

1 (Pause)

2 THE COURT: Have a seat, ma'am. Officer
3 Poon, you were previously sworn and placed under the
4 Rule, correct?

5 THE WITNESS: Correct.

6 THE COURT: You are still under the Rule,
7 and you are still under oath.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Silverman, you may
10 proceed.

11 OFFICER CAROL POON

12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SILVERMAN:

15 Q Good morning, Officer Poon. How are you?

16 A Good morning.

17 Q You are the same officer that was here
18 yesterday?

19 A Correct.

20 Q And yesterday, you had been up for quite a
21 long time?

22 A Still are today.

23 Q Have you gotten any sleep?

24 A I work night shift; so if I'm not worse than
25 yesterday, I can't imagine that.

1 Q All right. Now, are you familiar with what
2 offense Mr. Afhami is accused of? What criminal
3 offense?

4 A Terroristic threat.

5 MR. SILVERMAN: May I see the clerk's
6 file, Judge?

7 THE COURT: It's right here.

8 MR. SILVERMAN: Thank you.

9 Just ask the Court to take judicial
10 notice of the clerk's file in this case.

11 THE COURT: You want me to take judicial
12 notice of the clerk's file?

13 MR. SILVERMAN: Yes, take judicial notice
14 of the clerk's file and the contents of the file.

15 THE COURT: Well, let me see it so I can
16 take judicial notice of it.

17 MR. SILVERMAN: Yes, sir.

18 (Tendering)

19 THE COURT: All right.

20 MR. SILVERMAN: Thank you.

21 Q (By Mr. Silverman) You had told the jury
22 yesterday that you have received different training as
23 a police officer; is that correct?

24 A Correct.

25 Q And some of the training that you have

1 received is in the law; is that correct?

2 A Correct.

3 Q And can you tell the jury what this man
4 sitting here at counsel table is accused of? Can you
5 tell the jury what are the elements of that offense?

6 MR. ACKLIN: Objection, lack of personal
7 knowledge and relevance.

8 THE COURT: If she knows what the
9 specific elements are, she can testify to it. If she
10 doesn't, she's not required to.

11 If you know it, you can testify to it.
12 If you don't --

13 And before anything is exhibited to the
14 jury out of that file, let's have it marked and see
15 whether there's going to be any objections.

16 MR. SILVERMAN: Yes, sir. May I
17 approach, Your Honor?

18 THE COURT: Yes, sir.

19 Q (By Mr. Silverman) Officer, I'm going to show
20 you the Complaint in this case -- or the Information,
21 which says --

22 THE COURT: That's Defense Exhibit 4?

23 MR. SILVERMAN: This is Defense Exhibit
24 No. 2.

25 THE COURT: Thank you for identifying --

1 No. 2?

2 MR. SILVERMAN: No. 2.

3 THE COURT: Okay.

4 Q (By Mr. Silverman) And what this is, this is
5 the information that says what he's accused of. Could
6 you take a look at that.

7 A Okay.

8 Q And is it fair to say that Defendant's Exhibit
9 No. 2, which came out of the Court's file, is what
10 Mr. Afhami is accused of?

11 A I'm a police officer. I write reports when a
12 customer -- well, not a customer -- I always use the
13 word "customer" to be polite; but when a complainant
14 walk into the station, what I was doing that night --

15 THE COURT: Ma'am, don't go into a
16 narrative. The question is: Is it fair to say -- I
17 believe it was -- if this is what he's charged with.

18 If you know it, say, "Yes." If you don't
19 know it, say, "No," or "I don't know."

20 A I don't know.

21 Q Okay. If this came out of the clerk's file,
22 and I told you it is what he's accused of, you wouldn't
23 quarrel with that?

24 MR. ACKLIN: Objection, calls for
25 speculation. Counsel is testifying. It's such an

1 improper question --

2 MR. SILVERMAN: Judge, I object to the
3 sidebar.

4 THE COURT: Folks, don't talk over each
5 other. First of all, it's in the Court's file. So as
6 far as what she knows about it, you can ask what she
7 knows, if anything.

