

1 Detective Rexroad.

2 THE WITNESS: No, ma'am.

3 JEFFREY REXROAD,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LESLIE

7 Q. I will ask you to state your name and spell
8 it for the record?

9 A. Jeffrey. J-E-F-F-R-E-J, R-E-X-R-O-A-D.

10 Q. And where do you work?

11 A. Houston Police Department, homicide
12 division.

13 Q. How long have you worked in the homicide
14 division?

15 A. Two years.

16 Q. And so you are properly referred to as
17 officer or detective?

18 A. Officer or investigator usually.

19 Q. Investigator, okay. Do you know the
20 defendant Andrew Ealy?

21 A. I do.

22 Q. And how did you come into contact with the
23 defendant?

24 A. During the course of a murder
25 investigation.

1 Q. And was that the murder investigation of
2 Robert Deberry?

3 A. Yes.

4 Q. And was the defendant a suspect in that
5 investigation?

6 A. Yes.

7 Q. And was this an investigation that was
8 conducted on or about April 23, 2013?

9 A. Yes.

10 Q. And how did you first come into contact
11 with the defendant?

12 A. He was brought to the homicide division by
13 patrol officers after they located him.

14 Q. And was he under arrest at that point?

15 A. Yes.

16 Q. So, he was brought to the homicide division
17 in a patrol car?

18 A. Yes.

19 Q. And he was in handcuffs at that point?

20 A. Yes.

21 Q. What was he under arrest for?

22 A. Murder.

23 Q. Was he aware that he was under arrest for
24 murder at that point?

25 A. I informed him that he was.

1 Q. Okay. And you said that he was brought to
2 the homicide division; is that correct?

3 A. Yes.

4 Q. Where was he brought to specifically in the
5 homicide division?

6 A. Homicide division is on the sixth floor of
7 1200 Travis then we placed him in one of our
8 interview rooms.

9 Q. What are the interview rooms like?

10 A. A small room, table, two or three chairs
11 and it has the sound proof stuff on the walls.

12 Q. Are the rooms kept at a normal room
13 temperature?

14 A. Yes.

15 Q. So, they are not overly hot or overly cold?

16 A. As far as I know they are the same as the
17 rest of the floor.

18 Q. When you went-- did you go in to speak to
19 the defendant that day?

20 A. Yes.

21 Q. And this was April 23, 2013?

22 A. Yes.

23 Q. Do you know approximately what time it was
24 that you went in to talk with him?

25 A. I think it was around 11 am. A little bit

1 before.

2 Q. And when you went in to talk with him, was
3 he still in handcuffs?

4 A. No.

5 Q. When you went in there that day, did you
6 ask him any questions about the commission of the
7 murder?

8 A. Yes.

9 Q. And did the defendant answer those
10 questions?

11 A. Yes.

12 Q. Did he admit to committing any part of the
13 crime?

14 A. Yes.

15 Q. Did you make a record of those admissions?

16 A. Yes.

17 Q. Before he made any statements to you about
18 the commission of that crime, did you advise him of
19 his constitutional rights?

20 A. Yes.

21 Q. And do you have any kind of card or
22 anything to remind you what those constitutional
23 rights are when you advise someone of them?

24 A. Yes.

25 Q. Do you have a copy of that on you today?

1 A. Not with me, right now, no.

2 Q. Did you have a copy on you then?

3 A. Yes.

4 Q. And is that what you used to advise him of
5 his rights?

6 A. Yes.

7 Q. So, did you advise him of his
8 constitutional rights against self incrimination?

9 A. Yes.

10 Q. Did you advise him that he had a right to
11 an attorney?

12 A. Yes.

13 Q. Did you advise him that he had a right to
14 remain silent?

15 A. Yes.

16 Q. Did you advise him that anything that he
17 said to you could be used against him in a Court of
18 law?

19 A. Yes.

20 Q. Did you tell him that he had a right to
21 have an attorney with him prior to or during any
22 questioning of him?

23 A. Yes.

24 Q. Did you tell him that he had a right to
25 have an attorney appointed to him prior to or during

1 any questioning of him?

2 A. Yes.

3 Q. Did you tell him that he had a right to
4 terminate the interview at any time?

5 A. Yes.

6 Q. And did he indicate to you that he
7 understood all those rights?

8 A. Yes.

9 Q. How did he indicate that to you?

10 A. I asked him.

11 Q. And did he-- how did he respond?

12 A. He said he understood.

13 Q. Did he agree then to waive those rights and
14 speak to you?

15 A. Yes.

16 Q. And did you ask him then if he would give
17 you a statement?

18 A. Yes.

19 Q. And did he agree to give you a statement?

20 A. Yes.

21 Q. Did at any point in time while you were
22 speaking with him, did he ask you to have an attorney
23 with him?

24 A. No.

25 Q. Did he at any point ask for the interview

1 to cease?

2 A. No.

3 Q. Did you do anything to threaten or
4 intimidate the defendant?

5 A. No.

6 Q. Did you do anything to coerce him in any
7 way?

8 A. No.

9 Q. Did you directly or indirectly promise the
10 defendant anything in exchange for his statement?

11 A. No.

12 Q. Did you deny him any kind of basic
13 necessities like going to the bathroom or food or
14 drink or even cigarettes?

15 A. No.

16 Q. Did he appear to be under the influence of
17 any narcotics or alcohol?

18 A. No.

19 Q. After he waived his rights, what did you do
20 next?

21 A. I asked him a couple of questions and let
22 him speak.

23 MR. LESLIE: Permission to approach
24 the witness, Judge.

25 THE COURT: Yes, you may.

1 Q (MR. LESLIE) I'm showing what's been
2 marked for identification purposes as State's Exhibit
3 No. 37. Do you recognize this?

4 A. Yes.

5 Q. How do you recognize it?

6 A. It's a copy of the statement that I made
7 with my handwriting.

8 Q. And was this recording made on a device
9 capable of making an accurate recording?

10 A. Yes.

11 Q. And did the operator of the recording
12 device know how to operate the recording device?

13 A. Yes.

14 Q. So, is this recording an accurate copy of
15 the statement made by the defendant to you on April
16 23, 2013?

17 A. Yes.

18 Q. Can you identify all the voices on the
19 tape?

20 A. It's my voice and Mr. Ealy's.

21 Q. And does this recording reflect the
22 delivery of the constitutional rights that we just
23 went over a few moments ago?

24 A. Yes.

25 Q. And does the recording also reflect that

1 the defendant waived those rights and agreed to talk
2 to you?

3 A. Yes.

4 MR. LESLIE: Judge, at this time for
5 purposes of the hearing the State offers State's
6 No. 37. The video recording of the defendant's
7 interview with Investigator Rexroad?

8 THE COURT: All right. Tender to
9 counsel. Do you have any objection, Mr. Moore?

10 MR. MOORE: I have received it. Does
11 counsel intend to play it?

12 THE COURT: Well, he hadn't asked to
13 play it yet because he's offering it into evidence
14 for purposes of this hearing.

15 MR. MOORE: I don't object to it being
16 entered into evidence for purposes of this hearing,
17 no.

18 THE COURT: All right. Thank you.
19 State's Exhibit No. 37 is admitted for purposes of
20 this hearing.

21 MR. LESLIE: Permission to publish,
22 Judge.

23 THE COURT: Yes, you may.

24 **(Exhibit Published)**

25 MR. LESLIE: Pass the witness.

1 *THE COURT:* Not going to include the
2 rest of it?

3 *MR. LESLIE:* For purposes of the
4 hearing I was not planning on playing more than just
5 showing that he had been shown his rights and read
6 his rights, knowingly waived his rights and agreed to
7 the statement if you would like to proceed with
8 playing.

9 *THE COURT:* Well, if you are offering
10 the whole thing I'm going to need to see the whole
11 thing because he can stop and say I want a lawyer at
12 any time. So, I want to see the whole thing. How
13 long is this?

14 *MR. LESLIE:* Thirty-seven minutes,
15 Judge.

16 *THE COURT:* That's right. Let's play
17 it.

18 *MR. LESLIE:* Do I have permission to
19 step out?

20 *MS. FALK:* I will be here to
21 represent the State.

22 *THE COURT:* That's absolutely fine.
23 Just continue to watch it. I have not seen this.

24 *MS. FALK:* Are you ready, Your Honor?

25 *THE COURT:* Yes, ma'am.

1 person you wouldn't have known about it?

2 A. No.

3 Q. If he had marijuana or some other drug on
4 his person you wouldn't have known about it?

5 A. I would have known about that, yes.

6 Q. If he had the brick on his person you
7 wouldn't have known, but if he had a drug you would
8 have known?

9 A. The drugs is illegal. It's narcotics. The
10 police officers trying to keep ahold of that and tag
11 in evidence.

12 Q. And the arrest team would have told you?

13 A. I can only speculate but, yes, I would
14 assume so.

15 Q. Okay. Did you perform any sobriety test on
16 the defendant prior to this interview?

17 A. No.

18 Q. So, when you said that you felt that he was
19 not under the influence of anything that wasn't
20 pursuant to any test?

21 A. We do sobriety test on people that are
22 operating a motor vehicle.

23 Q. So, when you said I believe he was not
24 under the influence of any narcotics that was not
25 based on any kind of test that you had run?

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1 A. No.

2 Q. Would it surprise you to learn that when he
3 was arrested they found synthetic marijuana on him?

4 A. No, it wouldn't surprise me.

5 MR. MOORE: No further questions.

6 THE COURT: Anything further, Mr.
7 Leslie?

8 MR. LESLIE: Nothing further, Judge.

9 THE COURT: All right. Call your
10 next.

11 MR. LESLIE: State rest, Judge.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: All right. And do you
14 have any witnesses, Mr. Moore, on this hearing?

15 MR. MOORE: I would call the
16 defendant, but I'd like five minutes to confer,
17 please, with the State. With the State.

18 THE COURT: With the State. Oh, okay,
19 I was going to say-- you can have a few minutes. We
20 have our jury almost here, so, figure out where you
21 are both at and I'll give you a few minutes to do.
22 Then let's proceed.

23 **(Brief pause)**

24 MR. MOORE: Your Honor, for purposes
25 of this hearing the Defense rest.

1 *THE COURT:* Okay. Very good.

2 Argument?

3 *MR. LESLIE:* State waives the right to
4 open and reserves the right to close, Judge.

5 *THE COURT:* Mr. Moore, argument on the
6 admissibility of the statement?

7 *MR. MOORE:* The officer in question
8 did not perform any kind of sobriety test to
9 determine whether or not Mr. Ealy was under the
10 influence of any narcotics. If he was then it
11 embraces the 14th Amendment concerns failure to do
12 that should be grounds to suppress the statement.

13 *THE COURT:* Okay. Mr. Leslie.

14 *MR. LESLIE:* Judge, I think the tape
15 speaks for itself. He is obviously not impaired to
16 the point where it would override his ability to
17 freely, knowingly and voluntarily waives the
18 constitutional right. He was explained what those
19 rights were. He indicated that he understood what
20 those rights were. He knowingly waived those rights.
21 There is no evidence of any kind of coercion, threat,
22 intimidation or anything else that would make his
23 waiver not voluntary and therefore, his statement
24 should be admissible.

25 *THE COURT:* Okay. Thank you.

1 The Court makes the following
2 findings: As per the admissibility of the
3 defendant's statement and in Cause No. 1385088, I
4 find that Detective Rexroad, did have the defendant
5 under arrest based on his testimony that he was
6 placed into a patrol car, was in handcuffs and
7 brought to the station. That he was under arrest
8 that was his actual testimony and I do find that
9 Detective Rexroad, is a credible and truthful
10 witness.

11 I do find that the statement that was
12 obtained from the defendant and was videotaped, on
13 electronic recording that was videotaped that was
14 obtained in Harris County, Texas, at the HPD
15 headquarters.

16 I find that because he was under
17 arrest and he was interrogated that Article 38.22 of
18 the Texas Code of Criminal Procedure does apply and I
19 find that Article 38.22 was complied with in that,
20 the electronic recording shows that the defendant was
21 read his warnings prior to providing any statement on
22 that visual recording. And that his warnings that
23 are provided was that first he has the right to
24 remain silent and not make any statement against him
25 make any statement at all and any statement he makes

1 may be used against him in trial.

2 No. 2, that any statement that he
3 makes may be used as evidence against him in court.

4 And No. 3, that he has right to have a
5 lawyer present to advise him prior to and during any
6 questioning.

7 No. 4, that if he is unable to employ
8 a lawyer that he has the right to have a lawyer
9 appointed to advise him prior to and during any
10 questioning.

11 And No. 5, that he has right to
12 terminate the interview at any time. I find those
13 warnings were individually given to the defendant as
14 evidenced by the videotape itself. And that he
15 waived each of those warnings individually-- said he
16 understood them and waived them collectively and
17 proceed to voluntarily provide a statement to
18 Detective Rexroad. It appeared from the statement
19 itself and I make the finding that he knowingly,
20 intelligently and voluntarily waived all of his
21 rights that were set out in those warnings during the
22 entirety of his statement. And that his statement
23 was voluntarily given and it was made under voluntary
24 conditions. And I am going to make the specific and
25 independent findings outside the presence of the jury

1 that the reasons for my finding of voluntariness is
2 upon the viewing of the videotape or the electronic
3 recording that the defendant appears relax. He
4 appears articulate. He appears not to be
5 intoxicated, he was offered food and drink. There is
6 no indication and the testimony of Detective Rexroad
7 or on the tape itself that he was ever threatened or
8 promised anything or coerced in any way in order to
9 provide his statement. I also find that it was
10 voluntary based on the amount of time that he was
11 detained in the interrogation room a total of
12 approximately 37 to 47 minutes. He began at 11:10
13 a.m., the defendant did not appear sleepy or sleep
14 deprived on the video.

15 I do find that it's an accurate copy
16 and that it complies with section three of 38.22 and
17 that it is an electronic recording and it does show
18 on the beginning of the recording that he was read
19 his warnings and that he waived those warnings. And
20 he appeared to understand that and in addition that
21 Detective Rexroad identified the persons that were on
22 the tape, the voices that were on the tape and he
23 also testified that it was made with an accurate
24 recording device, the tape did not appear to be
25 altered. And those are my findings and they will be

1 set out separately and filed amongst the papers of
2 this cause. All right.

3 One additional finding, excuse me. I
4 do find that a copy of the tape was provided to
5 defense counsel as per notice that was filed in this
6 case and that was provided on June the 10th 2014.
7 Filed by the previous assistant district attorney
8 Sarah Mikelson. That a notice of intention to use
9 the defendant's video CD recording statement and an
10 attached copy had been provided to the defense
11 counsel at that time which is much more than 20 days
12 before this proceeding is taking place. All right.

13 Anything further?

14 *MR. LESLIE:* Judge, just before we
15 bring the jury out if we could put on the record that
16 the State has made a final offer of 30 years
17 confinement in the Institutional Division of the
18 Texas Department of Corrections or of Criminal
19 Justice. And that offer has been made and apparently
20 rejected by the defense -- by the defendant.

21 *THE COURT:* All right. So, Mr. Ealy,
22 do you understand the offer that is currently on the
23 table?

24 *THE DEFENDANT:* Yes, ma'am.

25 *THE COURT:* And that's been related to

1 you by your defense counsel and at this point, you
2 have the opportunity to take it or reject it in which
3 either way is fine because we're proceeding with
4 trial and you're aware of that. So, is it my
5 understanding that you are rejecting that offer at
6 this time?

7 *THE DEFENDANT:* Yes, ma'am.

8 *THE COURT:* All right. Very good.

9 And we're going to arraign the defendant outside the
10 presence of the jury at this time. