

REPORTER'S RECORD
 VOLUME 4 OF 9 VOLUMES
 TRIAL COURT CAUSE NO. 1481930
 FIRST COURT OF APPEALS NO. 01-15-00999 FILED IN
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 HOUSTON, TEXAS

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CHRISTOPHER A. BRINE
Clerk

STATE OF TEXAS * IN THE DISTRICT COURT OF
 VS. * HARRIS COUNTY, TEXAS
 DONALD NEALEY * 228TH DISTRICT COURT
 *

 *** TRIAL ON THE MERITS ***

On November 10, 2015, the following proceedings
 came on to be heard in the above-entitled and numbered
 cause before the Honorable Leslie Yates, Judge
 presiding, held in Houston, Harris County, Texas;

Proceedings reported by machine shorthand.

Mattie Kimble, Texas CSR #7070
 Deputy Court Reporter - 228th District Court
 1201 Franklin
 Houston, Texas 77002
 713-755-6961

A P P E A R A N C E S**FOR THE STATE:**

**MS. JENNIFER MERIWETHER
MS. CATINA HAYNES
ASSISTANT DISTRICT ATTORNEYS
1201 Franklin, Suite 600
Houston, Texas 77002
SBOT NOS. 24046430, 24055638
Phone: 713-274-5800**

FOR THE DEFENDANT:

**MR. JOSEPH PHILIP SCARDINO
MR. ROBERT SCARDINO
MR. ANTHONY SCARDINO
ATTORNEYS AT LAW
1004 Congress Street, Floor 3
Houston, Texas 77002
SBOT NOS. 17718600, 17719500, 24066029
Phone: 713-224-3800**

FOR THE CO-DEFENDANT MARQUIS DAVIS

**MR. ALVIN E. NUNNERY
ATTORNEY AT LAW
909 Texas Street, Suite 205
Houston, Texas 77002
SBOT NO. 15141800
Phone: 713-222-1919**

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P R O C E E D I N G S

November 10, 2015

(Open court, Defendant present.)

THE BAILIFF: All rise for the jury.

(Jury enters courtroom.)

THE COURT: Thank you. Please be seated.

Ms. Meriwether, you may proceed. I'm
sorry. Before that, welcome back, ladies and gentlemen.
Now you may proceed.

MS. MERIWETHER: Thank you, Your Honor.
Officer Perez.

THE BAILIFF: Judge, this witness has been
sworn in.

THE COURT: Thank you.

MICHAEL PEREZ,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MERIWETHER:

Q. Could you please introduce yourself to our
jury?

A. Officer Michael Perez.

Q. And how are you employed?

A. I'm a police officer with the City of Houston.

Q. How long have you been with the City of
Houston?

1 A. Just a little over 20 years.

2 Q. What did you do prior to joining the Houston
3 Police Department?

4 A. I was in United States Marine Corps.

5 Q. Thank you. And I believe it is the Marine
6 Corps' birthday today; is that correct?

7 A. Yes, ma'am.

8 Q. Very well. How long were you in the Marine
9 Corps?

10 A. About four and a half years.

11 Q. And what led you to the Houston Police
12 Department for work?

13 A. They had openings.

14 Q. Fair enough. What type of training do you have
15 to be a police officer?

16 A. Well, you do your six month academy training,
17 and after that you go through six months training as a
18 probationer police officer where you learn, actually
19 it's hands on from what you learn from the academy. And
20 then after that you go off on your own; and you learn
21 your basic laws, arrest techniques.

22 Q. And for you when you went through the academy
23 and then did your training part, where did you go after
24 that, what division?

25 A. I was at East side patrol for 11 years.

1 Q. What's involved in patrol?

2 A. Just running daily calls for service, 9-1-1
3 calls, disturbance calls, taking reports.

4 Q. And after finishing your time up in patrol,
5 what was your next assignment?

6 A. To the crime scene unit.

7 Q. And is that the position you currently hold?

8 A. Yes, ma'am.

9 Q. And how long have you been in the crime scene
10 unit?

11 A. Just a little over ten years.

12 Q. And what are your job duties as a crime scene
13 unit?

14 A. As a crime scene unit, we respond to all call
15 outs, which is like murders, bank robberies, infant
16 deaths, industrial accidents, suicides, questionable
17 deaths. When we get to the scene, we document the scene
18 by photographing the scene, drawing a rough sketch for a
19 diagram and collecting evidence.

20 Q. And what kind of training, experience have you
21 had that allows you to do this type of work?

22 A. Go through several photography classes,
23 evidence collection classes, bloodstain analysis
24 classes, crime scene reconstruction courses.

25 Q. And is that an ongoing process that you do

1 throughout your time in the crime scene unit?

2 A. Yes, ma'am.

3 Q. Have you been to few or many homicide scenes?

4 A. Many.

5 Q. And are you a certified peace officer in the
6 State of Texas?

7 A. Yes, ma'am.

8 Q. Do you hold any other certifications?

9 A. I'm a certified crime scene investigator
10 through International Association for Identification.

11 Q. And how long have you held that certification?

12 A. Four years.

13 Q. What was involved in obtaining that
14 certification?

15 A. It is a lengthy test. It's over 200 questions.

16 Q. So, you have that certification; and you
17 regularly make homicide scenes?

18 A. Yes, ma'am.

19 Q. How do you get sent out to a scene? How does
20 that part of the job work?

21 A. We receive a call from homicide or the related
22 division like robbery, they'll call us at the office and
23 give us the basic information, which is the case number,
24 call location and what kind of evidence they might have
25 on the scene.

1 Q. Were you working back on March 6th of 2014?

2 A. Yes, ma'am.

3 Q. And in the capacity as a crime scene unit?

4 A. Yes, ma'am.

5 Q. And what shift were you working at that time?

6 A. Evening shift.

7 Q. And what are the hours for evening?

8 A. My shift hours are 2:00 p.m. to 10:00 p.m.

9 Q. 2:00 to 10:00, okay. Did you get a call out to
10 a location that night that ended up being a homicide
11 scene?

12 A. Yes, ma'am.

13 Q. About what time did that call drop?

14 A. I received the call at 9:45 p.m.

15 Q. And what did you do?

16 A. Then I collect equipment, my camera, my
17 evidence bag, everything I'm going to need for
18 processing a scene. I load my vehicle up, and then I
19 drive to the scene.

20 Q. And what location did you make?

21 A. Went to 8565 West Sam Houston Parkway south.

22 Q. And what kind of location was that?

23 A. It's an apartment complex.

24 Q. Had you ever been to a call out at that place
25 before?

1 A. No, ma'am.

2 Q. Now, on your way out there, what information
3 are you provided with before you arrive?

4 A. I'm just provided with the case number, that
5 it's a shooting DOA, and that's pretty much all the
6 information I get.

7 Q. What does DOA mean?

8 A. Dead on arrival.

9 Q. So, about what time do you arrive, if you
10 recall?

11 A. I arrived about 10:00 p.m.

12 Q. And upon arrival, what do you do?

13 A. I meet with the primary patrol officers; and if
14 the homicide investigators are on the scene, I'll also
15 meet with them.

16 Q. So, on this scene did you have an opportunity
17 to meet with primary patrol as well as homicide
18 investigators?

19 A. Yes, ma'am.

20 Q. What did you observe about the scene when you
21 first arrived?

22 A. Once I arrived, I get the information that the
23 patrol officers have, and I ask them if they located any
24 evidence, then they'll direct me to wherever the scene
25 is and whatever evidence they've located.

1 Q. Let's talk a little bit generally about this
2 scene. You've already said it was an apartment complex,
3 correct?

4 A. That's correct.

5 Q. Is it one of those with multiple buildings?

6 A. Yes, ma'am.

7 Q. And were you directed to a particular area for
8 your crime scene?

9 A. Yes, ma'am.

10 Q. And what building area was that?

11 A. I think it was Building 11.

12 Q. And were you able to make any observations
13 about the lighting in that area?

14 A. It was dimly lit with exterior building lights.

15 Q. Were you also able to observe if the other
16 units had put up tape to kind of block the area?

17 A. Yes, ma'am.

18 Q. Upon your arrival, what did you -- did you
19 observe that there was any firearms evidence present?

20 A. When I arrived and I met with the officers,
21 they walked me over to where the Complainant was
22 located and around the Complainant the officers had used
23 white pieces of paper to mark off firearms evidence.

24 Q. And why is that typically done?

25 A. That's just to mark off evidence so no one will

1 step on it, and we have an idea of where our evidence is
2 located.

3 Q. So now that you've got a general overview of
4 the area and had a chance to look at it, what is your
5 next step?

6 A. I start photographing the scene. I use a
7 Cannon EOS 70 digital camera. I photograph the scene
8 with a flash if it's dark, and then I go back and
9 photograph the scene using available light.

10 Q. How many pictures do you take?

11 A. On average, on a murder, it's probably over 200
12 photos.

13 Q. And why so many photos?

14 A. It's just documenting everything on the scene
15 and whatever evidence we have.

16 Q. I'm going to step away from the photograph
17 side, and we'll come back to that in a minute. Do you
18 take any kind of measurements, or do you do any
19 diagramming at the scene?

20 A. Yes, ma'am.

21 Q. And why did you do that?

22 A. It's in case we have to recreate a scene, we
23 can go back and plot evidence and the Complainant back
24 on a scene.

25 Q. And what do you determine or do you use a point

1 of reference for the measurement or how does that part
2 work?

3 A. We usually use a fixed point of reference; it
4 would be a building or a fire hydrant.

5 Q. And did you do that on this scene?

6 A. Yes, ma'am.

7 Q. Now, is there also a time when you're at the
8 scene that you use a video camera?

9 A. Yes, ma'am.

10 Q. And tell us about that?

11 A. We just photograph or document the scene with a
12 video almost given the perspective as you're walking
13 through the scene.

14 Q. And why do you do that?

15 A. In case the photos don't come out properly, you
16 have a video as a secondary source of documentation.

17 Q. And this video, is it like I go to the movies
18 and I hear people talking on it or how does it work?

19 A. We normally have a sound plug in the video
20 camera so you don't hear any outside noises like a radio
21 or people talk.

22 Q. I assume if there's a noise plug in it, do you
23 narrate for the video what we're seeing; or is it simply
24 you filming?

25 A. Just filming.

1 MS. MERIWETHER: Your Honor, may I approach
2 the witness?

3 THE COURT: You may.

4 Q. (BY MS. MERIWETHER) All right. I'm going to
5 show you State's Exhibit No. 2. Are you familiar with
6 this?

7 A. Yes.

8 Q. What is it?

9 A. It's a scene DVD.

10 Q. And is it related to this homicide case that
11 you came out to on the apartment complex?

12 A. Yes, ma'am.

13 Q. And then I'm going to show you State's
14 Exhibit 3 and 4. Are you familiar with these items?

15 A. Yes, ma'am.

16 Q. And what are they?

17 A. These are the diagrams that I drew.

18 Q. And you think they'd help the jury understand
19 what you did out there and the layout of this scene?

20 A. Yes, ma'am.

21 Q. Okay. And then I'm going to show you State's
22 Exhibit 5 and 6, are you familiar with these?

23 A. Yes.

24 Q. And are they -- what are they?

25 A. It's the overall view of the complex layout.

1 Q. Okay. And is this the location that you went
2 to on March 6th of 2014?

3 A. Yes.

4 Q. And is this a location that's in Harris County,
5 Texas?

6 A. Yes, ma'am.

7 Q. And I'm going to give you State's Exhibit 7
8 through 44 to review and see if you can tell us what
9 those items are?

10 A. These are my scene photos, ma'am.

11 Q. And, obviously, is this a small selection of
12 the scene photos?

13 A. Yes, ma'am.

14 Q. Are these intended to help the jury understand
15 the layout of the scene as you found it on March 6th of
16 2014?

17 A. That's correct.

18 MS. MERIWETHER: Your Honor, at this time I
19 move to offer State's Exhibits 2 through 44, tender to
20 Counsel for any objections.

21 (State's Exhibit Nos. 2 through 44
22 offered.)

23 MR. ROBERT SCARDINO: Can we have just a
24 moment, Your Honor?

25 THE COURT: You may.

1 MR. PHILIP SCARDINO: May we approach, Your
2 Honor?

3 THE COURT: You may.

4 (Bench conference.)

5 MR. PHILIP SCARDINO: Judge, we'd object to
6 State's 31, 32, 33, 34 and 35 in that they're
7 duplicative. They all contain the same photo. Their
8 probative value is lost when there's multiple pictures
9 like that. It's just to inflame the jurors, Your Honor.

10 THE COURT: They don't appear to be
11 identical to me, but what is the State's response?

12 MS. MERIWETHER: They are not identical.
13 Each one shows a different view, and I believe -- well,
14 I can't see them exactly, some of them show the actual
15 wounds on the body. There are others you see the body
16 as it was found, that would be 35, depicts what's found
17 in his pocket. 31 and 32 show different angles of the
18 body and the blood flow, and 33 is the facial shot, very
19 different from any that are available.

20 MR. PHILIP SCARDINO: We don't have any
21 objections to those.

22 MS. MERIWETHER: Okay.

23 THE COURT: Your objection is overruled.
24 State's Exhibit Nos. 2 through 44 are admitted.

25 (State's Exhibit Nos. 2 through 44

1 admitted.)

2 MS. MERIWETHER: Thank you, Your Honor.

3 MR. PHILIP SCARDINO: I'd also, Your Honor,
4 object; or I'd like to take the witness on voir dire as
5 to the admission to 2.

6 THE COURT: On what basis?

7 MR. PHILIP SCARDINO: The hearsay that
8 might be contained therein and that it's the same
9 pictures that are in the other exhibits.

10 MS. MERIWETHER: It gives you a reference
11 and an overview of the scene.

12 MR. PHILIP SCARDINO: But they said there's
13 a voice over.

14 MS. MERIWETHER: No, there's not a voice
15 over. There's a plug in.

16 THE COURT: I'll allow you to ask him one
17 or two questions as it pertains to any voices that are
18 on there.

19 MR. PHILIP SCARDINO: Thank you, Your
20 Honor.

21 THE COURT: And that's as to State's
22 Exhibit 2?

23 MR. PHILIP SCARDINO: As to State's Exhibit
24 No. 2.

25 THE COURT: Okay.

VOIR DIRE EXAMINATION

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BY MR. PHILIP SCARDINO:

Q. Is it Officer Perez?

A. Yes, sir.

MR. PHILIP SCARDINO: May I approach the witness, Your Honor?

THE COURT: You may.

Q. (BY MR. PHILIP SCARDINO) State's Exhibit No. 2, you testified to is a video that you took out there at the scene on March the 6th of 2014, correct?

A. Yes, sir.

Q. And you reviewed the other pieces of evidence, the photographs that Ms. Meriwether showed you awhile ago, right?

A. Yes, sir.

Q. Is there -- are the same images depicted on this video that are depicted in those photographs?

A. It's a video of the scene. Those are still photos. This is a walkthrough of the scene with an actual video.

Q. Does it show anything different than what those photographs show you?

A. No, sir.

Q. Is there a voice over on the State's Exhibit No. 2?

1 A. No, sir.

2 Q. So there's no audio on this at all?

3 A. No audio.

4 MR. PHILIP SCARDINO: We just renew our
5 objection, Your Honor, that it's duplicative of the
6 photographs that are being introduced.

7 THE COURT: Your objection is overruled.
8 State's Exhibit No. 2 is admitted.

9 (State's Exhibit No. 2 admitted.)

10 MS. MERIWETHER: May I proceed with
11 publication of the items, Your Honor?

12 THE COURT: You may.

13 MS. MERIWETHER: Judge, it says that you're
14 muted again.

15 THE COURT: And that affects it?

16 MS. MERIWETHER: Thank you, Judge. Again,
17 you're all powerful.

18 THE COURT: Thank you.

19 (Laughter.)

20 (Publishing State's Exhibit 2.)

21 Q. (BY MS. MERIWETHER) Now, Officer Perez, I want
22 to talk about a few of the things that are seen in the
23 video. First off, State's Exhibit 5, is this the
24 apartment complex that you went to?

25 A. Yes, ma'am.

1 Q. And more specifically showing you State's
2 Exhibit No. 6, this is the lower area, bottom part of
3 State's Exhibit 5. Is this the general area of where
4 this shooting occurred?

5 A. That's correct.

6 Q. And we see that depicted -- do we see that
7 depicted in the video and that it's near Building 11?

8 A. Yes, ma'am.

9 Q. We also saw that you took some pictures of, I
10 guess for lack of a better term, tire tracks?

11 A. Yes, ma'am.

12 Q. And blood, tell us about that?

13 A. We just had bloody tire tracks through the
14 scene and we didn't know where they came from, so I just
15 documented them.

16 Q. Did you learn if any HPD officers had driven
17 through that area?

18 A. No, ma'am.

19 Q. I want to show you State's Exhibit No. 10. We
20 see a bunch of little white folded-up sheets here. What
21 are those?

22 A. Those are the markers that patrol had put out,
23 the folded pieces of paper.

24 Q. And that's done prior to your arrival?

25 A. That's correct.

1 Q. What do you put out?

2 A. I put out yellow evidence markers that are
3 numbered.

4 Q. And showing you State's Exhibit 13, is that
5 what we see depicted here?

6 A. Yes, ma'am.

7 Q. And how do you decide how many markers to use?

8 A. After I get to the scene and the officers or
9 the investigators show me what evidence they have, I
10 search the scene myself to look for any other evidence.
11 If I find anything else, I know that I need more
12 markers. They give me four evidence markers out there
13 or four pieces of paper, I usually go out with eight
14 markers just in case I find other evidence.

15 Q. And in this situation, you found a number of
16 items; and you used those tents to document them?

17 A. That's correct.

18 Q. Then do you also reflect each of those items in
19 your scene diagram and what they are?

20 A. Yes, ma'am.

21 Q. I want to talk to you about State's Exhibit 14
22 in particular, what's depicted here?

23 A. It's just an overall with most of the markers
24 in place.

25 Q. And tell me about these items down here, the

1 chalk lines, what are those?

2 A. That's the bloody tire tracks.

3 Q. And what are the chalk marks up here?

4 A. The same thing, more bloody tire tracks.

5 Q. And do you take a large number of photos with
6 all different angles of the body?

7 A. Yes, ma'am.

8 Q. And specifically showing you State's
9 Exhibit 18, we again see markers in this area; but in
10 this photograph there are also some markers up here at
11 the top, what were those items?

12 A. That was a pair of sunglasses and a glove.

13 Q. And showing you State's Exhibit No. 19, what's
14 depicted here?

15 A. The sunglasses and glove.

16 Q. What is this discoloration in this area?

17 A. It's a large amount of blood.

18 Q. Did you locate any other blood on either the
19 garage door or this brick pillar or building pillar?

20 A. There is some spatter on the garage door and
21 some staining on the, I guess, that would be the
22 exterior wall of the building.

23 Q. And is State's Exhibit 22 an attempt to get
24 both the ground blood as well as off of the building?

25 A. Yes, ma'am.

1 Q. And is it difficult to see in some of these,
2 showing you State's Exhibit 21, some of the blood given
3 that it blends in with the color of the brick?

4 A. Yes, ma'am.

5 Q. And same here with State's Exhibit 20?

6 A. Yes, ma'am.

7 Q. Now, did you find any shell casings at the
8 scene?

9 A. Yes, I did.

10 Q. And what are shell casings?

11 A. They're the fired cartridge or the casing from
12 a bullet.

13 Q. Explain that to the jury?

14 A. The actual brass portion of the bullet, that's
15 the fired casing.

16 Q. And how is that left behind? How does it work?

17 A. In a semiautomatic weapon you have a magazine,
18 and once you fire the weapon, the slide slides back
19 ejecting one cartridge, the bullet is fired out that's
20 your projectile, what's kicked out is the casing, so
21 every time you fire the gun, that's going to happen
22 until you run out of ammunition. If you have a
23 revolver, you have to actually fire five, six rounds,
24 whatever is in there; and you open the cylinder and dump
25 the ammunition out or the fired casings out.

1 Q. So, if there's a revolver that's used in a
2 homicide or in a shooting, you're not necessarily going
3 to find casings at the scene?

4 A. That's correct.

5 Q. Because they remain inside of the gun?

6 A. That's correct.

7 Q. But if you're using a semiautomatic, it's going
8 to eject cartridge casings?

9 A. Yes, ma'am.

10 Q. And did you find cartridge casings at this
11 scene?

12 A. Yes, ma'am.

13 Q. Were they all of the same type?

14 A. Yes, they were.

15 Q. And what does that mean?

16 A. They were all the same caliber, which is
17 9-millimeters.

18 Q. Now, in State's Exhibit 15, we see all of the
19 tents here, not all of them but at least I think 5 are
20 depicted in State's 15, what did those mark?

21 A. Those are the fired cartridges on scene.

22 Q. And did you also take individual pictures of
23 each of the fired cartridge casings?

24 A. Yes, ma'am.

25 Q. Showing you State's Exhibit 23, 24, State's

1 Exhibit 25, State's Exhibit 26, State's Exhibit 27,
2 State's Exhibit 28, State's Exhibit 29, and State's
3 Exhibit 30, where is that cartridge casing located?

4 A. Can I highlight it on here?

5 Q. Yes.

6 A. It's under the sheet right here (indicating).

7 Q. So, those were all of the cartridge casings
8 that you found at the scene?

9 A. Yes, ma'am.

10 Q. There were a total of eight 9-millimeter
11 cartridge casings?

12 A. Yes, ma'am.

13 Q. Did you locate any other type of cartridge
14 casing or ammunition at that scene?

15 A. No, ma'am.

16 Q. And showing you State's Exhibit No. 4, what is
17 this?

18 A. It's the bird's-eye view diagram that I draw on
19 the scene.

20 Q. And, again, we see some numbers as well as a
21 person laying down. Is this an item that you created to
22 document what you collected?

23 A. Yes, ma'am.

24 Q. And do you also put a legend off to the side
25 here that tells us what each of those items is?

1 A. Yes, ma'am.

2 Q. And then showing you State's Exhibit No. 3,
3 what is this?

4 A. It's just overall dimensions of the scene.

5 Q. And how do you collect those dimensions?

6 A. I use a measuring wheel or tape measure.

7 Q. Now, while you're at the scene, it appears as
8 if the victim's body is covered up with a sheet; is that
9 correct?

10 A. Yes, ma'am.

11 Q. At some point is that sheet removed?

12 A. Yes, ma'am.

13 Q. And when does that occur?

14 A. When the Medical Examiner's Office arrives.

15 Q. And does the medical examiner make the scene of
16 all fatalities?

17 A. Yes, ma'am.

18 Q. And when they arrive at the scene, what is
19 their job if you know?

20 A. All I know is that they have care, custody,
21 control of the body.

22 Q. Which, I guess, conversely means you don't have
23 any control of the body?

24 A. That's correct.

25 Q. Do you move it, touch it, do anything with it

1 while you're at the scene?

2 A. No, ma'am.

3 Q. When the medical examiner investigator arrives,
4 what does the ME investigator do?

5 A. They'll document the scene through photos and
6 remove the sheet and document the injuries on the
7 Complainant. And then they conduct an inventory of the
8 person's effects, if they have a wallet or keys or
9 whatever it is, they'll remove all that stuff.

10 Q. And when that part happens, do you have an
11 opportunity to document the body as well?

12 A. Yes, ma'am.

13 Q. And did you do that in this case?

14 A. Yes, I did.

15 Q. And how do you decide what pictures to take?

16 A. I just get overall photos of the Complainant
17 and any injuries they have.

18 Q. And in this, I forgot to ask, this area that's
19 outside of Building 11, what is the surface like?

20 A. It's a concrete surface.

21 Q. Is it a flat surface?

22 A. It's actually sloped. The higher end is where
23 the apartment is. The lower end is where the parking
24 lot is.

25 Q. And when you were viewing the victim's body,

1 did that cause you to be able to see a blood run?

2 A. Yes, ma'am.

3 Q. Due to the slope of the surface?

4 A. That's correct.

5 Q. Showing you State's Exhibit 32 and showing you
6 State's Exhibit 34, did they at some time while on the
7 scene, do they remove the shirt or lift up the shirt?

8 A. Lift up the shirt, yes.

9 Q. And that's how you're able to get State's
10 Exhibit 34?

11 A. Yes, ma'am.

12 Q. Were you able to view the body and make any
13 observations about injuries or harm that was done to it?

14 A. Just through photos.

15 Q. And did you draw any conclusions about what
16 happened?

17 A. No, ma'am.

18 Q. Not your job, right?

19 A. That's correct.

20 Q. You're just simply there to document and
21 collect?

22 A. Yes, ma'am.

23 Q. And showing you State's Exhibit No. 35, what's
24 occurring in this photograph?

25 A. This is when the medical examiner is conducting

1 an inventory of the Complainant's personal effects.

2 Q. And when that inventory was done, do you know
3 if they located a wallet or identification on him?

4 A. No, they did not.

5 Q. Did they locate any car keys on him?

6 A. No, ma'am.

7 Q. I'm going to zoom in a little bit here on
8 State's Exhibit 35. What is that that we're seeing
9 here?

10 A. It's a small baggy of marijuana.

11 Q. And where did that come from?

12 A. From his front, right pocket.

13 Q. So, he had a small baggy of marijuana on him
14 but no wallet or identification, car keys. Was there a
15 cell phone?

16 A. No, ma'am.

17 Q. And all of those things you would have
18 documented had they been on the body?

19 A. That's correct.

20 Q. And showing you State's Exhibit 36, what is
21 documented here?

22 A. That's where the Complainant was laying after
23 he was removed, and I'm just documenting the bloodstain
24 there.

25 Q. And, again, does this allow us to see the slope

1 in the driveway and the run of the blood?

2 A. That's correct.

3 Q. And showing you State's Exhibit 40, what is
4 depicted here?

5 A. That's the reflective chalk just highlighting
6 the tire tracks.

7 Q. Were you able to determine how many sets of
8 tire tracks there were?

9 A. Looks like one set going one direction and the
10 other.

11 Q. State's Exhibit No. 41, another set of tire
12 tracks?

13 A. Yes, ma'am.

14 Q. And then in the foreground here, what's back
15 there?

16 A. That's where my crime scene vehicle and a
17 couple of patrol cars.

18 Q. Did you also attempt to take some additional
19 photos as it was getting lighter in the day?

20 A. That's actually available light, that's without
21 the flash.

22 Q. That's without the flash. So, this is kind of
23 the lighting that was out there as you're there?

24 A. Yes, ma'am.

25 Q. And from this perspective we're able to see

1 Items 5 and 6 marked and then, again, more tire tracks;
2 is that correct?

3 A. Yes, ma'am.

4 Q. We also see some tire tracks that are somewhat
5 closer to the body?

6 A. That's correct.

7 Q. This one here?

8 A. Yes, ma'am.

9 Q. Did that appear as if it had passed and was
10 passing through again?

11 A. It could be, yes.

12 Q. Now, did you collect any items that were at
13 that scene and take them back to your office for review?

14 A. The glove, the sunglasses and the fired
15 cartridges I collected.

16 Q. And why do you collect those items?

17 A. That's our evidence that we have for this case.

18 Q. Did you collect any blood swabs or stains from
19 the ground?

20 A. No, ma'am.

21 Q. Why not?

22 A. At the request of the homicide investigators,
23 if they want it, then we'll collect it.

24 Q. Would you be able to surmise whose blood it
25 would most likely be at that scene?

1 A. It's possible, yes.

2 Q. And who would that be?

3 A. The Complainant's.

4 Q. Okay. So, after you documented the scene,
5 taken your pictures, video of it, what's your next step
6 in this investigation?

7 A. After I collect the evidence, I'll package it
8 and tag it in our property room.

9 Q. And in this case you've tagged in shell
10 casings, a glove, and sunglasses; is that correct?

11 A. Yes, ma'am.

12 MS. MERIWETHER: Your Honor, may I approach
13 the witness?

14 THE COURT: You may.

15 Q. (BY MS. MERIWETHER) I'm going to show you
16 State's Exhibit 45 and its contents and see if you're
17 familiar with these items?

18 A. Yes, ma'am.

19 Q. And what is State's Exhibit 45?

20 A. These are the recovered fired cartridges.

21 Q. That were collected at the scene?

22 A. Yes, ma'am.

23 Q. And showing you State's Exhibit 46, are you
24 familiar with this item and its contents, it's open?

25 A. Yes, ma'am.

1 Q. And what is item or State's Exhibit 46?

2 A. It's the glove that I collected.

3 Q. And then lastly, don't take it off?

4 A. Oh, I have others.

5 Q. And what is State's Exhibit 47?

6 A. Those are the sunglasses.

7 Q. And these were all items that you collected,
8 packaged up for further testing, if needed?

9 A. Yes, ma'am.

10 MS. MERIWETHER: Your Honor, at this time I
11 move to offer State's Exhibits 45, 46 and 47 and
12 contents.

13 (State's Exhibit Nos. 45 through 47
14 offered.)

15 MR. PHILIP SCARDINO: May I have just a
16 moment, Your Honor?

17 THE COURT: Yes, you may.

18 MR. PHILIP SCARDINO: May I take this
19 witness on voir dire?

20 THE COURT: For what purpose, Counselor?

21 MR. PHILIP SCARDINO: Just for the chain of
22 custody.

23 THE COURT: You may.

24 **VOIR DIRE EXAMINATION**

25 BY MR. PHILIP SCARDINO:

1 Q. Officer Perez, you've testified that you
2 collected these items, State's Exhibit 45, 46 and 47?

3 A. Yes, sir.

4 Q. And do you know where they've been?

5 A. To my knowledge, in the property room.

6 Q. And how do you know they're the same ones that
7 you collected?

8 A. On the bags I put my initials on each item I
9 collect. And those are the same containers I put them
10 in.

11 Q. Okay. And when did you turn them over to the
12 evidence room?

13 A. That night or actually the following morning on
14 the 7th.

15 Q. And when is the next time that you saw them?

16 A. Today, sir.

17 Q. Today?

18 A. Yes, sir.

19 Q. And how did you retrieve them?

20 A. I did not retrieve them.

21 Q. Do you know who did?

22 A. No, sir.

23 MR. PHILIP SCARDINO: We'd object to the
24 chain of custody, Your Honor.

25 THE COURT: Your objection is overruled,

1 and they're admitted.

2 (State's Exhibit Nos. 45 through 47
3 admitted.)

4 Q. (BY MS. MERIWETHER) Showing you first State's
5 Exhibit 45, what are these items?

6 A. Those are the fired cartridges from the scene.

7 Q. And you packaged them each individually?

8 A. Yes, ma'am.

9 Q. And why is that?

10 A. To keep each cartridge away from each other in
11 case they have DNA evidence or fingerprint evidence.

12 Q. And I want to show you one in particular out of
13 the random group here and ask you some questions about
14 it. In your attempt to package them and keep them
15 separate, do you also note which evidence marker they
16 belong to?

17 A. Yes, ma'am.

18 Q. And you do that for each one?

19 A. Each one, yes.

20 Q. Do you also put a offense location and date on
21 the item?

22 A. Yes, ma'am.

23 Q. And is that what we see here?

24 A. That's correct.

25 Q. And this appears to contain initials?

1 A. Yes, ma'am.

2 Q. Are these yours here?

3 A. Yes, ma'am.

4 Q. Showing you this item, what is this?

5 A. It's a gardening glove.

6 Q. And is that one of the items that you collected
7 at the scene?

8 A. Yes, ma'am.

9 Q. And that was marked as Item 10 on your evidence
10 diagram?

11 A. I believe so.

12 Q. And there is an additional tag that's been
13 placed on that item, do you know how that's taken place?

14 A. No, ma'am, that's probably from the crime lab.

15 Q. And now showing you this item, what are these?

16 A. It's the pair of sunglasses.

17 Q. And these were the ones that you collected at
18 the scene back then?

19 A. Yes, ma'am.

20 Q. Back on March 6th, I'm sorry?

21 A. Yes.

22 Q. And it appears, also, to have an addition of an
23 item tag, do you know much about that?

24 A. No, ma'am.

25 Q. Again, does it appear to have a number that

1 would be consistent with the crime lab?

2 A. Yes, ma'am.

3 Q. The 2014063720?

4 A. Yes, ma'am.

5 Q. All right, so you've gotten the items, you've
6 put them into the property room, done some scene
7 diagrams, that's done on the computer back at the office
8 later; is that correct?

9 A. That's correct.

10 Q. Did that conclude your involvement with the
11 scene side of this investigation?

12 A. Yes, ma'am.

13 Q. On the next day, on Friday, March 7th of 2014,
14 were you contacted by a homicide investigator?

15 A. Yes, I was.

16 Q. And who was that?

17 A. It was homicide Investigator Officer Sosa.

18 Q. And what was the purpose of Officer Sosa's
19 contact with you?

20 A. He asked me to photograph a --

21 MR. PHILIP SCARDINO: Excuse me.

22 Objection, Your Honor. Object to hearsay. I'd ask if
23 this witness be instructed about not saying what someone
24 has told him, Your Honor.

25 THE COURT: Your objection is sustained.

1 Please refrain from commenting upon what someone else
2 told you. You may proceed.

3 MS. MERIWETHER: Thank you, Your Honor.

4 Q. (BY MS. MERIWETHER) Officer Perez, you were
5 contacted by Sosa, what did you do as a result?

6 A. Document the individual they brought in,
7 photographed the individual himself and then collect his
8 clothing.

9 Q. And when and where did that take place?

10 A. It was on Friday, March 6th -- or 7th, I'm
11 sorry. And we do that on the 24th floor at 1200 Travis.
12 It's a suspect processing room or a Complainant
13 processing room.

14 Q. And 1200 Travis is in downtown main police
15 station?

16 A. Yes, ma'am.

17 Q. This individual, did you know anything about
18 him?

19 A. No, ma'am.

20 Q. Your role, what was your role with him?

21 A. Just to photograph him and collect his
22 clothing.

23 MS. MERIWETHER: Your Honor, may I approach
24 the witness?

25 THE COURT: You may.

1 Q. (BY MS. MERIWETHER) I first want to start with
2 State's Exhibit 48 through 51 and see if you're familiar
3 with these photographs?

4 A. Yes, ma'am.

5 Q. And what are they?

6 A. It's a photograph of the individual they
7 brought in and of his clothing that I collected.

8 Q. Okay. These are your attempt to document him
9 as well as in 48 and 49, is that correct, both his shirt
10 and his pants?

11 A. That's correct.

12 Q. And then tell me about 50 and 51?

13 A. These were just laid out without the individual
14 in the clothing.

15 Q. So, this is like flat version?

16 A. That's correct.

17 Q. Okay. Perfect.

18 MS. MERIWETHER: At this time I move to
19 offer State's Exhibit 48, 49, 50 and 51, tender for any
20 objections.

21 (State's Exhibit Nos. 48 through 51
22 offered.)

23 MR. PHILIP SCARDINO: No objections, Your
24 Honor.

25 THE COURT: State's Exhibits 48 through 51

1 are admitted.

2 (State's Exhibit Nos. 48 through 51
3 admitted.)

4 Q. (BY MS. MERIWETHER) Starting with State's
5 Exhibit 52 and its contents, can you take a look at it
6 and tell me what is this item? I think we may need
7 scissors.

8 And what is this item?

9 A. That is the jacket the individual was wearing.

10 Q. And that's the item that you collected from him
11 on March 7th; is that correct?

12 A. Yes, ma'am.

13 Q. All right. And now showing you the other item
14 which is marked as State's Exhibit 53 and its contents,
15 can you take a look at it? And what is this item?

16 A. These are the pants that he was wearing.

17 Q. And you collected those as well for further
18 testing?

19 A. Yes, ma'am.

20 Q. And these items also have some additional tags
21 and writing related to the -- to crime lab number; is
22 that correct?

23 A. That's correct.

24 MS. MERIWETHER: At this time I move to
25 offer State's Exhibits 52 and 53.

1 (State's Exhibit Nos. 52 and 53 offered.)

2 MR. PHILIP SCARDINO: We just make the
3 objection of relevance, Your Honor, how it's relevant to
4 the case.

5 THE COURT: I'm assuming it has some
6 relevance that the State is going to prove up shortly.

7 MS. MERIWETHER: Yes, it is.

8 THE COURT: Objection is overruled.
9 State's Exhibits 52 and 53 are admitted.

10 (State's Exhibit Nos. 52 and 53 admitted.)

11 Q. (BY MS. MERIWETHER) So, showing you State's
12 Exhibit 48, is this the individual that you
13 photographed?

14 A. Yes, ma'am.

15 Q. And this is the shirt that we see in State's
16 Exhibit 52; is that correct?

17 A. That's correct.

18 Q. And State's Exhibit 49 is the documentation of
19 his pants; is that correct?

20 A. Yes, ma'am.

21 Q. And those are also the same items that we see
22 there in State's Exhibit 53?

23 A. Yes, ma'am.

24 Q. These items, did you also place them into the
25 property room as well after collecting them?

1 A. Yes, I did.

2 Q. And were you responsible for the lovely
3 wrapping of them as well?

4 A. Just the outer packaging, the paper bag.

5 Q. Very well, so the inside bags are done by
6 another group as they test and analyze?

7 A. Yes, ma'am.

8 Q. So those are the people I don't want wrapping
9 my Christmas presents?

10 A. Probably not.

11 Q. Thank you, Officer Perez.

12 MS. MERIWETHER: I'll pass the witness,
13 Your Honor.

14 **CROSS-EXAMINATION**

15 BY MR. PHILIP SCARDINO:

16 Q. Officer Perez, you ever make a determination
17 who that person was in that photograph in State's
18 Exhibit 48?

19 A. No, sir.

20 Q. The Complainant, we keep referring to the
21 person as the Complainant, that's the person that we see
22 in the photographs that's with the blood on the ground
23 out there, correct?

24 A. Yes, sir.

25 Q. And that's a term that y'all use to identify

1 that person?

2 A. Yes, sir.

3 Q. The victim?

4 A. Yes, sir.

5 Q. Okay. Was the Complainant ever moved, to your
6 knowledge, before you got there?

7 A. Prior to my arrival, no, sir, I don't know.

8 Q. Okay. And the only time that the Complainant
9 was moved was when the Medical Examiner's Office came
10 and picked him up?

11 A. That's correct.

12 Q. We've talked about you saw some tire tracks out
13 there. Were you able to determine which direction the
14 tire tracks were going?

15 A. No, sir.

16 Q. But it's your testimony in front of the ladies
17 and gentlemen of the jury that there were tire tracks
18 going through the blood that were out there on the
19 scene, and did it appear that one set of them was going
20 into the apartments and one set was going out of the
21 apartments?

22 A. No, one set was going through the blood, one
23 direction, apparently; and the other one had to come
24 back the other direction to get the blood on it.

25 Q. How can you determine that?

1 A. Well, the bloodstain was flowing through the
2 parking lot; and the vehicle had to have gone through it
3 either direction to get that blood on the tire.

4 Q. Okay. But you can't tell which direction it
5 was going in, you just know that it went through it
6 twice?

7 A. That's correct.

8 Q. Was there any overlapping of the tire tracks?

9 A. No, sir, they were actually side by side.

10 Q. So, two sets of tire tracks, we don't know
11 which direction they were going?

12 A. That's correct.

13 Q. And did you or did you not make a determination
14 that none of the officers that made the scene prior to
15 your arrival had driven through that blood?

16 A. No, sir, we didn't know if they did or not.

17 Q. Didn't know if they did or not?

18 A. That's correct.

19 Q. So, it could have been a police vehicle driving
20 through there?

21 A. That's correct.

22 Q. Did you ever -- the police vehicles that were
23 out there, did you ever check to see if there was any
24 blood on the tire treads on any of those vehicles?

25 A. While we were there, they had a shift change so

1 if the vehicles were there initially, they probably had
2 left the scene.

3 Q. Okay. Did you ever try to determine what type
4 of tire it was, or were you able to try to match the
5 tread markings or anything like that?

6 A. No, sir.

7 Q. Was an attempt ever made trying to compare the
8 tread markings to the blood to any particular type of
9 tire?

10 A. Not that I'm aware of.

11 Q. You can do that, though, can't you?

12 A. They can I'm sure, yes, sir.

13 Q. You didn't interview anybody on the scene there
14 that night when you made the scene?

15 A. No, sir.

16 Q. Okay. Now, you know something about guns and
17 ballistics, do you not?

18 A. Yes, sir.

19 Q. Do you know -- you told the jury the difference
20 between a revolver and a semiautomatic?

21 A. That's correct.

22 Q. Now, there's also different calibers of
23 weapons, are there not?

24 A. Yes, sir.

25 Q. And if you were comparing a 9-millimeter to a

1 .38, would you say that they're very similar in caliber
2 size?

3 A. Yes, sir.

4 Q. Okay. And there's two things that they can use
5 to identify a bullet, one is the casing that the bullet
6 is fired from?

7 A. That's correct.

8 Q. And the other is the actual bullet itself, the
9 projectile itself, correct?

10 A. Yes, sir.

11 Q. Now the casing if it's in a semiautomatic will
12 have distinguishing marks as it's thrown from the
13 ejector port, correct?

14 A. Yes, sir.

15 Q. And that can help identify what gun it came
16 from?

17 A. That's right.

18 Q. And in a revolver, the shell casings stay in
19 the weapon until somebody has to open it up and dump
20 them out, correct?

21 A. That's correct.

22 Q. So, if somebody was shot with two guns, a .38
23 and a 9-millimeter, and all you had were the deformed
24 bullets themselves, either at the scene or in the body
25 of the deceased, it would be hard to tell whether it was

1 shot from a .38 or a 9-millimeter, correct?

2 MS. MERIWETHER: Objection, calls for
3 speculation.

4 THE COURT: He can answer if he knows.

5 A. No, I wouldn't be able to tell you.

6 Q. (BY MR. PHILIP SCARDINO) Okay. You wouldn't be
7 able to tell?

8 A. No, sir.

9 Q. Are you telling me that you wouldn't be able to
10 tell the different calibers because the bullets had been
11 deformed or that's not your area and you couldn't tell
12 me one way or the other?

13 A. One, because they are deformed, and I'm not a
14 firearms expert.

15 Q. Okay. Now, so you can't tell us from when you
16 investigated how many people were shooting or, at the
17 time, out there?

18 A. That's correct.

19 Q. But you did notice that the Complainant had
20 gunshot wounds?

21 A. Yes, sir.

22 Q. And from that you couldn't tell who had shot
23 him and from what direction or anything like that?

24 A. That's correct.

25 Q. You didn't make any of those determinations?

1 A. No, sir.

2 Q. Now, we saw on the video and we see in your
3 photographs that it looks fairly well lit out there; but
4 your testimony tells us that it's really pretty dimly
5 lit out there, is it not?

6 A. It's dimly lit, yes, sir.

7 Q. Dimly lit. It's not brightly lit up out there
8 in the back of those apartments?

9 A. That's correct.

10 Q. Let's talk about that for a minute. Those
11 apartments we're talking about it's that particular
12 building, I think it's Building 11, it's the garage
13 doors to the apartments, correct?

14 A. Yes, sir.

15 Q. So if you want to enter those apartments, you'd
16 enter from the other side?

17 A. That's correct.

18 Q. All right. So, we've got the scene that we
19 saw, that the jury saw, was at the back of the
20 apartments where the garage doors are; and then there's
21 a driveway that slopes down, correct?

22 A. Yes, sir.

23 Q. And then at the end of that slope, there's a
24 spot for cars to park head in?

25 A. Yes, sir.

1 Q. Correct?

2 A. Yes, sir.

3 Q. Okay. And beyond that it's a bayou, right?

4 A. I don't know what's beyond that. I didn't go
5 on the other side.

6 Q. Didn't go down there. There's a fence there
7 and a bayou, you didn't --

8 A. No, sir.

9 MS. MERIWETHER: Objection, asked and
10 answered.

11 THE COURT: Overruled.

12 Q. (BY MR. PHILIP SCARDINO) So you didn't notice
13 that?

14 A. No, sir.

15 Q. Did you make an offense report as a result of
16 this?

17 A. A supplemental report, yes, sir.

18 Q. Did you bring it with you?

19 A. Yes, sir.

20 MR. PHILIP SCARDINO: May I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 MS. MERIWETHER: Counselor, I have a copy
24 if you'd like one. I think you were already given one,
25 but here's another copy.

1 MR. PHILIP SCARDINO: I'll take care of my
2 own business, thank you.

3 MS. MERIWETHER: Okay.

4 MR. PHILIP SCARDINO: May I have just a
5 moment, Your Honor?

6 THE COURT: You may.

7 Q. (BY MR. PHILIP SCARDINO) Did you make any
8 other handwritten notes or any diagrams or anything
9 other than what you brought with you today?

10 A. Our field notes, yes, sir.

11 Q. Did you view them prior to your testimony?

12 A. I don't have access to them with our new system
13 with the Forensic Science Center.

14 MR. PHILIP SCARDINO: Thank you. I'll pass
15 the witness, Your Honor.

16 THE COURT: Anything further?

17 MS. MERIWETHER: No further questions.

18 THE COURT: May this witness be excused?

19 MR. PHILIP SCARDINO: No objections, Your
20 Honor.

21 MS. MERIWETHER: Yes, Your Honor.

22 THE COURT: Thank you, sir. You may step
23 down. You are excused.

24 THE WITNESS: Thank you.

25 THE COURT: Call your next witness.

1 MS. MERIWETHER: Your Honor, the State
2 would call Jerome Monroe.

3 THE COURT: If y'all are uncomfortable,
4 feel free to stand up and stretch while we're waiting
5 for the next witness. We'll take a break shortly. You
6 jumped up awful fast, I'm sorry. We'll take a break in
7 about 15 or 20 minutes. I didn't realize those chairs
8 were so uncomfortable.

9 THE BAILIFF: Your Honor, this witness has
10 already been sworn in.

11 THE COURT: Okay, thank you.
12 You may proceed.

13 MS. MERIWETHER: Thank you, Your Honor.

14 **JEROME MONROE,**
15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MS. MERIWETHER:

18 Q. Good morning, sir, could you please state your
19 name for the record?

20 A. Jerome Monroe.

21 Q. You're going to have to probably get a little
22 bit closer to the mike so that our folks and friends
23 over here can hear you?

24 A. Okay.

25 Q. Jerome Monroe?

1 A. Right.

2 Q. How old a man are you?

3 A. 36.

4 Q. And what type of work do you do?

5 A. I build oil rig motors.

6 Q. How long have you been doing that for?

7 THE COURT: Can you hear okay? Can you
8 just keep your voice up a little? I don't think I can
9 turn this up any louder, or we'll get feedback.

10 A. Maybe like a year and a half.

11 Q. Where do you live?

12 A. On the Beltway and Beechnut.

13 Q. What's the name of that apartment complex?

14 A. Little Nell.

15 Q. Little Nell?

16 A. Uh-huh.

17 Q. How long you lived at Little Nell?

18 A. Maybe like five years.

19 Q. Who do you live with?

20 A. My wife and kids.

21 Q. How many kids you got?

22 A. Three.

23 Q. And what type of work does your wife do?

24 A. She nursing.

25 Q. What apartment number do you live in at Little

1 Nell?

2 A. 1404.

3 Q. Is that the same one you lived in in March of
4 2014?

5 A. Right.

6 Q. I'm going to show you a picture here. There's
7 going to be a little TV screen right there to your
8 right. Do you see the picture?

9 A. Uh-huh.

10 Q. I'm going to try to zoom in a little bit. This
11 is State's Exhibit 6, and you said you were in 1404; is
12 that correct?

13 A. Uh-huh.

14 Q. Now, let's talk about March 6th of 2014, that's
15 a Thursday evening, right, when this happened?

16 A. Okay, uh-huh.

17 Q. And where were you?

18 A. In the garage.

19 Q. And where is your garage?

20 A. Right here (indicating).

21 Q. What were you doing in your garage?

22 A. Sweeping.

23 Q. Okay. Fair enough. What happened while you
24 were out there?

25 A. I was sweeping the garage, and I had my back

1 turned, and I kind of heard someone run by. So, when I
2 looked, I seen like the back of the person run by.

3 Q. Okay. Let me talk to you about that. What did
4 that person look like? Was he tall?

5 A. I didn't see him. He looked like a teenager.
6 He was kind of small; but as far as me, like, seeing
7 him, I didn't see him.

8 Q. You didn't see his face?

9 A. No, ma'am.

10 Q. What was he wearing?

11 A. I can't recall that neither.

12 Q. So, you see a teenaged-type boy run by; and
13 then what happens?

14 A. I thought maybe the kids were just playing, you
15 know, because it's a lot of kids always playing so I
16 went back to doing what I was doing. Maybe like not
17 even 10 seconds later, I hear more footprints, I turn
18 around, it's the same scenario, but it's guys chasing
19 him, three guys, at that point in time, I didn't know
20 they were chasing him. But I kind of looked to see what
21 was going on. I seen what was happening. They was
22 running the same way he was running, then you heard
23 gunfire, the guy falls and, I mean --

24 Q. Okay. So, you saw or you heard gunfire, how
25 many shots?

1 A. I can't recall how many. I'm sure I heard
2 maybe three at the most.

3 Q. At the most?

4 A. Right.

5 Q. How sure are you of that?

6 A. I'm in between. It was awhile back, you know,
7 I can't just say exactly how many. I don't want to lie,
8 so I think three.

9 Q. So, if they found eight shell casings at the
10 scene?

11 A. I can't tell you. That's what I'm saying.

12 Q. Fair enough. Now these people they run by,
13 what are they wearing?

14 A. Hoods.

15 Q. Dark colored?

16 A. Dark colored.

17 Q. Black? Navy?

18 A. Black, navy it could have been either one of
19 those; but it was dark colored.

20 Q. And what direction were they running? Draw an
21 arrow for me, please.

22 A. They were down towards the opposite way, like,
23 going towards 13, 12, and the 11s.

24 Q. And when do you hear the shots, at what point
25 are they then?

1 A. Like, this is me right here, I have three fire
2 lanes. I have a fire lane here, here, and here. The
3 guy maybe was at the third fire lane and they was in the
4 middle; and, you know, I can say, like, I heard shots.

5 Q. You heard shots then?

6 A. Right.

7 Q. And then what happens, do you keep watching?

8 A. I watched for a second, you know what I'm
9 saying? The guy falls or whatever.

10 Q. Where did he fall in your rememberings?

11 A. In my rememberings, if this one, two, three, I
12 don't want to say wrong, but maybe in between, if these
13 are fire lanes here, I think it was at this one.

14 Q. At building -- at where that 1204 is?

15 A. Right. I didn't go just look at the numbers
16 and stuff, but that's how far it was away from me.

17 Q. Did you ever go and look at the body?

18 A. Yeah, I walked down there and kind of glanced
19 at it and just walked away.

20 Q. So, when you went down there, did you realize
21 it was at Building 11?

22 A. I didn't look. I didn't look towards the
23 building, I just went to go, I guess, if you want to
24 call it being nosey, I went to go see.

25 Q. Did you know that guy?

1 A. No.

2 Q. Ever seen him in the apartment complex before?

3 A. No.

4 Q. Not at all?

5 A. No.

6 Q. Did you see a vehicle at all during this
7 incident?

8 A. Yeah.

9 Q. What kind of car?

10 A. It was black.

11 Q. Okay.

12 A. I don't want to say the wrong thing, it was
13 shaped like a, kind of like an Acura. It was black. It
14 pulled up right after whoever did what they did. You
15 know what I'm saying?

16 Q. And then what happened?

17 A. A guy got out the car, shot again. So from my
18 knowledge, that would be four.

19 Q. Uh-huh. And then what happened?

20 A. Everybody got back in, and they backed up.
21 They didn't turn around, put it in reverse they backed
22 up and I went upstairs, went to go tell my wife and
23 stuff.

24 Q. Did you call 9-1-1?

25 A. No, I didn't.

1 Q. Why not?

2 A. I ain't never seen nothing like that. I was
3 like, dang, excuse me, you know what I'm saying?

4 MS. MERIWETHER: Sorry, Your Honor.

5 A. I didn't mean it.

6 Q. (BY MS. MERIWETHER) That's okay. So, Mr.
7 Monroe, you tell your wife about it; and do the police
8 come to the scene?

9 A. Yeah, it didn't take that long.

10 Q. Did you talk to the police that night?

11 A. No.

12 Q. Why not?

13 A. I didn't think I had to. I mean, I'm not
14 thinking of doing all that.

15 Q. Okay.

16 A. It's just --

17 Q. Did you talk to the media that night or give an
18 interview on TV?

19 A. Right, they -- my wife was asking me what
20 happened. And the way how they do the caution tape, the
21 media guy was parked normally where we park at. So, I
22 guess they overheard me explaining to her what I seen
23 and that's when they asked me what I seen, and I just
24 told them what I told you.

25 Q. So, you gave the media interview; but you never

1 talked to the police that night?

2 A. No.

3 Q. Did an officer try to come talk to you the next
4 day?

5 A. I think it was -- they said that they had been
6 trying to contact me when they finally did come talk to
7 me.

8 Q. And, in fact, they didn't get ahold of you
9 until March 22nd; is that correct?

10 A. I mean, that's what it say on there, I don't
11 remember. The first person talking, it was a lady.

12 Q. Uh-huh, a female officer by the name of McLean?

13 A. I don't remember her name, but I know it was a
14 lady.

15 Q. And at that time, you gave her a statement
16 about what happened some three weeks afterwards?

17 A. Right.

18 Q. And during that time you try to give her as
19 much as you could remember, right?

20 A. Right.

21 Q. But you couldn't see anybody's faces?

22 A. No, ma'am.

23 Q. And you never had an opportunity to look at
24 photospreads or any pictures of people that might be
25 involved; is that correct?

1 A. No, ma'am, even if I look, I can't say it was
2 this guy, that guy; I didn't see.

3 MS. MERIWETHER: I'll pass the witness,
4 Your Honor.

5 MR. ROBERT SCARDINO: May I proceed?

6 THE COURT: Yes, you may.

7 **CROSS-EXAMINATION**

8 BY MR. ROBERT SCARDINO:

9 Q. Mr. Monroe, you're not happy to be here, are
10 you?

11 A. Nah.

12 MS. MERIWETHER: Objection, relevance.

13 THE COURT: Overruled.

14 Q. (BY ROBERT SCARDINO) In fact, you're concerned
15 about being here testifying in this case, aren't you?

16 A. I'm not really concerned it's just like, I'm
17 fixing to lose my job behind this, man, I'm just going
18 to tell you the truth.

19 Q. The night that this happened, was it a shocking
20 experience for you?

21 A. Yeah, because I never, you know, seen nothing
22 like that.

23 Q. You testified that you were in your garage and
24 you were sweeping and you heard something, tell us again
25 what it is you heard?

1 A. Footprints.

2 Q. Footprints, and was there any noise out there,
3 anybody playing a radio?

4 A. No, it was silent. I heard a hard running.

5 Q. Hard running. Okay. And is that what caused
6 you to turn around?

7 A. Uh-huh.

8 Q. And face outward so you could see who might be
9 running past your garage door?

10 A. Right.

11 Q. Now, as you're looking out your garage door,
12 there is a driveway, correct?

13 A. Right.

14 Q. And then on the other side of the driveway is a
15 fence?

16 A. Right.

17 Q. And then there's a bayou on the other side over
18 there?

19 A. Right.

20 Q. And did the running sound like somebody was out
21 for a jog, or did it sound like somebody was running as
22 fast as they can?

23 A. Sound like racing somebody.

24 Q. Like maybe somebody running for their life?

25 MS. MERIWETHER: Objection to Counsel

1 testifying.

2 THE COURT: Overruled.

3 Q. (BY MR. ROBERT SCARDINO) So, did it sound like
4 somebody running as fast as they could?

5 A. Yeah, if that's how you want to put it, you
6 know how you race.

7 Q. Is that what caused you to turn around and look
8 to see what was going on?

9 A. I mean, if I heard anybody, like, if I'm in the
10 garage and it's dark you hear some noise or something,
11 you're going to turn around and kind of see what's up.

12 Q. You turned around to see what's up?

13 A. I turned around to see who was running. I
14 mean, like, what was going on. It's late and sometimes
15 it be kids still playing out and about outside. So, I
16 just happened to, you know, kind of just glanced.

17 Q. Mr. Monroe, can you describe the lighting
18 conditions outside your garage that night?

19 A. I had light in my garage.

20 Q. How about outside, was there outside lighting?

21 A. It's like, you know, how you have a normal
22 porch light, but it's at the high rise of the building.
23 You know what I mean? It's not that bright, but it's
24 not pitch-black dark, you know what I'm saying?

25 Q. Would you describe it then as darker rather

1 than lighter?

2 A. Darker.

3 Q. So, when you turn to see, what's the first
4 thing you saw when you turned around?

5 A. The back -- like, when I seen, I turned to my
6 right, I seen the back end and if this is my garage --

7 Q. I can't hear you.

8 A. This is my garage, I turned around. I didn't
9 catch nobody. I seen the back of this guy, like he had
10 already passed.

11 Q. Let me stop you there. I believe you've tried
12 to describe the way that person appeared to you before.
13 You remember talking about how this person appeared to
14 you? You remember talking about his size or whether or
15 not --

16 A. Yeah, looking like a teenager or whatever, you
17 know, I'm not that tall. A medium-sized guy to me, if
18 it's dark outside, I'm going to think it's a kid or a
19 teenager or, you know, not a grown dude.

20 Q. Did you ever think that it might have been a
21 Hispanic person?

22 A. I thought that when I went to go and actually
23 take a look, but I didn't know if it was Hispanic or
24 Indian or what the nationality was.

25 Q. The person ran past your garage door?

1 A. The first person.

2 Q. The first person, the person we're talking
3 about?

4 A. Right.

5 Q. The person that you said was the smaller
6 person?

7 A. Right.

8 Q. And then did somebody else run past your doors?

9 A. Yeah, the guys.

10 Q. And how far -- let's see how we'll do this.
11 How long did it take for you to see the other people run
12 past your door?

13 A. Not even 10 seconds.

14 Q. Ten seconds?

15 A. Not even that, you know, it was a chase, you
16 know.

17 Q. So, just a few feet behind the first person
18 that ran?

19 A. Right, you can say that.

20 Q. Was anybody yelling anything?

21 A. No talking.

22 Q. And how many people did you see running past
23 your garage door after the first person?

24 A. Three.

25 Q. And there's no question in your mind there were

1 three?

2 A. Nah, it ain't no question.

3 Q. You don't think that after the time has passed
4 you might have imagined a different number than what
5 actually happened that night?

6 A. Because I can't make up something that I didn't
7 see, you know what I'm saying?

8 Q. In fact, that's what you said when the news
9 interviewed you and when the police interviewed you, you
10 said there were three people chasing that young man?

11 MS. MERIWETHER: Objection, asked and
12 answered.

13 THE COURT: Overruled.

14 Q. (BY MR. ROBERT SCARDINO) Three people chasing
15 that young man down that driveway past your garage door?

16 A. Right.

17 Q. And then what was your next recollection of
18 what happened?

19 A. As far as the -- they ran. I kind of peeped
20 out to see why they was running.

21 Q. So, you had to walk from the back of your
22 garage?

23 A. Nah, I wasn't at the back of my garage. I was
24 like in the middle part. This is the front where my
25 door is, I'm sweeping out. So, all I have to do is turn

1 around maybe take a couple steps, few steps and look out
2 my, you know, out the corner of my garage.

3 Q. Did it appear to you that they were kids
4 playing and running down that driveway? Were these
5 adult men?

6 A. They looked bigger than the guy that was hurt.

7 Q. Do you have an idea of the men, the three men
8 chasing the first man, were they bigger than he was or
9 smaller?

10 A. I would say a little taller, like after I
11 caught them running, you know what I'm saying, I just
12 looked a little bit. I'm not trying to, like, see who's
13 taller or who's bigger or who's fatter, you know, I'm
14 just like -- I just happened to look.

15 Q. Well, if it had been a short, fat, white guy
16 like me, you would have recognized it, right?

17 A. I wouldn't have recognized it because you're
18 not fat.

19 Q. So, what happened and what brought your --
20 something else was brought to your attention to make you
21 remember the event, what happened?

22 A. After they ran by, like, a few seconds later,
23 you hear the gunfire.

24 Q. You hear gunfire?

25 A. And you can see the light from the gun.

1 Q. So, if you can see the flashes from the gun,
2 you were already looking down the driveway?

3 A. Right.

4 Q. Correct, and how far past you had they gone
5 when you were able to look around the corner of your
6 garage?

7 A. Maybe like if my garage is here, I looked out,
8 they probably was maybe, like, I can't just give
9 numbers, you know what I'm saying? I can't say how many
10 feet it was in between this and that, you know. All I
11 know when they shot the guy was right here, you know. I
12 can't say, I'm just going by the fire lanes what I seen.
13 So, I can't say he was this many feet or they were this
14 close to him, I can't say that.

15 Q. But regardless when you see him run by and you
16 turn around to look to see what's going on, that's when
17 you hear and see what you thought were gunshots?

18 A. Right.

19 Q. Any question in your mind that they were
20 gunshots?

21 A. No.

22 Q. And I believe your testimony was you think you
23 heard three?

24 A. Yeah, you know.

25 Q. Could you see somebody shooting? Could you see

1 a person?

2 A. No, they running in a bunch, they together.
3 They didn't spread out. They running in a bunch. I
4 can't say the first, second, or third person; I don't
5 know who had the gun.

6 Q. Could you tell -- so you can't tell whether
7 more than one person was shooting or not?

8 A. Nah, not when they were running, no.

9 Q. You could see muzzle flashers, though?

10 A. Right.

11 Q. And what happened then? What did you see
12 happen after that?

13 A. Right after that, you know, the black or blue,
14 whatever kind of car it was, it pulled up.

15 Q. Let me stop you there. So, you see people
16 running and shooting?

17 A. And the car meet them at the end.

18 Q. At the same time that these people are running
19 and shooting?

20 A. No, after the fact that he fell or whatever and
21 the gunshots I heard, the car pulls up and meets them.

22 Q. So, the person being chased is shot and falls?

23 A. Right.

24 Q. And then the three men, do they walk up to him;
25 or what happened? What did they do? What did you see

1 them do?

2 A. I seen them going to get in his vehicle. The
3 car pulls up. They already did what they did, all
4 right? They're going to the vehicle. I see a guy get
5 out the car, and I hear another gunshot.

6 Q. Okay.

7 A. And at that point in time, I went upstairs.

8 Q. Okay. When the -- this is kind of important,
9 when you see the guy drive up in the car, do you see him
10 get out of the car?

11 A. I see a person exit the vehicle.

12 Q. Could you tell the size of the person?

13 A. I can't.

14 Q. Was he black, white?

15 A. I can't, it's far. I'm here. The car is at
16 the -- our apartments, when you come around that corner,
17 you have to drive to me. So, the guy came around the
18 corner. You know what I mean?

19 Q. Yes, sir.

20 A. So it's a -- it's far away from where I'm at,
21 but you can see somebody.

22 MR. ROBERT SCARDINO: May I approach, Your
23 Honor?

24 THE COURT: You may.

25 MR. ROBERT SCARDINO: Mama said gettin' old

1 wasn't for sissies.

2 Q. (BY MR. ROBERT SCARDINO) Let me bring your
3 attention to the chart the Prosecutor put into evidence.
4 You're here?

5 A. Right.

6 Q. You see people running by, they shoot this man,
7 he's on the ground?

8 A. Okay.

9 Q. And then you see the car coming from this
10 direction?

11 A. Right.

12 Q. You can see --

13 A. But it never turned, you know what I mean? You
14 can pull up -- when you come from this side right here,
15 you can turn and come around this back, but it just
16 pulled forward.

17 Q. From here where I'm pointing, towards the man
18 on the ground?

19 A. No.

20 Q. Come show us?

21 A. The car, this is a street right here.

22 Q. Yes, sir.

23 A. And you can come around and turn, the car
24 pulled forward. There's dumpsters here. The car pulled
25 forward, the guy is somewhere up in here, which means

1 those guys had to go to this guy and he had to get up
2 and walk up to the guy. I'm here.

3 Q. Okay, so the man in the car, you see the car
4 moving?

5 A. You can see when it pull -- I didn't see it
6 from here but when it pull up, you can see like how this
7 is, it's bigger than that, so you can see it pull up and
8 it sits there.

9 Q. And you see the car moving?

10 A. No, I seen it pull up. Yeah, you can see it
11 still moving.

12 Q. And you see a person get out?

13 A. Right.

14 Q. And tell us again what you see that person
15 doing? You can have your seat.

16 A. Okay.

17 Q. What do you see that person do?

18 A. He goes to the body.

19 Q. Goes to the body, which is about where this
20 arrow is, somewhere right in here or somewhere over
21 here?

22 A. That's what I'm trying to count, one, two,
23 three, that right there that's where I'm counting the
24 fire lanes.

25 Q. Right here?

1 A. No, the openings, like, right there where your
2 finger at, right here.

3 Q. Okay. Right here. So, the man in the car gets
4 out and walks to where the man has fallen on the ground?

5 A. The way the diagram is, it's not that far. It
6 looks like a big of a gap, but it's not that far.

7 Q. It's not as far as from here to the other side
8 of the courtroom, is it?

9 A. Nope.

10 Q. In fact, it's not much further than where I am
11 from the Judge?

12 MS. MERIWETHER: Objection to Counselor
13 testifying.

14 THE COURT: Overruled.

15 Q. (BY MR. ROBERT SCARDINO) And you see that
16 person get out of the car, and what do you see him do?

17 A. Walk up and shoot.

18 Q. When you say you see him walk up and shoot him,
19 I mean, does he have to pull a gun out of his pants; or
20 does he have it in his hands?

21 A. I don't know if he had it in his hand or not.
22 All I know is the guy got out of the car, he shot and
23 that was it. They had disbursed in the same car. I
24 went upstairs.

25 Q. The man in the car gets out and shoots the man

1 on the ground?

2 A. Right.

3 Q. And you see that?

4 A. Right.

5 Q. No question in your mind that's what happened?

6 A. No.

7 Q. How many times did he shoot him?

8 A. I heard one. I heard her say eight shell
9 casings. I can't recollect all that.

10 Q. You don't know what kind of gun the man had
11 that was in the car?

12 A. Nah.

13 Q. After he shot him -- let's back up. When he
14 shot him, where were the other three men?

15 A. To me, they were going to get in the car.

16 Q. Okay.

17 A. I guess that was they escape route or whatever.

18 Q. So, the three men that were chasing the poor
19 victim jumped in the car that had pulled around?

20 A. Right.

21 Q. You see them get in the car?

22 A. Right, I see them going to the car to get in.

23 Q. Do they get in the car while the driver was
24 getting out to shoot the victim?

25 A. That right there, you know how stuff is

1 happening fast?

2 Q. Yes, sir.

3 A. I'm seeing it, but then I'm also tripping,
4 like, dang, this happening. You know what I mean? So,
5 right after all that happened, what I just said, I went
6 upstairs to go tell my wife and stuff.

7 Q. So, what you seen, correct me if I'm wrong, you
8 actually see four people shoot the victim that we now
9 learn --

10 MS. MERIWETHER: Objection, misstatement of
11 the testimony.

12 THE COURT: Overruled.

13 Q. (BY MR. ROBERT SCARDINO) There are four people
14 involved in the shooting?

15 A. Right, yeah.

16 Q. So, if someone were to testify that there were
17 only two people, they would be wrong?

18 MS. MERIWETHER: Objection, calls for
19 speculation.

20 THE COURT: Sustained.

21 A. I mean, I don't know what everybody else seen,
22 so if they were to testify like that --

23 MS. MERIWETHER: Your Honor, I'd ask for an
24 instruction that the witness not answer the question.

25 THE COURT: So just wait for the next

1 question.