8 MR. SILVERMAN: Yes, sir.

9 THE COURT: We're not going to engage in
10 any argument with an officer, who is not the attorney
11 in the case, about what it means or does not mean.

12 Would you gentlemen come up here, please.

13 MR. SILVERMAN: Yes, sir.

14 (At the Bench, on the record)

15 THE COURT: Could you please clue me in
16 on why you are offering that?

17 MR. SILVERMAN: I was just going to
18 question her from the Information.

19 THE COURT: And how are you going to
20 question her from the Information?

21 MR. SILVERMAN: She's the witness that --
22 Judge, she --

23 THE COURT: She's not the affiant in this
24 case.

25 MR. SILVERMAN: If you don't want me to

1 publish it, I won't publish it. I'll just talk to her
2 about it.

3 THE COURT: It's not her document. She
4 didn't prepare it. She didn't swear to it.

5 MR. SILVERMAN: Yes, sir. Fair enough.

6 THE COURT: Thank you.

7 MR. SILVERMAN: Thank you, Judge.

8 THE COURT: You bet.

9 (In open court)

10 Q (By Mr. Silverman) You were the officer that
11 initially interviewed the witnesses in this case?

12 A Correct.

13 Q Was there an officer on the scene before you?

14 A I don't know that.

15 Q Was Mr. Afhami arrested at the scene?

16 A No.

17 Q You had two people that came into -- two
18 witnesses that came into the police station?

19 A Two complainants.

20 Q To talk to you?

21 A Yes.

22 Q And through your investigation -- and at this
23 point in time, is it fair to say that you are trying to
24 determine whether or not there was probable cause?

25 A When the desk duty officer is working at the

1 desk, when a complainant comes in --

2 Q Ma'am, if it can be answered with a "yes" or
3 "no": Are you trying to determine whether or not
4 there's probable cause?

5 MR. ACKLIN: Objection, leading.

6 MR. SILVERMAN: Adverse witness. Just
7 asking her.

8 THE COURT: Well, I don't know about
9 that, sir.

10 Ma'am, listen to the question very
11 carefully. I know I gave these instructions yesterday.
12 You may have forgotten. Answer them "yes" or "no." If
13 you don't understand the question, ask that he repeat
14 the question; so that whenever you do answer a question
15 "yes" or "no," you know what you are answering. You
16 know whether the "yes" is appropriate or whether the
17 "no" is appropriate; and if you don't know, it's okay
18 to say, "I don't know."

19 THE WITNESS: Okay.

20 THE COURT: You may proceed.

21 MR. SILVERMAN: Thank you, Your Honor.

22 Q (By Mr. Silverman) Officer Poon, you
23 understand that this jury's burden of proof is proof
24 beyond a reasonable doubt?

25 A Yes.

1 Q You understand that a police officer's burden
2 of proof to decide whether or not a person is arrested
3 is probable cause?

4 A Yes.

5 Q Would you agree with me that a police
6 officer's job is to gather the evidence and then
7 determine whether or not there's probable cause?

8 MR. ACKLIN: Objection, leading.

9 THE COURT: Well, that will be overruled.

10 A Can you please rephrase the question?

11 Q (By Mr. Silverman) Yes, ma'am.

12 Would you agree with me that a police
13 officer's job is to gather evidence?

14 A Yes.

15 Q Would you agree with me that it's a police
16 officer's job to look at that evidence and see if
17 there's probable cause?

18 A No.

19 Q So are you telling this jury that it's not
20 your job as a police officer to gather evidence to
21 determine whether or not there's probable cause?

22 MR. ACKLIN: Objection, compound,
23 argumentative, asked and answered.

24 THE COURT: Sustained, as to compound.
25 Break it down.

1 MR. SILVERMAN: Yes, sir.

2 Q (By Mr. Silverman) You told this jury a couple
3 of minutes ago that a police officer's burden of proof
4 to arrest somebody is probable cause, right?

5 A Correct.

6 Q You and I -- understanding that, would you
7 agree that it's your job to gather the evidence to
8 determine that?

9 A Partially right and not right.

10 Q Okay. So part of it's right and part of it's
11 not right; is that correct? You said part of it is
12 right and part of it is not right?

13 A Correct.

14 Q Well, in this case you understood what this
15 man is being accused of, right?

16 MR. ACKLIN: Objection, leading.
17 Objection to leading and assumes facts not in evidence.

18 THE COURT: It's repetitious. Move
19 along.

20 Q (By Mr. Silverman) What was the deadly weapon
21 in this case?

22 A Gun.

23 Q A gun. And when was that gun supposedly
24 being -- when was the person supposedly being
25 threatened with that gun?

1 A I don't understand your question, sir.

2 Q Okay. Do you remember the date of this
3 alleged offense?

4 A She came in at the station on March 30th,
5 2013.

6 Q Do you remember everything that's in your
7 police report?

8 A I try to, but not word for word.

9 Q Would it help refresh your recollection if I
10 showed you a copy of your police report?

11 A Yes.

12 Q Okay.

13 MR. SILVERMAN: May I approach the
14 witness?

15 THE COURT: Yes, sir. Show her only the
16 copy of the police report that she authored or relied
17 on.

18 MR. SILVERMAN: Yes, sir.

19 Q (By Mr. Silverman) And I think yesterday when
20 you and I were talking with -- for purposes of the
21 record, I'm showing you the first 2.5 pages of your
22 police report because that's the only section that you
23 wrote. If you could take a look at the first 2.5 pages
24 of your police report?

25 A Okay, sir.

1 Q Is your recollection refreshed?

2 A Yes.

3 Q Thank you, Officer.

4 So based on your investigation, was the
5 deadly weapon a gun?

6 A Yes.

7 Q And the deadly -- and the threat with the
8 deadly weapon, was it on March 30th of 2013?

9 A I'm sorry, say that again.

10 Q Was it on March 30th of 2013?

11 A Yes.

12 Q Okay. And the deadly weapon wasn't acid, was
13 it?

14 A Say that again.

15 Q Was the deadly weapon acid?

16 A What do you mean by --

17 Q Acid. Acid.

18 A I don't understand that word.

19 Q A-C-I-D, the chemical acid. Was it acid?

20 A I'm sorry, I don't understand it.

21 Q You told the jury that the deadly weapon in
22 the case was a gun, right?

23 A Correct.

24 Q Okay. Was it a knife? Was the deadly weapon
25 a knife? It's a "yes" or "no" question.

1 MR. ACKLIN: Objection, based on hearsay,
2 lack of personal knowledge, asked and answered.

3 THE COURT: You guys ask your questions.
4 That's going to be overruled.

5 MR. SILVERMAN: Judge, I can clean it up
6 with one question.

7 THE COURT: If you would, it would surely
8 be helpful.

9 MR. SILVERMAN: Yes, sir. No problem.

10 Q (By Mr. Silverman) Was the deadly weapon
11 anything other than a gun?

12 A And bullets.

13 Q And bullets. Okay.

14 Now, yesterday when you and I talked
15 about -- we talked about dealing with criminal cases,
16 right?

17 A Correct.

18 Q Okay. And then we talked about something
19 called false allegation. Do you remember that?

20 A Yes, sir.

21 Q And I had asked you yesterday whether or not
22 you ever see false allegations in what you do. And do
23 you remember what you told the jury yesterday?

24 A Please rephrase for me. I only have three
25 hours of sleep since yesterday.

1 Q I appreciate that. My question is:
2 Yesterday, you told the jury that you never see false
3 allegations. Do you remember that?

4 A Yes.

5 Q Overnight, you have had time to think about
6 it; and could you please tell the jury whether or not
7 in criminal cases you see false allegations?

8 THE WITNESS: Can I re --

9 THE COURT: That's a "yes" or "no" or an
10 "I don't know" or "rephrase the question."

11 A I don't know.

12 Q (By Mr. Silverman) How long have you been a
13 police officer?

14 A Four years, sir.

15 Q Would you agree with me that sometimes
16 witnesses can have different motives?

17 A Sometimes -- I'm sorry, say that again.

18 Q Yes, ma'am.

19 MR. ACKLIN: Objection to leading.

20 THE COURT: Let's go ahead and get this
21 testimony in.

22 Q (By Mr. Silverman) Would you agree with me
23 that different -- some witnesses -- witnesses can have
24 different motives?

25 A Correct.

1 MR. ACKLIN: Objection, leading.

2 THE COURT: Can you ask the question in a
3 positive: Can a witness have different motives? Can a
4 witness make a false allegation?

5 MR. SILVERMAN: Sure.

6 THE COURT: Thank you.

7 MR. SILVERMAN: Yes, sir. Thank you.

8 Q (By Mr. Silverman) Can a witness have
9 different motives?

10 A Yes.

11 Q Can a witness make false allegations?

12 A Yes.

13 Q Would you agree with me: Are domestic
14 disputes emotionally charged situations?

15 A No.

16 MR. SILVERMAN: Thank you, Officer Poon.
17 Pass the witness.

18 THE COURT: Thank you.

19 Any cross-examination from the State?

20 MR. ACKLIN: Briefly.

21 CROSS-EXAMINATION

22 BY MR. ACKLIN:

23 Q Would you agree that some domestic violence
24 cases have a lot of emotions in them?

25 A Yes.

1 Q But not all of them?

2 A Not all of them.

3 Q Isn't it true that in this case, you didn't
4 see anything indicating false allegations?

5 A Yes.

6 Q Let's clarify. With this case, these two
7 people, did you think you were looking at a false
8 allegation?

9 A No.

10 Q Did you believe them when they said what
11 happened?

12 A Yes.

13 Q Can you explain to this jury why?

14 A After you have been an officer for a little
15 bit, you are going to have certain instincts. When a
16 person comes into the station, there are certain things
17 that they cannot fake.

18 MR. SILVERMAN: Narrative.

19 THE COURT: Sustained.

20 Q (By Mr. Acklin) Can you tell the jury what you
21 saw and heard that made you believe the women you saw
22 that night?

23 A You see it in their eyes, you hear it from
24 their voice, you see it from their body motions, and
25 those are things a lot of times people cannot hide.

1 Q How long did it take to calm those two women
2 down when they came into the station on March 30th,
3 2013?

4 A I start work that night at 9:30. They walk in
5 as soon as I arrive at the station, and I was not able
6 to obtain a case number because I cannot --

7 MR. SILVERMAN: Nonresponsive, narrative.

8 THE COURT: Sustained.

9 Q (By Mr. Acklin) Did it take you a long time to
10 calm them down?

11 A Almost a good half an hour.

12 MR. ACKLIN: Pass the witness.

13 THE COURT: Thank you.

14 Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. SILVERMAN:

17 Q Yesterday, you told the jury that it took 15
18 minutes to calm the ladies down; and now you are
19 telling them it's half an hour?

20 A It's approximately those times.

21 Q Ma'am, you would agree with me that you told
22 the jury that the deadly weapon in this case is a gun
23 and six bullets, right? Is that correct, ma'am?

24 A Yes.

25 Q And that the threat of the gun and six bullets

1 took place on March 30th of 2013, right?

2 A I'm sorry, can you say the date again?

3 Q Yes. The threat with the gun and six bullets
4 took place on March 30th of 2013, right?

5 A Correct.

6 Q Would you agree with me that one of the things
7 that you look for as an officer, to determine whether
8 or not something is a false allegation, is if a witness
9 changes their story, right?

10 A Yes.

11 Q Would it surprise you to know that
12 Mrs. Ferdous, the witness, came in and told this jury
13 that --

14 MR. ACKLIN: Objection --

15 Q (By Mr. Silverman) -- there was no threat of a
16 gun and six bullets?

17 MR. ACKLIN: Objection.

18 THE COURT: Sustained.

19 MR. SILVERMAN: Judge, may we approach?

20 THE COURT: Yes, you may.

21 (At the Bench, on the record)

22 MR. SILVERMAN: The State opened the door
23 to this.

24 THE COURT: Not as to what she said. You
25 can't -- this is pure speculation, whether she is

1 surprised or not. You got in that if a witness changed
2 their story, then that would be an indication of --
3 whatever you want it to be.

4 MR. SILVERMAN: Sure.

5 THE COURT: Whatever -- but as far as
6 would it surprise you to say -- and I'm not sure that
7 was in testimony anyhow -- that on the night in
8 question the witness claimed that she was threatened
9 with a gun and six bullets.

10 MR. SILVERMAN: Okay. I'll move on.

11 THE COURT: So you are taking what you --

12 MR. SILVERMAN: I understand what the
13 Court is saying.

14 THE COURT: Do you see what I'm -- it's
15 not -- there's no testimony that that happened that
16 night. Changing the story is fine --

17 MR. SILVERMAN: I understand, Judge.

18 (In open court)

19 Q (By Mr. Silverman) You weren't at the
20 Dillard's parking lot?

21 A I'm sorry, can you say it again?

22 Q Yes, ma'am. You weren't at the Dillard's
23 parking lot?

24 A No, sir.

25 Q You didn't observe what happened there?

1 A No, sir.

2 MR. SILVERMAN: Pass the witness.

3 RECROSS-EXAMINATION

4 BY MR. ACKLIN:

5 Q Did you ask the woman who came in to list
6 every single deadly weapon that the defendant ever
7 threatened her with?

8 MR. SILVERMAN: Objection, relevance.

9 THE COURT: That will be overruled.

10 A Can you please rephrase the question?

11 Q (By Mr. Acklin) When the women came in, did
12 you tell them, I want you to sit down and write down
13 every single weapon the defendant has threatened you
14 with?

15 A No, sir.

16 MR. ACKLIN: Pass the witness.

17 THE COURT: Redirect, if any further?

18 FURTHER REDIRECT EXAMINATION

19 BY MR. SILVERMAN:

20 Q When you write a police offense report, it's
21 detailed, right?

22 A It's what the complainant told me.

23 Q Right after these events are alleged to have
24 taken place?

25 A When they come to the station and make a

1 report, that's when I write the report.

2 Q What kind of deadly weapon would be an
3 important fact you would put in your police report?

4 A A gun.

5 Q And that's what you were told?

6 A Correct.

7 MR. SILVERMAN: Thank you.

8 Pass the witness.

9 THE COURT: Thank you.

10 MR. ACKLIN: Nothing further, Your Honor.

11 THE COURT: Now, let me ask you this, for
12 the record: Does anybody, either side, desire to have
13 Officer Poon remain here; or may she be fully and
14 finally excused from this case and not subject to
15 recall?

16 MR. SILVERMAN: I have no objection to
17 this officer leaving.

18 THE COURT: So we can let her go and do
19 not have to have her back?

20 MR. SILVERMAN: Yes, sir.

21 THE WITNESS: Thank you very much.

22 THE COURT: Officer, you are released
23 from the case. Thank you.

24 Call your next witness.

25 MR. SILVERMAN: Just a second.

1 THE COURT: Mr. Silverman, do you have
2 anymore witnesses?

3 MR. SILVERMAN: Defense is going to rest,
4 Your Honor.

5 THE COURT: Defense rests. All right.
6 What says the State?

7 MR. ACKLIN: One minute while he is
8 getting a potential witness.

9 (Pause)

10 THE COURT: State rest and close?

11 MR. ACKLIN: State rests and close, Your
12 Honor.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen, I hate to make you
15 go to lunch early; but there are a few things we have
16 to do. So you are going to get a chance to enjoy a
17 leisurely lunch. As soon as you are back -- just like
18 I told you I would do -- I will get you out here as
19 quick as I can after I hear the bell, as soon as you
20 are back from lunch. You may be able to beat the
21 crowd.

22 Is that a possibility, Scott?

23 THE BAILIFF: Yes, Judge.

24 THE COURT: All right. I will sign the
25 paperwork while you folks get ready and go and enjoy