

1 going to want to approach this topic and this  
2 testimony, at this point, Mr. Ayers, if you'd like  
3 to take this witness on voir dire and let's see  
4 where we are so maybe we avoid having to send the  
5 jury back. We may still have to do that depending  
6 on the context of how his testimony goes, the  
7 deputy's.

8 But if you'd like to go ahead and  
9 ask this deputy some questions.

10 MR. AYERS: Sure, Judge, if I may.

11 **ROLAND PEREZ,**

12 having been first duly sworn, testified as follows:

13 **EXAMINATION**

14 **BY MR. AYERS:**

15 Q. Deputy, for the record, could you state  
16 your name?

17 A. Yes, sir. Roland Perez.

18 Q. Deputy Perez, I want to ask you very  
19 focused -- the police report --

20 MR. AYERS: And, Judge, it might  
21 help if I could just approach him.

22 THE COURT: That's fine.

23 Q. (By Mr. Ayers) I have in my hand a copy  
24 of the offense report in this case.

25 A. Yes, sir.

1           Q.    Have you had an opportunity to look at  
2   it before you testified today --

3           A.    Yes.

4           Q.    -- and refresh your memory?

5                   And you wrote the report, right?

6           A.    Yes.

7           Q.    Okay.  I want to focus on this -- looks  
8   like it's Page 5.  There's a paragraph where you  
9   wrote about some statements that Mr. Rojas, my  
10  client, made to you; is that correct?

11          A.    Yes, sir.

12          Q.    And so I'm referring to these  
13  specific -- and I'm just going to quote from the  
14  report the part I'm interested in.

15                   It mentions that you detained the male  
16  suspect when you arrived on the scene.  It mentions  
17  that you found a cell phone in his jacket pocket and  
18  that he had a knife that he was holding, but it was  
19  closed.  And you mentioned that he told you that he,  
20  being the suspect, he stated to you that "I didn't  
21  rape her because she didn't let me take her pants  
22  off" while you were walking him to your patrol car  
23  and that while getting the suspect's information the  
24  suspect told you he did not steal her cell phones.  
25  He just took them so she would not call the police.

1 Do you recall those statements?

2 A. Yes.

3 Q. My question is: At that point it seems  
4 like from the report you've already detained him; is  
5 that correct?

6 A. Yes, I did.

7 Q. So he would have been handcuffed and  
8 arrested when you were taking him to the car,  
9 correct?

10 A. Well, he would have been detained at  
11 that time, not arrested yet.

12 Q. All right. Was he in handcuffs?

13 A. Yes.

14 Q. Was he free to go?

15 A. No.

16 Q. If he had asked you, "Can I leave,"  
17 would you have unhandcuffed him and let him go?

18 A. No.

19 Q. All right. So he was not free to leave,  
20 correct?

21 A. Uh-huh.

22 Q. And I'm assuming he knew that, right?  
23 When you handcuffed him and you took him to your  
24 car, you didn't --

25 A. I don't -- I don't know what he was

1 believing.

2 Q. Okay.

3 A. He was detained at that time, though.

4 Q. Well, what do you think a reasonable  
5 person would believe -- what you would believe if  
6 you were handcuffed and being taken by an officer to  
7 a patrol car and being questioned by that officer?  
8 Would you think you were free to leave or not?

9 A. I'm not sure, sir.

10 Q. Well, you don't have an opinion on if  
11 you were handcuffed and being taken to a patrol car  
12 whether you were free to leave or not?

13 A. Yeah, probably not --

14 MS. FAIAZ: Objection, relevance.

15 THE COURT: Overruled.

16 Q. (By Mr. Ayers) Well, let me ask: What  
17 would be your belief in that situation?

18 A. That he was being detained and he was  
19 not allowed to leave.

20 Q. Okay. And, in fact, if you  
21 handcuffed -- you're a deputy, right?

22 A. Yes.

23 Q. How long have you been a deputy?

24 A. I've been a deputy for seven years.

25 Q. So you're familiar with the law?

1           A.    Yes.

2           Q.    If -- if you have a hand -- a suspect  
3 who's handcuffed that you're walking to the car and  
4 he turns and runs away from you, has he committed  
5 another crime?

6           A.    Yes.

7           Q.    And what is that crime?

8           A.    Evading detention.

9           Q.    Possibly even escape, right?

10          A.    Evading detention unless I called the  
11 district attorney's office to get charges.

12          Q.    Okay.  So in this case certainly  
13 Mr. Rojas at the time of this conversation with him,  
14 he was -- he was in custody, he was handcuffed?

15          A.    He was detained.

16          Q.    Well, I understand.

17          A.    Walked to my patrol car.

18          Q.    But he was in handcuffs?

19          A.    Yes.

20          Q.    And you had no intention of letting him  
21 leave, correct?

22          A.    No.

23          Q.    Okay.  And the questions he said while  
24 getting his information, so you were talking to him  
25 and asking him questions; is that correct?

1           A.    Identifying information, to get his  
2 name, birthday, stuff like that.

3           Q.    I understand.  But this was a  
4 conversation with him, right?

5           A.    To get his identifying information.

6           Q.    And I'm assuming in a conversation like  
7 that you would normally ask somebody, hey, what's  
8 going on, what happened, tell me what happened?

9           A.    No, sir, identifying information.

10          Q.    No --

11          A.    Regarding name, birthday, address.

12          Q.    So you never asked him any questions to  
13 tell you what had happened.  You never asked his  
14 side of what happened out there in your  
15 investigation?

16          A.    Not while he was detained, no, sir.

17          Q.    Okay.  What does that mean?  After he  
18 was detained you asked him?

19          A.    No.

20          Q.    So you're saying that all the  
21 conversation where he tells you these things, it was  
22 during the time that you were taking him to the car  
23 and talking to him?

24          A.    Could you repeat the question?

25          Q.    All these statements that you -- that

1 you're talking about where he tells you -- it says,  
2 "While walking the male to my patrol car while  
3 getting his information." So the two statements  
4 we're talking about were during the time you were  
5 taking him to the patrol car and talking to him  
6 asking him questions; isn't that correct?

7 A. The statements that he made to me was  
8 after he was detained, walking to my patrol car and  
9 getting his personal information regarding name,  
10 birthday, address, phone number.

11 Q. And then that's pretty much what it says  
12 in the report you wrote at the time, right?

13 A. Yes.

14 Q. And certainly your memory of what  
15 happened was clearer when you wrote the report than  
16 it would be today independent of that, right?

17 A. Yes.

18 MR. AYERS: I'll pass the witness,  
19 Judge.

20 THE COURT: Yes, ma'am.

21 MS. FAIAZ: Thank you.

22 **EXAMINATION**

23 **BY MS. FAIAZ:**

24 Q. Okay. When you were getting the  
25 Defendant's personal information, what type of --

1 what type of information was that?

2 A. When I was getting his personal  
3 information?

4 Q. Uh-huh.

5 A. Name, birth date, address, phone number,  
6 stuff like just only that.

7 Q. And is that something that you typically  
8 get from people that you have detained?

9 A. Yes.

10 Q. Okay. Did you ask the Defendant  
11 specifically about the cell phone?

12 A. No.

13 Q. Did you ask him any questions related to  
14 the cell phone at all?

15 A. No.

16 Q. Did the Defendant volunteer anything to  
17 you?

18 A. Yes, ma'am. He -- when I was taking him  
19 to my patrol car, he told me that he did not rape  
20 her, that she wouldn't let him take his pants off --  
21 her pants off.

22 Q. Okay. So walk me through this. Where  
23 are you and the Defendant when you're getting the  
24 personal information?

25 A. When I'm getting the personal



1 information, I was outside of my patrol car with  
2 him.

3 Q. Okay.

4 A. My patrol car is parked on the street,  
5 and that's going to be outside the property on the  
6 street. I was walking to my patrol car; and when we  
7 were outside of my patrol car, I was getting his  
8 information before we sat down in the backseat.

9 Q. Okay. So in the process of the two of  
10 you walking from the bathroom to the patrol car, at  
11 that point in time are you asking him questions?

12 A. No, ma'am.

13 Q. At what point do you begin asking the  
14 questions?

15 A. When we were outside my patrol car,  
16 directly, like, 2 feet away from my backseat, I  
17 asked him for his personal information.

18 Q. Okay. At that point are the two of you  
19 standing in the patrol car --

20 A. Outside the patrol car.

21 Q. I'm sorry. Outside the patrol car.

22 En route from the bathroom as the two of  
23 you are walking to the patrol car before you arrive  
24 at the patrol car, you mentioned you did not ask him  
25 any questions; is that correct?

1           A.    Yes, ma'am.

2           Q.    During that walk, does he say anything?

3           A.    Yes, ma'am.  He just speaks without  
4 being spoken to, and he says that "I didn't rape her  
5 because she didn't let me take her pants off."

6           Q.    Does he make any other statements?

7           A.    He might have.  I didn't -- maybe he's  
8 telling me stuff that happened.  I don't remember.

9           Q.    But that one particular statement  
10 remains in your head?

11          A.    Yes, ma'am.

12          Q.    And is that why you wrote it in your  
13 police report?

14          A.    Yes, ma'am.

15          Q.    Okay.  Now, the statement about the cell  
16 phone, in particular when you quote the Defendant as  
17 "I just took them so she would not call the  
18 police" --

19          A.    Yes.

20          Q.    -- when did that particular statement  
21 come out?

22          A.    When I was getting his information.

23          Q.    Was that statement in and of itself in  
24 response to any questioning that you did about the  
25 cell phones?

1           A.    No, ma'am.

2           Q.    Or about anything that he had done  
3   inside the bathroom?

4           A.    Well -- could you repeat the question?

5           Q.    Was that statement that he made about  
6   taking the cell phones in response to any question  
7   that you had asked the Defendant about what had  
8   happened in the bathroom?

9           A.    No, ma'am.

10          Q.    Did he volunteer that information on his  
11   own accord?

12          A.    Yes.

13                    MS. FAIAZ:   Pass the witness,  
14   Judge.

15                    THE COURT:   Mr. Ayers?

16                    MR. AYERS:   I have no further  
17   questions of the deputy on this issue at this time,  
18   Judge.

19                    THE COURT:   Okay.   Based on the  
20   Motion to Suppress that you filed, Mr. Ayers, and we  
21   just having had basically a *Jackson-Denno* hearing, I  
22   find the deputy's -- I find the deputy's  
23   statements -- the deputy to be credible and at this  
24   time will allow the statements as to the -- the  
25   statements the Defendant made that were not from

1 questioning but made just on his own behalf or made  
2 on his own without questioning from the deputy but  
3 excluding those statements we discussed in the  
4 Motion in Limine as they go -- as they refer to the  
5 Social Security card.

6 All right. Let's go ahead and  
7 bring the jury in.

8 MR. AYERS: Thank you, Judge.

9 (*Jury seated.*)

10 THE COURT: All right. Y'all may  
11 be seated.

12 State, call your next witness,  
13 please.

14 MS. FAIAZ: State calls Deputy  
15 Perez.

16 THE COURT: All right. You may  
17 proceed.

18 MS. FAIAZ: Thank you.

19 **ROLAND PEREZ,**  
20 having been first duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 **BY MS. FAIAZ:**

23 Q. Deputy, would you please tell the jury  
24 your full name?

25 A. Roland Perez.

1 Q. What agency do you work for?

2 A. I work for the Harris County Sheriff's  
3 Office.

4 Q. How long have you been with the Harris  
5 County Sheriff's Office?

6 A. Approximately nine years.

7 Q. What division are you assigned to right  
8 now?

9 A. I'm assigned to Patrol.

10 Q. And tell us about the training that you  
11 received in order to become a patrol officer.

12 A. We receive numerous amounts of training,  
13 mandatory, every year. We have to go through a  
14 six-month long academy period. After that it's  
15 approximately -- it varies between four or five  
16 months of on-the-job experience. And after that  
17 we're required to do mandatory training. So every  
18 year, hourly training.

19 Q. And is it continued training?

20 A. Every year.

21 Q. Are you a certified peace officer?

22 A. Yes, ma'am.

23 Q. And are you up to date on all of your  
24 training?

25 A. Yes, ma'am.

1           Q.    Tell us a little bit about the duties of  
2 a patrol officer.

3           A.    The duties of a patrol officer are to  
4 enforce state law.

5           Q.    What types of things do you do on a  
6 regular shift?

7           A.    I am a district deputy and I am required  
8 to answer calls for service.  Calls for service are  
9 generated by a dispatcher who receives either 9-1-1,  
10 hang-up or burglary or some kind of family violence  
11 that could turn into a -- turned into a call and the  
12 call is created and I get dispatched to the call.