2 THE WITNESS: Oh, I don't know what's going
3 on, man.

4 MS. MERIWETHER: Thank you, Judge.

5 Q. (BY MR. ROBERT SCARDINO) Has anybody suggested
6 to you what to say on the witness stand?

7 A. No.

8 Q. Has anyone suggested to you that what happened
9 out there was different than what you just told this
10 jury?

11 A. No.

12 Q. Has anyone told you that if you testify -- you
13 needed to testify in a different way than what you've
14 told this jury?

15 A. No.

16 Q. Thank you, Mr. Monroe.

17 MR. ROBERT SCARDINO: Pass the witness.

18 MS. MERIWETHER: Brief, Your Honor.

19 THE COURT: You may proceed.

20 **REDIRECT EXAMINATION**

21 BY MS. MERIWETHER:

22 Q. Mr. Monroe, I have a few questions for you.
23 What you've told this jury today is a little bit
24 different than what you've told before, is it not?

25 A. Meaning what?

1 Q. Let me get into the specific questions that I
2 have for you then. With regard to the fact that
3 somebody got out of a car and shot, you never told
4 Officer McLean that, did you?

5 A. I can't remember if I told her that.

6 Q. Okay. And you also never told her about seeing
7 four people at the scene; is that correct?

8 A. I'm not sure that was almost last year; but I
9 know what I seen, though.

10 Q. Okay. But you would agree with me that if you
11 told a different story back closer in time that that
12 would probably be more accurate than what you're telling
13 now a year and a half later?

14 A. It would be more accurate?

15 Q. Correct. Like you remember things better at
16 the time that they happened rather than a year and a
17 half later?

18 A. Oh, yeah, you would.

19 Q. Okay. So if back then you never talked about
20 seeing somebody get out of a car and shoot, that would
21 probably be more accurate than what you're telling us
22 today?

23 A. Right.

24 MS. MERIWETHER: Pass the witness, Your
25 Honor.

1 MR. ROBERT SCARDINO: Just briefly.

2 **RE-CROSS-EXAMINATION**

3 BY MR. ROBERT SCARDINO:

4 Q. Do you know a person by the name of Marquis
5 Davis?

6 A. No, sir.

7 Q. Do you know a person by the name of Donald
8 Nealey?

9 A. No, sir.

10 Q. Do you know a person named K.C., either spelled
11 with the letters "K" and "C" or spelled out C-A-S-E-Y?

12 A. No, sir.

13 Q. Have you learned the names of anybody that have
14 been -- do you know anybody that is accused by the
15 Prosecution of having committed these crimes?

16 A. No.

17 MS. MERIWETHER: Objection, calls for
18 hearsay.

19 THE COURT: Overruled.

20 A. The reason I don't know is because where I live
21 at, I don't hang outside; and when I cut hair in the
22 garage, I only cut family, people that I've known for
23 years and my family. I don't cut hair in the
24 apartments.

25 Q. (BY MR. ROBERT SCARDINO) So, Mr. Monroe, have

1 you learned anything from that night until today that
2 would have caused you to change your mind about what
3 happened out there? In other words, learned maybe who
4 was charged or what was going on?

5 A. Nah.

6 Q. The Prosecutor suggested to you that you told a
7 different story to the police the night it happened?

8 A. I never talked to the police.

9 Q. Well, you did eventually talk to the police,
10 didn't you?

11 A. Yeah, after the fact. I mean, like the guy who
12 came to see me.

13 Q. After the news media told the police about you
14 being a witness, right?

15 A. Here's the deal. I don't want my family and my
16 life in danger behind something somebody else did. So,
17 I really don't feel comfortable, I really don't want to
18 be in here talking about this, you know what I'm saying?

19 Q. Is what you've told this jury the truth?

20 A. Right.

21 MR. ROBERT SCARDINO: Pass the witness.

22 THE COURT: Anything further?

23 MS. MERIWETHER: No, Your Honor.

24 THE COURT: May this witness be excused?

25 MR. ROBERT SCARDINO: Yes, Your Honor.

1 MS. MERIWETHER: Nothing further from the
2 State.

3 THE COURT: Thank you, sir. You may step
4 down, and you are excused.

5 Let's take our mid-morning break. I will
6 let you go with the bailiff. Please feel free to go to
7 the second floor if you want to get a snack or some
8 coffee. I don't know if we have any smokers on the
9 jury, but if we do feel free to step outside of the
10 building and have a cigarette or just step outside to
11 get some fresh air if you'd like, and we'll resume in
12 about 15 or 20 minutes.

13 THE BAILIFF: All rise for the jury.
14 (Jury exits courtroom.)

15 THE COURT: Thank you. Be seated. We'll
16 take about a 15-minute recess.

17 (A recess was taken.)

18 (Open court, Defendant present.)

19 THE COURT: Are we ready for the jury? Go
20 ahead and get them.

21 THE BAILIFF: All rise for the jury.
22 (Jury enters courtroom.)

23 THE COURT: Thank you. Be seated.
24 You may call your next witness.

25 MS. MERIWETHER: The State would call

1 Shejuan Bumpers.

2 THE BAILIFF: Your Honor, this witness has
3 been sworn in.

4 THE COURT: Thank you. You may proceed.

5 MS. MERIWETHER: Thank you.

6 **SHEJUAN BUMPERS,**

7 having been first duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 BY MS. MERIWETHER:

10 Q. Could you please state your name and introduce
11 yourself to the jury by saying your first and last name?

12 A. Hi, Shejuan Bumpers.

13 Q. Shejuan, how old a woman are you?

14 A. 27.

15 Q. And what type of work do you do?

16 A. I'm a clerical worker.

17 Q. Is that here in Houston?

18 A. Uh-huh.

19 Q. How long have you been doing that for?

20 A. About a year now.

21 Q. Do you like it?

22 A. It's okay.

23 Q. Pays the bills?

24 A. Yes, ma'am.

25 Q. Do you have any other kind of side business or

1 other work that you do?

2 A. Fashion.

3 Q. Okay. What about hair?

4 A. Yes.

5 Q. Do you have a cosmetology-type license?

6 A. Uh-huh.

7 Q. How long have you had that for?

8 A. Now a month.

9 Q. Do you do any work in that area?

10 A. No, not yet.

11 Q. Not yet?

12 A. Not yet.

13 Q. Hopes to?

14 A. I will be.

15 Q. Any children?

16 A. I have one daughter.

17 Q. And how old is she?

18 A. Five.

19 Q. And where do you guys live?

20 A. We live, Little Nell.

21 Q. The Little Nell Apartment Complex?

22 A. Uh-huh.

23 Q. How long have you lived there?

24 A. For about ten years.

25 Q. So what high school did you go to?

1 A. I went to West Side.

2 Q. West Side High School. And were you living at
3 Little Nell when you were going to West Side?

4 A. Uh-huh.

5 Q. So, that's the school district, the high school
6 that you go to?

7 A. That's the high school I went to and graduated
8 from.

9 Q. Very well. So, who else lives in that house
10 with you, that Little Nell Apartment?

11 A. My mother and my sister and my daughter.

12 Q. What's your mom's name?

13 A. Sheryl Mitchell.

14 Q. And what's your sister's name?

15 A. Why?

16 Q. Just curious.

17 A. No.

18 Q. You have to answer questions that I ask you.

19 A. Why?

20 THE COURT: May I get the jury to go with
21 the bailiff, briefly, please.

22 THE WITNESS: I'm sorry. I was told
23 totally different.

24 THE BAILIFF: All rise for the jury.

25 (Jury exits courtroom.)

1 THE COURT: So, Ms. Bumpers, when the
2 lawyers ask you a question, you're under oath; and
3 you're required to answer it. Is there some relevance
4 to the name of her sister? She obviously doesn't want
5 to give it.

6 MS. MERIWETHER: It's just background
7 information, Your Honor. I wasn't going to ask.

8 THE WITNESS: I was told that none of my
9 personal, as far as, like, where I stay and all that
10 will not be asked, that's exactly what she told me. As
11 far as my siblings, that would not be asked; that's what
12 I was told.

13 Q. (BY MS. MERIWETHER) Why are you concerned
14 about saying your sister's name?

15 A. I was concerned about saying my sister's name
16 or where I stay for the same reason I told you, I don't
17 feel comfortable with that.

18 Q. Very well.

19 MS. MERIWETHER: I'll put that on in front
20 of the jury, Your Honor, her lack of comfort about it,
21 and then I'll move along.

22 THE COURT: Okay. And please just limit
23 your question to that. We're not going to get into any
24 extended questioning about her being uncomfortable to be
25 here today, okay?

1 MS. MERIWETHER: Yes, Your Honor, I
2 certainly won't.

3 MR. PHILIP SCARDINO: Excuse me, Judge.
4 Out of an abundance of caution, before we proceed, if
5 she has some concern, of course, I can interview her or
6 examine her or if the Court wants to, but she's
7 obviously got some concern about her testimony. Maybe
8 it would be better if we ferret it out now instead of
9 out in front of the jury.

10 THE COURT: I think we're not going to get
11 into any more personal questions is my understanding,
12 just that she's uncomfortable giving that last answer.
13 We'll go from there.

14 MR. PHILIP SCARDINO: My concern was, Your
15 Honor, if she's afraid to testify that we need to -- if
16 that's not the case, I don't have a problem. If there's
17 something there --

18 THE COURT: We're not questioning her
19 outside the presence of the jury. You have my ruling.
20 She's going to say that she's not comfortable; and we're
21 moving on, okay?

22 MR. PHILIP SCARDINO: Yes, ma'am.

23 MS. MERIWETHER: Yes, ma'am.

24 THE BAILIFF: All rise for the jury.

25 (Jury enters courtroom.)

1 THE COURT: Thank you. Be seated.

2 You may proceed.

3 MS. MERIWETHER: Thank you, Your Honor.

4 Q. (BY MS. MERIWETHER) Ms. Bumpers, I was asking
5 you your sister's name, and you didn't want to provide
6 it; is that correct?

7 A. That's correct.

8 Q. And why is that?

9 A. Because I'm uncomfortable with providing
10 personal information.

11 Q. All right. I want to move back in time to
12 March 6th of 2014, that was a Thursday evening; is that
13 correct?

14 A. Uh-huh.

15 Q. What were you doing that day?

16 A. I was actually watching *Scandal*, and at that
17 time actually doing a friend's hair.

18 Q. *Scandal*, a show you like?

19 A. Uh-huh.

20 Q. Who else was in the home at that time?

21 A. My daughter, my sister and my mother.

22 Q. Does your mom work?

23 A. Uh-huh.

24 THE COURT REPORTER: I'm sorry. Will you
25 say yes or no?

1 THE WITNESS: Oh, I'm sorry. Okay. Yes.

2 Q. (BY MS. MERIWETHER) Had she gotten home from
3 work yet?

4 A. Yes, we were all there.

5 Q. The friend that you were cutting her hair, or
6 was it cutting or doing like a style on it?

7 A. Styling it.

8 Q. Had you known her for a while?

9 A. It had been about two years.

10 Q. And you were in Apartment No. 1205, is that
11 correct, back then?

12 A. Uh-huh.

13 THE COURT: I'm sorry, ma'am. The court
14 reporter has to take down your answers.

15 THE WITNESS: I'm sorry. Yes. I'm so used
16 to saying uh-huh. I'm sorry, yes.

17 Q. (BY MS. MERIWETHER) And I want to show you a
18 picture, and it's going to show up on a little screen
19 right there next to you in a minute. All right.

20 A. Hold on. I don't have my glasses, there you
21 go.

22 Q. Am I good?

23 A. You're good.

24 Q. And 1205 is right about here; is that correct?

25 A. That's correct.

1 Q. And there's -- this is one whole building by
2 itself, right?

3 A. Yes.

4 Q. And then you got Building 11 to this side and
5 Building 13 to the right side of the photo?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes, sorry.

9 Q. Tell me about 1205, how does that apartment
10 work? Is it a one story, two story? What's y'all's
11 apartment like?

12 A. It's a two story. It goes across all of the
13 garages.

14 Q. Do you have windows in your apartment that look
15 out to this area, to the drive and parking lot?

16 A. Yes.

17 Q. And where are those windows located on the top
18 floor or the bottom floor?

19 A. The top floor.

20 Q. And are the windows in a living area or
21 bedrooms?

22 A. Living room.

23 Q. Okay. Are there any in the bedroom?

24 A. One.

25 Q. So, y'all are watching *Scandal*; and what

1 happened?

2 A. We're about to watch it.

3 Q. About to watch it?

4 A. Uh-huh.

5 Q. What happens?

6 A. My mother was getting ready to eat, and she
7 heard two shots and then we thought that it was, well, I
8 thought, let me say that, that it was the -- like in the
9 neighborhood where the homes are because there's a fence
10 and there's a bayou and then there are homes, so I
11 assume that it was back there because I hear a lot of
12 gunshots back there. But then the gunshots came closer
13 and at that time it was multiple gunshots, and so
14 immediately we knew it was right there because it was so
15 close to us.

16 Q. So, it sounded real loud?

17 A. Yes.

18 Q. So, what did you do then?

19 A. At that time I remember my mother going out on
20 the balcony and asking someone that was running if they
21 were okay because we didn't know what happened. And I
22 was looking out of the, out of the -- it's not the
23 living room, it's the hallway kind of, the hallway
24 window and I seen someone running towards the end of
25 the, like, of that driveway.

1 Q. Okay. So let me ask, so this is 1205 and you
2 say that there's a balcony?

3 A. Yes.

4 Q. In this area; is that correct?

5 A. Correct.

6 Q. You look at the -- let me say, you look out a
7 window and a hallway area?

8 A. Okay.

9 Q. And where would that be?

10 A. I don't know. Hold on. So, it probably would
11 be --

12 Q. And if you touch the screen, it will make a --

13 A. Oh, sorry.

14 Q. No, no, touch the screen and it will mark where
15 you're talking about.

16 A. Right there, yeah, it would be like -- nah,
17 nah, nah, because this is the balcony so it will be just
18 as you get up the stairs right in here somewhere.

19 Q. Okay. So that's a window in an apartment area
20 that's on top of those garages that we see in State's
21 Exhibit 6?

22 A. Uh-huh.

23 Q. So, you look out that window; and what do you
24 see?

25 A. I seen someone running; they had khaki pants on

1 and a blue hoodie.

2 Q. Okay.

3 A. And that was basically it.

4 Q. Could you tell how old they were?

5 A. Honestly, I thought it was like a young, it
6 looked like a young person to me.

7 Q. And what about kind of a height and build of
8 that individual?

9 A. He was kind of tall, skinny, and the complexion
10 like a lighter brown skin.

11 Q. And what did you see that person, what happened
12 to that person?

13 A. What do you mean?

14 Q. You see him outside of the window, where did
15 they go next? What do you see next happen?

16 A. They ran to a car.

17 Q. What kind of car?

18 A. It was the Acura, it was a black Acura. I
19 don't know the type of Acura, but it was an Acura.

20 Q. Were you able to see who was inside of the car?

21 A. No.

22 Q. Why not?

23 A. Because it was dark, the tint was on it; and I
24 wasn't outside, I was just looking out of the window so
25 I couldn't see, you know, who was in the car.

1 Q. It had a dark tint on the windows?

2 A. Uh-huh.

3 Q. The person that you saw, where did they go?

4 You said they got in a vehicle?

5 A. They got into the vehicle, they got into the
6 passenger's side because the vehicle was further down.

7 So, they had to pass my window like my apartment
8 building up in order to even get to the car because it
9 was further down, I guess, waiting for them.

10 Q. And which way further down towards the 13, 1400
11 buildings or towards the 1100 buildings?

12 A. So see, to me, it looks backwards. So, I'm
13 going to say towards 14 because I know that it's 11 and
14 then 12 and then towards like further down towards 14 is
15 where the car was waiting.

16 Q. So, you see a person get in the vehicle; and
17 then what happens next?

18 A. So, of course, by nature it's to go outside and
19 make sure that the person is okay; or you can help them
20 or, you know, whatever.

21 Q. So, you saw a person laying on the ground?

22 A. Yes, we ran outside.

23 Q. Who went out?

24 A. Myself, my mom, my sister, and it was a couple
25 of other people, like it was a bunch of people. And

1 immediately I went to -- I wanted to try and go and help
2 him but the car started circling around and so once it
3 got to where, almost to me where it seen about to help,
4 it slowed down, so I wasn't going to, you know, risk my
5 life.

6 Q. So, when you saw the vehicle, you knew that it
7 was the same one that you had seen pick up a person?

8 A. Uh-huh.

9 Q. And what direction was it traveling from?

10 A. It was coming from 14, going back around and
11 then I'm assuming that it went up because that's the
12 only thing you can do, that's the only circle in the
13 apartments.

14 Q. So, it was pointed this direction and going
15 around?

16 A. No, that's 11. So, it was pointing here,
17 sorry.

18 Q. And you can actually draw a line with your
19 finger.

20 A. Okay. So, it was about right here somewhere,
21 and then it was going this way and it circled around and
22 came back through here, had to, because if you circle
23 the other way, you would have to exit the apartments in
24 order to get back to where I stay so, yeah.

25 Q. So, you saw the vehicle come back through; and

1 what did you do?

2 A. I got up and my mother was yelling to get the
3 license plate, and it, it would slow down once it got to
4 where we were.

5 Q. To where the person was?

6 A. Uh-huh, to where the person was and then it
7 will speed off, like as long as we weren't leaned over
8 trying to help, it would speed off and then it circled a
9 second time, it slowed down and then it sped off again.
10 And that was the last of it.

11 Q. Did you call 9-1-1?

12 A. I think I called and a couple other people
13 called, I think. I'm not sure. I don't remember. I
14 want to say that I did.

15 Q. It's okay. Did the police arrive?

16 A. Uh-huh.

17 Q. And did you stay outside and talk to the police
18 and tell them what you knew?

19 A. I had no choice, yes.

20 Q. Did they put you in a separate patrol car from
21 your mom?

22 A. Yes.

23 Q. And did you stay in that patrol car until a
24 police officer talked to you about what you saw?

25 A. A detective talked to me, yeah.

1 Q. Okay. After talking to him, did another police
2 officer come the next day and talk to you again, would
3 have been a female?

4 A. I don't know the next day. I think the day
5 after that. Was it the next day? It could have been;
6 but, yes, she came and talked to me.

7 Q. And that was a female officer, a black female
8 officer?

9 A. Yes.

10 Q. And when you spoke to her, did you try to give
11 her as much information as you could and that you
12 remembered from the night before?

13 A. Uh-huh, yes.

14 Q. Did she show you a photograph of a vehicle?

15 A. Yes.

16 Q. And what did you tell her about that vehicle,
17 if you remember?

18 A. I think the first one she showed it was too
19 close because the vehicle looked like a regular vehicle.
20 I didn't know off back that it was an Acura. I knew
21 what it looked like, and there's one in the apartments
22 that looks exactly like that same car. And the ones she
23 showed at first it was too close, and I was like, no,
24 that doesn't look like it; but then she showed me a
25 second one where it was further off.

1 MR. PHILIP SCARDINO: Excuse me, Ms.

2 Bumpers. We object, it's nonresponsive.

3 THE COURT: Sustained.

4 Q. (BY MS. MERIWETHER) So, Shejuan, the first
5 picture she showed you, it didn't give you enough of the
6 overview of the vehicle?

7 A. Right.

8 Q. And so she showed you a second picture. What
9 did you tell her about that second picture?

10 A. That looked like the car.

11 Q. Did she also tell you at that time that you
12 might have to look at some pictures of a person later?

13 A. Yes.

14 Q. And did, in fact, you look at some photographs
15 of individuals on March 12th of 2014?

16 A. Yes.

17 Q. And where did that happen at?

18 A. My house.

19 Q. She came to your apartment?

20 A. At the time, uh-huh.

21 Q. And were you by yourself when she showed you
22 the pictures, or were there other people in the room?

23 A. No, it was just me and her.

24 MS. MERIWETHER: Your Honor, may I approach
25 the witness?

1 THE COURT: You may.

2 Q. (BY MS. MERIWETHER) Okay. I'm going to show
3 you State's Exhibit No. 141. Do you recognize this?

4 A. Uh-huh, it's my handwriting.

5 Q. Okay. And what is this?

6 A. Witness admonishment.

7 Q. And is this what you looked at on March 12th?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes, sorry.

11 Q. It's okay. And you said has your handwriting
12 and your name on it; is that correct?

13 A. Yes.

14 Q. And these are some warnings and things that she
15 had you read over and initial, right, with regard to
16 what you're about to do?

17 A. Yes.

18 Q. And did you do that?

19 A. Yes.

20 Q. And then she had you look at the photographs
21 and see if you recognized anybody?

22 A. Uh-huh, yes, sorry, I'm sorry.

23 Q. Did you recognize anybody in the photographs,
24 in the first set?

25 A. I want to say one and then like two other

1 people.

2 Q. Okay. So, on this one, which is State's
3 Exhibit 141, you made some markings on it. Is this your
4 circle, date and initials and everything; is this you?

5 A. Yes, uh-huh.

6 Q. And who is this person that you're identifying?
7 Why did you identify this individual?

8 A. Because when he ran, I seen his eyes. I didn't
9 see him, but I -- because I thought he looked at me.

10 Q. Okay. And then they showed you, showing you
11 State's Exhibit 142; is this also another set of
12 photographs that you looked at and it's got your name,
13 signature and date and everything on it?

14 A. Yes.

15 Q. And in this set of photographs, you didn't
16 identify, you didn't circle anybody, right?

17 A. No, I didn't.

18 MS. MERIWETHER: Your Honor, at this time I
19 move to offer State's Exhibits 141 and 142.

20 (State's Exhibit Nos. 141 and 142 offered.)

21 MR. PHILIP SCARDINO: We'd object to
22 State's 141 and 142, Your Honor. It contains hearsay.
23 It's bolstering. We'd object.

24 THE COURT: Overruled. State's
25 Exhibits 141 and 142 are admitted.

1 (State's Exhibit Nos. 141 and 142
2 admitted.)

3 Q. MS. MERIWETHER: All right. Ms. Bumpers, so,
4 just want to kind of -- State's Exhibits 141 and 142
5 both have this cover page, is that correct, where it's
6 got the rules that you're supposed to follow and know
7 before you look at the photographs; is that correct?

8 A. Yes.

9 Q. Does it in essence tell you to look at the
10 pictures and see if you recognize anybody related to
11 this incident?

12 A. Uh-huh.

13 Q. Did the officer --

14 A. Yes.

15 Q. Did Officer McLean in any way tell you who to
16 identify in the photographs?

17 A. No.

18 Q. Or suggest to you who to identify?

19 A. No.

20 Q. Did she give you as much time as you wanted to
21 look at the photographs?

22 A. Yes.

23 Q. And showing you the second page of 141, is this
24 the set of photos that you looked at?

25 A. Yes.

1 Q. And the person in Position No. 1 and the
2 writing here, are those markings made by you?

3 A. Yes.

4 Q. And why were those markings made?

5 A. Because as I said, I only recognized the eyes.

6 Q. As being the person you saw on the night of
7 March 6th, 2014, when the shooting was happening, yes or
8 no?

9 A. When or running?

10 Q. That you saw on March 6th, 2014, running?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. And then when you looked at the second set of
15 photographs, State's Exhibit 142, you didn't make any
16 markings on this photograph; is that correct?

17 A. That's correct.

18 Q. When you spoke to Officer McLean about the
19 person that you were identifying, do you recall stating
20 a description of what that person was wearing to her?

21 A. Uh-huh.

22 Q. And what was that description?

23 A. Khaki pants and a blue hoodie, looked like a
24 navy blue hoodie.

25 Q. Do you remember telling her navy blue pants and

1 a black hoodie?

2 A. No, he had, I know that he had on a
3 dark-colored hoodie and I know that he had on, I want to
4 say khaki pants.

5 Q. Okay.

6 A. I can barely remember honestly. I remember a
7 black belt hanging, that's it.

8 Q. Okay. You would agree with me that your memory
9 back on March 6th, the night of the incident, and what
10 you told them then is probably the most accurate; is
11 that correct?

12 A. Yes.

13 Q. And we can both agree that it's been about a
14 year and a half or more since the shooting happened?

15 A. Right.

16 Q. And those interviews they took from you were
17 recorded, correct?

18 A. Yes.

19 MS. MERIWETHER: Pass the witness, Your
20 Honor.

21 **CROSS-EXAMINATION**

22 BY MR. PHILIP SCARDINO:

23 Q. Ms. Bumpers, my name is Philip Scardino. You
24 and I have never met, have we?

25 A. No.

1 Q. Before you testified here today, did you have a
2 chance to review any statements or look at any
3 photographs or anything to refresh your recollection
4 prior to your testimony today?

5 A. When I spoke to Jennifer, she showed me those
6 photographs but other than that --

7 Q. Other than that, that's all you've looked at?

8 A. Uh-huh.

9 Q. They didn't play your recorded interview back
10 to you for you to listen to?

11 A. No.

12 Q. Is it safe to say that night, back on March 6th
13 of 2014, that you were pretty excited? This is kind of
14 a wild thing going on there in the apartments, correct?

15 A. Not excited but shocked or I guess you could
16 say.

17 Q. Maybe excited is not the right word, but
18 anxious or a lot going on, it was not normal, correct?

19 A. Right.

20 Q. Is it safe to say it was all happening pretty
21 fast?

22 A. Yes.

23 Q. Okay. Tell the ladies and gentlemen of the
24 jury about -- can we put the apartment diagram back up,
25 please?

1 MS. MERIWETHER: Sure.

2 MR. PHILIP SCARDINO: It's right there.

3 Q. (BY MR. PHILIP SCARDINO) All right. Now, the
4 back part of those buildings on the far left is Building
5 No. 11, correct, as we're looking at the photograph?

6 A. Right, uh-huh.

7 Q. And then it goes 12, 13, 14?

8 A. Correct.

9 Q. Okay. Now, the backside of that is a little
10 parking lot there just like it's shown in the diagram,
11 correct?

12 A. Right, yes.

13 Q. And then those little lines at the bottom of
14 the picture or the bottom of the diagram, those are
15 places for cars to park straight in?

16 A. Correct.

17 Q. And behind that's a fence and then a bayou?

18 A. Uh-huh.

19 Q. And then there are a few lights at the tops of
20 the buildings, correct?

21 A. Yes.

22 Q. Is it safe to say that it's pretty dimly lit
23 out there at night?

24 A. I wouldn't say dim, there is an -- I would say
25 that there needs to be more but it's enough to see

1 certain things.

2 Q. Okay. It would be nice if there was more light
3 out there?

4 A. Yeah, it would be.

5 Q. Okay. And you're telling us that you're
6 observing these persons out there on that back driveway
7 at night from the second story window?

8 A. Yes.

9 Q. How many people did you see running?

10 A. I just saw one running.

11 Q. Just one?

12 A. Uh-huh.

13 Q. And that's the same person that you picked out
14 in the photospread, correct?

15 A. That's the same person I picked out in the
16 photo -- what I picked out -- oh, go ahead.

17 MR. PHILIP SCARDINO: If I can see State's
18 141. Thank you.

19 May I approach the witness, Your Honor?

20 THE COURT: You may.

21 Q. (BY MR. PHILIP SCARDINO) You testified
22 earlier, Ms. Bumpers, that you identified one person out
23 there; and it's the person that's circled in State's
24 Exhibit 141, correct?

25 A. Yes.

1 Q. And that's the only person that you saw out
2 there?

3 A. That's the only person that I could recognize.

4 Q. Okay.

5 A. As far as his eyes.

6 Q. Now, let me ask you were there any other
7 persons out there on that driveway with this person?

8 A. Not out of the car. There was someone in the
9 car waiting, but other than that I only seen the person
10 running.

11 Q. Okay. So, you saw one person running?

12 A. Uh-huh.

13 Q. And one person in the car?

14 A. Yes.

15 Q. Now, did you tell us that the windows on that
16 car are fairly tinted?

17 A. Yes, they are.

18 Q. Could there have been more than one person in
19 that car?

20 A. Very well could have been.

21 Q. So, there could have been three other people in
22 that car?

23 A. Possibly.

24 Q. Now, did you see anybody shooting a gun?

25 A. No, I did not see anyone shooting a gun.

1 Q. Okay. When the detective came and talked to
2 you and had you look at these photospreads --

3 A. Uh-huh.

4 Q. -- and you made this identification, okay, you
5 remember that?

6 A. Uh-huh, yes.

7 Q. Didn't you place your hand on the top and
8 bottom of the person that you picked out?

9 A. Yes.

10 Q. To where all you could see were their eyes?

11 A. Correct.

12 MR. PHILIP SCARDINO: May I reapproach,
13 Your Honor?

14 THE COURT: Yes.

15 Q. (BY MR. PHILIP SCARDINO) So, when you made
16 this identification of the person in the No. 1 position
17 in this -- in this, you had -- you covered up all the
18 way up to his nose and all the way down to his eyes?

19 A. Hold on.

20 Q. Show me what you covered up?

21 A. Yeah, that's what I covered up.

22 Q. Okay. So, you covered up everything except the
23 eyes?

24 A. Yes.

25 Q. To make the identification, you covered up

1 everything; and that's how you made the identification
2 of the person in the No. 1?

3 MS. MERIWETHER: Objection, repetitive.

4 THE COURT: Sustained.

5 Q. (BY MR. PHILIP SCARDINO) Okay. Do you think
6 you would recognize that person if you saw him again
7 today?

8 A. Possibly not, I can barely remember yesterday,
9 sorry.

10 Q. You think if we brought him into the courtroom
11 you could identify him?

12 MS. MERIWETHER: Objection, asked and
13 answered as well as speculation and relevance.

14 THE COURT: Overruled.

15 A. Oh, you want me to answer, sorry.

16 Q. (BY MR. PHILIP SCARDINO) Yes. If we brought
17 him into the courtroom, you think you could recognize
18 him?

19 A. I may, I may not; like I said, I covered his
20 face to see his eyes because that's what I seen.

21 Q. Okay.

22 MR. PHILIP SCARDINO: At this time I'd ask
23 that we bring Mr. Davis in the courtroom?

24 MS. MERIWETHER: Your Honor, the State
25 would obviously object given that it's been a year and a

1 half since she last saw him. The best evidence is
2 what's been put forth today, which is the photospread.

3 THE COURT: Overruled. Since this may take
4 us a minute, I'm going to let the jury go with the
5 bailiff.

6 THE BAILIFF: All rise for the jury.

7 (Jury exits courtroom.)

8 THE COURT: Be seated.

9 Is it a problem? Is he still next door?

10 THE BAILIFF: Yes, ma'am.

11 THE COURT: Is it a problem for y'all to go
12 get him?

13 THE BAILIFF: No, ma'am.

14 THE COURT: Do you need some help from
15 their bailiffs?

16 THE BAILIFF: No, ma'am.

17 THE COURT: Just out of curiosity, how is
18 it not relevant? He's testifying in a few minutes for
19 the State. She's identified him in a photospread. I'm
20 just wondering how is it not relevant?

21 MS. MERIWETHER: Yes, Your Honor. I mean,
22 obviously there is concern that it's been a year and a
23 half. It's an individual showup --

24 THE COURT: That doesn't make it
25 irrelevant.

1 MS. MERIWETHER: It's an individual showup
2 versus a six.

3 THE COURT: That still doesn't make it
4 irrelevant.

5 MS. MERIWETHER: Yes, ma'am.

6 THE COURT: We're going to ask him to step
7 in. You can ask her if she recognizes him -- and you
8 can ask her if she recognizes him.

9 And just so we're clear, Mr. Scardino,
10 we're going to ask him to step in. You can ask her if
11 she recognizes him, we're going to ask him to step out,
12 that's it.

13 MR. PHILIP SCARDINO: I was just going to
14 ask him to step in and then let her look at him, have
15 him step out and then ask her.

16 THE COURT: That's okay. That would be
17 fine.

18 MR. PHILIP SCARDINO: I didn't want to have
19 to talk while he's in here.

20 THE COURT: That's fine.

21 MS. MERIWETHER: Judge, can I put on the
22 record that his lawyer is not present; however, I have
23 advised him he's just going to stand there and not say
24 anything so that there's not any concern down the road?

25 (A recess was taken.)

1 (Open court, Defendant present.)

2 THE BAILIFF: All rise for the jury.

3 (Jury enters courtroom.)

4 THE COURT: Thank you. Be seated.

5 You may proceed, Mr. Scardino.

6 Q. (BY MR. PHILIP SCARDINO) Ms. Bumpers, we're
7 going to bring somebody in the courtroom and then
8 they're going to stand there for a minute and then
9 they're going to leave the courtroom and then I'm going
10 to ask you some more questions.

11 A. Okay.

12 Q. Okay?

13 A. Uh-huh, yes.

14 (Marquis Davis enters courtroom.)

15 Q. MR. PHILIP SCARDINO: Take a look at this man,
16 Ms. Bumpers.

17 A. Uh-huh.

18 THE COURT: Thank you. You can take him
19 out.

20 MR. PHILIP SCARDINO: Okay. Thank you.

21 (Marquis Davis exits courtroom.)

22 Q. (BY MR. PHILIP SCARDINO) Ms. Bumpers, was that
23 the same person that you picked out in the photospread?

24 A. Huh, I'm sorry?

25 Q. Do you recognize that person as the same person

1 you picked out in the photospread?

2 A. I recognize this area (indicating).

3 Q. Okay.

4 A. I'm sorry, it looks like --

5 Q. Well, the question, I guess a better question
6 I'm asking you, you picked out a person that was out
7 there on the driveway at the Little Nell Apartments back
8 on March 6th of 2014, and the man that was brought in
9 the courtroom awhile ago, is that one in the same
10 person?

11 A. Eyes wise, from looking here, looks like it to
12 me.

13 Q. Okay. So, are you telling the ladies and
14 gentlemen of the jury that you cannot say for sure
15 that's the same person that you saw back on March 6th,
16 2014, out in the Little Nell Apartments out on the
17 driveway behind your apartment unit?

18 A. Yeah.

19 Q. You said that is the same person, or you can't
20 tell?

21 A. Oh, I'm sorry. I cannot identify a person. I
22 can tell you what I seen, and eyes that's all I caught
23 was eyes. I didn't see a person's entire face, that's
24 the same thing I've been saying.

25 Q. Okay. Maybe I'm asking the question wrong. Is

1 that or is that not the same person you saw out at the
2 apartments on March 6th, 2014, just yes or no; or if you
3 don't know?

4 A. I don't know.

5 Q. Okay. Thank you, I'll pass the witness.

6 MS. MERIWETHER: Briefly, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MS. MERIWETHER:

9 Q. Do you know Jerome Monroe?

10 A. Who?

11 Q. Jerome Monroe?

12 A. No.

13 Q. Did you see him the night of this incident of
14 the shooting?

15 A. I don't know who he is.

16 Q. You don't know him. Did you see a gentleman
17 here who -- earlier here today wearing a white shirt
18 outside maybe before you came into the courtroom? Did
19 you recognize anybody outside -- let me ask it another
20 way. Did you recognize -- when you came to court this
21 morning and there's been a bunch of people milling
22 around, right?

23 A. Uh-huh.

24 Q. Did you recognize anybody out there other than
25 you and your mother that are here?

1 A. No.

2 Q. You didn't recognize anybody that was also
3 there at the time of the shooting as being here today?

4 A. No.

5 MS. MERIWETHER: I'll pass the witness,
6 Your Honor.

7 MR. PHILIP SCARDINO: No further questions,
8 Your Honor.

9 THE COURT: May this witness be excused?

10 MR. PHILIP SCARDINO: No objection.

11 MS. MERIWETHER: Yes, Your Honor.

12 THE COURT: Thank you, ma'am. You may step
13 down. You are excused.

14 We will take our lunch break at this time.
15 The bailiffs have made arrangements to take y'all to
16 lunch, and so I will ask that you go with them.

17 THE BAILIFF: All rise for the jury.

18 (Jury exits courtroom.)

19 THE COURT: We'll be in lunch recess for an
20 hour.

21 (A lunch recess was taken.)

22 (Open court, Defendant present.)

23 THE BAILIFF: All rise for the jury.

24 (Jury enters courtroom.)

25 THE COURT: Thank you. Please be seated.

1 Hope you enjoyed your lunch. Got to get out of the
2 building for a little bit.

3 Ms. Meriwether, you may call your next
4 witness.

5 MS. MERIWETHER: Thank you, Your Honor.
6 Can I call Sergeant Rhoads, please?

7 THE COURT: Yes, you may.

8 THE BAILIFF: This witness has been sworn,
9 ma'am.

10 THE COURT: Thank you.

11 **J. RHOADS,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 BY MS. MERIWETHER:

15 Q. Good afternoon, sir. Could you introduce
16 yourself to our jury?

17 A. Yes, I'm Sergeant J. Rhoads, HPD homicide
18 division.

19 Q. And how long have you been with the Houston
20 Police Department?

21 A. I'm employed 26 years.

22 Q. And how long in the homicide division?

23 A. About four years.

24 Q. What other positions within the Houston Police
25 Department have you held?

1 A. I was a patrolman at Greenspoint and north
2 division and got promoted, I was at northeast and
3 patrolman.

4 Q. So lots of patrolling and then the last four
5 years have been with homicide?

6 A. Correct.

7 Q. What led you to go to the homicide division?

8 A. The kids were out of the house, so I got to do
9 what I wanted to do.

10 Q. Fair enough. What shift do you work within
11 homicide?

12 A. I am on evening shift from 3:00 p.m. to 1:00
13 a.m.

14 Q. And that's a little bit more convenient kid
15 free?

16 A. Yes.

17 Q. Fair enough. I want to talk to you about
18 March 6th, 2014. Were you working in homicide back
19 then?

20 A. Yes, I was.

21 Q. And did you have a partner?

22 A. Yes, I did.

23 Q. And who was that?

24 A. Officer Sylvester.

25 Q. And how do you become partners with an

1 individual?

2 A. Just the lieutenant pairs us up with whoever we
3 have the same days off.

4 Q. How long had you and Sylvester been partners?

5 A. Actually Sylvester and I, he was filling in for
6 my regular partner, so he was just filling in for the
7 regular partner.

8 Q. Okay. So, was he your partner on March 6th of
9 2014, a fill-in partner?

10 A. Yes, Sylvester was a fill-in partner.

11 Q. Were you guys assigned a homicide that had
12 occurred that night?

13 A. That is correct.

14 Q. How does that work?

15 A. Patrol makes the scene, they call homicide
16 division, the front desk and they run it through the
17 lieutenant and then the lieutenant assigns it to whoever
18 is up next, and we were up next.

19 Q. So you and Sylvester get a call. About what
20 time do you head out to the location?

21 A. We leave 1200 Travis, 6th floor, homicide
22 division, we left there about 9:40 p.m. and we got there
23 at the Little Nell Apartments about 10 o'clock.

24 Q. And when you arrived, what do you do?

25 A. The scene is usually taped up. I look for

1 any -- I get a rundown from the primary officers with
2 whatever information they have. If they have a witness
3 sometimes the primary officers will detain a witness who
4 saw something, so I will interview the witnesses at the
5 scene if they didn't, if they didn't get a, if they're a
6 witness to the aftermath, I will interview them at the
7 scene. Sylvester will process the scene side of the
8 evidence while I will canvass the area for witnesses,
9 also.

10 Q. So, if I hear correctly, y'all split it up, one
11 does scene, one does witnesses and this night you did
12 the witnesses?

13 A. Correct.

14 Q. And upon your arrival did you learn if there
15 were some witnesses who had been detained?

16 A. Yes, I'd learned there was two witnesses
17 detained.

18 Q. Okay. And who were they?

19 A. They were Ms. Maxwell and Ms. Bumpers.

20 Q. Ms. Mitchell, Sheryl Mitchell?

21 A. Yes.

22 Q. Where did Maxwell come from?

23 A. I don't know.

24 Q. So, the two individuals detained were Sheryl
25 Mitchell and Shejuan Bumpers?

1 A. Yes.

2 Q. And do you know if they had been kept separate
3 from each other?

4 A. Yes, they were kept separate.

5 Q. And how is that done?

6 A. Our procedure is to put them in separate patrol
7 cars. Anytime there is a witness, we separate them so
8 they can't talk to go over the evidence together, or
9 what they saw, so we separate them and that's how, in
10 patrol cars.

11 Q. And did you interview both of them separately
12 about what they saw?

13 A. Yes, I did in my car.

14 Q. In your car. After talking to them, were you
15 able to get an idea of what kind of vehicle was
16 involved?

17 A. Yes, I did.

18 Q. Did you get really much detail about suspects
19 and who they might be?

20 A. The only suspect information was black male in
21 a black hoodie.

22 Q. With regard to the vehicle, what type of
23 information did you have about that?

24 A. It was a Acura, black-colored Acura, late
25 model.

1 Q. After speaking to these two witnesses, what did
2 you do?

3 A. After speaking to those two witnesses, I then
4 went around to Building 11 and knocked on doors and try
5 to find any more witness.

6 Q. So, kind of trying to canvass that building.
7 Why Building 11?

8 A. Because the incident occurred directly behind
9 Building 11.

10 Q. Did you also go to Building 12?

11 A. I can't remember.

12 Q. Can I approach the witness, Your Honor?

13 THE COURT: You may.

14 THE WITNESS: Yes.

15 Q. (BY MS. MERIWETHER) I'm going to give you this
16 and give you an opportunity to refresh your memory and
17 see if that helps you.

18 A. Oh, yes, yes, I went to Building 12.

19 Q. And that document that you're looking at there,
20 is that a supplement that you prepared related to the
21 investigation?

22 A. Correct.

23 Q. And have you made few or many homicide scenes
24 since March of 2014?

25 A. I made many.

1 Q. So, you also tried to find some folks in
2 Building 12 and learned if they knew anything about the
3 shooting?

4 A. Correct.

5 Q. Did you find any other witnesses that night
6 that were able to provide you details or descriptions of
7 the individuals that committed the offense?

8 A. I did not.

9 Q. You also didn't locate any suspects at that
10 time, either?

11 A. Correct, no suspects.

12 Q. Did you learn after leaving the scene that
13 there had been a potential witness who gave a media
14 interview?

15 A. Yes, I did.

16 Q. And tell me about that, how did you learn about
17 that?

18 A. I was back at homicide division and this
19 gentleman who is with Metro News, he films news at
20 night, he came up and he asked for me and he showed me a
21 video that he had, somebody had stated they had seen the
22 shooting, but I had not, I did not talk to the witness
23 at the scene. He did not -- the witness did not
24 approach me.

25 Q. So, this individual, did you see the news

1 footage?

2 A. Briefly, yes.

3 Q. Okay. And that person was somebody you never
4 talked to out at the scene?

5 A. Correct, nobody.

6 Q. Did that conclude your work on this homicide
7 investigation?

8 A. Yes, that was basically it.

9 Q. What happens when you and your partner,
10 Sylvester, make the scene, why do you not continue
11 further the investigation?

12 A. As it occurred at that time, it's different
13 now, but at that time evening shift was only one squad
14 and a murder takes a lot of follow-up investigation.
15 Our hours are not conducive to follow up unless we have
16 the manpower, which we did not, so basically the evening
17 shift would pass off, that's what we call, kind of hand
18 off the case to dayshift investigators and that's what
19 we did when they got there that next morning.

20 Q. So, who would this case have been passed off
21 to, if you know?

22 A. Sergeant Cisneros.

23 Q. Prior to passing off the case, did you receive
24 an e-mail from a Sergeant Bridges that was related to
25 this homicide or could have been related to this

1 homicide?

2 A. Well, not before I passed it off; but the
3 following, the following night I did, yes.

4 Q. Okay. You received an e-mail from Bridges?

5 A. Yes.

6 Q. That was related to this case?

7 A. Yes.

8 Q. And what did you and Sylvester do with that
9 information?

10 A. Well, we passed it on to Sergeant Cisneros,
11 made sure he got it.

12 Q. And did that conclude your involvement with the
13 case, you didn't do any other follow-up interviews or
14 anything of that nature?

15 A. Correct.

16 MS. MERIWETHER: I pass the witness, Your
17 Honor.

18 **CROSS-EXAMINATION**

19 BY MR. PHILIP SCARDINO:

20 Q. Sergeant Rhoads.

21 A. Yes, sir.

22 Q. You made a supplement offense report. I
23 believe you were just looking at it?

24 A. Yes, sir.

25 Q. May I have a look at it?

1 MR. PHILIP SCARDINO: May I approach the
2 witness, Your Honor?

3 THE COURT: You may.

4 Q. (BY MR. PHILIP SCARDINO) I take it from your
5 testimony that this is the first time you've seen it in
6 a while, right?

7 A. Yeah, I've seen it.

8 Q. Before today?

9 A. No, I've seen it.

10 Q. Before just seeing it right now, when was the
11 last time you saw it?

12 MS. MERIWETHER: Objection, relevance.

13 THE COURT: Overruled.

14 A. Earlier today.

15 Q. (BY MR. PHILIP SCARDINO) Earlier today, okay.
16 Did you refresh your recollection with any other notes
17 or photographs or anything like that before your
18 testimony today, Sergeant Rhoads? Or was that offense
19 supplement the only thing that you reviewed?

20 A. I looked over the crime scene photos last week.

21 Q. Okay. So, you're telling the ladies and
22 gentlemen of the jury as a result of your on-scene
23 investigation the night of March the 6th, 2014, and
24 having spoken to a couple of witnesses that one of the
25 pieces of information that you gleaned from this is that

1 the person or persons who committed this crime fled the
2 scene in a white Acura?

3 A. No.

4 Q. Okay. Well, I'm old and my notes indicate to
5 me when I was taking notes on your direct testimony that
6 that's the information that you got when you were out
7 there?

8 A. No, it was a black Acura.

9 Q. Black Acura, okay.

10 MR. PHILIP SCARDINO: Pass the witness,
11 Your Honor.

12 THE COURT: Anything further?

13 MS. MERIWETHER: No, Your Honor.

14 THE COURT: May this witness be excused?

15 MS. MERIWETHER: Yes, Your Honor.

16 MR. PHILIP SCARDINO: No objections, Your
17 Honor.

18 THE COURT: Thank you, sir. You may step
19 down, and you are excused.

20 Call your next witness.

21 MS. MERIWETHER: Sheryl Mitchell.

22 THE COURT: By the way, at any time I'm
23 going too long between breaks, just let me know; I don't
24 want anybody to be uncomfortable, okay?

25 THE BAILIFF: Your Honor, this witness has

1 already been sworn in.

2 THE COURT: Thank you.

3 You may proceed.

4 MS. MERIWETHER: Thank you, Your Honor.

5 **SHERYL MITCHELL,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 BY MS. MERIWETHER:

9 Q. Could you please state your name for the record
10 and introduce yourself to our jury?

11 A. Sheryl Mitchell.

12 Q. And I know I'm not supposed to ask, but how old
13 a woman are you, Ms. Mitchell?

14 A. 54, very proud of it.

15 Q. Certainly don't look 54. I see by your scrubs,
16 do you work in the medical field?

17 A. Yes, I do.

18 Q. Where do you work?

19 A. I work for Memorial Hermann.

20 Q. How long have you been with them?

21 A. Well, 14 years now.

22 Q. And do you have children?

23 A. I do.

24 Q. Is one of them Shejuan Bumpers?

25 A. It is.

1 Q. And she was here earlier this morning, that's
2 the same Shejuan that's your daughter?

3 A. That is correct.

4 Q. And you have another daughter, is that also
5 true?

6 A. Anece (phon).

7 Q. And then a son?

8 A. Uh-huh.

9 Q. And a stepdaughter -- no, no, daughter-in-law?

10 A. Daughter-in-law, correct.

11 Q. How many grandkids?

12 A. Four.

13 Q. And you live at the Little Nell Apartments?

14 A. Correct.

15 Q. Lived there for about how long?

16 A. Since 2005.

17 Q. And right now it's you living there, daughter,
18 Shejuan, other daughter Sabel(phon.)?

19 A. Anece.

20 Q. Anece, I'm sorry. Anece and then granddaughter
21 that's Shejuan's?

22 A. Renea, uh-huh.

23 Q. I want to talk to you about March 6th of 2014.

24 Let's go straight into what you're here to talk about.

25 Did you work that day?

1 A. Yes, I did.

2 Q. At the Memorial Hermann?

3 A. Correct.

4 Q. And you work in kind of an office/clinic
5 setting?

6 A. Correct.

7 Q. What kind of hours?

8 A. Normally from 9:00 to 8:00 or 9:00 to 9:00. It
9 just depends, we do a late night.

10 Q. Had you just gotten home that night before this
11 all started?

12 A. Yes, I had.

13 Q. Had you picked up dinner on your way home?

14 A. I did.

15 Q. And then what happens?

16 A. My daughter and I were sitting down to eat
17 dinner. Shejuan was fixing a friend's hair, and as we
18 sat down to eat, we heard like a pop, pop; and we all
19 looked at each other and was like, was that a gun?

20 Q. Okay.

21 A. And so, I mean, I started to get up, they said,
22 no, don't go toward the windows. After that it was like
23 pow, pow, pow, pow, pow. And so we was like, oh, my
24 God. So, I proceeded to go to my bedroom window to look
25 out because my bedroom faces the parking lot. I didn't

1 see anything, so I went to the patio door and they're
2 like, mama, no. So, somebody shooting out here. And
3 when I drove up that night, there was a young man, a
4 little boy that was taking trash out and my first
5 thought was, oh, my, God, I hope somebody's kid hadn't
6 got shot. So, when I went to the patio, I went up to
7 the patio, just the rail, so I'm looking and there is
8 someone running by, and I said are you okay?

9 MR. PHILIP SCARDINO: Excuse me, Ms.
10 Mitchell. We have an objection.

11 THE COURT: Sustained. Just keep it
12 question/answer form, please.

13 MS. MERIWETHER: Yes, Your Honor.

14 Q. (BY MS. MERIWETHER) Your apartment, it has an
15 outside patio area that looks down to the first --

16 A. To the parking lot, uh-huh.

17 Q. And that parking lot then has a bayou that's
18 behind it, correct?

19 A. Correct, uh-huh.

20 Q. So you look out, and you see an individual
21 running by?

22 A. Correct.

23 Q. What do you do then?

24 A. That's when I asked are you okay, but that
25 individual didn't say anything. They just kind of

1 turned their head.

2 Q. Okay. Then what happens?

3 A. I looked over the railing and I looked down to
4 my right and I saw someone laying there, so I screamed,
5 oh, my God, somebody has been shot. And I told my
6 daughter, the baby girl, I said, oh, my God, somebody's
7 been shot. Somebody call 9-1-1. You come go with me,
8 and we ran downstairs to the gentleman that had been
9 shot.

10 Q. And that was you and?

11 A. Anece.

12 Q. And Anece that go down?

13 A. Uh-huh.

14 Q. And where does Shejuan stay?

15 A. Where does she stay?

16 Q. Or where was she at this time?

17 A. Oh, she was in the apartment; and she was the
18 one that was dialing 9-1-1.

19 Q. When y'all go downstairs, what happens next?

20 A. We run down to the gentleman that was laying on
21 the ground and there was another man that met us there,
22 well, standing there, and we were trying to check him
23 and I was telling Anece, I said, see if he has a pulse.
24 And as she leaned down to do that, someone screamed here
25 they come or here they come, something to that effect.

1 So, this black car drives around. And everybody starts
2 out running. And I'm asking Shejuan where is the
3 ambulance or the police or somebody?

4 Q. Did you go back towards your house when you saw
5 that black vehicle come by again?

6 A. We all started running that direction, I didn't
7 make it to the house.

8 Q. And did that vehicle -- what was its speed as
9 it was going by?

10 A. It just kind of slowly drove by; and then as it
11 got past us, it just kind of picked up speed.

12 Q. After the vehicle then leaves, what happens
13 next?

14 A. That's when I was asking Shejuan, no, I started
15 saying where is somebody, where is somebody, we needed
16 help, where is somebody? And they said that the
17 paramedics and the fire department was at the gate, but
18 they had to wait for the police because it was gunshots.
19 And I went and knocked on one of my neighbor's doors to
20 ask her, because it was a Hispanic family that lived
21 next to us, if that was -- you know, maybe that had been
22 their son.

23 MR. PHILIP SCARDINO: Excuse me, Ms.
24 Mitchell. We'd object, Your Honor. It's nonresponsive
25 and ask that we proceed in question/answer form.

1 THE COURT: Please proceed in
2 question/answer form. Your objection is sustained.

3 MS. MERIWETHER: Yes, Your Honor.

4 Q. (BY MS. MERIWETHER) The individual, did you
5 see him on the ground, the man that was shot?

6 A. Yes.

7 Q. And you weren't sure if he was Hispanic or
8 Indian at that time?

9 A. Right, exactly.

10 Q. Did you recognize him? Had you ever seen him
11 in the complex before?

12 A. No, ma'am.

13 Q. Now, you said that you saw a person when you
14 looked out, do you remember giving a description of that
15 individual?

16 A. Look like it may have been about five-five,
17 five-six.

18 Q. And he was wearing a black hoodie?

19 A. Had a hoodie on, yeah; that is correct.

20 Q. Were you able to see his face or not?

21 A. No, because when I asked are you okay, he just
22 kind of turned his head to where I couldn't see the
23 face.

24 Q. And you were out on a balcony looking out; is
25 that correct?

1 A. Correct.

2 Q. And Shejuan was inside the apartment?

3 A. Correct.

4 Q. Did you stick around and talk to the police
5 that night?

6 A. Later on one of the officers came to the door
7 and said that a detective, I think, was on his way; and
8 they wanted us to talk, speak with the detective.

9 Q. And did you do that?

10 A. Yes.

11 Q. And the detective also, another one came a few
12 days later and you spoke to them again as well, a female
13 detective came and saw you?

14 A. No.

15 Q. Actually, it was much later than that, right?

16 A Va'Shawnda McLean, you remember talking to her?

17 A. Oh, yes, yes, yes.

18 Q. And you tried to provide her information about
19 the vehicle and the description of the individual you
20 saw?

21 A. Right.

22 Q. Were you able to tell who was inside of that
23 vehicle?

24 A. No, ma'am.

25 Q. What were the window tints like?

1 A. It was dark and the windows was tinted and it's
2 not very good lighting in that parking lot anyway, so it
3 was hard to tell.

4 MS. MERIWETHER: Pass the witness, Your
5 Honor.

6 **CROSS-EXAMINATION**

7 BY MR. PHILIP SCARDINO:

8 Q. Ms. Mitchell, my name is Philip Scardino. You
9 and I have never met, have we?

10 A. Not that I know of.

11 Q. You just testified to the ladies and gentlemen
12 of the jury that the lighting is not very good out
13 there?

14 A. Correct.

15 Q. And this was at night?

16 A. Correct.

17 Q. And that you saw someone but you could not
18 identify them?

19 A. No.

20 Q. Did the police ask you to look at some pictures
21 of people to see if you could identify them?

22 A. No.

23 Q. They never showed you a photospread of people?

24 A. No.

25 Q. Okay. You had -- and I'm a little confused,

1 help me with this, you had the same vantage point that
2 your daughter, Ms. Bumpers, had?

3 A. No, I did not.

4 Q. Did not?

5 A. Did not.

6 Q. Explain that to me, please?

7 A. Because I was on the balcony and the gentleman
8 was running, I would say north, and she was standing in
9 the window, so with him running it would have been
10 running to where, if she was looking out, she would have
11 seen him.

12 Q. Okay. Okay. I believe you testified that you
13 heard lots of shots?

14 A. Uh-huh, when you say "lots" meaning?

15 Q. That's what I want to ask you.

16 A. Oh, okay. First time I heard like pop, pop and
17 then after that it was pop, pop, pop, pop, so it could
18 have been maybe seven at the most, yeah.

19 Q. So somewhere seven shots, could have been a few
20 more, could have been a few less?

21 A. Right.

22 Q. And the order of the shots that you remember it
23 was pop, pop?

24 A. Uh-huh.

25 Q. And then pop, pop, pop?

1 A. Right.

2 Q. Was there a time gone by and then a final pop
3 or those --

4 A. I just remember it going pop, pop because we
5 were sitting at the table; and we looked at each other,
6 we were like, is that gunshots? And then after that
7 maybe a couple minutes or so, then it was like pow, pow,
8 pow, pow, pow.

9 Q. And I believe you said you saw a black Acura
10 coming through the parking lot?

11 A. I didn't say Acura, but I did see a black
12 vehicle because I wasn't sure.

13 Q. Okay. And I believe you testified to the
14 ladies and gentlemen of the jury that this black car
15 that you saw --

16 A. Uh-huh.

17 Q. -- had tinted windows?

18 A. Uh-huh.

19 Q. And it was at night?

20 A. Correct.

21 Q. And the lighting wasn't too good?

22 A. Correct.

23 Q. And you could not see how many people were in
24 that vehicle?

25 A. No, because we were too busy trying to get out

1 of the way because we hear people screaming, here they
2 come. I don't know what here they come means. You know
3 what I'm saying? Here they come, so, I'm getting my
4 daughter trying to get out of the way.

5 Q. Do you know who screamed here they come?

6 A. No, I don't. I just know it was a bunch of
7 people had gathered at that time, coming out; and they
8 said here they come.

9 Q. So, you personally don't have -- you did not at
10 the time have any information that linked this black car
11 to this person that was on the ground?

12 A. No.

13 Q. Other than you heard somebody say here they
14 come?

15 A. Correct.

16 Q. And when they passed by there could have been
17 two people in there, it could have been four people in
18 there, you don't know?

19 A. I wouldn't know.

20 Q. And I believe you said that they passed by at a
21 slow rate?

22 A. Yeah, it was like cruising; and then it kind of
23 picked the speed.

24 Q. So, it wasn't just --

25 A. Zoom through.

1 Q. -- flooring out of there, right?

2 A. No.

3 Q. And when you saw this car, it was headed out
4 towards Building 11 as you exit the Little Nell
5 Apartments?

6 A. No, it was coming between 7 and 11, around
7 going back towards, I guess that would be maybe Building
8 15 because it's at the end, it's going back, like,
9 north. If I was standing up, back this way.

10 Q. So, the vehicle was traveling, if it was
11 traveling in the direction of Building 11, 12, 13, 14,
12 like that?

13 A. Correct, because he was laying right there at
14 Building 11; and I live in 12.

15 Q. When was the first time that you noticed this
16 black car? Well, let me ask you a better question.
17 Where was the black car when you first noticed it?

18 A. When it came around in between Building 7 and
19 11 where the dumpsters is there.

20 Q. Okay. Thank you.

21 MR. PHILIP SCARDINO: I pass the witness,
22 Your Honor.

23 THE COURT: Ms. Meriwether.

24 MS. MERIWETHER: No additional questions,
25 Your Honor.

1 THE COURT: May she be excused?

2 MR. PHILIP SCARDINO: No objection, Your
3 Honor.

4 MS. MERIWETHER: Yes, Your Honor.

5 THE COURT: Thank you, ma'am. You may step
6 down, and you are excused.

7 Call your next witness.

8 MS. MERIWETHER: Lawrence Scott.

9 Your Honor, I think I have another witness
10 in mind, if the Court doesn't mind. The State would
11 call Officer Tesfay.

12 THE COURT: Okay.

13 THE BAILIFF: Your Honor, this witness has
14 already been sworn in.

15 THE COURT: Thank you.

16 You may proceed.

17 MS. MERIWETHER: Thank you, Your Honor.

18 **BRUK TEFAY,**
19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 BY MS. MERIWETHER:

22 Q. Good afternoon, sir. Could you please
23 introduce yourself to our jury?

24 A. Officer Bruk Tesfay.

25 Q. And how are you employed?

1 A. I'm a police officer with the Houston Police
2 Department.

3 Q. And how long have you been with the Houston
4 Police Department?

5 A. About nine and a half years.

6 Q. And are you assigned to any particular
7 division?

8 A. At this time I'm in patrol, northeast patrol
9 division.

10 Q. At some point, did you work in the video,
11 audio/video section of the Houston Police Department?

12 A. Yes, prior I was certified in forensic video
13 tech.

14 Q. So, you went from being a video tech and like
15 computer stuff to being on the street?

16 A. Well, I was on the street previously; and I
17 transferred to a division where I did forensic video.

18 Q. Which do you like better?

19 A. The streets.

20 Q. Fair enough. A little more interaction than
21 the computers, I guess?

22 A. True.

23 Q. I want to talk to you about your previous life
24 before going back on patrol, and you said you were a
25 certified forensic --

1 A. Video technician.

2 Q. Video technician. What do you do to get that
3 certification?

4 A. You take extensive amount of training classes
5 and tests.

6 Q. On what types of things?

7 A. On forensic video field, digital video,
8 retrieving video evidence from digital and such.

9 Q. Were you contacted on March 8th of 2014 by
10 another officer to assist in retrieving some video?

11 A. Yes, I was.

12 Q. And is that typically how it works, an officer
13 needs some video and they call over and get some help
14 getting it?

15 A. Mostly, yes, if we're at the office, they would
16 come to the office; or if we're not at the office, we
17 always on call. So, they would call and request for an
18 officer to come out.

19 Q. This officer that contacted you was Officer
20 McLean from the homicide division?

21 A. That's correct.

22 Q. And where did you two go?

23 A. We ended up going to the House of Pies.

24 MR. PHILIP SCARDINO: Excuse me, Officer.
25 May we approach, Your Honor?

1 THE COURT: You may.

2 (Bench conference.)

3 MR. PHILIP SCARDINO: Might be a good time
4 for me to make my Motion about the extraneous if he's
5 going to prove up the video.

6 THE COURT: Ladies and gentlemen, sometimes
7 there becomes points in the trial that I need to take up
8 legal issues outside your presence; this is one of those
9 times. So, I will ask you to go briefly with the
10 bailiff, please.

11 THE BAILIFF: All rise for the jury.
12 (Jury exits courtroom.)

13 THE COURT: Thank you. Be seated.
14 What did you say your first name is?

15 THE WITNESS: Bruk.

16 THE COURT: How do you spell it?

17 THE WITNESS: B-R-U-K.

18 THE COURT: You pronounce it Brock.

19 THE WITNESS: Yes.

20 THE COURT: That's my son's name, but he
21 spells it differently.

22 MR. PHILIP SCARDINO: Spell your last name
23 for me.

24 THE WITNESS: Tesfay, T-E-S-F-A-Y.

25 MR. PHILIP SCARDINO: Well, I was close.

1 If I may address the Court and the record, Your Honor.
2 Officer Tesfay is here to testify and he obviously
3 mentioned that he's a video technician and the State is
4 at the point of introducing some video from a House of
5 Pies robbery that took place on March the 6th, 2014.
6 The evidence is clear that this robbery took place at
7 least is better than an hour past the time of this
8 murder from the testimony that's come before. It is not
9 the same criminal episode. The State is attempting to
10 introduce an extraneous offense in the guilt/innocence
11 phase of this trial to prejudice my client's right to a
12 fair trial by introducing the extraneous robbery at the
13 House of Pies; and we'd object.

14 THE COURT: And your objection is based on
15 the fact that it's an extraneous offense, and it's
16 prejudicial?

17 MR. PHILIP SCARDINO: It's an extraneous
18 and prejudicial. As we know extraneous have to, the
19 founding notion is that it somehow has to help the fact
20 finder in this case resolve the case at bar, which is a
21 murder case; and they're trying to introduce a robbery
22 case that happened sometime later, which does not help
23 them resolve the case at bar, which is a murder case,
24 Your Honor.

25 THE COURT: What says the State?

1 MS. MERIWETHER: Your Honor, the State
2 would, in fact, argue that it is a same transaction
3 context situation; and, therefore, it should come in.
4 It has multiple factors that show it's a continuation.
5 It's so tightly interwoven with the capital murder. The
6 inability of the jury to hear that would be a problem,
7 and I would first argue it under that theory.

8 THE COURT: And how is it so interwoven
9 with the capital murder that makes it a same
10 transaction?

11 MS. MERIWETHER: Because upon commission of
12 the capital murder, they go to the House of Pies, which
13 is a short distance away. It occurs within 57 minutes
14 of the capital murder occurring. They use the victim's
15 vehicle to commit this offense. They use his backpack
16 to commit the offense, and it is a similar type gun that
17 is used to commit this offense. And there is a witness
18 inside of the House of Pies who can identify both
19 individuals, Marquis Davis and Donald Nealey, as
20 committing the offense.

21 THE COURT: Well, given the fact that I
22 will admit it under both theories, under both same
23 transaction but also under the identification since
24 there has been no witnesses in my understanding, there
25 are no witnesses that can identify this Defendant as

1 having committed the capital murder that we've been
2 hearing about.

3 MS. MERIWETHER: Yes, Your Honor.

4 THE COURT: So, the State needs this
5 evidence for identification as well.

6 MS. MERIWETHER: That would be my second
7 prong to the argument to the Court is both
8 identification and corroboration to the co-defendant's
9 testimony that the State intends to offer via Marquis
10 Davis.

11 THE COURT: The Defense objection is
12 overruled. The Court's ruling is that the extraneous
13 offense that occurred at the House of Pies is
14 admissible.

15 THE BAILIFF: All rise for the jury.

16 (Jury enters courtroom.)

17 THE COURT: Thank you. Be seated.
18 You may proceed, Ms. Meriwether.

19 MS. MERIWETHER: Thank you, Your Honor.

20 Q. (BY MS. MERIWETHER) I think I left off --

21 MS. MERIWETHER: I'm sorry, Judge.

22 THE COURT: We lost one.

23 Now you may proceed.

24 MS. MERIWETHER: Thank you, Judge.

25 Q. (BY MS. MERIWETHER) Okay. I think I left off

1 with you and Officer McLean headed to the House of Pies
2 to recover video, not pies?

3 A. That's correct.

4 Q. Okay. Did you get a slice of pie while you
5 were there?

6 A. Actually, I did not.

7 Q. Okay.

8 A. As much as I want to.

9 Q. Fair enough. So which House of Pies did you go
10 to?

11 A. We went to the one located on Westheimer.

12 Q. And that's a location in Harris County, Texas?

13 A. That's correct.

14 Q. So, when you went over to the House of Pies,
15 were you able to see what kind of video equipment they
16 had set up?

17 A. Yes, I observed they had a digital video
18 recorder, which it operated the surveillance system for
19 the restaurant.

20 Q. And did the restaurant have a number of cameras
21 set up throughout it?

22 A. That's correct. They have cameras inside and
23 outside, totally about 15 cameras.

24 Q. And how do those cameras run? Are they on a
25 continuous loop, or what method of recording were they

1 using?

2 A. They are on continuous loop.

3 Q. Did you have a timeframe that you were
4 recovering video for?

5 A. Yes, I did.

6 Q. And what timeframe period was that?

7 A. It was nighttime around, I don't remember the
8 exact time; but it was probably close to 10 o'clock.

9 Q. And did you recover the video for a general,
10 like a window of time?

11 A. That's correct.

12 Q. And was that window March 6th of 2014?

13 A. That's correct.

14 Q. From 1830 hours to 2200 hours?

15 A. That's correct.

16 Q. And help me out, what is that in non-military
17 time?

18 A. 1800 would be from 8:00 p.m., and 2200 hours
19 would be 10:00 p.m.

20 Q. So, that was the time range; and you just took
21 all of the video from all of the cameras for that time
22 period?

23 A. That's correct.

24 Q. Did you make any attempt to review that video
25 while you were there?

1 A. I did.

2 Q. And were you able to tell that it recorded a
3 robbery that took place?

4 A. That's correct.

5 Q. And do you pull that from all of the cameras
6 that were available?

7 A. That's correct.

8 Q. And when you pull the video, what do you do
9 with it? Tell us how it kind of works?

10 A. When I pull the video, normally it will be
11 decoded in a way that it can play only on that digital
12 recorder. So when we pull it, we in the process you
13 download a player that would play the video on a regular
14 home computer or laptop and as such. And once we
15 retrieve the video, we digitalize it, well, it's already
16 digital reader but you digitalize it in a way that
17 anyone can be able to view it on any computer.

