

1 were wrong?

2 A. During Miranda?

3 Q. Yes, sir.

4 A. Correct.

5 MS. BIGGAR: I pass the witness, Your  
6 Honor.

7 THE COURT: Mr. Allard.

8 MR. ALLARD: Nothing further.

9 THE COURT: You may step down, sir.  
10 Call your next witness.

11 MR. ALLARD: Vincent Olivarez.

12 THE COURT: All right. Go ahead.

13 MR. ALLARD: Thank you.

14 **VINCENT OLIVAREZ,**

15 having been first duly sworn, testified as follows:

16 **REDIRECT EXAMINATION**

17 **BY MR. ALLARD:**

18 Q. When you were on the stand before, you said  
19 that you had an opportunity to speak with the defendant,  
20 correct?

21 A. Yes, sir.

22 Q. And we talked about you doing an interview with  
23 him?

24 A. Yes, sir.

25 Q. And, again, you said you didn't promise him

1 anything, correct?

2 A. No, I did not.

3 Q. Or coerce him?

4 A. No.

5 Q. During the statement, at any time did he  
6 request an attorney?

7 A. No, sir.

8 Q. At any time during him giving a statement, did  
9 he ask that the interview cease?

10 A. No, sir.

11 Q. At any time did he refuse to give a statement?

12 A. No, sir.

13 Q. And that statement was recorded?

14 A. Yes, sir.

15 Q. And the voice -- and was it audio-recorded,  
16 also?

17 A. Yes, sir.

18 Q. And what are the voices that were on the  
19 recording?

20 A. My voice and the defendant's voice.

21 Q. I'm going to publish to you now State's Exhibit  
22 No. 12.

23 (State's Exhibit No. 12 published)

24 Q. (By Mr. Allard) So, who are we looking at on  
25 the video right now?

1           A.    At this time we're looking at the defendant,  
2 Mr. Darryle Robertson.

3           Q.    And who just walked into the room?

4           A.    That is Officer Daniel Costin.

5                    MS. BIGGAR:  I'm going to stand back here  
6 because I can't --

7           Q.    (By Mr. Allard) Officer -- Officer Olivarez, if  
8 you would, could I get you to unplug your mic so we  
9 don't have feedback?  Because I have to turn this up  
10 really loud.

11          A.    How do I --

12          Q.    During your interview with the defendant, what  
13 was his volume?

14          A.    It was very low.

15                    (State's Exhibit No. 12 published)

16          Q.    (By Mr. Allard) So, the interview we just  
17 watched, what were you talking to him about, which  
18 robbery?

19          A.    I was talking to him about the robbery that  
20 occurred at 5401 East Freeway, the Family Dollar  
21 robbery.

22          Q.    And what was the date of that robbery?

23          A.    June 23rd, 2010.

24          Q.    And where is the location of that store as far  
25 as counties go?

1           A.    Harris County.

2           Q.    What did the defendant tell you he did that  
3 day?

4                       MS. BIGGAR:  Objection, Your Honor.  The  
5 video speaks for itself.  Cumulative.

6                       THE COURT:  Sustained.

7           Q.    (By Mr. Allard) When you compared his statement  
8 to Guadalupe Hurtado's statement and the video of the  
9 actual robbery, did you see inconsistencies?

10          A.    Yes, sir.

11                      MS. BIGGAR:  Objection, Your Honor.  Calls  
12 for speculation.  The jurors are the sole judge of the  
13 facts of the case.  They can come to a conclusion  
14 themselves.

15                      THE COURT:  Overruled.

16                      You may answer that question.

17          A.    Yes, sir, there were discrepancies.

18          Q.    (By Mr. Allard) And which discrepancies did you  
19 notice?

20          A.    During the video --

21                      THE WITNESS:  Am I able to speak about the  
22 video of the actual robbery?

23                      THE COURT:  Yes.

24          A.    During the video of the robbery, you see the  
25 defendant come in to the counter and he pulls out the

1 gun, and that's when the complainant reaches into the  
2 cash register and gives him the money as he stated to  
3 her. According to her statement --

4 Q. How was that inconsistent with his statement?

5 A. His statement said that he walked up to the  
6 counter and told her to give her {sic} the money, and  
7 the gun didn't come out until afterwards.

8 Q. What other inconsistencies did you observe as  
9 an investigator?

10 A. He said that he was playing, but according to  
11 the video there was no -- nothing looked as in a playing  
12 manner. Everything appeared to be a serious manner.

13 Q. And what other inconsistencies did you notice?

14 A. About him when he said -- can I refer back to  
15 my case notes?

16 Q. You can refresh your memory with your notes.

17 A. Okay.

18 Q. Don't read from your case notes.

19 A. No, sir.

20 He stated that a shot was fired from the  
21 weapon. There was no casings, no type of evidence to  
22 show that fact. I believe that's what he was saying,  
23 that he shot the weapon and that should have informed  
24 the complainant that it was a joke, but that did not  
25 occur.

1 Q. And what consistencies did you notice from the  
2 video from what the statement was that led you to  
3 believe that this was an actual true confession?

4 A. His demeanor, him laying his head down as he  
5 was confessing, and he was saying that he had the gun  
6 and that he told her to give her {sic} the money and it  
7 actually went down.

8 Q. Did the fact that he made the statement about  
9 the red shirt, placing it on the counter, did that have  
10 anything to do with your assessment of the truthfulness  
11 of his statement?

12 A. Yes. It showed that he was there, he was the  
13 individual --

14 MS. BIGGAR: Your Honor, I object. He's  
15 giving the -- he's commenting on the state of the  
16 evidence. He's giving an opinion as to what his opinion  
17 is.

18 THE COURT: Overruled.

19 THE WITNESS: Continue?

20 THE COURT: You can finish.

21 A. Only people that are at the location during an  
22 event can give facts of an event, facts -- factual  
23 information. And he provided factual information by  
24 stating that he grabbed a red shirt, placed it on the  
25 counter. If he would have just said "I grabbed an

1 item," that could have left it open, but he was -- gave  
2 a specific color and article.

3 Q. (By Mr. Allard) And did you show him the  
4 surveillance videos before you spoke with him?

5 A. No, sir.

6 Q. To your knowledge, has he ever seen the  
7 surveillance videos?

8 A. Not to my knowledge, no, sir.

9 Q. Now, at the very end you make a comment about  
10 the man taking care of him. What are you -- what was  
11 that about?

12 A. During his confession, during our interview, he  
13 stated that he knew that he was going to get caught  
14 soon. He made a reference toward God, "the man." A lot  
15 of people refer to God as "the man" --

16 MS. BIGGAR: Objection, Your Honor. Calls  
17 for speculation. He's not sure what he was referring  
18 to.

19 THE COURT: Overruled.

20 You may finish your answer.

21 A. By him making that reference towards God  
22 leading him to being caught, that's when I told him, at  
23 the end of my statement: The man led him here and the  
24 man will take care of him somewhere else.

25 MR. ALLARD: Pass the witness.

1 THE COURT: Ms. Biggar.

2 MS. BIGGAR: Thank you, Your Honor.

3 **RECROSS-EXAMINATION**

4 **BY MS. BIGGAR:**

5 Q. Officer Olivarez --

6 A. Yes, ma'am.

7 Q. -- before you started questioning -- well,  
8 first of all, were you in the room when Officer Costin  
9 was giving the Miranda warnings?

10 A. No, ma'am.

11 Q. So, when you began your questioning of  
12 Mr. Robertson, did you Mirandize him again?

13 A. No, ma'am.

14 Q. So, you didn't know at that point whether or  
15 not Mr. Robertson understood his -- his rights?

16 A. Yes, ma'am, I did.

17 Q. So, you had observed that and you knew that it  
18 was covered?

19 A. Yes, ma'am.

20 Q. But you weren't in the room?

21 A. No, ma'am.

22 Q. And you had asked Mr. Robertson whether or not  
23 he understood all of his rights?

24 A. Did I ask him that?

25 Q. Yes, sir.



1 A. No, ma'am.

2 Q. And did Mr. Robertson tell you that he  
3 understood his rights?

4 A. No, ma'am.

5 Q. And did Mr. Robertson tell you that he waived  
6 his rights?

7 A. No, ma'am.

8 Q. And did you look -- or do any sort of  
9 questioning or answering as to what Mr. Robertson's  
10 intelligence might be?

11 A. No, ma'am.

12 Q. So, did you find out or ask Mr. Robertson what  
13 his educational level might be?

14 A. No, ma'am.

15 Q. Did you ask him if he had ever been diagnosed  
16 with any mental illness?

17 A. No, ma'am.

18 Q. Did you ever ask him whether or not he had ever  
19 been told he was mentally retarded?

20 A. No, ma'am.

21 Q. Or had any special education classes in school?

22 A. No, ma'am.

23 Q. Had you asked him how far in school he had  
24 gone?

25 A. No, ma'am.

1 Q. So, at this point you really didn't do anything  
2 to find out what his intellectual ability would be?

3 A. No, ma'am.

4 Q. Did you ask him if he had had an understanding  
5 of the situation that was going on there at the police  
6 station?

7 A. No, ma'am.

8 Q. And he didn't have a lawyer with him, correct?

9 A. No, ma'am.

10 Q. And he didn't have anybody else there to  
11 explain to him any of his rights except for you and  
12 Officer Costin?

13 A. No, ma'am.

14 Q. And you did not explain to him his rights?

15 A. No, ma'am. Once he waived his rights --

16 Q. My question was: Did you explain to him his  
17 rights?

18 A. No, ma'am.

19 Q. So, when he was giving you the statement, he  
20 had told you that he knew Shannon Williams, correct?

21 A. Yes, ma'am.

22 Q. And that he and Shannon Williams had talked  
23 about the incident?

24 A. He stated that him and Shannon Williams were  
25 going to go in there and play a joke on the individual

1 who Shannon Williams knew, which was one of the  
2 complainants.

3 Q. And there were discrepancies between  
4 Mr. Robertson's story and what occurred at the Family  
5 Dollar store, correct?

6 A. Yes, ma'am.

7 Q. And he had even told you that a shot had been  
8 fired, when no shot had been fired?

9 A. Yes, ma'am.

10 Q. So, he actually made the story worse than what  
11 the story was, correct, by saying shots had been fired?

12 A. Well, an agg robbery is an agg robbery is an  
13 agg robbery, ma'am. You can't worsen an agg robbery.

14 Q. So, if you think somebody is shot at, that's  
15 not worse than if somebody is not shot at?

16 MR. ALLARD: Objection. Speculation.

17 THE COURT: Overruled.

18 You may answer the question.

19 A. You'll still get charged with agg robbery,  
20 ma'am. You won't get charged an additional charge.

21 Q. (By Ms. Biggar) My question was: That's not  
22 worse, the fact that somebody gets shot at versus  
23 somebody not getting shot at?

24 A. For the complainant, it would be more  
25 terrifying, but, again, in the eyes of the law, it's

1 going to be the same charge. So, it won't be any worse  
2 or lessen.

3 Q. But it sounds worse, no?

4 A. If you get shot at?

5 Q. Yeah.

6 A. Sure.

7 Q. So, his demeanor was a quiet demeanor?

8 A. During the interview, are you speaking of?

9 Q. Yes, sir.

10 A. Yes, ma'am.

11 Q. Was he emotional during that interview?

12 A. Yes, ma'am.

13 Q. Now, you said that you told him that the man  
14 led him here and the man could take him away?

15 A. No. The man will take care of him elsewhere.

16 Q. So, quite figuratively, isn't "the man" also  
17 referred to as the police?

18 A. Not what I'm referring to, ma'am.

19 Q. Okay. But you don't know what that statement  
20 meant to Mr. Robertson?

21 A. I can't speak for Mr. Robertson, no, ma'am.

22 Q. But "the man" sometimes is referred to as the  
23 police or the government?

24 A. Not in my terminology, no, ma'am.

25 Q. But in general.

1 A. I can't speak for someone in general, ma'am.

2 Q. What was the date the video was taken?

3 A. The date the video -- which video, ma'am? Of  
4 the incident or the interview?

5 Q. The interview. I'm sorry.

6 A. May I refer to my notes?

7 Q. Yes, sir.

8 A. The date is going to be October 4th, 2010,  
9 ma'am.

10 Q. October 4th, 2010 is when the video -- the  
11 video statement was made?

12 A. October 4th, 2010, yes, ma'am.

13 Q. So, just for date purposes, August 23rd, 2010  
14 is when the robbery of the Family Dollar store occurred?

15 A. June 23rd, 2010.

16 Q. Okay. And then the photospread of Marcus  
17 Whitaker, right, that was shown on July 14th, 2010?

18 A. If I could see the -- which it's dated on  
19 there. For Marcus Whitaker, this was July 9th, 2010.

20 Q. July 9th --

21 A. Yes, ma'am.

22 Q. -- 2010 is when the video -- I mean -- I'm  
23 sorry -- the photospread was shown?

24 A. For Marcus Whitaker.

25 Q. And then September 1st, 2010 is when a

1 photospread of Mr. Robertson was shown?

2 A. That's correct, ma'am.

3 Q. And then this interview was conducted on  
4 October 4th, 2010?

5 A. Yes, ma'am.

6 Q. Do sometimes people -- scratch that.

7 In this situation, he wasn't allowed to  
8 leave, was he?

9 A. No, ma'am.

10 MS. BIGGAR: I'll pass the witness.

11 THE COURT: Mr. Allard.

12 MR. ALLARD: Just a couple questions, Your  
13 Honor.

14 THE COURT: Okay.

15 **REDIRECT EXAMINATION**

16 **BY MR. ALLARD:**

17 Q. When you were having that conversation with the  
18 defendant, did he seem confused to you?

19 A. Confused?

20 Q. Yes.

21 A. No, sir.

22 Q. Was he able to articulate in a meaningful  
23 conversation with you?

24 A. Yes, sir.

25 Q. Did he appear to be mentally ill in any way?

1 A. No, sir.

2 Q. Did he seem to understand what was happening?

3 A. Yes, sir.

4 MR. ALLARD: Pass the witness.

5 THE COURT: Ms. Biggar.

6 MS. BIGGAR: Just briefly.

7 **RECROSS-EXAMINATION**

8 **BY MS. BIGGAR:**

9 Q. Are you a mental health professional?

10 A. No, ma'am.

11 Q. So, would you be able to diagnose somebody who  
12 had a mental illness or a diminished capacity?

13 A. No, ma'am.

14 MS. BIGGAR: Pass.

15 MR. ALLARD: Nothing further, Your Honor.

16 THE COURT: You may step down, sir.

17 Call your next witness.

18 MR. ALLARD: State rests.

19 THE COURT: All right. Ladies and  
20 gentlemen of the jury, please retire to the jury room.

21 (Open court, defendant present, no jury)

22 THE COURT: What's next?

23 MS. BIGGAR: Judge, at this time the  
24 defense would like to ask for a directed verdict.

25 Specifically on the points that we don't believe that