13          Q.    So to break it down, essentially  
14 somebody calls 9-1-1 to report an emergency, that  
15 goes to dispatch.  Is that what you're saying?

16          A.    Yes.

17          Q.    And then dispatch generates that into  
18 some sort of a call slip?

19          A.    A call slip.

20          Q.    And then you get sent out to that  
21 emergency?

22          A.    Yes.

23          Q.    All right.  In addition to responding to  
24 these calls for service, do you do you traffic  
25 violations as well?

1 A. Yes, ma'am, I do traffic calls.

2 Q. Okay. And whatever else happens as  
3 you're roaming?

4 A. Yes.

5 Q. Are you assigned to a particular area of  
6 town?

7 A. Yes.

8 Q. I'm referencing State's Exhibit No. 14  
9 that's pulled up on our computer there.

10 A. Yes.

11 Q. All right. Can you show us on this map  
12 what area of town you are responsible for  
13 patrolling?

14 A. Well, I'm assigned to District 3.  
15 That's a large area, but mainly I work a certain  
16 area just called a sub beat. And namely I work --  
17 oops, can I erase that? Sorry.

18 Q. Touch the bottom left corner of your  
19 screen right there.

20 A. Okay. That's normally -- that's the  
21 area I normally work, I'm assigned to.

22 Q. And is that entire area that you're  
23 assigned to and that you work in Harris County,  
24 Texas?

25 A. Yes, ma'am.

1 Q. All right. Let me take you back to July  
2 the 15th, 2012. Were you working that day?

3 A. Yes, ma'am.

4 Q. Okay. When you're working are you in  
5 uniform?

6 A. Yes.

7 Q. Are you -- do you have a patrol car?

8 A. Yes.

9 Q. Do you ride solo or are you with a  
10 partner?

11 A. Solo, by myself.

12 Q. Now, on that particular day, were you  
13 dispatched to a call at the White Elephant Flea  
14 Market?

15 A. Yes, ma'am.

16 Q. Is that a location that you're familiar  
17 with?

18 A. Yes.

19 Q. And is that a location that's in Harris  
20 County, Texas?

21 A. Yes.

22 Q. What was the nature of the call?

23 A. It came out from dispatch as an  
24 in-progress.

25 Q. Can you tell us what that means?



1           A.    In-progress -- normally a call has a  
2 particular name for it, like, a burglary or a  
3 hang-up. This came out as an in-progress. They're  
4 not sure what's going on, but they do know it's an  
5 emergency and it's happening right there that  
6 instant.

7           Q.    Did you get any information going into  
8 the call to sort of give you a heads-up as to what  
9 you're walking into?

10          A.    Yes, ma'am.

11          Q.    Okay. And where did that information  
12 come from?

13          A.    It came from -- well, it comes from --  
14 the information we received comes from our  
15 dispatcher that a citizen has called in from their  
16 phone.

17          Q.    Okay. So the information comes from the  
18 9-1-1 caller to dispatcher, dispatcher tells you?

19          A.    Yes.

20          Q.    What was your understanding of what you  
21 were about to walk into?

22          A.    That a female needed -- an emergency  
23 inside the bathroom that was -- it was two males  
24 inside there along with the female and the -- the  
25 male believed that the female might be getting raped

1 inside the bathroom.

2 Q. Okay. And of your understanding of the  
3 two males inside the bathroom, is it your  
4 understanding that there was two suspects or one  
5 suspect?

6 A. There was one suspect.

7 Q. Okay. Did you have an understanding of  
8 who the other male was?

9 A. Yes.

10 Q. Okay. And what was your understanding  
11 before you arrived?

12 A. That there was a male inside the doorway  
13 and he was talking to the suspect, trying to calm  
14 him down.

15 Q. When you arrived at the flea market,  
16 where did you go?

17 A. Half of the flea market was burned down  
18 prior to that day. I didn't know where in  
19 particular -- where the restroom was, but I do  
20 know -- know which area to walk to and when I got  
21 there, there was a large crowd pointing to the  
22 bathroom.

23 Q. Okay. Just so we can put it into  
24 perspective, if we're looking at -- if you wouldn't  
25 mind clearing your screen for us. If we're looking

1 at State's Exhibit 15, can you tell where this is  
2 looking at that?

3 A. Yes.

4 Q. Okay. And do you see where the White  
5 Elephant Flea Market would be on this map?

6 A. Yes.

7 Q. Okay. I'm going to zoom it in for you.  
8 Can you tell us, is that the bottom left corner then  
9 that we're looking at?

10 A. Yes.

11 Q. All right. You mentioned that -- can  
12 you show on this map the -- I guess the greater  
13 facility of the flea market?

14 A. Yeah. The dot has -- shows the actual  
15 address of it, but the flea market is kind of large  
16 and it goes (indicating) like that.

17 Q. All right. And you mentioned a portion  
18 had burned down?

19 A. Yes, ma'am.

20 Q. Can you show what portion that might be?

21 A. From the line on to the left is burned  
22 down (indicating).

23 Q. Okay. So you said when you arrived you  
24 didn't really know where to go, but you asked where  
25 the bathroom was?

1           A.    No, ma'am.  When I arrived I knew that  
2 this side was burned down over here, so I  
3 immediately went to the part that was open for  
4 business and I walked into the flea market.  I saw a  
5 large group of people, maybe approximately, like, 15  
6 or 20 people, and they were all pointing towards a  
7 small room that looked like the bathroom.

8           Q.    Okay.  If you wouldn't mind clearing the  
9 screen for us.  Thank you.

10                    I'm going to show you State's Exhibit  
11 No. 9.  Do you recognize State's Exhibit 9?

12           A.    Yes.

13           Q.    Okay.  Can you tell us what we're  
14 looking at?

15           A.    That is the -- a men's restroom, a  
16 female's restroom and a concession stand on the  
17 northeast side of the flea market.

18           Q.    Is this where you arrived, the restrooms  
19 that you arrived to?

20           A.    Yes, ma'am.

21           Q.    Okay.  And can you -- you mentioned  
22 there was a crowd gathering.  This is the area that  
23 the crowd was gathering in?

24           A.    From the photo you can't really see  
25 them, but it shows -- the photo, it shows the

1 picture of the restroom, the women's restroom.

2 Q. The area the crowd was gathering in, can  
3 we see that in this picture or no?

4 A. You see a general area where they were  
5 standing at, yes, ma'am.

6 Q. Okay. And so just to show a different  
7 angle, this is State's Exhibit 3. Is that  
8 essentially a different angle of what we're talking  
9 about?

10 A. Yes.

11 Q. And can we see the concession stand  
12 you're referencing in this picture?

13 A. Yes.

14 Q. As well as the women's bathroom?

15 A. Yes.

16 Q. When you arrived, what did you do when  
17 you get to the bathroom?

18 A. I arrived on the left side of the  
19 bathroom; and, like I said, the crowd of people were  
20 pointing towards the bathroom. The bathroom door  
21 was open and there was a -- there was a male that we  
22 believe was the person trying to talk him down and  
23 he was standing just inside the doorway.

24 Q. Okay. When you approached did you  
25 approach with your weapon drawn or was your weapon

1 still in your holster?

2 A. As we walked into the flea market, the  
3 weapons were in the holster until we learned the  
4 specific point of where they were and then we drew  
5 them.

6 Q. And when you say we, who are you  
7 referring to?

8 A. Oh, I'm sorry. On a Priority One, which  
9 is the in-progress, we do not go alone because we  
10 don't know the dangers, who might be involved or  
11 what kind of behavior they're in. So we don't go  
12 alone. And me and several other deputies went to  
13 that location.

14 Q. Okay. Who was the first deputy on the  
15 scene?

16 A. I was.

17 Q. Given that you were the first deputy on  
18 the scene, does that have any significance as to how  
19 the scene is then handled?

20 A. Yes.

21 Q. And what is that significance?

22 A. Since I'm the primary deputy on the  
23 scene, I'm in control of the scene and I do the  
24 report and I give all the commands.

25 Q. So then does the investigation then

1       become your responsibility?

2               A.    Yes, ma'am.

3               Q.    All right.  So as you approach the  
4       bathroom, you said at this point gun drawn?

5               A.    Yes.

6               Q.    What do you do?

7               A.    We -- the door was open at that time,  
8       and there was a male standing inside the bathroom  
9       that we believed was the witness.  Our guns were  
10       drawn.  I ordered the male to come outside.  The  
11       male comes outside.  Behind him was a female.  The  
12       female is in the clear.  She looks like she's  
13       afraid.  She comes out, and then the suspect was the  
14       last one inside the restroom.

15              Q.    Okay.  So the witness, the male witness,  
16       did you identify him later as Ricardo Zuniga?

17              A.    Yes.

18              Q.    Ricardo Zuniga leaves the bathroom,  
19       correct?

20              A.    Yes.

21              Q.    Is that at your command?

22              A.    Yes.

23              Q.    After Ricardo Zuniga, does the female  
24       leave the bathroom?

25              A.    Yes.

1           Q.    And did you identify her to be Venancia  
2 Guerrero?

3           A.    Yes.

4           Q.    Once Venancia and Ricardo leave the  
5 bathroom, do you enter the bathroom or do you remain  
6 outside?

7           A.    No, we don't go inside the bathroom. I  
8 don't know how -- I don't know how big the bathroom  
9 was. I've never been inside the women's bathroom.  
10 I don't know the layout of it. So I ordered the  
11 male to come outside.

12          Q.    Did the male respond to your orders?

13          A.    Yes.

14          Q.    Okay. What did he do in response to  
15 your orders?

16          A.    The door was still open. I observed the  
17 male to reach out with his right hand and it was  
18 closed and he reached out with his hand pointed, the  
19 palm facing down, and he dropped an object. And  
20 I -- when I saw him drop the object, it was  
21 clearly -- it was a folding -- it was a closed  
22 folding knife inside his hand.

23          Q.    Okay. When you're talking about the  
24 door, that he comes towards the door and pushes his  
25 hand out the door --



1           A.    Yes.

2           Q.    -- are we talking about this green door  
3 here (indicating)?

4           A.    It was -- this door right here, it was  
5 open (indicating) to the inside.

6           Q.    Can you see his -- can you see this  
7 person's body as they're -- as he's reaching around  
8 the door to drop that object?

9           A.    Yes.    Yes.

10          Q.    And what did you do with the object that  
11 was dropped?

12          A.    When he dropped it, I picked it up.

13          Q.    Okay.    What was that object?

14          A.    It was a -- like, an orange in color  
15 folding knife.

16                    MS. FAIAZ:   May I approach the  
17 witness, Judge?

18                    THE COURT:   You may.

19          Q.    (By Ms. Faiaz)   I'm going to show you  
20 what's been marked as State's Exhibit 16 and its  
21 contents.   Do you recognize that?

22          A.    Yes.

23          Q.    And what is it?

24          A.    It's the folding knife that I picked up  
25 from the -- after the suspect dropped it.

1 Q. How do you know that's the same knife?

2 A. I recognize it.

3 Q. Okay. And did you actually tag this  
4 piece of evidence?

5 A. Yes, I did.

6 Q. Okay. And what does that mean to tag  
7 it?

8 A. It means I picked it up from the scene,  
9 I held it in my possession and I submitted it into  
10 evidence.

11 Q. And does it have any sort of identifying  
12 mark on here indicating that you were the one who  
13 tagged this knife from that scene?

14 A. Yeah, I put the -- I put evidence tape  
15 around it and I put the date on it when I submitted  
16 it.

17 Q. Okay. And does it have your initials --  
18 your name on it?

19 A. Yes, ma'am.

20 Q. All right. As well as the case number?

21 A. Yes.

22 Q. All right.

23 MS. FAIAZ: Judge, State offers  
24 State's Exhibit 16 and its contents, the knife.  
25 Offer to Defense for any objections.

1                                    (*State's Exhibit No. 16, Knife,*  
2 *offered.*)

3                                    MR. AYERS: Thank you, Judge.  
4                                    No objection, Judge, to State's  
5 No. 16.

6                                    THE COURT: State's No. 16, the  
7 clear tube and its contents, are admitted.

8                                    MS. FAIAZ: Okay.

9                                    (*State's Exhibit No. 16 admitted.*)

10                                  Q. (By Ms. Faiaz) When the Defendant -- I  
11 guess when he dropped the knife, did -- was the  
12 knife fully open, fully closed, or halfway?

13                                  A. It was fully closed.

14                                  Q. Okay. Did you see him close it?

15                                  A. No, ma'am.

16                                  Q. Okay. After he dropped the knife, what  
17 did he do?

18                                  A. After he dropped the knife, I ordered  
19 him to come outside. He came past the doorway, and  
20 I detained him.

21                                  Q. Did --

22                                  A. I'm sorry. I detained him. I placed  
23 him in handcuffs.

24                                  Q. Okay. The -- was there anybody else in  
25 that bathroom besides the Defendant at that point?

1           A.    No, ma'am.

2           Q.    Okay.  Was the arm and the body that you  
3 saw dropping that knife onto the ground the arm and  
4 the body of the same person that you then detained  
5 as he walked out of the restroom?

6           A.    Yes, ma'am.

7           Q.    And do you see that person sitting in  
8 the bathroom -- in the courtroom today?

9           A.    Yes, I do.

10          Q.    Can you point to him and identify him by  
11 an article of clothing?

12          A.    Yes.

13          Q.    Will you do so?

14          A.    It is that gentleman over there wearing  
15 the blue long-sleeved shirt (indicating).

16                    MS. FAIAZ:  Judge, may the record  
17 reflect that the officer has identified the  
18 Defendant?

19                    THE COURT:  It will so reflect.

20          Q.    (By Ms. Faiaz)  And do you know the  
21 Defendant's name to be Deigo Rojas?

22          A.    Yes.

23          Q.    After you detained the Defendant, what  
24 were your next steps in this investigation?

25          A.    After I detained the suspect, I get all

1 the evidence, I get all the information regarding  
2 the witness information, name, birthdays, addresses  
3 of the witnesses and the complainant's.

4 Q. Okay. And in this case who did you  
5 identify to be the complainant?

6 A. Venancia Guerrero.

7 Q. Venancia Guerrero?

8 A. Yes.

9 Q. And did you speak with her?

10 A. Yes. Well, I didn't speak to her  
11 because she -- due to a language barrier. She spoke  
12 to me through a translator that was over there.

13 Q. So the language barrier, what language  
14 barrier was that?

15 A. I don't speak Spanish, and she only  
16 spoke Spanish.

17 Q. And a translator that was there, is that  
18 another officer or is that just another person who  
19 happened to be in the flea market?

20 A. It was another person that happened to  
21 be at the flea market.

22 Q. Okay. And so did you then learn the  
23 story, I guess, secondhand through translations --

24 A. Yes, ma'am --

25 Q. -- from Venancia?

1           A.    Yes, ma'am, she was speaking to me and  
2 then the translator was informing me of what she  
3 said exactly.

4           Q.    Okay. Did you speak to the witness,  
5 Ricardo Zuniga?

6           A.    Yes.

7           Q.    And what language did you speak with  
8 him?

9           A.    In English.

10          Q.    Any language difficulties there?

11          A.    No.

12          Q.    Did you have any trouble communicating  
13 with the Defendant in this case?

14          A.    No.

15          Q.    What language did the Defendant  
16 communicate to you in?

17          A.    In English.

18          Q.    Did you recover -- aside from State's  
19 Exhibit 16, the knife, did you recover any other  
20 evidence at the scene?

21          A.    Yes.

22          Q.    What else did you recover?

23          A.    A cell phone.

24          Q.    Okay. How many cell phones?

25          A.    Just one.

1 Q. Okay. Where did you find that cell  
2 phone?

3 A. Inside the Defendant's pocket.

4 Q. Did you -- when you found the cell phone  
5 inside the complainant's -- when you found the cell  
6 phone inside of the Defendant's pocket, at that  
7 point did you know who the cell phone belonged to?

8 A. Yes.

9 Q. Okay. And who did it belong to?

10 A. To the complainant.

11 Q. And how did you know that it belonged to  
12 her?

13 A. She told me that he had her cell phone.

14 Q. Now, do you know whether there was one  
15 cell phone or multiple cell phones that were  
16 involved in this case?

17 A. The suspect only had one cell phone in  
18 his pocket, but there were three cell phones  
19 involved total.

20 Q. Okay. And did you recover all three of  
21 those cell phones?

22 A. Yes, ma'am.

23 MS. FAIAZ: Judge, may I approach?

24 THE COURT: Yes, ma'am.

25 Q. (By Ms. Faiaz) I'm going to show you

1 State's Exhibits 11, 12 and 13. Do you recognize  
2 these?

3 A. Yes.

4 Q. What are these?

5 A. The knife the suspect had showed me as  
6 evidence, the three cell phones with the knife and  
7 the three cell phones on this one -- yeah, the three  
8 cell phones.

9 Q. Okay. And are these fair and accurate  
10 pictures of the cell phones and the knife on that  
11 day?

12 A. Yes.

13 MS. FAIAZ: Judge, State offers  
14 State's 12 -- 11, 12, 13, tenders to Defense for any  
15 objections.

16 *(State's Exhibits No. 11, 12 and*  
17 *13, Photographs, offered.)*

18 MR. AYERS: If I may, Judge?

19 I have no objection, Judge, to  
20 those exhibits.

21 THE COURT: No objection, 11, 12  
22 and 13 are admitted and you may publish.

23 *(State's Exhibits No. 11, 12 and 13*  
24 *admitted.)*

25 Q. (By Ms. Faiaz) Now, sir, you said that



1 three cell phones were involved that were recovered?

2 A. Yes.

3 Q. Do you know who the owner of all three  
4 of those cell phones is?

5 A. Yes, ma'am.

6 Q. And who was that?

7 A. The complainant.

8 Q. And was it your understanding that --  
9 well, what was your understanding as to whether  
10 those cell phones were taken from her?

11 A. That she --

12 MR. AYERS: I have to object. That  
13 would be hearsay at this point.

14 THE COURT: Sustained.

15 Q. (By Ms. Faiaz) Will you clear the  
16 screen for me?

17 A. (Witness complied.)

18 Q. Did the complainant identify all three  
19 of those cell phones as hers?

20 A. Yes.

21 Q. Okay. And when she identified them,  
22 were any of those cell phones still in her  
23 possession?

24 A. No.

25 Q. Had they all been taken from her?

1           A.    Yes.

2           Q.    State's Exhibit 13, are these the three  
3 cell phones that belonged to the complainant?

4           A.    Yes, ma'am.

5           Q.    Okay.  And State's 12, is that -- what  
6 are we looking at?

7           A.    This cell phone here was the one that  
8 was inside the suspect's pocket.  The other two cell  
9 phones were not on her possession, and the knife was  
10 the knife the suspect dropped from his hand.

11          Q.    Okay.  And so just for the record, the  
12 white phone with the red rim was the one that you  
13 recovered in the Defendant's pockets?

14          A.    Yes, ma'am.

15          Q.    And State's 11, what's that?

16          A.    That's the suspect's knife that he  
17 dropped from his hand.

18          Q.    Okay.

19                    MS. FAIAZ:  Judge, may I approach  
20 the witness?

21                    THE COURT:  Yes.

22          Q.    (By Ms. Faiaz)  Can you clear that  
23 screen for us?

24                    And, Deputy, will you show the jury how  
25 that knife opens?

1           A.    It opens with a -- it's just a regular  
2 folding knife.  It opens straight out.

3           Q.    And can you demonstrate for the jury,  
4 just holding that knife in your hands with your palm  
5 around it?

6           A.    Demonstrate what, ma'am?

7           Q.    Just holding it in your hand with your  
8 palm around it.

9           A.    (Witness complied.)

10          Q.    All right.  You can close it.

11          A.    (Witness complied.)

12          Q.    Thank you.

13                    When you detained the Defendant at the  
14 bathrooms, did he remain there or did you guys go  
15 somewhere else?

16          A.    Yes, ma'am.  Our patrol vehicles -- my  
17 patrol vehicle was parked on the street.  After I  
18 detained him, I walked him to my patrol car.

19          Q.    As you were walking the Defendant to  
20 your patrol car, were you asking him any questions?

21          A.    No, ma'am.

22          Q.    Did he volunteer any statements?

23          A.    Yes.

24          Q.    What did he volunteer to you?

25                    MR. AYERS:  Your Honor, I'm going

1 to have to object. That's hearsay.

2 THE COURT: Overruled.

3 Q. (By Ms. Faiaz) You can answer that.  
4 What did he volunteer to you?

5 A. As I walked him to my patrol car, he  
6 said, "I didn't rape her because she wouldn't let me  
7 take her pants off."

8 Q. Okay. When you get to your patrol car,  
9 does he make any additional statements to you?

10 A. Yes.

11 Q. Okay. And the statements that he made  
12 to you, were these in response to any questioning  
13 that you did or did he just volunteer them?

14 A. I asked for his personal identification  
15 information.

16 Q. Did he make a response that was not, I  
17 guess, in response to questions about personal  
18 identifiers?

19 A. Yes.

20 Q. What was that statement that he made?

21 MR. AYERS: Your Honor, again, I'm  
22 going to have to object. That's hearsay.

23 THE COURT: Overruled.

24 A. He stated, "I didn't steal her cell  
25 phones. I held them for she wouldn't call the

1 police."

2 Q. (By Ms. Faiaz) Deputy, in your training  
3 and experience, is a knife a deadly weapon?

4 A. Yes, ma'am.

5 MS. FAIAZ: Pass the witness.

6 THE COURT: Mr. Ayers.

7 MR. AYERS: If I may, Judge?

8 THE COURT: Yes, sir.

9 **CROSS-EXAMINATION**

10 **BY MR. AYERS:**

11 Q. Deputy Perez; is that correct?

12 A. Yes, sir.

13 Q. All right. Let's talk about -- you said  
14 you got a call to go to this in-progress, what was  
15 reported to possibly be a sexual assault; is that  
16 correct?

17 A. It came out as an in-progress, so they  
18 were unaware of what was going on at that time.

19 Q. All right. Well, on -- at some point  
20 when the prosecutor was asking you questions, I  
21 believe you said it was something to do with a rape,  
22 a woman being raped, correct?

23 A. Yes, ma'am -- yes, sir.

24 Q. So -- and you also mentioned that when  
25 you got there, you came up to the scene, you didn't

1 have your guns drawn but once you got to the scene  
2 you drew your guns; is that correct?

3 A. When we got to the scene, we didn't draw  
4 our guns until we learned the specific area where  
5 the suspect was.

6 Q. Well, was that when you learned there  
7 was allegedly some -- a knife involved?

8 A. Yes.

9 Q. How did you know about this knife?

10 A. It was on the call slip that we were  
11 dispatched to.

12 Q. All right. So there was some allegation  
13 of a knife and when you came, you know, that's why  
14 you drew your weapons because you thought there  
15 might be a weapon involved; is that correct?

16 A. Yes.

17 Q. Okay. Now, you didn't actually see any  
18 interaction between Mr. Rojas and either the  
19 witness, Mr. Zuniga, or the complainant,  
20 Ms. Guerrero, correct?

21 A. No.

22 Q. When you got there, though, they were  
23 still all three in the bathroom?

24 A. Yes.

25 Q. Okay. Could you characterize -- was

1 there a big crowd around the bathroom?

2 A. There was a big crowd in the corner  
3 approximately about 30 feet away.

4 Q. Okay. And when you came in there,  
5 you're saying all three of them were still inside,  
6 but you can see Mr. Zuniga kind of in the door; is  
7 that correct?

8 A. Yes.

9 Q. And you ordered him out; is that  
10 correct?

11 A. Yes.

12 Q. Could you characterize his demeanor when  
13 he came out? Was he excited? Was he calm? Was he  
14 yelling? Screaming? Was he -- you know, what was  
15 his demeanor?

16 A. He appeared to be afraid as well.

17 Q. All right. So your perception of him  
18 was he was in fear of something?

19 A. Yes.

20 Q. Okay. Could it have been that you were  
21 ordering him out of the bathroom at gunpoint? Could  
22 that have been the source of his concern?

23 A. It could be.

24 Q. Okay. But certainly when he came out,  
25 then you went in and you heard -- you didn't

1 actually ever go in, correct?

2 A. No, sir.

3 Q. So you stood back?

4 A. Uh-huh.

5 Q. Now, when he came out did you just  
6 assume he was okay or did you check him out at all?

7 A. Who is that, sir?

8 Q. Mr. Zuniga, the first one out.

9 A. No. Once he came outside, I was --  
10 there's still the suspect and the complainant was  
11 still inside the bathroom.

12 Q. I guess my question is you get guy No. 1  
13 comes out the door, you still don't know exactly  
14 what's going on. You still don't know who has what,  
15 right?

16 A. From the clothing description that our  
17 dispatch gave us, he was our witness that was  
18 attempting to calm the suspect down.

19 Q. All right. But, again, at the scene you  
20 don't really know that. Are you just saying you  
21 just assumed this was the guy that was --

22 A. No, at the scene we did know that  
23 because that's -- the call slip came out and that's  
24 what the clothing description of the suspect was and  
25 the -- I'm sorry -- the clothing description of the



1 witness provided was wearing. We knew that he was  
2 the person trying to calm him down.

3 Q. Right. So you take him out and you  
4 don't really check him out or anything. You just  
5 tell him to leave, correct?

6 A. We get him outside, and we're still  
7 concentrating inside the bathroom.

8 Q. Right. And then you can see into the  
9 bathroom, or are you still not really looking in the  
10 door?

11 A. No, we can see inside the bathroom.

12 Q. All right. And so you can see  
13 Ms. Guerrero inside?

14 A. Yes.

15 Q. And she was kind of in the far back,  
16 right?

17 A. Yes.

18 Q. And so you tell her to come out?

19 A. Yes.

20 Q. And, again, could you characterize -- I  
21 think you said her demeanor was she was looking  
22 scared as well?

23 A. Yes.

24 Q. But, again, we have -- I think you said  
25 several -- I guess there were several deputies there

1 by now?

2 A. Yes.

3 Q. All had their guns out, right?

4 A. Yes.

5 Q. Okay. But when she came out and  
6 appeared to be frightened, correct?

7 A. Yes.

8 Q. At the point you saw her in the bathroom  
9 there was nobody standing near her that you saw  
10 holding a knife on her or anything like that, right?

11 A. No.

12 Q. Okay. So she came out, right?

13 A. Yes.

14 Q. Nobody tried to prevent her from coming  
15 out?

16 A. No.

17 Q. No drama, no hostage, knife to the  
18 throat or anything like that?

19 A. No.

20 Q. Okay. And when she came out, once she  
21 came out, did you notice anything unusual about her  
22 clothing? Was her clothing in obvious disarray or  
23 disheveled or anything?

24 A. No, sir.

25 Q. Okay. And did she have any property,

1 anything on her like a purse or anything?

2 A. No.

3 Q. Okay. So she comes out and you get her  
4 out of the way; is that correct?

5 A. Yes.

6 Q. Okay. So at this point you still  
7 haven't physically seen the other person in there?

8 A. I can see pieces of him through the  
9 door, yeah.

10 Q. All right. So it's obvious there's  
11 somebody in there, but you --

12 A. Somebody else, yes, sir.

13 Q. -- can't have a good look at them,  
14 right?

15 A. Yes.

16 Q. Okay. And then you tell them -- I guess  
17 you say, hey, drop -- throw the knife out or throw  
18 the weapon out, or what do you say?

19 A. I tell him to put his hands up in the  
20 air and come outside.

21 Q. Okay. So at what point do you have this  
22 discussion about him dropping the knife or whatever?  
23 How does that come about?

24 A. He does it on his own. He just reaches  
25 out and his hands face -- hands up -- sorry -- palm

1 facing down and just drops the knife and I pick it  
2 up.

3 Q. And the picture behind you, State's  
4 Exhibit No. 11, that's sort of a side view. That's  
5 the knife, but you said when it was dropped on the  
6 ground out of his hand it was closed, correct?

7 A. Yes.

8 Q. And that's the only way you saw the  
9 knife out there was closed, right?

10 A. Yes.

11 Q. And I guess what I'm asking, though, you  
12 said you knew there was a knife, but you didn't ever  
13 tell him to drop the knife. He just -- when you  
14 told him to come out, he just threw the knife out?

15 A. No, sir, he dropped the knife that was  
16 inside his hand. It was closed.

17 Q. I guess my question is you were telling  
18 the jury that at the time you were there you knew  
19 the information was supposedly he had a knife,  
20 correct?

21 A. Yes.

22 Q. But you're also telling the jury that  
23 you never said to him throw the knife out or drop  
24 the knife out. You just told him to come out?

25 A. I told him to come out with his hands up

1 in the air, yes, sir.

2 Q. Okay. Were you not concerned about him  
3 dropping the knife or having the knife?

4 A. I didn't see a knife on him.

5 Q. Okay.

6 A. And what I think I said was that he did  
7 it on his own will and he dropped the knife.

8 Q. Okay. And is it possible that until you  
9 saw him drop the knife your didn't know he had a  
10 knife?

11 A. No, sir, I knew he had a knife because  
12 when I ordered the witness to come out the witness  
13 told me as he was leaving that he had a knife.

14 Q. All right. Was that the first you heard  
15 anything about a knife was when the witness said he  
16 has a knife?

17 A. Yes, sir.

18 Q. Okay. So the original call didn't  
19 involve a knife. It was once you were on the scene  
20 the witness said something about he has a knife; is  
21 that correct?

22 A. Yes.

23 Q. Okay. Now, how would you characterize  
24 Mr. Rojas' demeanor when he came out? Was he  
25 agitated? Excited? Aggressive? Calm?

1 A. Yeah, he seemed afraid as well.

2 Q. All right. So he seemed afraid?

3 A. Uh-huh.

4 Q. But obviously, again, you had a whole  
5 bunch of officers there with guns drawn, right?

6 A. Yes, sir.

7 Q. But he wasn't in any way aggressive or  
8 agitated with y'all?

9 A. Not with us, no, sir.

10 Q. Did he try to resist or evade or take  
11 off or anything?

12 A. No, sir.

13 MS. FAIAZ: Objection, relevance,  
14 Judge.

15 THE COURT: Overruled.

16 Q. (By Mr. Ayers) Would you characterize  
17 him as cooperative or uncooperative?

18 A. As cooperative.

19 Q. Cooperative. Did you notice anything  
20 unusual about his clothing or appearance? Were his  
21 clothes disheveled or in disarray or anything?

22 A. No.

23 Q. Did you -- once you handcuffed him I  
24 assume you searched him, correct?

25 A. Yes.

1           Q.   And is that when you found the cell  
2 phone in the pocket?

3           A.   Yes.

4           Q.   Did you find any other weapons or  
5 anything like that on -- in his possession?

6           A.   No, sir.

7           Q.   The other two cell phones you mentioned,  
8 where did you recover those from?

9           A.   They were given -- they were given to me  
10 that they were taken from the -- or dropped by the  
11 complainant.

12          Q.   All right.  So someone gave you those  
13 two phones, correct?

14          A.   Yes, sir.

15          Q.   You never saw where they were?

16          A.   No.

17          Q.   But you didn't recover those two phones  
18 from Mr. Rojas; is that correct?

19          A.   No, sir.

20          Q.   Okay.  And at some point all three of  
21 these phones, the victim said, "Those are all mine";  
22 is that correct?

23          A.   Yes, ma'am -- yes, sir.

24          Q.   And so you took pictures and gave them  
25 all back to her?

1           A.    Yes, sir.

2           Q.    All right.  And you never really -- I  
3 guess you just kind of take her word for it at that  
4 point, right?

5           A.    Yes.

6           Q.    Probably you checked the phones somehow  
7 to verify they were hers?

8           A.    No, sir, I didn't check them.

9           Q.    Okay.  Now, when you -- when  
10 Mr. Rojas -- I guess you said first his hand comes  
11 out to drop the knife.  Do you remember which hand  
12 this knife was in?

13          A.    It was his right hand.

14          Q.    Right hand.  As you indicated in your  
15 report, you wrote that down, right, the right hand?

16          A.    I'm not sure, sir.

17          Q.    Well, you did write a report about this  
18 incident, right?

19          A.    Yes.

20          Q.    And you refreshed your memory from that  
21 before you testified, right?

22          A.    Yes, sir.

23          Q.    Okay.  So if I said to you that your  
24 report says it was in his right hand, you would  
25 agree with that, right?



1           A.    Yes.

2           Q.    Okay.  And so I guess he was alone in  
3 the bathroom at the time you got there.  Apparently  
4 he made no effort to hide the knife or anything,  
5 right?

6           A.    No.

7           Q.    Or the phones, correct?

8           A.    No.

9           Q.    Certainly Mr. Rojas never threatened you  
10 in any way, did he?

11          A.    No, sir.

12          Q.    Never threatened you with a knife or  
13 anything, correct?

14          A.    No, sir.

15          Q.    Was not aggressive with you?

16          A.    No, sir.

17          Q.    And now you said -- I guess you don't  
18 speak Spanish, correct?

19          A.    No, sir.

20          Q.    So all your conversations with  
21 Ms. Guerrero at the scene -- and I guess you talked  
22 to her and kind of had her tell you what happened,  
23 right?

24          A.    I had a translator.  I was speaking to  
25 her and she was speaking to me through her

1 translator.

2 Q. All right. So the information that you  
3 would have put in your report about what she may  
4 have told you was based on talking to her through  
5 the translator, correct?

6 A. Yes.

7 Q. And did you talk to her -- I mean, did  
8 you ask her questions -- like, you were thorough in  
9 your -- getting her to tell you what happened?

10 A. Yes.

11 Q. And you didn't record anything -- like,  
12 you didn't audio or video record any of the witness  
13 statements or --

14 A. No.

15 Q. -- any of the statements Mr. Rojas may  
16 have made to you?

17 A. No, sir.

18 Q. All right. Did you have any kind of  
19 recording device with you, a little pocket recorder  
20 or anything?

21 A. No, sir. No, sir.

22 MR. AYERS: Okay. I'll pass the  
23 witness, Judge.

24 THE COURT: State.

25 MS. FAIAZ: Briefly, Judge.

**REDIRECT EXAMINATION**

**BY MS. FAIAZ:**

Q. Deputy Perez, from when you arrived at the women's bathroom, when you first got there, before you get anybody out, can you see inside of the bathroom?

A. Yes.

Q. Okay. Do you have a clear view inside the bathroom?

A. It was not a clear view of the entire bathroom, but I see portions of it.

Q. Okay. And could you see the witness, Mr. Zuniga?

A. Yes.

Q. Okay. And could you see Ms. Guerrero, Venancia Guerrero?

A. Yes.

Q. Could you see the Defendant?

A. I didn't see his entire body, but I could see him in there.

Q. Okay. Portions of him?

A. Yes, ma'am.

Q. Could you see the entire length of his arm?

A. Yes.

1           Q.    This is from -- and I'm talking from  
2 outside of the bathroom.

3           A.    Well, when -- as I first walked in  
4 there, I didn't see the entire body. I saw portions  
5 of him. And when he dropped the knife, I saw his  
6 entire arm.

7           Q.    And I guess what I'm getting at is  
8 State's Exhibit 4, this shows a view from outside  
9 the bathroom, right?

10          A.    Yes.

11          Q.    Okay. From the position that you had  
12 outside of the bathroom trying to get everybody out,  
13 can you see the knife the entire time?

14          A.    No.

15          Q.    Okay. Can you tell from where you're at  
16 outside whether the knife is open or closed?

17          A.    I didn't even know he had a knife until  
18 he dropped it.

19          Q.    Okay.

20          A.    I mean, I couldn't see a knife on him  
21 until he dropped it.

22          Q.    All right. Before he drops the knife,  
23 before the Defendant drops the knife outside, is  
24 there a period of time that he is alone in that  
25 bathroom by himself?

1           A.    Yes.

2                    MS. FAIAZ:  Pass the witness,  
3 Judge.

4                    THE COURT:  Mr. Ayers.

5                    MR. AYERS:  No further questions of  
6 the deputy at this time, Judge.

7                    THE COURT:  All right.  May he be  
8 excused?

9                    MR. AYERS:  Subject to possible  
10 recall, Judge.

11                   THE COURT:  Deputy, you're excused.  
12 Just make sure we have a phone number where we can  
13 reach you if we need to recall you.

14                   THE WITNESS:  Thank you, Judge.

15                   THE COURT:  All right.  We have one  
16 more witness.  Why don't we go ahead and take kind  
17 of our last break of the day.  Just a quick  
18 five-minute break or so.

19                   THE BAILIFF:  All rise for the  
20 jury.

21                            (*Jury retired.*)

22                            (*Brief recess.*)

23                   THE BAILIFF:  All rise for the  
24 jury.

25                            (*Jury seated.*)