18 Q. And that's half the battle in your job, right?

19 A. That's correct.

20 Q. Because all of these different convenient
21 stores and mom and pop places, they all have different
22 surveillance systems in use?

23 A. That's correct.

24 Q. And, in essence, your job is to go into those
25 places, take it off and then put it in a format that can

1 be played in a courtroom or in an office or anywhere
2 easily?

3 A. Correct.

4 Q. And did you do that with the video from the
5 House of Pies?

6 A. Yes, I did.

7 Q. After pulling off the video and saving it onto
8 disks, did you verify that you had, in fact, gotten what
9 you needed and that your disks were going to work?

10 A. Yes, I did.

11 Q. Did you also as part of the process pull some
12 still photos out of the videos?

13 A. Yes, I did capture several images.

14 Q. Tell us how do you do that?

15 A. There's a way that you can use on, it's called
16 proprietor player that's downloaded from the digital
17 recorder we can use to save a still image of the video.

18 Q. And did you create some and pull some still
19 images off of the video footage of this robbery?

20 A. Yes, I did.

21 MS. MERIWETHER: Your Honor, may I approach
22 the witness?

23 THE COURT: You may.

24 Q. (BY MS. MERIWETHER) I'm going to start with
25 State's Exhibits 54 and 55. Are you familiar with these

1 two items?

2 A. That's correct.

3 Q. And what are they?

4 A. These are converted digital videos that were
5 obtained from the House of Pies.

6 Q. Okay. So these are all the cameras and the
7 full two hours -- or the full from the 1830 hours to
8 2200 hours worth of video?

9 A. That's correct.

10 Q. For each of the cameras?

11 A. Yes.

12 Q. Showing you State's Exhibit 56, have you had an
13 opportunity to look at it?

14 A. Yes, I did.

15 Q. And what does it contain?

16 A. It contains part of video images, the
17 representation of the other video.

18 Q. So, in essence, this contains clips of these
19 two but just narrowed down to when the robbery happened?

20 A. That's correct.

21 Q. If we watched these, we would be here for a
22 very, very long time, right?

23 A. Yes, a couple hours for each camera.

24 Q. Couple hours for each camera and it was close
25 to 15?

1 A. Yes.

2 Q. So, this version is much better because it's
3 much shorter?

4 A. Shorter, yes.

5 Q. Fair enough. Now I want to show you State's
6 Exhibits 57 through 64 and see if you recognize these
7 and if they are your handy work?

8 A. Yes, these are still pictures.

9 Q. You know these are yours because they contain
10 your initials?

11 A. My initials, yes.

12 Q. And all of these, State's Exhibits 57 through
13 64, are those; is that correct?

14 A. That's correct.

15 MS. MERIWETHER: Your Honor, at this time I
16 move to offer State's Exhibits 54 through 64.

17 (State's Exhibit Nos. 54 through 64
18 offered.)

19 MR. PHILIP SCARDINO: Judge, I have seen
20 these. State has provided them to us. My only
21 objection would renew my earlier objection as to the
22 extraneous, Your Honor.

23 THE COURT: That objection is overruled;
24 and the exhibits, State's Exhibits 54 through 64 are
25 admitted.

1 (State's Exhibit Nos. 54 through 64
2 admitted.)

3 MS. MERIWETHER: Thank you, Your Honor.
4 I'll reserve publication and pass the
5 witness, Your Honor.

6 MR. PHILIP SCARDINO: No questions.

7 THE COURT: Thank you.

8 May this witness be excused?

9 MR. PHILIP SCARDINO: No objection.

10 MS. MERIWETHER: Yes, Your Honor.

11 THE COURT: Thank you, sir. You may step
12 down, and you are excused.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MS. MERIWETHER: Your Honor, the State
16 would call Sergeant Bridges.

17 MR. PHILIP SCARDINO: May we?

18 (Bench conference.)

19 MS. MERIWETHER: I can call a separate
20 witness if he wants to wait.

21 MR. PHILIP SCARDINO: No, no. I don't know
22 if we covered this on the record or not.

23 THE COURT: We didn't.

24 MR. PHILIP SCARDINO: Did not. However,
25 you want to deal with that. We can deal with it on the

1 record, outside the presence of the jury or with them in
2 here.

3 THE COURT: If you want to just go ahead
4 and state your objection through the microphone, we can
5 do that. That's fine.

6 MR. PHILIP SCARDINO: All right. At this
7 time, Your Honor, we object to this witness whose
8 testimony I anticipate this is the witness who's going
9 to testify that he received a phone call from someone
10 who identified themselves as my client. I anticipate
11 his testimony that he does not know Donald Nealey. He
12 does not know Donald Nealey's voice; that he had the
13 capacity to record the conversation. He's in the police
14 station. It's the rankest form of hearsay, Your Honor;
15 and we'd object.

16 THE COURT: Okay. And just so the record
17 is clear, we talked about this at length outside the
18 presence of the jury. I reviewed the case law that the
19 State provided me. I'm assured that based on the
20 circumstances and the self-identification of the caller
21 that it's properly authenticated, and your objection is
22 overruled.

23 MR. PHILIP SCARDINO: Yes, ma'am.

24 (End of bench conference.)

25 THE BAILIFF: Your Honor, this witness has

1 been sworn.

2 THE COURT: Thank you.

3 MS. MERIWETHER: May I proceed, Your Honor?

4 THE COURT: You may.

5 **RUSSELL BRIDGES,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 BY MS. MERIWETHER:

9 Q. Would you please state your name for the record
10 and introduce yourself to our jury?

11 A. I'm Russell Bridges. I was a sergeant with the
12 Houston Police Department in the homicide division.

13 Q. Was?

14 A. I retired, sorry, last December.

15 Q. Okay. Fair enough. What do you do now?

16 A. I'm retired.

17 Q. As little as possible?

18 A. As little as my wife will let me.

19 Q. Did she get to retire as well?

20 A. She did, schoolteacher for 30 years.

21 Q. Wonderful. So, you're both retired together
22 now until I call you and ask you to come back and deal
23 with cases?

24 A. That's correct.

25 Q. All right. So, how long were you with the

1 Houston Police Department pre-retiring?

2 A. For 33 years.

3 Q. And how much of that time was spent in the
4 homicide division?

5 A. The last nine years.

6 Q. Active homicide, hold desk?

7 A. I worked the hold desk at night.

8 Q. And what's the nightshift for the hold desk?

9 A. It's 11:00 at night until 7:00 in the morning.

10 Q. 11:00 p.m. to 7:00 a.m.?

11 A. Yes, ma'am.

12 Q. And how much of your time was spent there?

13 A. I spent the entire part of my time in homicide
14 on the hold desk. I never worked cases.

15 Q. You never worked cases?

16 A. No.

17 Q. What is the hold desk?

18 A. The hold desk processes prisoners. The
19 homicide division handles all cases, weapons, assaults,
20 some disorderly conduct in addition to homicide, so
21 policemen arrest anybody for any of those offenses would
22 have to call us to help process the prisoners and get
23 them taken to the sheriff's jail.

24 Q. So you're kind of at a desk, and you're
25 shuffling people around and making sure holds are

1 placed?

2 A. Right, and answer inquiries from policemen and
3 police officers and citizens, basically, answering the
4 phone and being kind of the central switchboard there at
5 the homicide division.

6 Q. And do you from time to time get other phone
7 calls that are not related to officers and specific
8 people within HPD calling you?

9 A. Yes, ma'am, we get calls from all kinds of
10 people. Go ahead, I'm sorry.

11 Q. Is it a main number that anybody can find?

12 A. Yes, it's a published number for the homicide
13 division of the police department.

14 Q. And did you get kind of an unusual phone call
15 on March 7th, 2014, at early morning hours?

16 A. About 6:00 in the morning, yes, ma'am.

17 Q. And tell us about that phone call?

18 A. It sounded like a male called me, he identified
19 himself as Donald Nealey and he was inquiring about --

20 MR. PHILIP SCARDINO: Excuse me, Your
21 Honor. I'll renew my objection at this time that this
22 is hearsay.

23 THE COURT: Overruled.

24 A. The caller had explained that he had learned
25 somehow that an acquaintance or friend of his had been

1 killed, and he realized his identification was in his
2 friend's car, and because he was out on bail, he was
3 concerned that he would be connected to whatever that
4 case was, and he just wanted to, I guess, clear the air
5 and make sure that investigators knew he wasn't involved
6 in that death.

7 Q. Okay. Did you try to get some additional
8 information from him?

9 A. I did. I tried to get a call back number for
10 him, but he explained because he was out on bail from
11 the other offense, which I never learned what that was,
12 when he was booked, I guess, whatever agency it was
13 still had his phone, so he didn't have a number to give
14 me.

15 Q. And upon receiving this information, what did
16 you do with it?

17 A. I got whatever information I could. I'm not
18 sure how I knew what case it was connected to, whether
19 the caller gave me a location or something, I don't
20 know, but I was able to determine, I guess, what
21 investigators were assigned to the case he was talking
22 about and I e-mailed the investigators and just passed
23 along the information just so they could check him out
24 and see if he was, in fact, connected to the case or
25 totally not connected to the case.

1 Q. And did that e-mail go to a Rhoads and a
2 Sylvester?

3 A. I believe so, yes, ma'am.

4 Q. And those are both homicide detectives at HPD?

5 A. That's correct.

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

8 THE COURT: You may.

9 Q. (BY MS. MERIWETHER) I'm showing you what I've
10 marked as State's Exhibit No. 66. Is this document the
11 e-mail that you sent and information you forwarded to
12 those officers?

13 A. I believe that is my e-mail, yes, ma'am.

14 MS. MERIWETHER: Your Honor, at this time I
15 move to offer State's Exhibit 66, tender to Counsel for
16 any objections.

17 (State's Exhibit No. 66 offered.)

18 MR. PHILIP SCARDINO: May I take this
19 witness on voir dire briefly, Your Honor?

20 THE COURT: For what purpose, Counselor?

21 MR. PHILIP SCARDINO: He's testified
22 generally about some phone call that he got, and now
23 he's trying to memorialize it in an e-mail.

24 THE COURT: You'll have your opportunity on
25 cross-examination. Your request is denied. Are you

1 objecting to the State's Exhibit?

2 MR. PHILIP SCARDINO: Yes, it's hearsay.

3 THE COURT: Your objection is overruled,
4 and it's admitted.

5 (State's Exhibit No. 66 admitted.)

6 MS. MERIWETHER: And, Your Honor, may I
7 publish -- it's difficult to read on the large screen,
8 may I publish it by also reading it as well?

9 THE COURT: You may.

10 MS. MERIWETHER: Had a guy call in on
11 Friday 3/7/14 at about 0600, said his name was Donald
12 Nealey. He said his identification was in the vehicle
13 that belonged to your dead victim. He was concerned
14 because he was -- he was concerned about it because he
15 was on bail. I tried to give him a contact number,
16 tried to get him to give me a contact number so I could
17 TLO him, but he said he hadn't gotten his cell phone
18 back from being arrested before. I gave him both your
19 desk numbers and he said he would call later today,
20 Friday. Wanted to drop you a line about him calling in
21 case you may think -- in case you think he may have
22 something to do with your case.

23 Q. (BY MS. MERIWETHER) I want to ask you a couple
24 of questions out of that e-mail. What is TLO?

25 A. TLO is a website that we use, I don't know if

1 they still use it, but it's basically a search engine
2 aggregator, I guess, it grabs a bunch of public
3 available information like from social media sites, and
4 sometimes we're able to find out a little bit more about
5 individuals punching information into it.

6 Q. But you were unable to get a contact number?

7 A. Right, just a name by itself, you can get all
8 kind of returns; and you can't really narrow it down.
9 You need as much information as you can get. So usually
10 a name and an address or a name and a phone number is
11 really helpful.

12 Q. And he was unable, or he failed to provide you
13 that information?

14 A. Well, he explained that he didn't have his
15 phone, so he wasn't interested in giving me a number
16 which kind of made sense.

17 Q. Did you attempt to get a number for a relative
18 or other family member?

19 A. No, I didn't.

20 Q. You said that you gave him desk numbers for the
21 detectives?

22 A. Right, the direct line so they have voicemail,
23 he could have left a message or called later on during
24 the day when they were there.

25 Q. And this phone call was on March 7th of 2014 at

1 0600?

2 A. Yes, ma'am.

3 Q. And 0600 would be 6:00 a.m.?

4 A. 6 o'clock in the morning, right.

5 MS. MERIWETHER: Pass the witness, Your
6 Honor.

7 **CROSS-EXAMINATION**

8 BY MR. PHILIP SCARDINO:

9 Q. How do I refer to you, Bridges, by Detective?

10 A. Oh, Mister is fine.

11 Q. Mr. Bridges, all right. Now, this call came in
12 on March the 7th at 6:00 a.m.?

13 A. Yes.

14 Q. And you told -- you're telling the ladies and
15 gentlemen of the jury that you figured out that Rhoads
16 and Sylvester were working a murder case and sent it to
17 them?

18 A. Yes, sir.

19 Q. How did you connect it to them?

20 A. I'm not sure. We have a board where any active
21 cases, it's a whiteboard where we use dry erase markers
22 to put the location. There's not a lot of detail.
23 There's a time and a date, a location, what kind of
24 offense it was, a shooting, a stabbing and what
25 investigators are assigned to it. I don't know how I

1 made the connection. It's possible that the caller gave
2 me a location maybe for something. Like I said, there's
3 not a lot of detail on the board. There wouldn't be a
4 description of vehicles or something like that, so I
5 can't really tell you how I knew.

6 Q. Now, you would agree with me this is pretty
7 incredible, wouldn't you?

8 A. I don't know what you mean.

9 Q. Well, that someone would call up and say I left
10 my wallet in a dead man's car?

11 A. Well, my e-mail just has identification, so I
12 can't really swear that he said wallet.

13 Q. All right. Now, you're working homicide had
14 been working homicide for, I guess, eight years before
15 that. This is a year and a half ago. So, seven and a
16 half years before that?

17 A. Right.

18 Q. So, how many homicides we get a day around
19 here?

20 A. It all depends, it varies year to year. It can
21 be a very busy weekend, or it can be several days of a
22 week without a homicide.

23 Q. Not uncommon?

24 A. Not at all.

25 Q. We get lots of them around here?

1 A. Yes, sir.

2 Q. People calling to the police station, their
3 calls are recorded, are they not?

4 A. No, they're not, not in the homicide division.

5 Q. So you're telling the ladies and gentlemen of
6 the jury, somebody calls in to the homicide division,
7 you don't record their phone calls?

8 A. That's correct.

9 Q. Do you have the capability of recording their
10 phone calls?

11 A. I don't know what the capability of the phone
12 system are. We don't have any gear in the office where
13 I worked that we could record a call. I don't know if a
14 switchboard has that capability.

15 Q. So, that's your testimony to the ladies and
16 gentlemen of the jury, one of the biggest --

17 THE COURT: Sustained.

18 Q. (BY MR. PHILIP SCARDINO) Have you ever
19 recorded a phone call?

20 MS. MERIWETHER: Objection, relevance.

21 THE COURT: Overruled.

22 A. No, sir.

23 Q. (BY MR. PHILIP SCARDINO) So, you've never
24 recorded a phone call?

25 A. Not at work.

1 Q. 33 years police department, 9 years in
2 homicide, never recorded a phone call?

3 MS. MERIWETHER: Objection, asked and
4 answered.

5 THE COURT: Sustained.

6 Q. (BY MR. PHILIP SCARDINO) Do you know Donald
7 Nealey?

8 A. I do not.

9 Q. Have you ever heard Donald Nealey's voice?

10 A. No, sir.

11 Q. So, you can't tell these folks if that was
12 Donald Nealey's voice or not?

13 A. That's correct.

14 Q. And you really don't know whose voice it was?

15 A. That's correct.

16 MR. PHILIP SCARDINO: Pass the witness,
17 Your Honor.

18 THE COURT: Ms. Meriwether.

19 MS. MERIWETHER: No further questions, Your
20 Honor.

21 THE COURT: May this witness be excused?

22 MR. PHILIP SCARDINO: No objections.

23 MS. MERIWETHER: No objections.

24 THE COURT: Thank you, sir. You are
25 excused.

1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MS. MERIWETHER: Lawrence Scott.

4 THE COURT: Try that again.

5 MS. MERIWETHER: I think that's who I'd
6 like to call, Your Honor.

7 THE BAILIFF: Your Honor, this witness has
8 not been sworn in.

9 THE COURT: Sir, if you'll raise your right
10 hand to be sworn, please.

11 (Witness sworn.)

12 THE COURT: I'm going to go ahead and give
13 the jury a break while we figure this out. It's about
14 time for our afternoon break anyway.

15 THE BAILIFF: All rise for the jury.

16 (Jury exits courtroom.)

17 (A recess was taken.)

18 (Open court, Defendant present.)

19 THE BAILIFF: All rise for the jury.

20 (Jury enters courtroom.)

21 THE COURT: Thank you. Be seated.

22 Ms. Meriwether, you may proceed.

23 MS. MERIWETHER: Thank you, Your Honor.

24

25

1 **LAWRENCE SCOTT,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 BY MS. MERIWETHER:

5 Q. Could you introduce yourself to our jury?

6 A. Lawrence Scott.

7 Q. And, Lawrence, how old of a man are you?

8 A. 38.

9 THE COURT: Can you pull that microphone
10 down a little closer to you? I'm just afraid they're
11 not going to be able to hear you. There you go.

12 Q. (BY MS. MERIWETHER) And where do you live?

13 A. Little Nell Apartments.

14 Q. And how long have you lived at the Little Nell
15 Apartments?

16 A. Since 2008.

17 Q. And what apartment do you live in?

18 A. 701.

19 Q. And have you lived there the whole time?

20 A. Yes.

21 Q. And you have any children?

22 A. Yes.

23 Q. How many?

24 A. One.

25 Q. And what's his name?

1 A. Lawrence Scott, Jr.

2 Q. Junior, and how old is he?

3 A. 15.

4 Q. Were you living back in March of 2014 in
5 Apartment 701?

6 A. Yes.

7 Q. And do you know an individual by the name of
8 Stanly?

9 A. Yes.

10 Q. How do you know Stanly?

11 A. Stanly, we met like in 2006 through one of his
12 friends.

13 Q. And what friend is that?

14 A. Beju, B-E-J-U.

15 Q. And how do you know Beju?

16 A. He worked on my cars, mechanic.

17 Q. And he works at a car dealership, right?

18 A. Yeah, yeah.

19 Q. And what did Stanly do, if you know?

20 A. Stanly was a student, medical student.

21 Q. And was he going to medical school here or out
22 of town?

23 A. He was going to Dallas, I believe.

24 Q. When this happened, was -- were you planning on
25 seeing Stanly that night?

1 A. Yes.

2 Q. And why was Stanly coming to see you?

3 A. He was coming to see me to smoke with me, and
4 sometimes he watch us play the game, sometimes we'll
5 just kick it, and he'll leave. But that night -- go
6 ahead.

7 Q. Go ahead. What happened that night, that was
8 my next question?

9 A. Right. That night when he was on his way, we
10 was in their playing a game, a few of us; but by the
11 time he made it there, it was just me and my son. So,
12 when he got there, he didn't stay long because he saw it
13 was just me and my son. So, he left.

14 Q. And did you smoke any marijuana with him, or
15 did he just stay?

16 A. No, he left because he saw it was just me and
17 my son. So, we didn't smoke anything that night.

18 Q. Was that the last time you saw Stanly?

19 A. Yes.

20 Q. Did you hear that there had been a shooting
21 that happened in the apartment complex that night?

22 A. Yes.

23 Q. And how did you find out about it?

24 A. My neighbor, my neighbor called me and said --

25 MR. PHILIP SCARDINO: Excuse me, Mr. Scott.

1 THE COURT: Sustained.

2 MR. PHILIP SCARDINO: Object to hearsay,
3 Your Honor.

4 THE COURT: You can't say what anyone else
5 said.

6 THE WITNESS: Okay.

7 Q. (BY MS. MERIWETHER) You said a neighbor
8 contacted you?

9 A. Yeah.

10 Q. And after hearing that, what did you do?

11 A. We went out the back, out my back door; and we
12 looked in the back and it was police cars everywhere,
13 the lights. And when we went out there, a few of the
14 neighbors was like that's a Mexican on the ground dead.

15 Q. So you thought it was a Hispanic guy that was
16 dead?

17 A. Yeah, so we just went right back inside.

18 Q. Did you know that it was Stanly at all that
19 night?

20 A. No.

21 Q. I want to ask you, there's a TV right next to
22 you there. You see it?

23 A. Yeah.

24 Q. Your apartment is 701?

25 A. Yes.

1 Q. Is that a first floor apartment?

2 A. Yes.

3 Q. And then where you saw all the police cars and
4 everything, where was that? And if you point to the
5 screen, a little arrow will appear?

6 A. Like over the garage, like, second garage.

7 Q. It was all blocked off from there?

8 A. Yeah, they was like all, like, around this area
9 and stuff and going around the back.

10 Q. Approximately when did you learn that it was
11 Stanly who had been shot?

12 A. Like three, like three, four days later.

13 Q. And did the police call you as well to talk to
14 you about what you knew?

15 A. Yeah.

16 Q. And did that come, if you know, were you
17 communicating via cell phone with Stanly?

18 A. Yeah.

19 Q. And he had contacted you about coming in to
20 town and seeing you that night?

21 A. Yeah, yeah.

22 Q. Was that unusual that he was coming into town?

23 A. Nah, 'cause Stanly always be back and forth
24 from Dallas to Houston.

25 Q. Do you know if anything special was happening

1 that weekend?

2 A. I don't remember.

3 MS. MERIWETHER: Pass the witness, Your
4 Honor.

5 MR. PHILIP SCARDINO: May I have just a
6 moment, Your Honor?

7 **CROSS-EXAMINATION**

8 BY MR. PHILIP SCARDINO:

9 Q. So, Mr. Scott, how old a person are you?

10 A. 38.

11 Q. 30?

12 A. 38.

13 Q. 38. You said you were a drug dealer; is that
14 right?

15 A. Did I say that, or did you say that?

16 Q. Well, you said you sell marijuana?

17 A. I didn't say that.

18 Q. Okay. You just smoke marijuana?

19 A. Yeah.

20 Q. Did -- have you ever sold marijuana to Stanly?

21 A. No.

22 Q. Did Stanly ever sell you marijuana?

23 A. No.

24 Q. Did he ever -- did y'all ever exchange any
25 other drugs?

1 MS. MERIWETHER: Objection, relevance.

2 THE COURT: What's the relevance, Counsel?

3 MR. PHILIP SCARDINO: I'm not sure, Your
4 Honor.

5 THE COURT: Then the objection is
6 sustained. Ask your next question.

7 MR. PHILIP SCARDINO: All right.

8 Q. (BY MR. PHILIP SCARDINO) Tell us again what
9 time of night this was that you saw Stanly?

10 A. I don't actually remember the exact time.

11 Q. And about how many times, you said you see him
12 from time to time, how many times have you seen him?
13 How many times has he come visit with you since you've
14 been living there in the Little Nell Apartments?

15 A. How many times has he visited me?

16 Q. He's visited with you, yes, sir.

17 A. I didn't keep count. I don't keep count.

18 Q. Give me a ballpark figure?

19 A. Give me a timeframe?

20 Q. In a year.

21 A. I don't know, often.

22 Q. Often. Once a month? Once a week? What are
23 we talking about?

24 A. No, we talk, we're going to kick it, we kick
25 it. I can't really give you no -- I don't count the

1 times.

2 Q. Okay. Tell the ladies and gentlemen of the
3 jury what you mean by when you say "kick it," what's
4 that mean?

5 A. Like sometimes he'll come, he'll come smoke
6 with me sometimes; or sometimes I'll smoke with him.
7 Sometimes he'll just like watch the Madden tournaments.
8 Sometimes he just like to watch the game, you know.

9 Q. Okay. Now, it -- how do you remember that it
10 was March the 6th of 2014? How do you know that was the
11 night that he came by?

12 A. I never said that.

13 Q. Okay. So you don't know when it was?

14 A. I don't understand what you're getting at.

15 Q. Can you tell us when the last time you saw
16 Stanly?

17 A. That night.

18 Q. Okay. Can you give us an idea of when that
19 night was?

20 A. The night he got murdered was the last time I
21 saw him.

22 Q. Okay. How do you know it was that night?

23 A. How do I know that I saw him that night?

24 Q. Yes, sir.

25 A. Because when I talked to his people a few days

1 later, that was the night.

2 Q. So, you didn't find out about the incident
3 until three or four days later?

4 A. After the fact, yeah.

5 MR. PHILIP SCARDINO: I'll pass the
6 witness, Your Honor.

7 THE COURT: Just briefly.

8 **REDIRECT EXAMINATION**

9 BY MS. MERIWETHER:

10 Q. Lawrence, do you know the gentleman that is
11 seated next to the man that was just asking you
12 questions, do you know him?

13 A. No, no, I never seen him before; and now that I
14 see him face to face, I still don't know him. I didn't
15 know him from the pictures. I still don't know him.

16 MS. MERIWETHER: No further questions, Your
17 Honor.

18 THE COURT: Anything further, Mr. Scardino?

19 MR. PHILIP SCARDINO: That's all I have,
20 Judge.

21 THE COURT: May this witness be excused?

22 MS. MERIWETHER: Yes, Your Honor.

23 MR. PHILIP SCARDINO: No objections.

24 THE COURT: Thank you, sir. We will see if
25 we can do this a little smoother this time. You just

1 need to back up.

2 Call your next witness.

3 MS. MERIWETHER: State would call Sergeant
4 Eli Cisneros.

5 THE BAILIFF: Your Honor, this witness has
6 not been sworn in.

7 THE COURT: Sir, if you would raise your
8 right hand to be sworn, please.

9 (Witness sworn.)

10 **ELI CISNEROS,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 BY MS. MERIWETHER:

14 Q. All right. Good afternoon, Sergeant.

15 A. Good afternoon.

16 MS. MERIWETHER: May I proceed, Your Honor?

17 THE COURT: You may.

18 Q. (BY MS. MERIWETHER) Would you introduce
19 yourself to our jury?

20 A. I'm Sergeant Eli Cisneros.

21 Q. And how are you currently employed?

22 A. Houston Police Department.

23 Q. And what division are you currently assigned
24 to?

25 A. Internal Affairs Division.

1 Q. How is that working out?

2 A. I've done better.

3 Q. You can't talk about it, right?

4 A. I can't talk about it.

5 Q. Prior to joining the Internal Affairs Division,
6 where did you work?

7 A. The homicide division.

8 Q. And how long were you in the homicide division
9 for?

10 A. Eight and a half years.

11 Q. Worked few or many homicides?

12 A. Many.

13 Q. And what kind of training and experience have
14 you had to work homicides?

15 A. I've been through your basic dead man
16 investigation school, numerous interview and
17 interrogation schools. We also have a basic on-the-job
18 training where you follow seasoned investigators, and
19 you just kind of learn from them.

20 Q. When you received this case back in March of
21 2014, had you risen to the ranks of being a senior
22 investigator?

23 A. I was a sergeant at the time.

24 Q. Okay. And were you assigned a partner?

25 A. Yes.

1 Q. And who was that?

2 A. Va'Shawnda McLean.

3 Q. And what was her level in the homicide division
4 at that time?

5 A. Her title was investigator, which simply means
6 an officer.

7 Q. And was she fairly new to homicide?

8 A. She was.

9 Q. Did you take the lead on this investigation?

10 A. I did.

11 Q. Before I get too far down the road, we're
12 talking about a capital murder investigation that you
13 did back on March 6th, 7th of 2014?

14 A. Okay.

15 Q. Okay. How did you get that case to work?

16 A. I received the case on the following day, which
17 was the 7th of March of 2014, from my shift commander,
18 Lieutenant Lopez.

19 Q. And what do you do when you get a homicide
20 case? Do you go out to the scene? What's up?

21 A. Each case is different. If I'm actually
22 assigned a investigation when it actually occurs,
23 sometimes we actually go out to the scene. In other
24 cases, such as this one here, we have our nightshift
25 investigators who will actually go out to the scenes and

1 then on the following morning when we get to work, the
2 case is passed on to us.

3 Q. And that's what this case is, right, a pass
4 along?

5 A. That's correct.

6 Q. And so what did you do?

7 A. Well, we began the investigation by meeting
8 with the investigators who actually went out on the
9 scene. And I also sent my investigator, which is
10 Investigator McLean, out to the original crime scene to
11 do a canvass.

12 Q. After sending her out to do additional
13 canvassing, what steps did you take to work the case?

14 A. When I met with the nightshift investigators
15 who made the scene, I was able to determine that a
16 separate offense had occurred in close proximity, which
17 was actually 7.3 miles from the murder scene, which is a
18 separate incident of a robbery, so I begin by looking at
19 the possibility that both of these cases were, in fact,
20 connected.

21 Q. What led you to believe that they might be
22 connected?

23 A. The information that the -- the preliminary
24 information that I gathered when I first received the
25 case was that a black similar vehicle that looked like a

1 four-door Acura, black Acura, was seen leaving the scene
2 by two black males. And from the information that I
3 gathered from the nightshift investigators was that the
4 robbery investigators had recovered a black four-door
5 Acura at a House of Pies that was robbed approximately
6 an hour after my murder.

7 MS. MERIWETHER: Your Honor, may I approach
8 the witness?

9 THE COURT: You may.

10 Q. (BY MS. MERIWETHER) Showing you State's
11 Exhibit 65; what is this?

12 A. This is a copy of the Google maps that I ran
13 given the approximate distance from the actual crime
14 scene to the House of Pies aggravated robbery.

15 Q. You think this would help the jury understand
16 the distance that we're talking about and proximity?

17 A. I do.

18 MS. MERIWETHER: Your Honor, at this time I
19 move to offer State's Exhibit 65, tender to Defense
20 counsel for any objections.

21 (State's Exhibit No. 65 offered.)

22 MR. PHILIP SCARDINO: No objections, Your
23 Honor.

24 THE COURT: State's Exhibit 65 is admitted.

25 (State's Exhibit No. 65 admitted.)

1 Q. (BY MS. MERIWETHER) And showing you State's
2 Exhibit 65, what's denoted down here with the "A"?

3 A. That's going to be the location or approximate
4 location of the crime scene.

5 Q. And that's that Little Nell Apartment complex?

6 A. That's correct.

7 Q. And what's up here in "B"?

8 A. That's the approximate location of the House of
9 Pies.

10 Q. And were you able to determine a distance
11 between those two locations?

12 A. I was.

13 Q. And what is that?

14 A. Approximately 7.3 miles.

15 Q. And you just mentioned that you also had a time
16 period from the capital murder to the aggravated
17 robbery. How were you able to develop a timeframe
18 between the two?

19 A. I looked at the time that the 9-1-1 call went
20 out from my scene to the actual 9-1-1 call that went out
21 from the House of Pies robbery.

22 Q. And what was the 9-1-1 call time if you recall?

23 A. I don't know the exact time.

24 Q. Okay. Would that be something that's
25 documented in your offense report?

1 A. Yes.

2 Q. Would you take a moment at this time to refresh
3 your memory from your supplements?

4 A. Okay. The crime scene of mine actually
5 occurred at 2017 which is 8:17, and the other incident
6 happened at 2142, which is 9:42.

7 Q. And that 2142, how was that a time arrived at?

8 A. By the call, the 9-1-1, the time that the 9-1-1
9 call went out at.

10 Q. The 9:42, the House of Pies time?

11 A. No.

12 Q. I think I asked a confusing question. Let me
13 rephrase. The 2017 that you first talked about, that's
14 your capital murder 9-1-1 call?

15 A. That's correct.

16 Q. Okay. And the 2142, how did you arrive at
17 that -- or where did you learn that time from?

18 A. That is the time that the 9-1-1 call went out
19 at the House of Pies.

20 Q. Were you able to contact the officers that were
21 working the House of Pies case?

22 A. The robbery investigators?

23 Q. Yes, were you able to speak to them?

24 A. Yes.

25 Q. And did you learn that video had been recovered

1 from that location?

2 A. I did.

3 Q. Did you learn any other information about that
4 robbery that was helpful to your investigation?

5 A. I did.

6 Q. And what is that?

7 A. That the vehicle that was seen by the two
8 suspects who had committed the robbery was seen parking
9 in the parking lot in front of the House of Pies and
10 that the robbery investigators had, in fact, recovered
11 that vehicle and that that vehicle was now currently at
12 our vehicle examination building.

13 Q. What is the vehicle examination building?

14 A. It's a location near the end of downtown area
15 that's used to process evidence such as vehicles or any
16 type of evidence.

17 Q. Did you learn if they had taken any of the
18 information off that vehicle like a VIN number or
19 license plate?

20 A. No.

21 Q. Did you -- so you were not provided, or did you
22 learn the license plate for that black Acura?

23 A. I actually went to the vehicle examination
24 building myself.

25 Q. And about what time did you do that? Is this

1 all still on March 7th?

2 A. This is, and it's approximately 12:40 that day.

3 Q. So you go over to the vehicle examination lot,
4 and what do you do there?

5 A. I took a photograph of the vehicle and at that
6 time my partner was still out at the scene because I
7 sent her back out there to conduct the canvass and look
8 for any more potential witnesses. And I forwarded a
9 photograph of that vehicle to Investigator McLean to
10 show it to the witnesses that she was attempting to
11 locate to see if that looked similar to or was, in fact,
12 the vehicle that they saw leaving the apartment complex.

13 Q. And is it at that time that you were able to
14 get some identifiers off the vehicle as well?

15 A. That's correct.

16 Q. What did you do with that information?

17 A. I took the vehicle license plate, and after I
18 sent the photograph to Investigator McLean, I went back
19 to my office and I ran the registration off of that
20 license plate and I was able to get the registration
21 name. I was also able to run that name that the license
22 plate provided, get a Texas driver's license number and
23 I was able to get a Texas driver's license photograph
24 from that driver's license and compare that to the
25 photographs from the crime scene of the victim.

1 Q. So, let me take it piece by piece. In terms of
2 the vehicle registration, who was the vehicle registered
3 to?

4 A. Stanly and I don't want to offend anybody by
5 mispronouncing the last name K-U-M-B-A-N-A-T-T-E-L.

6 Q. That was the vehicle registration?

7 A. Yes, to that name and also to the same last
8 name.

9 Q. And from that information you were able to
10 obtain a driver's license photo of Stanly?

11 A. That's correct.

12 Q. And how were you able to access the crime scene
13 photos?

14 A. I have direct access to that as a homicide
15 investigator.

16 Q. So, this crime scene happened on March 6th at
17 8:30 or so and by then there are -- excuse me, 8:17, at
18 least by then they are already loaded up into the system
19 at that point?

20 A. That's correct.

21 Q. And when you looked at the crime scene photos
22 and compared it to the photograph from the driver's
23 license, were you able to make any determinations?

24 A. I was.

25 Q. And what is that?

1 A. Is that at that particular time the photograph
2 from the Texas driver's license looked to me as the same
3 individual that I saw in the crime scene photographs.

4 Q. And what did you do with that information?

5 A. I contacted the Harris County Institute of
6 Forensic Sciences, which is the Medical Examiner's
7 Office, and I provided them with the name of who I
8 believe the victim was as well as the identifiers, date
9 of birth and such.

10 Q. When Stanly was found at that crime scene, he
11 didn't have an identification or wallet on him?

12 A. No.

13 Q. So at that point the Medical Examiner's Office
14 had not been able to identify the body?

15 A. That's correct.

16 Q. After providing the information on to the
17 Medical Examiner's Office, did you, at any time, have an
18 opportunity to learn what the suspects in the House of
19 Pies robbery looked like?

20 A. Yes.

21 Q. What race were those two individuals?

22 A. Black males.

23 Q. And also did you learn that video had captured
24 that and was available for viewing?

25 A. Yes.

1 Q. And have you at some point looked at that
2 video?

3 A. I have.

4 Q. Have you also had an opportunity to look at the
5 still shots from -- that were taken from the video --

6 A. Yes.

7 Q. -- cameras?

8 MS. MERIWETHER: Your Honor, at this time
9 I'd like to publish State's Exhibit 56?

10 THE COURT: You may.

11 (Publishing State's Exhibit 56.)

12 MS. MERIWETHER: And for purposes of the
13 record, I'm showing Camera 13 in this clip.

14 Q. (BY MS. MERIWETHER) Sergeant Cisneros, for
15 purposes for the jury, this vehicle that we see waiting
16 in the center, is that the vehicle, Stanly's vehicle,
17 that's about to back in?

18 A. Yes.

19 (Publishing State's Exhibit 56.)

20 Q. (BY MS. MERIWETHER) Now showing you Camera 10.

21 A. Okay.

22 MS. MERIWETHER: Now Camera 1.

23 (Publishing State's Exhibit 56.)

24 MS. MERIWETHER: Showing you Camera No. 5.

25 (Publishing State's Exhibit 56.)

1 MS. MERIWETHER: Showing you Camera 6.

2 THE COURT: Let me stop you there so we can
3 take a little recess. Ladies and gentlemen, you may go
4 with the bailiff. Again, please feel free if you need
5 to go down to the second floor to get some water or a
6 snack, stretch your legs a little bit.

7 THE BAILIFF: All rise for the jury.

8 (Jury exits courtroom.)

9 THE COURT: You may be seated.

10 Officer, you can step down. We'll take
11 about a 15 minute recess.

12 (A recess was taken.)

13 (Open court, Defendant present.)

14 THE BAILIFF: Your Honor, you ready?

15 THE COURT: Yes.

16 THE BAILIFF: All rise for the jury,
17 please.

18 (Jury enters courtroom.)

19 THE COURT: Thank you. Be seated. You may
20 proceed.

21 MS. MERIWETHER: Thank you, Your Honor.

22 (Publishing State's Exhibit 56.)

23 MS. MERIWETHER: Camera 7.

24 Camera 9.

25 And lastly, Camera 12.

1 Q. (BY MS. MERIWETHER) Sergeant Cisneros, are you
2 also familiar with some of the still shots that were
3 taken from these videos?

4 A. Yes.

5 Q. Showing you State's Exhibit 57, is this one of
6 those shots?

7 A. Yes.

8 Q. Does it appear as both of the robbers have guns
9 in their hands?

10 A. Yes.

11 Q. In particular the one that's closest to us, can
12 you tell what type of gun he has?

13 A. Other than a semiautomatic, no.

14 Q. Does he appear to have anything on his hands?

15 A. Yes.

16 Q. And what is that?

17 A. Gloves.

18 Q. Any particular type of gloves, or can you tell?

19 A. I can't tell.

20 Q. And he also appears to have some covering over
21 part of his face?

22 A. Yes.

23 Q. And showing you State's Exhibit 63, is this one
24 of the individuals as they're fleeing?

25 A. Yes.

1 Q. That's the individual that's got the blue shirt
2 and backpack on through most of the robbery; is that
3 correct?

4 A. Yes.

5 Q. Were you able to identify who that individual
6 is?

7 A. Yes.

8 Q. And who is it?

9 A. Marquis Davis.

10 Q. Showing you State's Exhibit No. 64, is this the
11 other suspect that we see in this aggravated robbery?

12 A. Yes.

13 Q. And were you able to develop who that suspect
14 is?

15 A. Yes.

16 Q. And who is that?

17 A. Donald Nealey.

18 Q. And how did you reach that conclusion?

19 A. Through the interview with Marquis Davis.

20 Q. I want to take you back a couple of steps in
21 the investigation. After viewing these videos and
22 learning about the vehicle and its comparison with the
23 victim, were you able to make a determination about the
24 aggravated robbery and the capital murder?

25 A. As far as what?

1 Q. Whether they were related in any way?

2 A. Yes.

3 Q. And did you believe they were related?

4 A. I did.

5 Q. And why is that?

6 A. Because the vehicle that was taken from the
7 Complainant in my capital murder was found to be driven
8 by the suspects according to the surveillance video.

9 Q. Did you, during the course of the
10 investigation, receive an e-mail from or forwarded an
11 e-mail that originally started with a Sergeant Bridges?

12 A. Yes.

13 Q. Are you familiar with that e-mail?

14 A. I am.

15 Q. And showing you State's Exhibit No. 66, is
16 that -- is this the e-mail?

17 A. Yes.

18 Q. And were you able to review any of the
19 information that's contained in that e-mail and verify
20 if, in fact, there was a Donald Nealey?

21 A. Yes.

22 Q. And what did you learn?

23 A. From the e-mail?

24 Q. Yes.

25 A. That the e-mail stated that Sergeant Bridges

1 had received a phone call while working at the front
2 desk from an individual who identified himself as Donald
3 Nealey and had inquired how to get his wallet back
4 because his wallet had been left in a, quote, dead man's
5 vehicle.

6 Q. And did you do anything with the name Donald
7 Nealey?

8 A. I did.

9 Q. And what did you do?

10 A. I ran the name.

11 Q. And what did you learn?

12 A. I learned that I was able to, number one,
13 obtain the full name and date of birth as well as a
14 address.

15 Q. And what was that address?

16 A. It was back to the same location as the crime
17 scene, which is 8565 West Sam Houston Parkway.

18 MS. MERIWETHER: Your Honor, may I approach
19 the witness?

20 THE COURT: You may.

21 Q. (BY MS. MERIWETHER) Showing you State's
22 Exhibit 182, are you familiar with this type of
23 document?

24 A. Yes.

25 Q. What is it?

1 A. This is a Texas Department of Public Safety ID
2 information form.

3 Q. And is it a --

4 MS. MERIWETHER: At this time I'd move to
5 offer State's Exhibit 182, the certified document of the
6 driver's license of Donald Nealey.

7 (State's Exhibit No. 182 offered.)

8 MR. PHILIP SCARDINO: No objections, Your
9 Honor.

10 THE COURT: State's Exhibit 182 is
11 admitted.

12 (State's Exhibit No. 182 admitted.)

13 Q. (BY MS. MERIWETHER) I think State's
14 Exhibit 182 is a driving record for Donald Nealey, and
15 does it show his registered address on this document?

16 A. Yes.

17 Q. And what is that?

18 A. 8565 West Sam Houston Parkway, Apartment
19 No. 1501.

20 Q. And is that the same location where this
21 capital murder occurred?

22 A. Yes.

23 Q. There is some other information in that e-mail
24 in the phone call that was received regarding Donald
25 Nealey being out on bond. Are you familiar with whether

1 or not he was out on bond?

2 A. Yes.

3 Q. Are you familiar with bond paperwork out of
4 Harris County?

5 A. Yes.

6 Q. Were you able to verify whether or not Donald
7 Nealey was out on bond for an offense?

8 A. Yes.

9 MS. MERIWETHER: Your Honor, may I approach
10 the witness?

11 THE COURT: You may.

12 Q. (BY MS. MERIWETHER) Showing you State's
13 Exhibit No. 183, are you familiar with this item?

14 A. Yes.

15 Q. Does it relate to the same Donald Nealey that
16 we've been talking about today?

17 A. Yes.

18 Q. And what is this paperwork?

19 A. It's the bail bonds paperwork.

20 MS. MERIWETHER: Your Honor, at this time I
21 move to offer State's Exhibit 183, tender it for any
22 objections.

23 (State's Exhibit No. 183 offered.)

24 MR. PHILIP SCARDINO: Yes, Your Honor, we'd
25 object. It deals with the same objection that we had

1 earlier about extraneous offenses. It has no probative
2 value to this cause, and we'd object.

3 THE COURT: May I see the document, please?

4 (Bench conference.)

5 THE COURT: Ladies and gentlemen, will you
6 go with the bailiff briefly, please?

7 THE BAILIFF: All rise for the jury.

8 (Jury exits courtroom.)

9 THE COURT: Be seated.

10 Response from the State. Why are you
11 offering bond paperwork for a misdemeanor offense that
12 he was charged with?

13 MS. MERIWETHER: To lend credibility to
14 this phone call. One of the statements within the phone
15 call was, in fact, that he was out on bond. This shows
16 that same Donald Nealey is out, in fact, on bond at the
17 time that this phone call is made, corroboration to
18 further the phone call or the e-mail and phone call.

19 THE COURT: So, the whole reason that
20 you're offering this is to show that it was true what he
21 said to the officer when he called him that he, in fact,
22 was out on bond?

23 MS. MERIWETHER: Correct, Your Honor. I
24 believe the Defense during its cross-examination
25 undermined Sergeant Bridges and said how could you even

1 possibly know that that was the same person that was on
2 the phone, that's Donald Nealey. You didn't record it.
3 You didn't know his name, blah, blah, blah. So, I'm
4 simply offering that exhibit to further show that, in
5 fact, Donald Nealey was out on bond for an offense.

6 THE COURT: Let me see that Exhibit 66,
7 please?

8 MS. MERIWETHER: Yes, Your Honor.

9 THE COURT: Your objection is overruled.
10 State's Exhibit 183 is admitted. Bring the jury back
11 in, please.

12 (State's Exhibit No. 183 admitted.)

13 MS. MERIWETHER: Thank you, Your Honor.

14 THE BAILIFF: All rise for the jury.

15 (Jury enters courtroom.)

16 THE COURT: Be seated.

17 You may proceed, Ms. Meriwether.

18 MS. MERIWETHER: Thank you, Your Honor.

19 Q. (BY MS. MERIWETHER) Sergeant Cisneros, showing
20 you State's Exhibit 183, is this, in fact, bond
21 paperwork to show the Defendant was released on
22 March 5th of 2014?

23 A. Yes.

24 Q. Are you familiar with the case that arose out
25 of that bond paperwork?

1 A. Somewhat.

2 Q. And I don't want to go into any of the details
3 of that case. But are you familiar with whether or not
4 a cell phone was seized from Donald Nealey in that case?

5 A. Yes.

6 Q. Was a cell phone seized?

7 A. Yes.

8 Q. So, with regard to State's Exhibit 66 and the
9 e-mail, you were able to corroborate the fact that he
10 was -- Donald Nealey was out on bond for an offense and,
11 in fact, a cell phone was taken from him?

12 A. Yes.

13 Q. So, at this point Donald Nealey clearly was a
14 person of interest to you in this investigation?

15 A. Yes.

16 Q. All right. Now proceeding along in the
17 investigation, you had passed along the name of Stanly
18 to the Medical Examiner's Office. Did you learn that,
19 in fact, they had confirmed that it was Stanly
20 Kumbanattel was the deceased individual in your capital?

21 A. Yes.

22 Q. Also on March 7th of 2014, did you learn that a
23 suspect had been taken into custody at the -- at or near
24 the scene of the House of Pies aggravated robbery?

25 A. Yes.

1 Q. And who was that individual?

2 A. Marquis Davis.

3 Q. And did you have an opportunity to speak to
4 Marquis Davis?

5 A. Not me personally, my partner did.

6 Q. Did you observe that interview take place?

7 A. I did.

8 Q. And during the course of that interview, did he
9 provide information regarding who the other individual
10 involved was?

11 A. Yes.

12 Q. And who was that?

13 A. Donald Nealey.

14 Q. Did you learn whether or not there was another
15 vehicle back at the Little Nell Apartment complex that
16 was relevant to this investigation?

17 A. Yes.

18 Q. And what did you learn about that?

19 A. I learned details of the case in regards to
20 both of them driving to the Little Nell Apartment in
21 order to obtain a vehicle to commit the robbery at the
22 House of Pies. I also learned that their vehicle that
23 they arrived at the Little Nell Apartments in was left
24 at the crime scene.

25 Q. And that was a Grand Marquis?

1 A. Correct.

2 Q. Did you instruct other officers to go see if
3 they could locate that vehicle?

4 A. I did.

5 Q. And were they able to locate a Grand Marquis?

6 A. Yes.

7 Q. And what did you have done with that vehicle?

8 A. I had that vehicle towed to our vehicle
9 examination building.

10 Q. Did you obtain a search warrant so that you
11 could look inside of that vehicle?

12 A. Yes.

13 Q. After taking those steps in the investigation,
14 what was your next process in locating Donald Nealey;
15 and where did you go from there?

16 A. I was able to meet with an Assistant District
17 Attorney out of the Harris County District's Attorney
18 Office, and I was able to obtain a probable cause
19 warrant for Donald Nealey.

20 Q. And what's a probable cause warrant?

21 A. Probable cause warrant is an actual warrant
22 that is written without actual hard charges being filed.
23 And that is basically the difference right there is that
24 it is probable cause to pick up and arrest an individual
25 without actual criminal charges being filed at that

1 particular time.

2 Q. So, you obtained that warrant for Donald Nealey
3 on what date?

4 A. March 10th.

5 Q. Okay. And did you learn if Donald Nealey was
6 taken into custody on warrant, on that warrant?

7 A. Yes.

8 Q. And where was he taken into custody?

9 A. I don't recall the exact location where he was
10 arrested.

11 Q. Was it here in Harris County or a different
12 jurisdiction?

13 A. I believe it was a different jurisdiction.

14 Q. Do you recall which one it was?

15 A. Fort Bend.

16 Q. When he was arrested in Fort Bend, was he
17 eventually brought to Harris County?

18 A. Yes.

19 Q. That same day, March 10th?

20 A. Yes.

21 Q. Once he was in custody, did you have an
22 opportunity to speak to him and see if he wanted to be
23 interviewed about this incident?

24 A. Yes.

25 Q. And did he wish to be interviewed?

1 A. No.

2 Q. What was his demeanor during that time?

3 A. Extremely combative.

4 Q. How so?

5 A. Well, when it came time for us to transport him
6 from our facility, which was the homicide office, he
7 began kicking at the walls, punching the walls, turning
8 over chairs, just extremely combative in that nature.

9 Q. Did you attempt to get a DNA swab from Donald
10 Nealey?

11 A. Yes.

12 Q. And was that on March 10th of 2014?

13 A. Yes.

14 Q. And what happened?

15 A. We're referring to the same date as the
16 incident in the office?

17 Q. Yes.

18 A. He refused.

19 Q. So, the same time when you were trying to
20 transport him prior to the transport, you asked about
21 taking a DNA swab?

22 A. Yes.

23 Q. And he refused at that time?

24 A. Yes.

25 Q. Did you obtain a search warrant for Donald

1 Nealey's DNA?

2 A. I did.

3 Q. And was that signed by a Judge and then
4 executed?

5 A. Yes.

6 Q. How did you execute that search warrant?

7 A. I went to the Harris County Jail, where he was
8 being housed at that particular time, I presented that
9 to the medical staff along with other deputies at the
10 Harris County Jail and the nurse on staff basically
11 obtained the DNA sample for me.

12 Q. And just so, because I'm sure most folks don't
13 know, what's involved in taking somebody's DNA sample?
14 In this instance, what did y'all do?

15 A. You take what's called a buccal swab, which is
16 simply a wooden Q-tip, a long Q-tip, there's two of them
17 and the individual obtaining the sample will use sterile
18 gloves and they'll either hand it to the individual
19 themselves and let them swab their inner cheek, or they
20 will actually swab the inner cheek for them, the person
21 we're obtaining the sample from, which is what happened
22 in this case, the nurse actually swabbed his inner
23 cheek.

24 Q. And that was all submitted for analysis?

25 A. Yes.

1 Q. And let's talk about that a little bit. Was
2 part of your job in this case to request both firearms
3 and DNA analysis?

4 A. Yes.

5 Q. As well as some fingerprint analysis, also?

6 A. Yes.

7 Q. Did you request items from the capital murder
8 scene to be analyzed?

9 A. Yes.

10 Q. And what items were those?

11 A. We have latent prints. We have a tan work
12 glove that was recovered at the scene. We have
13 sunglasses recovered at the scene. The DNA buccal
14 swabs, which I just referred to. A set of eye goggles,
15 the morgue evidence, the victim's bloodstain card, which
16 is a sample of the victim's blood that is obtained by
17 the Harris County Institute of Forensic Science and a
18 pair of jogging pants.

19 Q. You requested DNA analysis on those items
20 compared to Donald Nealey?

21 A. Yes.

22 Q. Marquis Davis?

23 A. Yes.

24 Q. And the victim, Stanly?

25 A. Correct.

1 Q. Did you also request testing on items that were
2 recovered from the aggravated robbery?

3 A. Yes.

4 Q. And why did you do that?

5 A. Well, I wanted to, of course, compare, we
6 believed that they were the same individuals who
7 committed both offenses and wanted to compare the prints
8 or any other physical evidence for that matter.

9 Q. And what items out of the aggravated robbery
10 did you request testing on?

11 A. Latent prints, a Swiss backpack, a pair of Nike
12 shoes and a thermal shirt and buccal swabs.

13 Q. You asked for comparison of all of those items
14 to both Donald Nealey, Marquis Davis and the victim?

15 A. Yes.

16 Q. Did you also ask for firearms comparison of the
17 shell casings that were recovered from the capital
18 murder scene?

19 A. Yes.

20 Q. At some point did you contact the Harris County
21 Jail and speak to a deputy about determining whether
22 Donald Nealey was right or left handed?

23 A. Yes.

24 Q. And when did that take place?

25 A. I don't recall the specific date. If you have

1 a page I can refer to, I can go back to that.

2 Q. I believe it can be found in your Supplement
3 No. 13, right after the timeline part?

4 A. You have a page at the bottom of that?

5 Q. 34 is mine.

6 A. Okay. Okay. That's the date now?

7 Q. Yes.

8 A. On March 18th of 2014.

9 Q. And who did you speak to?

10 A. That was Deputy Alexander Jobert (phon.).

11 Q. And where did he work?

12 A. The Harris County Jail.

13 Q. Were you able to determine whether Nealey was
14 right or left handed?

15 A. Yes.

16 Q. And what was the response?

17 A. Left handed.

18 Q. And how did he learn that?

19 A. He observed him on two separate occasions
20 signing for his commissary with his left hand.

21 Q. Showing you State's Exhibit 57, this person in
22 the foreground here in the all black hoodie, are you
23 able to tell whether he's right or left handed?

24 A. Yes.

25 Q. And what is it?

1 A. Left handed.

2 Q. During the course of the investigation, did you
3 have an opportunity to learn about the vehicle, the
4 black Acura that was towed to the vehicle examination
5 lot, Stanly's vehicle?

6 A. Yes.

7 Q. Were there any items recovered in Stanly's
8 vehicle of interest?

9 A. Yes.

10 Q. And what was that?

11 A. A wallet that contained a Texas identification
12 card for Donald Nealey.

13 MS. MERIWETHER: Pass the witness, Your
14 Honor.

15 **CROSS-EXAMINATION**

16 BY MR. PHILIP SCARDINO:

17 Q. Sergeant Cisneros, are you telling the ladies
18 and gentlemen of the jury you can tell from a photograph
19 of somebody with a gun in their hand if they're right or
20 left handed?

21 A. I'm telling the jury that in the totality of
22 everything in regards to the actual video, and the
23 photographs, yes.

24 Q. Okay. The Prosecutor showed you a video of a
25 person with a gun in their hand, and you told them from

1 that you could tell whether they're right or left
2 handed, correct?

3 A. Yes.

4 Q. Now, are you telling them that a left-handed
5 person is always going to have a gun in their left hand?

6 A. The majority of the time, yes.

7 Q. Okay. So, you're guessing at that?

8 A. No, I'm not.

9 Q. You're guessing that the person in that
10 photograph is right or left handed?

11 A. No.

12 Q. So, you can tell by looking at a person with
13 something in their hand if they're right or left handed?

14 A. If I view them for long enough, yes.

15 Q. That's a good trick.

16 MS. MERIWETHER: Objection, sidebar.

17 THE COURT: Sustained.

18 Q. (BY MR. PHILIP SCARDINO) Now, how long have
19 you been with HPD?

20 A. For 23 and a half years.

21 Q. 23 and a half years. You ever had an occasion
22 in your history of working for HPD as in the capacity of
23 homicide or IAD to ever record a phone call?

24 A. When we're able to anticipate a call
25 beforehand, yes.

1 Q. You have the capacity to record a phone call at
2 the police station, do you not?

3 A. We have a capacity to do that if we anticipate
4 something that requires recording.

5 Q. Well, tell me about that. What device do you
6 have to attach to the phone to record it?

7 A. Okay. In the homicide hold desk where Sergeant
8 Bridges works --

9 MR. PHILIP SCARDINO: Excuse me. It's
10 nonresponsive, Your Honor.

11 Q. (BY MR. PHILIP SCARDINO) I asked what
12 equipment do you need to record a phone call?

13 MS. MERIWETHER: Objection, relevance.

14 THE COURT: Overruled.

15 A. It requires a specific device that hooks onto
16 the receiver of the phone as well as either digital
17 recorder or some other kind of recording device.

18 Q. (BY MR. PHILIP SCARDINO) So, it's the same
19 thing. It's a little suction cup you stick on the phone
20 receiver, correct?

21 A. That's not the type we use.

22 Q. Well, what's the type that you use?

23 A. The type that we use is a device that hooks
24 onto the receiver of the phone as well as either a
25 digital recorder or some other type of recording device.

1 Q. Now, do you know about the plea bargain in this
2 case?

3 A. No.

4 Q. You don't know about Davis' deal?

5 MS. MERIWETHER: Objection, asked and
6 answered.

7 THE COURT: Sustained.

8 Q. (BY MR. PHILIP SCARDINO) Did you interview any
9 of the witnesses out there at the Little Nell
10 Apartments?

11 A. No.

12 Q. I believe you said that your partner, McLean,
13 did all that?

14 A. That's correct.

15 Q. Did you have an occasion to listen to the
16 interviews?

17 A. No.

18 Q. So, you don't know what those people said that
19 were witnesses out there at the Little Nell Apartment?

20 A. No, I do.

21 Q. Okay. Well, if you didn't listen to it and you
22 didn't take the interviews, how do you know what they
23 are?

24 A. Because Investigator McLean's supervisor and I
25 read the supplements.

1 Q. So what you know from that is what McLean has
2 written in an offense report?

3 A. That's correct.

4 Q. Now, the State called Jerome Monroe to testify.
5 Do you have any reason not to believe Jerome Monroe, the
6 only eyewitness to the shooting?

7 MS. MERIWETHER: Objection, improper
8 impeachment.

9 THE COURT: Sustained.

10 Q. (BY MR. PHILIP SCARDINO) All right. The --
11 from your investigation, did -- was it your
12 understanding that Davis, Marquis Davis was at the scene
13 of the murder and was at the scene of the House of Pies
14 robbery?

15 A. Yes.

16 Q. At both?

17 A. Yes.

18 Q. And that Davis had a revolver?

19 A. Yes.

20 Q. And that a revolver when it's fired doesn't
21 eject the bullets from the gun, correct?

22 A. Yes.

23 Q. They stay in the cylinder?

24 A. That's right.

25 Q. And we can see in the video that Davis is the

1 one with the revolver in his hand. Can you tell it's a
2 revolver in his hand?

3 A. I couldn't tell from looking at the video.

4 Q. Oh, we'll look at some of those pictures in a
5 minute. Davis is the one that fires the shot in the
6 air, correct?

7 A. Yes, sir.

8 Q. Davis is the one that has a dead man's backpack
9 on in the House of Pies, correct?

10 A. Yes.

11 Q. Davis is the one whose mask comes down and you
12 can see him in the picture and you can see his face?

13 A. A certain portion of it, yes.

14 Q. Now Davis is also the person who had some
15 bloody shoes on, correct?

16 A. I don't remember bloody shoes.

17 Q. You don't remember the bloody shoes from your
18 investigation?

19 A. No.

20 Q. Did you listen to or read the report on Davis'
21 interviews?

22 A. I do --

23 MS. MERIWETHER: Objection, improper
24 impeachment.

25 THE COURT: Overruled.

1 A. I did.

2 Q. (BY MR. PHILIP SCARDINO) Did you learn about
3 the bloody shoes then?

4 A. I don't recall bloody shoes.

5 Q. And I apologize if I've asked you this already,
6 but you said you did or did not listen to the three
7 interviews that were videotaped of Davis?

8 A. No, we didn't ask that yet. Say that again?

9 Q. Marquis Davis gave three videotaped interviews
10 to the police. Two to Sosa, one to McLean.

11 MS. MERIWETHER: Objection, misstatement of
12 the interviews. I believe it's the wrong officers he's
13 referring to.

14 THE COURT: Can you clarify that, please?

15 Q. (BY MR. PHILIP SCARDINO) Do you remember who
16 he gave the statements to?

17 A. Yes.

18 Q. Who were they?

19 A. Investigator McLean.

20 Q. Do you remember him giving a video statement to
21 Sosa?

22 A. No.

23 Q. Do you know who Sosa is?

24 A. I do.

25 Q. Do you remember who the other officer was that

1 Davis gave a statement to besides McLean?

2 A. Are you referring to the murder investigation,
3 or are you talking about the robbery investigation?

4 Q. Either one?

5 A. Okay, yes.

6 Q. Who was that?

7 A. I believe that was Investigator Nealey of the
8 robbery division.

9 Q. And have you seen those interviews?

10 A. I have not.

11 Q. You've just seen the notes from them?

12 A. Yes.

13 Q. Do the notes indicate how many times that Davis
14 lied to the police when he was being interviewed?

15 MS. MERIWETHER: Objection, improper
16 impeachment, mischaracterization of the evidence.

17 THE COURT: Sustained.

18 Q. (BY MR. PHILIP SCARDINO) You talk a little bit
19 about testing. Did you ever do any GSR testing, excuse
20 me, gunshot residue testing on Davis?

21 A. I personally did not.

22 Q. Do you know if anyone else did?

23 A. I'm not aware of anyone else.

24 Q. You're the lead investigation on this case,
25 correct?

1 A. For the homicide investigation versus the
2 aggravated robbery case, yes.

3 Q. But you don't know if they bagged his hands to
4 see if he fired a gun recently?

5 A. I don't believe robbery did. I'm not aware of
6 the fact they did it or did not.

7 Q. All right. Now, do you know an Officer
8 Bedingfield?

9 A. Sergeant Bedingfield, I do.

10 Q. Do you know if he interviewed Davis?

11 A. I don't know if he did or did not.

12 Q. Could have?

13 A. I don't know.

14 Q. Davis' car is found at the Little Nell
15 Apartments, correct?

16 A. Yes.

17 Q. When you -- did you inventory the items that
18 were inside of the victim's car that was at the House of
19 Pies?

20 MS. MERIWETHER: I'm going to object that
21 it exceeds the scope of this witness' knowledge. I
22 believe there's a better witness.

23 THE COURT: I'm sorry, what was the
24 question?

25 Q. (BY MR. PHILIP SCARDINO) Did you inventory the

1 items that were in the black Acura that you determined
2 belonged to the victim in the case from -- after it was
3 taken from the House of Pies and taken to the police
4 impound to be inventoried?

5 THE COURT: He can answer yes or no,
6 overruled.

7 A. No.

8 Q. (BY MR. PHILIP SCARDINO) Okay. Did not.

9 A. No.

10 Q. In your investigation of the homicide, how many
11 people did you learn were at the homicide location
12 besides the victim; or how many people were involved in
13 the homicide, I guess, for lack of a better question?

14 MS. MERIWETHER: Objection, calls for
15 hearsay.

16 MR. PHILIP SCARDINO: If he knows, he's the
17 investigator.

18 THE COURT: Overruled.

19 A. You're asking how many individuals from
20 speaking to or just what I know about the investigation?

21 Q. (BY MR. PHILIP SCARDINO) From your
22 investigation --

23 A. Uh-huh.

24 Q. -- how many persons were involved in the
25 homicide at the Little Nell Apartment?

1 A. Two.

2 Q. Two. You didn't read interviews from any
3 witnesses that said there was more than two people
4 out --

5 MS. MERIWETHER: Objection, improper
6 impeachment.

7 THE COURT: Overruled.

8 A. My understanding it was two individuals from
9 the persons that saw the incident happen.

10 Q. (BY MR. PHILIP SCARDINO) So, from your
11 investigation, and you're telling the jury that you
12 didn't talk to any of these witnesses, but your partner,
13 McLean, had talked to them and that you had read the
14 offense report which was a rendition of those
15 interviews. And as a result of all that, your
16 determination there's only two people out there involved
17 in the homicide?

18 MS. MERIWETHER: Objection, asked and
19 answered, Your Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. PHILIP SCARDINO) Did you read the
22 notes that were taken by your partner on the witness,
23 Jerome Monroe?

24 A. The notes or the offense report?

25 Q. Well, however you get it. I don't know how you

1 get it. Do you get it from the notes or the offense
2 report? How do you get it?

3 A. I read the supplement.

4 Q. Okay. And from that did you glean that there
5 were more than two people out there?

6 A. My recollection is that there were two
7 individuals.

8 Q. Do -- you said that you looked at the notes.
9 You said you hadn't seen Davis' interview, but you
10 looked at the notes from that. Do you recall whether or
11 not Davis said there were more than two people out
12 there?

13 A. I don't recall.

14 THE COURT: Anything further, Mr. Scardino?

15 MR. PHILIP SCARDINO: Just a minute, Your
16 Honor.

17 THE COURT: All right.

18 MR. PHILIP SCARDINO: Pass the witness,
19 Your Honor.

20 THE COURT: Ms. Meriwether.

21 MS. MERIWETHER: No redirect, Your Honor.

22 THE COURT: May this witness be excused?

23 MS. MERIWETHER: Yes, Your Honor.

24 THE COURT: Thank you, sir. You may step
25 down, and you are excused.

1 Call your next witness.

2 MS. MERIWETHER: State would call Marquis
3 Davis.

4 THE COURT: Y'all can stand up and stretch
5 if you want, this might take a second.

6 Please raise your right hand to be sworn.

7 (Witness sworn.)

8 THE COURT: Have a seat right over here,
9 please.

10 MS. MERIWETHER: May I proceed?

11 THE COURT: Yes, you may.

12 **MARQUIS DAVIS,**
13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. MERIWETHER:

16 Q. Could you please state your name for the
17 record?

18 A. Marquis Davis.

19 Q. And how old are you, Marquis?

20 A. 21.

21 Q. And you're wearing an orange jumpsuit, where
22 are you currently residing? Where do you live?

23 A. 701 Harris County.

24 Q. Harris County Jail?

25 A. Yes, ma'am.

1 Q. Have you been in jail since March 6th, 7th,
2 2014?

3 A. Yes, ma'am.

4 Q. For the offenses of aggravated robbery and
5 capital murder?

6 A. Yes, ma'am.

7 Q. And did you recently enter a plea of guilty to
8 those offenses to -- and that was a bad question.
9 That's why you're giving me the look. Let me ask it a
10 different way, okay, Marquis?

11 A. Yes, ma'am.

12 Q. You recently entered, back in September, a plea
13 of guilty to two counts of aggravated robbery; is that
14 correct?

15 A. Yes, ma'am.

16 Q. And one of those was related to the capital
17 murder that you were charged with, and it was reduced to
18 aggravated robbery?

19 A. Yes, ma'am.

20 Q. And what is your sentence going to be after,
21 after this is all over?

22 A. 50 years.

23 Q. 50 years in the Texas Department of Criminal
24 Justice?

25 A. Yes, ma'am.

1 Q. And those two sentences are to run concurrently
2 at the same time, correct?

3 A. Yes, ma'am.

4 Q. And as part of your guilty plea, did you agree
5 to testify truthfully against Donald Nealey?

6 A. Yes, ma'am.

7 Q. And is that what you're here to do today?

8 A. Yes, ma'am.

9 Q. And you had a lawyer representing you on that?

10 A. Yes, ma'am.

11 Q. On your plea negotiations and deal?

12 A. Yes, ma'am.

13 Q. You had two lawyers, in fact?

14 A. Yes, ma'am.

15 Q. And is one of those lawyers in the courtroom
16 today?

17 A. Yes, ma'am.

18 Q. And who is that?

19 A. Alvin Nunnery.

20 Q. And he's seated over there on the far side,
21 right?

22 A. Yes, ma'am.

23 Q. You understand if at any point you need to ask
24 a question, you can. But you understand that your job
25 here is to testify truthfully about what you know?

1 A. Yes, ma'am.

2 Q. You're 21 years old. Did you graduate from
3 high school?

4 A. No, ma'am.

5 Q. Did you go to high school?

6 A. I went to academy, Houston Can Academy, a
7 charter school.

8 Q. Houston Can Academy Charter School?

9 A. Yes, ma'am.

10 Q. Are you affiliated with any gangs?

11 MR. ROBERT SCARDINO: Objection to a gang
12 being irrelevant in this case.

13 THE COURT: What's the relevance, Counsel?

14 MS. MERIWETHER: Just giving the jury a
15 full picture of this witness. But I'll move along, Your
16 Honor.

17 THE COURT: The objection is sustained.

18 MR. ROBERT SCARDINO: Ask the Court to
19 instruct the jury to disregard the question.

20 THE COURT: That's denied.

21 Q. (BY MS. MERIWETHER) Marquis, you did not
22 graduate from high school. Did you ever work before
23 going to county jail?

24 A. Yes, ma'am.

25 Q. Where did you work?

1 A. Wal-Mart.

2 Q. What did you do at Wal-Mart?

3 A. Cashier.

4 Q. How long did you work at Wal-Mart for?

5 A. I was working there for two months.

6 Q. Two months before this happened?

7 A. Yes, ma'am -- nah, not before it happened. I
8 was working. I had transferred to the chemical plant,
9 then this day that -- before I came to jail for this
10 day, I was working at Target.

11 Q. What kind of work were you doing at the
12 chemical plant?

13 A. I was just taking, testing the chemicals,
14 taking it to the lab.

15 Q. How long did you work at that job for?

16 A. Six months.

17 Q. What kind of work were you doing at Target?

18 A. Salesman.

19 Q. Do you recognize anybody in the courtroom today
20 as the same individual that you were with on March 6th
21 of 2014?

22 A. Yes, ma'am.

23 Q. Could you point to him and identify an article
24 of clothing he's wearing?

25 A. A jumpsuit, I mean, a tie.

1 Q. What color is his tie?

2 A. Black.

3 Q. And what color is his shirt?

4 A. White.

5 Q. And who is that individual?

6 A. Drama.

7 Q. Does he also go by the name Donald Nealey?

8 A. Yes, ma'am.

9 MR. ROBERT SCARDINO: Object to the leading
10 question.

11 THE COURT: Sustained.

12 MS. MERIWETHER: Your Honor, may the record
13 reflect this witness has identified the Defendant?

14 THE COURT: The record will so reflect.

15 Q. (BY MS. MERIWETHER) Do you know the
16 Defendant's given name? What's his real name? You know
17 him as Drama, what's his real name?

18 A. Donald.

19 Q. And how do you know Drama?

20 A. Through friends, through friends, neighborhood,
21 the apartment complex that we be in.

22 MR. ROBERT SCARDINO: Excuse me. May we
23 approach?

24 THE COURT: You may.

25 (Bench conference.)

1 MR. ROBERT SCARDINO: Your Honor, I'm
2 concerned that this line of questioning, open-ended
3 question of how he knows the Defendant, instead of a
4 specific question, it might open the door to the witness
5 talking about gang relationships and affiliations that
6 would be highly prejudicial and not relevant to this
7 cause.

8 THE COURT: It might be relevant.

9 MR. ROBERT SCARDINO: It's not yet.

10 THE COURT: It's not yet.

11 MR. ROBERT SCARDINO: Objection is
12 overruled?

13 THE COURT: Your objection at this time is
14 sustained.

15 MR. ROBERT SCARDINO: Sustained. Thank
16 you, Your Honor.

17 (End of bench conference.)

18 Q. (BY MS. MERIWETHER) You said that you knew him
19 from being in the same apartment complex. What
20 apartment complex is that?

21 A. Riverbank.

22 Q. And how long did you live there?

23 A. Since I used to stay there way back in '08.

24 Q. And then in 2014, were you living over there,
25 too, or had you moved?

1 A. I moved. I stayed on Highway 6 at Westpark.

2 Q. Is that towards, like, Sugarland down that way?

3 A. It's by, like, Alief side, you can say.

4 Q. And who were you living with before you went to
5 jail?

6 A. My cousin.

7 Q. About how long had you known Donald Nealey,
8 Drama?

9 A. I've been -- I know just really, I never really
10 been just, like, associate with him, but I've been
11 seeing him for a minute.

12 MR. ROBERT SCARDINO: Object, nonresponsive
13 answer.

14 THE COURT: Sustained. Just try to answer
15 the question. Ask it again.

16 MS. MERIWETHER: Yes, Your Honor.

17 Q. (BY MS. MERIWETHER) How long have you known
18 Donald Nealey?

19 A. Three years.

20 Q. On this occasion when y'all got together and
21 all of this stuff happened, how did he contact you?

22 MR. ROBERT SCARDINO: Object to the leading
23 question.

24 THE COURT: Overruled.

25 Q. (BY MS. MERIWETHER) How did he contact you?

1 MR. ROBERT SCARDINO: Object to the form of
2 the question.

3 THE COURT: Overruled, Counsel, it's not
4 leading.

5 A. We was talking on the phone. We were talking
6 on Instagram.

7 Q. What's Instagram?

8 A. Social media.

9 Q. And what is his Instagram handle if you
10 remember?

11 A. The name?

12 Q. Uh-huh.

13 A. I don't remember his name.

14 Q. Okay. Did you know it back then?

15 A. No, ma'am.

16 Q. Back in March of 2014, how does Instagram work?
17 Did he send you a picture? Did he send you a message?
18 How did you know he wanted to talk to you?

19 A. I seen a picture, I seen a uploaded picture of
20 him recently; and I had spoke to him on Instagram asking
21 him about, asking him I thought he was in jail and
22 stuff. And that's how the conversation started.

23 MR. ROBERT SCARDINO: Objection,
24 nonresponsive answer.

25 THE COURT: Sustained.

1 Q. (BY MS. MERIWETHER) So, you see a picture of
2 him; and you contact him and see how he's doing?

3 A. Yes, ma'am.

4 Q. Do y'all make plans to get together that night,
5 March 6th?

6 A. Yes, ma'am.

7 Q. And how did you contact him after Instagram?

8 A. He gave me a female number her house that he
9 was at.

10 Q. And did you give him a call?

11 A. Yes, ma'am.

12 Q. And then what happens?

13 A. Then and I came -- we had made agreement to
14 come pick him up from Rainy Meadows Apartment.

15 Q. From Rainy Meadows Apartments?

16 A. Yes, ma'am.

17 Q. And where is that located?

18 A. West Airport.

19 Q. When you got over there, what -- let me step
20 back. What kind of car did you take to get over there?

21 A. A Grand Marquis.

22 Q. What color was it?

23 A. Like brownish.

24 Q. Brownish, tanish?

25 A. Tanish, brownish.

1 Q. You drive over there and pick him up?

2 A. Yes, ma'am.

3 Q. And then what happens?

4 A. He get in the car, we pull up at Shell on
5 Fondren and West Airport and we chill, we chill for a
6 little bit with some friends and then after that I let,
7 he told me we're going to the Nell Apartments.

8 Q. He told you we were going to go where?

9 A. To the Nell.

10 Q. To the Little Nell?

11 A. The Nell Apartments, and I let him switch seats
12 and he drove to the Little Nell.

13 Q. Had you been to the Little Nell Apartments
14 before?

15 A. No, ma'am.

16 Q. Did you know if he had been to the Little Nell
17 Apartments before, Donald Nealey, Drama, do you know if
18 he had been to those apartments before?

19 A. No, ma'am.

20 Q. So you switched, you let him drive and then
21 what happens?

22 A. We pulled up in the Nell. We parked the car,
23 he get out, I'm in the passenger's seat.

24 Q. Okay. Where did y'all park the car?

25 A. In the back by some more apartments, by some

1 more cars that's parked.

2 Q. When you parked, was it facing forward or
3 backwards?

4 A. Facing forward.

5 Q. So, he pulled into a parking spot?

6 A. Yes, ma'am.

7 Q. And when you looked out the front windshield,
8 what did you see?

9 A. I seen him getting into it with a man.

10 Q. Okay. Let me back up. That area out in front
11 of the vehicle, is it a bayou, is it a grassy area, is
12 it more cars, what's it look like?

13 A. It's more cars and it's like a whole bunch of
14 grass area.

15 Q. So, y'all pull up; and then what happens?

16 A. Well, he get into it with the man. I get out
17 the car to see what's going on. They arguing and I
18 stood between them.

19 Q. Let me stop you there because we have to do
20 this in question and answer, okay, Marquis?

21 A. Yes, ma'am.

22 Q. When he first gets out of the car, does he tell
23 you anything about where he's going?

24 A. He was supposed to meet up with a girlfriend to
25 get some money.

1 Q. So, he tells you, what exactly does he say?

2 A. That they took, the police took \$2,000 from him
3 and he ain't got no more money so fixin' to get some
4 money from his girlfriend.

5 Q. Did he leave the vehicle?

6 A. Yes, ma'am.

7 Q. Did he take the car keys with him?

8 A. Yes, ma'am.

9 Q. What did you do?

10 A. I just stayed in the passenger's seat.

11 Q. Okay. Was he gone for a little bit?

12 A. Like five, like five minutes.

13 Q. And then what happens?

14 A. That's when he come back around the corner with
15 a man in a headlock.

16 Q. A man in a headlock.

17 A. Yes, ma'am.

18 Q. What did that man look like if you remember?

19 A. I think he was Iranian or something.

20 Q. Was he dark skin?

21 A. No, he was light complected.

22 Q. But Iranian or something like that?

23 A. Yes, ma'am.

24 Q. Were you able to hear what Nealey was saying,
25 what Drama was saying?

1 A. It was just, it really was just curse words.

2 Q. Okay.

3 A. When I got out the car to see what happened,
4 that's when I had came between them. I stood between
5 him and the man.

6 Q. Did it appear as if Drama was upset?

7 A. I ain't gon' say upset, like he was mad about
8 something; but it was, it was just like a little
9 argument. But I didn't see no, no, like no face
10 expressions to say that the man did something to him.

11 Q. Did you see anything about the man, what did he
12 look like? What did he appear to be doing?

13 A. Just he was quiet really.

14 Q. So he's in a headlock and he's quiet?

15 A. I mean, they were arguing.

16 Q. What were they saying?

17 A. Well, the man just kept asking him can he,
18 please, can you please let me make it? Can you please
19 let me make it? I just -- I'm from college or something
20 like that. I guess he was on home chill down here. I
21 ain't even for sure, but he was telling him that he came
22 from college, can he just make it? Can he let him make
23 it?

24 Q. And what did that mean to you? Did you know
25 what he was saying or what he was talking about?

1 A. Like don't mess with me.

2 Q. Had you ever seen that guy before?

3 A. No, ma'am.

4 Q. What was Drama doing to him?

5 A. He had a gun pointed at him.

6 Q. Did he ever strike him in your presence with
7 his hand?

8 A. Yes, ma'am.

9 Q. And when was that? When he had him in the
10 headlock or after?

11 A. Well, it's before because he was bleeding when
12 I approached him.

13 Q. What was he bleeding from?

14 A. From his nose.

15 Q. So, you get out of the car and you see Drama
16 with this man in a headlock and you go up, and then what
17 happens?

18 A. That's when I approached him and told him to
19 chill out. I was just like, man, I was referring curse
20 words to him like saying "F" him man, let's just go.
21 Let's just go. Forget him. He was like, nah.

22 Q. Who were you trying to get to leave?

23 A. I was trying to get Drama to leave, get back in
24 the car so we could leave.

25 Q. And what happens next?

1 A. He wasn't trying to hear what I was trying to
2 say, so I was like, man, forget it. I was walking back
3 to my car. When I walked back to my car, I heard a
4 gunshot go off.

5 Q. You said that you saw that Drama had a gun with
6 him when y'all were up, when you were by him?

7 A. Yes, ma'am.

8 Q. Do you know what kind of gun it was?

9 A. It was black, it was a all black gun.

10 Q. Do you know what kind? Do you know much about
11 guns?

12 A. No, ma'am.

13 Q. So, as you're walking back to the car, do you
14 see what happens?

15 A. Yes, ma'am.

16 Q. What happens?

17 A. He shoot the man in the stomach.

18 Q. Where else?

19 A. Then he walked up on him, stood over him, kept
20 shooting him in his body.

21 Q. Is the man on the ground when he's continuing
22 to shoot him?

23 A. Yes, ma'am.

24 Q. Do you know how many times he shot him?

25 A. From what I heard?

1 Q. No, from you being there, do you know how many
2 times he pulled the trigger, do you remember?

3 A. I know more than five times.

4 Q. Okay. But you're not sure a specific amount,
5 right?

6 A. No, ma'am.

7 Q. So after you see him do this, what happens
8 next?

9 A. I take off running.

10 Q. Then what happens?

11 A. While I'm trying to get out of the apartments,
12 he pull up on me in the car, in a blue car.

13 Q. What happens next?

14 A. I get in.

15 Q. Okay. What side do you get in on?

16 A. Passenger's side.

17 Q. Who's in the driver's side?

18 A. Donald.

19 Q. The man that's in the courtroom over here --

20 A. Yes, ma'am.

21 Q. -- is in the driver's side? What happens next?

22 A. And while I'm talking to him about the little
23 scene that just happened in the Nell about what happened
24 to the man, why he did it.

25 Q. Right.

1 A. He really wasn't talking about it, like, why he
2 did it. He was saying he don't care. He was just
3 saying that he wanted to go to the House of Pies and rob
4 the House of Pies because it's a 24-hour restaurant.
5 And he know that it's going to be money in the safe.

6 Q. Okay. So, he's just killed a man, and he's in
7 the car with you, and he's talking about going and doing
8 a robbery at the House of Pies?

9 A. Yes, ma'am.

10 Q. Why do you stay in the car?

11 A. Because I just -- I was just thinking it's
12 going to cause less confusion between me and him.

13 Q. What do you mean?

14 A. What you mean?

15 Q. What do you mean "cause less confusion," what's
16 that mean?

17 A. If I would have been, if I would have been,
18 like, refusing to what he was trying to do, or if I was
19 trying to get away, then it would have been a problem
20 between me and him for me witnessing what had just
21 happened in the Nell.

22 Q. Because you saw him kill that man?

23 A. Yes, ma'am.

24 Q. Okay. So, what happens when y'all go over to
25 the House of Pies, who's driving?

1 A. He driving.

2 Q. And what happens when y'all, do y'all go
3 straight there?

4 A. Yes, ma'am.

5 Q. What happens when you get there?

6 A. Well, we -- we was driving around for a little
7 bit around the perimeter, like in the parking lot of
8 House of Pies; and we were talking. I kept trying to,
9 like, just say forget it or whatnot. Like somebody --
10 like, it's too packed, somebody see us. He was, like,
11 man, it's gon' be quick. Come on, let's just go in
12 there. It's gon' be quick. So, I agreed. I was, like,
13 all right.

14 Q. So, you agreed to go do the robbery at the
15 House of Pies?

16 A. Yes, ma'am.

17 Q. When you get to the House of Pies, do you have
18 a gun?

19 A. Yes, ma'am.

20 Q. What kind of gun do you have?

21 A. .38, a revolver.

22 Q. A revolver?

23 A. Yes, ma'am.

24 Q. Okay. How did you know it was a .38 revolver?

25 A. Because, well, I've been knowing .38 revolvers,

1 them the ones that keep the shells.

2 Q. They keep the shells?

3 A. Yes, ma'am.

4 Q. Okay. Where did that gun come from?

5 A. Donald.

6 Q. You didn't have it with you?

7 A. No, ma'am.

8 Q. When did he give you that gun?

9 A. In the car on the way to the House of Pies.

10 Q. Did you, again, see what kind of gun he had?

11 A. All black.

12 Q. And do you know what a semiautomatic is, a gun,
13 a semiautomatic gun is?

14 A. No, not really.

15 Q. Okay. Fair enough. So, you're at the House of
16 Pies; and you decide you're going to go in and do this
17 robbery with him?

18 A. Yes, ma'am.

19 Q. Do you have a mask on your face?

20 A. No, ma'am.

21 Q. Did you put anything over your face?

22 A. A thermal that came out of the man's backseat.

23 MR. ROBERT SCARDINO: Object to
24 nonresponsive answer.

25 THE COURT: Overruled.

1 Q. (BY MS. MERIWETHER) A thermal, like a shirt?

2 A. Yes, ma'am.

3 Q. And that's what you used to put over the bottom
4 part of your face?

5 A. Yes, ma'am.

6 Q. Did you have anything on your hands?

7 A. Black gloves.

8 Q. Donald Nealey, did he have any disguise for his
9 face?

10 A. Black flag.

11 Q. What's a black flag?

12 A. Bandanna rag.

13 Q. A black flag or a bandanna for his face?

14 A. Yes, ma'am.

15 Q. Did he have anything on his hands?

16 A. Plastic gloves.

17 Q. Was he wearing those while he was driving the
18 car, or did he put them on right before y'all went in;
19 do you remember?

20 A. He was driving the car.

21 Q. With those on?

22 A. Yes, ma'am.

23 Q. When did you put the black gloves on?

24 A. Inside the car soon as we got to the House of
25 Pies.

1 Q. So, you didn't have them on when you first got
2 into the car?

3 A. No, ma'am.

4 Q. Now, let me ask you a question about that car,
5 was there a lot of stuff in that car?

6 A. Yes, ma'am.

7 Q. Where?

8 A. In the backseat.

9 Q. Okay. Was it a four-door car?

10 A. I forgot. I didn't really.

11 Q. Okay. Not sure how many doors?

12 A. I'm not sure.

13 Q. But you know there was a bunch of stuff in the
14 backseat?

15 A. Yes, ma'am.

16 Q. Real full?

17 A. Just like a bag with clothes in it.

18 Q. So, you're at the car and y'all parked and it's
19 time to go inside. You got your gloves on, and you got
20 a black thermal over your face, and Nealey has his flag
21 over his face. Y'all both have your guns. Do you take
22 anything else with you?

23 A. A backpack.

24 Q. Where did the backpack come from?

25 A. The man car.

1 Q. Why did you take that?

2 A. Because that's what we were going to use to
3 collect the money and put the money in.

4 Q. Did y'all have any discussion about what you
5 were going to do before you went in, did y'all talk
6 about it, come up with a plan?

7 A. I go out the door, and he jumped the counters
8 and tried to get them to take them to the back to get
9 the money out the safe.

10 Q. Okay. Any other discussion about -- before you
11 go in or is that the game plan and away you go?

12 A. Yes, ma'am.

13 Q. Okay. So, you enter into the House of Pies;
14 and what happens?

15 A. Well, I go inside the House of Pies, he jumped
16 the counter and I stand by the door. And I realize it
17 was a couple on the left-hand side, they was, like,
18 seated by theyself, away from the majority of the table
19 that was mostly connected together. So, I went to them
20 and pointed the gun at them and made them get up and go
21 where everybody else at. And still I seen, it was like
22 people still like talking, like, ain't nobody know the
23 place was gettin' robbed, so I shot the gun in the air.
24 That's when everything got quiet. That's when Donald
25 was gettin' money from everybody and cell phones and

1 bringing it to the backpack that I had open.

2 Q. Showing you State's Exhibit 58, who is this
3 person here?

4 A. Me.

5 Q. Showing you State's Exhibit 60, who is this
6 person here?

7 A. Donald.

8 Q. So you're inside of the House of Pies, you've
9 loaded up on wallets, cell phones, what happens next?

10 A. I turned around and I see, I see the police. I
11 see the police at a red light, and I see somebody
12 running toward the police car that worked in the
13 kitchen. When I seen that --

14 Q. Is that at the front door?

15 A. At the front door.

16 Q. So you see a police car and you see a worker
17 running towards it, then what happens? What do you do?

18 A. I run to Donald and told him come on, the
19 police, I say the police outside. They fixin' to pull
20 up, and I just took off running.

21 Q. Where do y'all run to?

22 A. We run to some back, like, backyards.

23 Q. Okay. Do y'all go out the back door of House
24 of Pies?

25 A. Yes, ma'am.

1 Q. Showing you State's Exhibit 63, who is this?

2 A. Me.

3 Q. Showing you State's Exhibit 64, who is this?

4 A. Donald.

5 Q. So, y'all are at the back door going out the
6 back door. Is there any conversation as you're exiting
7 the House of Pies? Do you and Donald talk at the back
8 door?

9 A. Not at the back door.

10 Q. Okay. Do you ever talk at all about what
11 happens? What happens after the back door, after you're
12 out the House of Pies?

13 A. He was trying to go back and go get his wallet
14 out the car. And I was like, nah, I was like forget the
15 wallet because the police already know. Then you might
16 get into a shootout with them and stuff. He was just,
17 he left it alone. And he asked me to give him the
18 backpack. I gave him the backpack, and I gave him the
19 gun. We were supposed to stay together, but he kept
20 telling me to stay with him. I just ran. I ran my
21 separate way.

22 Q. So, y'all split up at some point in the
23 backyard alleyway areas?

24 A. Yes, ma'am.

25 Q. I want to go back a little bit. You just said

1 that there was discussion about Nealey's, about Donald's
2 wallet?

3 A. Yes, ma'am.

4 Q. Had he removed his wallet prior to doing the
5 robbery?

6 A. Yes, ma'am.

7 Q. When did he do that?

8 A. When we was gettin' prepared to go inside the
9 House of Pies.

10 Q. What exactly did he do?

11 A. He took it out of his back pocket and put it in
12 the car, pulled up his pants, tightened his belt up.

13 Q. Where did he put the wallet?

14 A. I'm not really sure, I think in the console.

15 Q. Okay. So, then after this is all said and
16 done, you're at the back door, you give him the backpack
17 and your gun?

18 A. Yes, ma'am.

19 Q. And where do you go?

20 A. Across the main street.

21 Q. Across Westheimer or do you know the street?

22 A. Westheimer.

23 Q. Did you take anything off while you were
24 running or drop anything while you were running?

25 A. I took shoes off that I had on.

1 Q. You took shoes off that you had on. Why did
2 you do that?

3 A. Because I knew the shoes had blood on them.

4 Q. Okay. Why did your shoes have blood on them?

5 A. Because I was by the man when the man was
6 bleeding before, before he got shot.

7 MS. MERIWETHER: Your Honor, may I approach
8 the witness?

9 THE COURT: You may.

10 Q. (BY MS. MERIWETHER) Showing you State's
11 Exhibits 149-B and C. What are these, Marquis?

12 A. They some Nikes.

13 Q. Those the shoes you were wearing that night?

14 A. Yes, ma'am.

15 Q. And these are the ones you ditched?

16 A. Yes, ma'am.

17 Q. Because they had blood on them?

18 A. Yes, ma'am.

19 Q. So after crossing Westheimer, where did you go?

20 A. To some apartments.

21 Q. Do you know what those apartments were?

22 A. No, ma'am.

23 Q. What did you do when you got into the apartment
24 complex?

25 A. I was on -- well, I seen some people that I was

1 trying to ask can I come in their house; but, like, they
2 didn't speak no English, like, it was Mexicans. So, I
3 ran down the stairs. It was, like, three-level stairs,
4 and I just seen an attic, and I had went inside the
5 attic.

6 Q. Do the police come find you in the attic?

7 A. Yes, ma'am.

8 Q. How long were you in the attic for before they
9 found you?

10 A. Like 45 minutes.

11 Q. Okay. So, not very long after doing the
12 robbery?

13 A. No, ma'am.

14 Q. They arrest you?

15 A. Yes, ma'am.

16 Q. You recall talking to a police officer at
17 the -- a robbery officer about what happened?

18 A. Yes, ma'am.

19 Q. And he tried to get you to tell him about being
20 at the House of Pies, right?

21 A. Yes, ma'am.

22 Q. And, actually, before they took you to the
23 police station, did they take you back to House of Pies?

24 A. Yes, ma'am.

25 Q. And what happened over there?

1 A. They came back with the backpack and some of
2 the cell phones that they found, put it on the back of
3 the car, pulled me out the car; and they had the shoes,
4 too.

5 Q. Yeah.

6 A. They were asking me these my shoes, and they
7 was asking me did I dis a backpack that I dropped. I
8 told them, nah.

9 Q. You denied all of it, right?

10 A. I denied everything, yes, ma'am.

11 Q. Why did you do that?

12 A. Because I didn't want them to know everything
13 that just happened.

14 Q. So, after that they take you back to the police
15 station?

16 A. Yes, ma'am.

17 Q. And the robbery detective talks to you, right?

18 A. Yes, ma'am.

19 Q. About why you were up in the attic?

20 A. Yes, ma'am.

21 Q. And you tell them a lie?

22 A. Yes, ma'am.

23 Q. What do you tell them?

24 A. That I had weed on me, and I ran when I seen
25 the police.

1 Q. Okay. So, that's the story you came up with to
2 tell the officer?

3 A. Yes, ma'am.

4 Q. And he tried to tell you that, no, you're
5 lying. You were involved in that aggravated robbery,
6 right?

7 A. Yes, ma'am.

8 Q. And you stuck to your story, I wasn't involved?

9 A. Yes, ma'am.

10 Q. What happens after that?

11 A. They come get me from the city jail, homicide
12 come get me from the city jail, bring me to, I guess,
13 HPD headquarters.

14 Q. Okay. Had you ever been there?

15 A. No, ma'am.

16 Q. So, they take you; and they tell you that
17 they're homicide officers?

18 A. Yes, ma'am.

19 Q. What did you think then?

20 A. I knew, I knew they was fixing to start asking
21 me about it.

22 Q. Okay. So they do, a female officer talks to
23 you, right?

24 A. Yes, ma'am.

25 Q. Officer McLean?

1 A. Yes, ma'am.

2 Q. Do you remember her name or no?

3 A. I don't remember her name, but I remember her.

4 Q. A younger black female officer, and she wants
5 to talk to you about a homicide that happened, right?

6 A. Yes, ma'am.

7 Q. And do you tell her the truth about what
8 happened in the first statement?

9 A. No, ma'am.

10 Q. Why not?

11 A. 'Cause I ain't, I really didn't want them to
12 mess my story up or try to make me feel like -- I didn't
13 want them to think I was the killer that I was the
14 shooter. I was by myself, so I lied to her.

15 Q. You lied to her?

16 A. Yes, ma'am.

17 Q. After that, did some officers take you
18 somewhere else and take your clothes?

19 A. Yes, ma'am.

20 Q. Showing you State's Exhibit 52, was this the
21 jacket you were wearing?

22 A. Yes, ma'am.

23 Q. Is this the same jacket that you're wearing in
24 that video in the House of Pies; is that what you were
25 wearing?

1 A. Yes, ma'am.

2 Q. They take that from you, right?

3 A. Yes, ma'am.

4 Q. And showing you State's Exhibit 53, are these
5 the pants that you were wearing?

6 A. Yes, ma'am.

7 Q. And they take those from you, also?

8 A. Yes, ma'am.

9 Q. So they've got your clothes, and then what
10 happens?

11 A. Then we get in a -- they take me back to the
12 city jail and they talking to me about, just telling me
13 why he took my clothes from me. Telling me that he took
14 my clothes because he seen blood on the --

15 MR. ROBERT SCARDINO: Object to the
16 hearsay.

17 THE COURT: Sustained.

18 Q. (BY MS. MERIWETHER) So, he's talking to you;
19 and it gives you cause for concern?

20 A. Yes, ma'am.

21 Q. Okay. So, then what happens; what do you do?

22 A. He tell me that a man had got killed and that
23 if I know something it's best for me to talk now or if I
24 want to be silent, then if I didn't do nothing, if I
25 ain't got nothing to worry about, then I need to tell

1 him what happened. If not, and the blood come back and
2 I never told him nothing happened, then I could go to
3 jail for capital murder.

4 Q. Okay. So, they tell you all these things; and
5 what does that make you think?

6 A. That I didn't -- I didn't have nothing to do
7 with the murder, and I don't want to get charged with no
8 capital murder.

9 Q. So, did you tell the officer that you want to
10 go back and talk to the police again?

11 A. Yes, ma'am.

12 Q. To the detective?

13 A. Yes, ma'am.

14 Q. So, you go back, are you with the same
15 detective again?

16 A. Yes, ma'am.

17 Q. And when you talk to her at first, do you
18 continue to lie about your involvement?

19 A. Yes, ma'am.

20 Q. Okay. At what point do you decide that you
21 want to finally tell them what really happened?

22 A. When she -- when she told me, she told me that
23 just tell everything that happened, if I really didn't
24 do nothing, then stop lying about everything, just tell
25 her everything that happened.

1 Q. So then you decide to tell her what happened?

2 A. Yes, ma'am.

3 Q. So, I'm sure this jury is curious, as am I, why
4 did you lie for so long before telling what happened?

5 A. Because I knew, I knew that, first, I knew that
6 I was by the man and the man was bleeding, and I knew
7 that it was blood on my shoes 'cause I was trying to
8 wipe it off. And I still didn't want to get -- I know
9 about accessory, I know about being with somebody that
10 kill somebody and you still guilty as them; and that's
11 the only thing that I was scared of. And knowing that I
12 really didn't have nothing to do with the murder, I kind
13 of felt like still wouldn't admit nothin'.

14 Q. So, Marquis, did you pull the trigger on
15 March 6th of 2014 and shoot that man?

16 A. No, ma'am.

17 Q. Who did?

18 A. Donald.

19 Q. Did you get in the car afterwards and leave
20 with him?

21 A. Yes, ma'am.

22 Q. In the stolen car?

23 A. Yes, ma'am.

24 Q. And did you go over to the House of Pies and
25 commit an aggravated robbery there?

1 A. Yes, ma'am.

2 MS. MERIWETHER: Pass the witness, Your
3 Honor.

4 THE COURT: Mr. Scardino.

5 **CROSS-EXAMINATION**

6 BY MR. ROBERT SCARDINO:

7 Q. Mr. Davis, my name is Robert Scardino. We've
8 never met before, have we?

9 A. No, sir.

10 Q. Before you testified here today in front of
11 this jury, did you have an opportunity to talk to the
12 Prosecutor about what you were going to tell this jury?

13 A. Yes, sir.

14 Q. Did the Prosecutor tell you that you were going
15 to be cross-examined by a Defense lawyer?

16 A. Yes, sir.

17 Q. Did she tell you what she thought I was going
18 to ask you?

19 A. Yes, sir.

20 Q. So, they prepared you for my cross-examination?

21 A. Yes, sir.

22 Q. How long did that take?

23 MS. MERIWETHER: Objection, relevance.

24 THE COURT: Overruled.

25 A. Not long. They just told me to tell the truth.

1 Q. (BY MR. ROBERT SCARDINO) Tell the truth. Did
2 they tell you that there were going to be some problems
3 with what you were going to tell this jury that was
4 inconsistent with the facts?

5 MS. MERIWETHER: Objection, argumentative.

6 THE COURT: Overruled.

7 Q. (BY MR. ROBERT SCARDINO) You can answer.

8 A. I don't understand.

9 Q. Well, did they tell you that if you got up and
10 told the story you just told this jury that there were
11 some things in that story that weren't consistent with
12 what the police knew, did they tell you that?

13 A. No, sir.

14 Q. No. Okay. Did they tell you they believed
15 you?

16 A. Yes, sir.

17 Q. Okay. They believed that you were forced to go
18 into that House of Pies against your will?

19 MS. MERIWETHER: Objection, misstatement of
20 the testimony.

21 THE COURT: Sustained.

22 Q. (BY MR. ROBERT SCARDINO) You were forced to go
23 into the House of Pies by Donald Nealey?

24 MS. MERIWETHER: Objection to misstatement
25 of the testimony.

1 THE COURT: Sustained.

2 Q. (BY MR. ROBERT SCARDINO) Were you forced to go
3 into the House of Pies?

4 MS. MERIWETHER: Objection, misstatement of
5 the testimony.

6 THE COURT: Overruled.

7 A. No, sir.

8 Q. (BY MR. ROBERT SCARDINO) So, you did it on
9 your own?

10 A. Yes, sir.

11 Q. So you were willing to do an aggravated robbery
12 with a deadly weapon that night?

13 A. Yes, sir.

14 Q. This is after you tell this jury that you saw a
15 man murdered by somebody other than yourself, right?

16 A. Yes, sir.

17 Q. And that this other man gave you a gun to go
18 into the House of Pies, right?

19 A. Yes, sir.

20 Q. And this other man had you put on a mask to go
21 into the House of Pies?

22 A. Yes, sir.

23 Q. And this other man told you to shoot into the
24 ceiling when you got in there?

25 A. Yes, sir.

1 Q. And the Prosecution believes you?

2 MS. MERIWETHER: Objection, argumentative.

3 THE COURT: Sustained.

4 Q. (BY MR. ROBERT SCARDINO) Let's back up a
5 little bit, Mr. Davis. Before we get into the number of
6 different versions you've told, whatever the last
7 version was, was the one that's got you this deal,
8 right?

9 A. Yes, sir.

10 Q. The first version you told didn't get you out
11 of this capital murder case, did it? When you first
12 told the cops what happened when you were arrested, that
13 didn't get you out of trouble, did it?

14 A. No, sir.

15 Q. Did the second story you told the police when
16 they questioned you, that didn't get you out of trouble
17 either, did it?

18 A. No, sir.

19 Q. Okay. In fact, that conversation was recorded,
20 video recorded by the police, wasn't it?

21 A. Yes, sir.

22 Q. They told you we're recording this, right?

23 A. Homicide told me they were recording, not
24 inside the car when I was talking to the regular police.

25 Q. Right. They told you they weren't recording

1 it?

2 A. They didn't tell me, but the only people that
3 told me they were recording was the homicide people.

4 Q. Right. But you made at least three video
5 statements, didn't you?

6 A. Yes, sir.

7 Q. And you lied on everyone of them, didn't you?

8 A. Yes, sir.

9 Q. And none of those stories got you out of
10 trouble and got you this deal, did it?

11 A. No, sir.

12 Q. In fact, you were charged with capital murder,
13 weren't you?

14 A. Yes, sir.

15 Q. And you know that when you're charged with
16 capital murder, if you're successfully prosecuted, you
17 can get the death penalty, you know that, don't you?

18 A. Yes, sir.

19 Q. They explained that to you, didn't they?

20 A. Yes, sir.

21 Q. And that's when you changed your story, wasn't
22 it?

23 A. Yes, sir.

24 Q. Okay. You told the story that helped the
25 Prosecution prosecute another man, right?

1 A. Yes, sir.

2 Q. They had you at the scene of the murder because
3 you told them you were there and told them your version
4 of it, right?

5 A. Yes, sir.

6 Q. And they know -- we know you were in a House of
7 Pies because we can see your face on the video, right?

8 A. Yes, sir.

9 Q. Okay. While I'm thinking about it, how did you
10 get the dead man's backpack off his back to take with
11 you to go to the House of Pies robbery, did you take it
12 off his back?

13 A. No, sir.

14 Q. When you were telling the story you told, did
15 anybody tell you that they had a eyewitness that would
16 contradict what you said?

17 MS. MERIWETHER: Objection, hearsay.

18 THE COURT: Overruled.

19 MR. ROBERT SCARDINO: Not what they said,
20 but if they said.

21 THE COURT: Overruled.

22 Q. (BY MR. ROBERT SCARDINO) That there was
23 somebody at the scene that saw the shooting that had
24 nothing to do with it?

25 THE COURT: Now it's sustained.

1 Q. (BY MR. ROBERT SCARDINO) Did you get out of
2 the car that you were in that night?

3 A. I don't understand the question.

4 Q. Well, you were, when you were at the Little
5 Nell Apartments, you arrived there in a vehicle of some
6 sort, did you not?

7 A. Yes, sir.

8 Q. Okay. And did you get out of that vehicle?

9 A. Yes, sir.

10 Q. Okay. And where did you go when you got out?

11 A. That's when I approached Donald and the man.

12 Q. Say it again?

13 A. I approached Donald and the man.

14 Q. I'm sorry. I didn't understand what you said?

15 A. I approached Donald and the man, the man that
16 had got killed.

17 THE COURT: You need to be sure to keep
18 your voice up. They're having a hard time hearing you.
19 You need to keep your voice up or maybe move closer to
20 the microphone.

21 A. I approached Donald and the man.

22 Q. Okay. Are you telling this jury that you
23 didn't shoot this man?

24 A. I didn't.

25 Q. And you're telling this jury you weren't

1 driving the car?

2 A. I wasn't.

3 Q. Are you telling this jury that there were only
4 two people out there that night?

5 A. It was.

6 Q. When you were charged with this offense of
7 capital murder, you got a lawyer, didn't you?

8 A. Yes, sir.

9 Q. And you told the jury his name already. It's
10 Alvin Nunnery, isn't it?

11 A. Yes, sir.

12 Q. And he was appointed to be your lawyer in this
13 case, was he not?

14 A. Yes, sir.

15 Q. And when they appointed Mr. Nunnery to the
16 case, you recognize him as the gentleman sitting in the
17 courtroom?

18 A. Yes, sir.

19 Q. And that's Alvin Nunnery sitting back there
20 while you testify, your lawyer?

21 A. Yes, sir.

22 Q. And you know that -- that when Mr. Nunnery was
23 appointed, they appointed a lawyer that was one of the
24 best lawyers in the State. Did they tell you that?

25 A. No, sir.

1 Q. That he has tried as many capital murder cases
2 than any --

3 MS. MERIWETHER: Your Honor, I'm going to
4 have to object as to the relevance of this.

5 THE COURT: What's the relevance, Counsel?

6 MR. ROBERT SCARDINO: Just to show that he
7 was able to negotiate a great deal because of his
8 skills.

9 THE COURT: I think you've made that point.
10 Move on, please.

11 Q. (BY MR. ROBERT SCARDINO) Was Mr. Nunnery
12 involved in making this deal for you with the
13 Prosecution?

14 A. I don't understand.

15 Q. Well, did your lawyer come make the deal for
16 you or did you negotiate this deal with the Prosecution
17 or did your lawyer do it?

18 A. He did it.

19 Q. He did it. Okay. And you were happy to accept
20 it, weren't you?

21 A. Nah, I wasn't happy.

22 Q. Sir?

23 A. I wasn't happy.

24 Q. You weren't happy?

25 A. No, sir.

1 Q. Did you just want to get away scot-free from
2 this, is that what you're looking for?

3 MS. MERIWETHER: Objection, argumentative.

4 THE COURT: Sustained.

5 Q. (BY MR. ROBERT SCARDINO) Okay. When the
6 police first talked to you and you gave them a statement
7 that was a lie, right, lie No. 1?

8 A. Yes, sir.

9 Q. You told them you ran because you had marijuana
10 on you?

11 A. Yes, sir.

12 Q. That was not true, was it?

13 A. No, sir.

14 Q. And they asked you, they wanted to know why you
15 didn't have any shoes on, right?

16 A. Yes, sir.

17 Q. And you lied to them about that, didn't you?

18 A. Yes, sir.

19 Q. Then they showed you a pair of shoes that had
20 blood on them and you told them they weren't yours,
21 didn't you?

22 A. Yes, sir.

23 Q. And you lied about that, didn't you?

24 A. Yes, sir.

25 Q. And that same night, when they caught you in

1 that attic, they asked you if you had anything to do
2 with that robbery at the House of Pies; and you lied
3 about that, didn't you?

4 A. Yes, sir.

5 Q. And then later on they asked you whether or not
6 you knew anything about the murder at the Little Nell
7 Apartments; and you lied about that, didn't you?

8 A. Yes, sir.

9 Q. And then later a police officer got you on a
10 videotape in a room and asked you questions about what
11 happened that night in the robbery and the murder,
12 didn't they?

13 A. Yes, sir.

14 Q. And that was a white HPD homicide sergeant by
15 the name of Officer Bedingfield. You remember talking
16 to him?

17 A. Yes, sir.

18 Q. You remember he's the one that took the DNA
19 swab from you, you recall that?

20 A. Yes, sir.

21 Q. And he asked you a number of detailed
22 questions, did he not, about what happened that night?

23 A. Yes, sir.

24 Q. And you lied to him about everyone of them,
25 didn't you?

1 A. Yes, sir.

2 Q. And that interview took almost an hour, didn't
3 it?

4 A. I'm not sure.

5 Q. Well, you looked him straight in the eye and
6 lied to him about everything that he asked you?

7 MS. MERIWETHER: Objection, asked and
8 answered.

9 THE COURT: Overruled.

10 Q. (BY MR. ROBERT SCARDINO) Didn't you?

11 A. No, sir.

12 Q. You did lie to him about everything?

13 A. I did lie to him.

14 Q. You did lie to him?

15 A. Yes, sir.

16 Q. And then he left and then another police
17 officer named McLean came in later on to talk to you, a
18 black female homicide detective?

19 A. Yes, sir.

20 Q. You remember her?

21 A. Yes, sir.

22 Q. She was really nice, wasn't she?

23 A. She was all right.

24 Q. And she told you she was proud of you, didn't
25 she?

1 A. Nah.

2 Q. You don't remember that. Have you looked at
3 these videos since you made them? Nobody showed them to
4 you?

5 A. No, sir.

6 THE COURT: Sir, you need to answer out so
7 the court reporter can take down your answer.

8 A. Yes.

9 Q. (BY MR. ROBERT SCARDINO) But she interviewed
10 you and asked you questions about what happened that
11 night based on what she knew, and you lied to her about
12 everything that she asked you, didn't you?

13 A. Yes, sir.

14 Q. And that interview lasted almost an hour,
15 didn't it?

16 A. I'm not sure.

17 Q. Then she came in and talked to you a second
18 time and you lied again, didn't you?

19 A. Yes, sir.

20 Q. And then when they were transporting you out of
21 the jail, that's when you told Officer Sosa you wanted
22 to go back and tell another story, didn't you?

23 A. Yes, sir.

24 Q. And you still didn't tell the complete truth
25 then, did you?

1 A. No, sir.

2 Q. But you're telling the truth now, aren't you?

3 A. Yes, sir.

4 MR. ROBERT SCARDINO: Ms. Meriwether, can
5 we have the exhibit with the video? And I have it -- I
6 wasn't here when you played it, so I don't know the
7 number, where the two men walking into the House of
8 Pies. May I see it?

9 Q. (BY MR. ROBERT SCARDINO) Mr. Davis, I want you
10 to look at this video, if you would?

11 MS. MERIWETHER: Mr. Scardino, which camera
12 angle?

13 MR. PHILIP SCARDINO: When they first walk
14 in.

15 MR. ROBERT SCARDINO: It's outside the
16 House of Pies, and two men are walking in. It's a
17 grainy black and white video.

18 Q. (BY MR. ROBERT SCARDINO) Can you see that, Mr.
19 Davis?

20 A. Yes, sir.

21 Q. Okay. I want you to watch this. By the way,
22 have you seen this before?

23 A. No, sir.

24 Q. Nobody showed this to you before right now?

25 MS. MERIWETHER: Objection, asked and

1 answered.

2 THE COURT: Sustained.

3 Q. (BY MR. ROBERT SCARDINO) Inartfully asked the
4 first question.

5 MR. ROBERT SCARDINO: Any way to speed it
6 up until you see them in the frame?

7 There it is, stop it. Stop it there,
8 please. Can you stop it? Back it up a little bit. Can
9 you stop it there? Thank you very much.

10 Q. (BY MR. ROBERT SCARDINO) Mr. Davis, you see
11 that video?

12 A. Yes, sir.

13 Q. Look familiar to you?

14 A. Yes, sir.

15 Q. So, you have seen it before?

16 A. I haven't seen it, but I know what I did.

17 Q. Okay. So, can you identify who's in that
18 video?

19 A. Me and Donald.

20 Q. So, you're telling us the person in the front
21 that's walking into the House of Pies is Donald Nealey?

22 A. Yes, sir.

23 Q. We can't see a face there, so we'd have to
24 believe you to believe that's Donald Nealey, right?

25 A. Yes, sir.

1 Q. And the person in the back, you're saying
2 that's you, right?

3 A. Yes, sir.

4 Q. And that you've got on a backpack, do you not?

5 A. Yes, sir.

6 Q. That's the man that was murdered backpack,
7 isn't it?

8 A. Yes, sir.

9 Q. And you've got it on, don't you?

10 MS. MERIWETHER: Objection, asked and
11 answered.

12 THE COURT: Overruled.

13 Q. (BY MR. ROBERT SCARDINO) You got it on, right?

14 A. Yes, sir.

15 Q. When did you put it on?

16 A. Getting out the car.

17 Q. While you're in the car?

18 A. No, while we're getting out the car.

19 Q. Getting out of the car, you took the dead man's
20 backpack and put it on?

21 A. Yes, sir.

22 Q. So, you could rob the people at the House of
23 Pies and put the goods in the dead man's backpack,
24 right?

25 A. Yes, sir.

1 Q. Did you have on gloves?

2 A. Yes, sir.

3 Q. Did Donald Nealey, you're claiming that he made
4 you put on gloves?

5 A. No, he didn't make me.

6 Q. You did that voluntarily?

7 A. Yes, sir.

8 Q. Didn't you tell the police that at one time
9 when you were telling them your version of what happened
10 that Donald Nealey told you to shoot the gun when you
11 walked into the House of Pies?

12 A. Yes, sir.

13 Q. That's not what you just told this jury,
14 though, right? You told this jury a different story
15 about shooting the gun?

16 A. No, sir, I told them I shot the gun in the air.

17 Q. You did, but that was because you saw somebody
18 off on your left and then decided to shoot the gun?

19 MS. MERIWETHER: Objection, argumentative.

20 THE COURT: Overruled.

21 A. No, sir.

22 Q. (BY MR. ROBERT SCARDINO) Were you threatened
23 in a way that would make you shoot that gun?

24 A. No, sir.

25 Q. Now, Mr. Davis, you're in the House of Pies for

1 however long you were there, two, three, four minutes, I
2 don't know; and then you told the jury that you could
3 see somebody that ran out to wave a police car down,
4 right?

5 A. Yes, sir.

6 Q. And that's when you decided robbery time is
7 over, right?

8 A. Yes, sir.

9 Q. And that's when you told, you say it was Donald
10 Nealey with you, we need to leave?

11 A. Yes, sir.

12 Q. How did you leave the House of Pies?

13 A. Ran out the back exit door.

14 Q. Now, from looking at the video, you walk in and
15 there's a counter and then there's seats and tables all
16 down to the right, and then a little bar where you can
17 sit there right in front, right?

18 A. Yes, sir.

19 Q. And then you have to walk behind that to get to
20 the kitchen, don't you?

21 A. Yes, sir.

22 Q. Okay. Tell the jury whether you could see a
23 back door from inside the restaurant?

24 A. I didn't see it, but I know it was one.

25 Q. You did know that it was one. You had to have

1 been in there before to know there was a back door
2 through the kitchen to get out of there, didn't you?

3 A. No, I just seen when the kitchen workers,
4 someone ran to the back; and I heard a door slam.

5 Q. You just guessed that there was a back door
6 there?

7 A. Then I seen the man that was there that I seen
8 run in the back, running towards the police car.

9 Q. It wasn't because you had been there before to
10 determine how you could get away if the front door was
11 blocked?

12 MS. MERIWETHER: Objection, argumentative.

13 THE COURT: Overruled.

14 A. No, sir, I had never been there before; that
15 was my first time.

16 Q. (BY MR. ROBERT SCARDINO) Never been there
17 before. So, you got lucky that there was an exit out
18 the back?

19 A. I guess so.

20 Q. You guess so. So, you said that you told the
21 jury that Drama had called you that day, March the 6th
22 of 2014, and told you that he was going to come pick you
23 up, or you were going to come pick him up? I wasn't
24 clear on what you were saying?

25 A. I was going to go pick him up.

1 Q. So, he called you on your cell phone?

2 A. I called him. He gave me his number on
3 Instagram.

4 Q. Off Instagram?

5 A. Yes, sir, I called him.

6 Q. So, I understand this, he called you on your
7 cell phone?

8 A. No, he never called me, I called him.

9 Q. You called him from your cell phone?

10 A. Yes, sir.

11 Q. What is that cell phone number?

12 A. I don't remember it.

13 Q. Did you give the police your cell phone number
14 so that they could get the records to see if you made
15 that call or he made that call?

16 A. I gave them my name because the phone in my
17 name. I gave them my name.

18 Q. You did that?

19 A. Yeah, my Instagram name.

20 Q. You gave all that to the police?

21 A. Nah, not the police; I give it to the
22 Prosecutor.

23 Q. You gave it to the Prosecutor because they
24 wanted to know whether or not they could prove that this
25 call actually happened or not, right?

1 MS. MERIWETHER: Objection, assumes facts
2 not in evidence, and misstatement.

3 MR. ROBERT SCARDINO: I actually would
4 agree with that and withdraw the question.

5 THE COURT: Thank you.

6 Q. (BY MR. ROBERT SCARDINO) Did anybody talk to
7 you about is this your phone number? Anybody confront
8 you with that, saying, hey, is this correct?

9 A. No, sir.

10 Q. Did anybody ever ask you what number that you
11 called, or did you have that information stored in your
12 phone in some way?

13 A. No, sir.

14 Q. Did anybody ever tell you, yes, we've confirmed
15 you're telling the truth about this because we have
16 documented evidence to show it? Did anybody tell you
17 that?

18 A. No, sir.

19 MS. MERIWETHER: Objection, calls for
20 hearsay.

21 THE COURT: Sustained.

22 Q. (BY MR. ROBERT SCARDINO) What was Donald
23 Nealey's phone number?

24 A. He didn't have a phone. It was a girl's phone,
25 the house, the place I came picked him up from, it was

1 her phone.

2 Q. So, you're telling the jury that he called you
3 from a girl's phone?

4 A. I called him. The number he gave me was a
5 girl's phone. I called him.

6 Q. And do you know that girl's name?

7 A. No, sir.

8 Q. And Instagram, help me with that. That's way
9 past my time. What is Instagram?

10 A. Social media.

11 Q. Social media, is it a written message; or is it
12 a vocal message?

13 A. Written.

14 Q. It's a written message like an e-mail or a
15 text?

16 A. It's like pictures, you just post pictures.

17 Q. Pictures?

18 A. Yeah, you post it. You make captions or
19 whatnot.

20 Q. But can you send a written message on
21 Instagram?

22 A. Yes, sir.

23 Q. And that's how you're claiming that you were
24 communicating with Donald Nealey that night, on
25 Instagram?

1 A. Yes, sir.

2 Q. On your phone?

3 A. Yes, sir.

4 Q. And in that you're telling us that Nealey
5 wanted you to come pick him up?

6 A. Yes, sir.

7 Q. About what time was that?

8 A. I'm not sure what time it was.

9 Q. Okay. Well, was it during the daytime or the
10 nighttime?

11 A. It was in the daytime.

12 Q. Was it in the afternoon?

13 A. Say evening.

14 Q. Evening, okay. And was it not important to try
15 to determine the time that you and Nealey made contact
16 that day, according to you?

17 MS. MERIWETHER: Objection, argumentative.

18 THE COURT: Overruled.

19 A. No, it wasn't important.

20 Q. (BY MR. ROBERT SCARDINO) So, did you go pick
21 him up?

22 A. Yes, sir.

23 Q. Where?

24 A. At Rainy Meadows Apartments.

25 Q. And was he by himself or with somebody else?

1 A. He was by himself.

2 Q. And were you in your car?

3 A. Yes, sir.

4 Q. It was a Mercury Marquis?

5 A. Yes, sir.

6 Q. And you were buying that car?

7 A. Was I buying it?

8 Q. Yeah.

9 A. I been bought the car.

10 Q. You said?

11 A. I been had the car.

12 Q. So, you owned the car?

13 A. Yes, sir.

14 Q. And you bought it with the money you made
15 working at Wal-Mart?

16 A. Yes, sir.

17 Q. How long did you work at Wal-Mart?

18 A. Like two months.

19 Q. Two months?

20 A. Yes, sir.

21 Q. How much did you make at Wal-Mart in
22 two months?

23 A. Like 5, 575 every two weeks.

24 Q. And you used that money to buy a car that you
25 paid for?

1 A. Yes, sir.

2 Q. And you remember what time you picked Donald
3 Nealey up?

4 A. No, sir.

5 Q. Where did you go from there?

6 A. We went to a Shell station parking lot, but it
7 was like a whole bunch of other stores, like, right
8 there. We, like, chilled for a minute because we seen
9 some friends we knew.

10 Q. Would you speak into the microphone a little
11 more, Mr. Davis?

12 A. I said we seen some friends we knew, so we
13 stopped for a minute and talked to them. Then we
14 chilled for about, like, 20 minutes or so.

15 Q. Was there anybody with you at that time?

16 A. No, sir.

17 Q. Did anybody else get in the car with you from
18 that service station?

19 A. No, sir.

20 Q. Didn't you tell the police there was another
21 man with you that night named K.C.?

22 A. Yes, sir.

23 Q. You told them that, didn't you?

24 A. Yes, sir.

25 Q. Was that a lie?

1 A. Yes, sir.

2 THE COURT: Can I see the lawyers about a
3 scheduling question, please?

4 (Bench conference.)

5 MR. ROBERT SCARDINO: I got a bit more.

6 THE COURT: More than one minute I'm
7 presuming? I said, I presume this is going to take more
8 than one minute.

9 MR. ROBERT SCARDINO: Yes.

10 THE COURT: A lot longer than one minute?

11 MR. ROBERT SCARDINO: It's kind of hard to
12 say. I'm kind of winding it down. I mean, it kind of
13 depends on where he goes.

14 THE COURT: And then are you going to
15 redirect?

16 MS. MERIWETHER: Probably briefly.

17 MR. ROBERT SCARDINO: I'll try to finish
18 it.

19 (End of bench conference.)

20 THE COURT: All right. Ladies and
21 gentlemen, I'm going to see if we can finish with this
22 witness. We're going to go a few minute past 6:00, see
23 if we can finish up with him this evening.

24 You may proceed, Mr. Scardino.

25 Q. (BY MR. ROBERT SCARDINO) So, Mr. Davis, this

1 fictional K.C. fella that you made up --

2 MS. MERIWETHER: Objection to the improper
3 arguments, argumentative nature of the question.

4 THE COURT: Sustained.

5 Q. (BY MR. ROBERT SCARDINO) Is there a person
6 named K.C.?

7 A. No, sir.

8 Q. You just made that name up?

9 A. Yes, sir.

10 Q. Did you feel like that would somehow throw the
11 cops off from focusing on you in some way?

12 A. Yes, sir.

13 Q. Did you explain how you thought that might
14 throw the cops off?

15 A. Yes, sir.

16 Q. What did you tell the Prosecution when you made
17 your deal why that wasn't true?

18 A. Because I didn't -- I didn't want to accept the
19 fact that I was there and I seen everything and I was in
20 the middle of all of it. So, me saying somebody else
21 name was to say that I don't know what happened, this
22 the only person I know that happened, which I gave them
23 K.C. knowing that they were going to have to look for
24 him to get all the information that they wanted to get
25 of what happened in the Nell Apartments because I was

1 nervous and afraid to tell them everything that
2 happened.

3 Q. That was just another one of your lies, another
4 one of your lies making up K.C.?

5 A. Yes, sir.

6 Q. Then you said you got to the Little Nell
7 Apartments, and let's talk about that. When you got
8 there, it was in your car that you say you paid for from
9 two months of K-mart (sic), right?

10 A. Yes, sir.

11 MS. MERIWETHER: Objection, asked and
12 answered.

13 THE COURT: Sustained.

14 Q. (BY MR. ROBERT SCARDINO) And when you pulled
15 into the Little Nell Apartments, did you get out of your
16 vehicle?

17 A. Not soon as we pulled in.

18 Q. Say it again?

19 A. Not as soon as we pulled into the apartments.
20 I got out after I seen Donald and the man walk around
21 the corner.

22 Q. You told the jury that you went there because
23 Donald Nealey wanted to go meet some girl to get some
24 money, right?

25 A. Yes, sir.

1 Q. That was what you told the cops and the
2 Prosecutor, right?

3 A. Yes, sir.

4 Q. Didn't you tell the cops at one time that you
5 had a agreement that you were going to go there and
6 carjack somebody to get the car to use to rob the House
7 of Pies?

8 A. No, sir.

9 Q. Never told anybody that?

10 A. No, sir.

11 Q. Nobody confronted you with -- did anybody
12 confront you with the fact that that's what you were
13 doing at the Little Nell Apartments was to steal a car
14 so you can go rob the House of Pies with a car other
15 than your car?

16 MS. MERIWETHER: Objection, I believe he's
17 already answered.

18 THE COURT: Overruled.

19 A. No, sir.

20 Q. (BY MR. ROBERT SCARDINO) No.

21 A. Nobody knew.

22 Q. It just turned out that way, right?

23 A. Yes, sir.

24 Q. And then when you say that this poor man was
25 murdered and you had nothing to do with that except that

1 you get blood on your shoes when he's murdered, right?

2 A. Yes, sir.

3 Q. So you're close enough to him when he's
4 murdered and shot eight times that you're the one that
5 gets blood on his shoes, right?

6 A. I know it got blood on my shoes before he got
7 shot, not after he got shot.

8 Q. And you lied to the cops and told them that
9 Donald Nealey made you trade shoes with him because
10 there was blood on his shoes, didn't you?

11 A. Yes, sir.

12 Q. Is that a yes?

13 A. Yes, sir.

14 Q. Another lie, right?

15 A. Yes, sir.

16 Q. When it turned out they were really your shoes
17 with the dead man's blood on them, wasn't it?

18 A. Yes, sir.

19 Q. And then when you leave there, you go get in
20 the dead man's car, don't you?

21 A. Yes, sir.

22 Q. Don't get in your car, do you?

23 A. No, sir.

24 Q. And your story is that's when Donald Nealey
25 gave you a gun and a mask and gloves and said let's go

1 rob the House of Pies, and it's the first time you heard
2 of that?

3 A. Yes, sir.

4 Q. And that's the truth according to you now?

5 A. Yes, sir.

6 Q. So, is it possible, Mr. Davis, that you were --
7 you and others were chasing this poor man down the
8 alleyway, shooting at him at the Little Nell Apartments?

9 A. No, sir.

10 Q. That's not possible?

11 A. No, sir.

12 Q. Okay. And it's not possible that whoever was
13 in the car got out of the car and reached over and shot
14 the poor boy in the head and then got back in the car
15 and drove off? No. They were already in the dead man's
16 car because his car had been carjacked?

17 MS. MERIWETHER: I'm going to object to
18 Counsel testifying.

19 THE COURT: Sustained.

20 Q. (BY MR. ROBERT SCARDINO) You're telling this
21 jury that this poor student was begging for his life,
22 and you were standing there and didn't do anything?

23 A. Yes, sir.

24 Q. You're the same guy that's willing to go into
25 the House of Pies with a gun and rob 'em; but you're too

1 timid to try to save somebody's life?

2 THE COURT: Sustained.

3 MR. ROBERT SCARDINO: Can I have just a
4 moment, Your Honor?

5 THE COURT: You may.

6 Q. (BY MR. ROBERT SCARDINO) When you left the
7 House of Pies, you still had the gun, did you not, the
8 .38?

9 A. Yes, sir.

10 Q. You knew enough about guns to know it was a
11 38-caliber weapon, right?

12 A. Yes, sir.

13 Q. And you knew it was loaded, right?

14 A. Yes, sir.

15 Q. How -- were you sure it was going to shoot?

16 A. Well, I shot it.

17 Q. You did shoot it?

18 A. I was a little positive that it was loaded. I
19 never seen nobody load it, but I'm pretty sure it was
20 loaded.

21 Q. You were just hoping it was loaded?

22 A. I guess you could say that.

23 Q. And you ran out the back, you still had the
24 gun, the .38, right?

25 A. Yes, sir.

1 Q. And you still had the poor dead man's backpack
2 on your back, right?

3 A. Yes, sir.

4 Q. And you still had on the poor dead man's
5 bloody, still had his blood on your shoes, right?

6 A. Yes, sir.

7 Q. And as you're running away, what did you do
8 with the gun?

9 A. I gave it to Donald.

10 Q. Just handed it to him, say, here, you take the
11 gun?

12 A. He told me to give him the backpack, so I give
13 him the backpack and the gun.

14 Q. You're telling the jury you gave Donald Nealey
15 the gun back and the gun, that's why we can't find the
16 gun?

17 A. Well, I don't know that's why y'all can't find
18 it; but that's what I did.

19 Q. Well, you know the cops found the backpack,
20 right?

21 A. Yes.

22 Q. They found the backpack because you're the one
23 that threw the backpack away, which is consistent with
24 the way you were running out of the House of Pies,
25 right? That's why they found it?

1 A. I don't know where they found it, but I know I
2 had it when I gave Donald the backpack, we went our
3 separate ways. So, I don't know what he did, where he
4 put the backpack at.

5 Q. So, if you gave it to Donald Nealey, then he
6 just happened to drop it on a line where you were
7 running from the House of Pies?

8 MS. MERIWETHER: Objection, calls for
9 speculation.

10 THE COURT: Sustained.

11 Q. (BY MR. ROBERT SCARDINO) But you knew enough
12 to get rid of the bloody shoes, right?

13 A. Yes, sir.

14 MR. ROBERT SCARDINO: Just a moment, Your
15 Honor.

16 Q. (BY MR. ROBERT SCARDINO) When the police
17 arrested you, did they put a bag on your hands?

18 A. Yes, sir.

19 Q. Did they tell you why?

20 A. No, sir.

21 Q. Okay. One of the reasons why you decided to
22 tell this story that made you the deal was the cops told
23 you they had a good case against you, didn't they?

24 MS. MERIWETHER: Objection, hearsay.

25 THE COURT: Overruled.

1 Q. (BY MR. ROBERT SCARDINO) Isn't that why you
2 made your deal?

3 A. I made the deal because I didn't want to go
4 down for something I didn't do.

5 Q. Well, you remember the police officers telling
6 you that they had evidence that it was your DNA and your
7 fingerprints that would connect you with the murder; and
8 that's when you decided to change your story, wasn't it?

9 A. No.

10 Q. No. But they did tell you that, didn't they?

11 A. Yes, sir.

12 Q. And they told you that before you changed your
13 story again, didn't they?

14 A. No.

15 Q. When do you start serving your time?

16 A. I'm really not sure.

17 Q. Well, when is your deal finalized?

18 A. I guess after all this is over with.

19 Q. After all this is over with. So, your deal
20 isn't done yet, is it?

21 A. I guess not.

22 Q. You guess not. You haven't been sentenced yet,
23 have you, Mr. Davis?

24 A. No, sir.

25 MS. MERIWETHER: Objection, relevance, Your

1 Honor.

2 THE COURT: Overruled.

3 Q. (BY MR. ROBERT SCARDINO) As a matter of fact,
4 if you don't testify in a way that's consistent --

5 MS. MERIWETHER: Objection, I don't believe
6 the last question was answered, Your Honor.

7 THE COURT: Could you repeat the last
8 answer? The question was: You haven't been sentenced
9 yet; is that right?

10 THE COURT REPORTER: He answered, no, sir.

11 THE COURT: Okay.

12 MR. ROBERT SCARDINO: In fact, the reason
13 you hadn't been sentenced is to make certain you testify
14 in a way consistent with making a case against Donald
15 Nealey?

16 MS. MERIWETHER: Objection, improper
17 argument. Calls for speculation.

18 THE COURT: Overruled.

19 Q. (BY MR. ROBERT SCARDINO) Isn't that a fact?

20 A. I guess so.

21 Q. You guess so. Weren't you told that if you
22 testify something different than what you told this
23 jury, you don't have a deal?

24 A. Yes, sir.

25 MR. ROBERT SCARDINO: Thank you. Pass the

1 witness.

2 **REDIRECT EXAMINATION**

3 BY MS. MERIWETHER:

4 Q. I've met you on a couple of occasions; is that
5 right, Marquis?

6 A. Yes, ma'am.

7 Q. Over at the county jail and up here in a
8 holdover as well, and I've always told you to tell the
9 truth; is that not --

10 MR. PHILIP SCARDINO: Object.

11 THE COURT: Overruled.

12 A. You have.

13 Q. (BY MS. MERIWETHER) I always told you to tell
14 the truth, no matter what it is?

15 A. Yes, ma'am.

16 Q. Good, bad, indifferent, tell the truth?

17 A. Yes, ma'am.

18 Q. I told you that you've lied a lot, did I not?

19 A. Yes, ma'am.

20 Q. And that you were going to have to admit that
21 you had lied?

22 A. Yes, ma'am.

23 Q. And that you were going to have to explain to
24 this jury why you lied so much?

25 A. Yes, ma'am.

1 Q. And is that what you've done your best to do
2 today?

3 A. Yes, ma'am.

4 Q. And what you've told them about this incident
5 and seeing Donald Nealey shoot the victim; is that the
6 truth?

7 A. Yes, ma'am.

8 Q. You'd never seen those surveillance videos
9 before, had you not?

10 A. No, ma'am.

11 Q. I never played those for you?

12 A. No, ma'am.

13 Q. And you've not watched your statements that you
14 gave to the police?

15 A. I never seen any statements.

16 Q. Right, those recorded statements you gave,
17 you've not seen them again?

18 A. Yes, ma'am, I never seen them.

19 Q. What you're doing today is telling the truth as
20 best as you remember?

21 MR. ROBERT SCARDINO: Object to the leading
22 question.

23 THE COURT: Sustained.

24 Q. (BY MS. MERIWETHER) And the agreement that you
25 have is that you will serve, potentially, 50 years in

1 prison for your role in this crime?

2 A. Yes, ma'am.

3 Q. And you understand that there is a possibility
4 of parole after serving half of that sentence?

5 A. Yes, ma'am.

6 Q. You'll have to serve a minimum of 25 years in
7 prison before you'll be up for parole?

8 A. Yes, ma'am.

9 MS. MERIWETHER: Pass the witness, Your
10 Honor.

11 THE COURT: Mr. Scardino.

12 **RECROSS-EXAMINATION**

13 BY MR. ROBERT SCARDINO:

14 Q. That's better than getting the death penalty,
15 isn't it?

16 MS. MERIWETHER: Objection, improper
17 argument.

18 THE COURT: Sustained. You don't have to
19 answer that.

20 MR. ROBERT SCARDINO: Nothing further.

21 THE COURT: All right. Ladies and
22 gentlemen, I'm sorry to keep you past 6:00, but it was
23 important to me to get finished with this witness today.
24 So with that I will let you go home. Please be back,
25 let's try 9:15 tomorrow, see if we can get started by

1 9:30. Please enjoy your evening, what's left of it.
2 Please remember my earlier instructions about not
3 discussing the case, not doing any internet research.
4 And have a good evening. See you tomorrow.

5 THE BAILIFF: All rise for the jury.
6 (Jury exits courtroom.)

7 THE COURT: Please be seated. We'll be in
8 recess until 9:15 tomorrow.

9 (Adjourned until 11/11/15.)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, Mattie Kimble, Deputy Court Reporter in and for the 228th District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is (See Exhibit Index) and was paid by Harris County.

WITNESS MY OFFICIAL HAND this the 21st day of January, 2016.

/s/Mattie Kimble
Mattie Kimble, Texas CSR 7070
Expiration Date: 12/31/2016
Deputy Court Reporter
228th District Court
Harris County, Texas
Houston, Texas 77002
713-755-6961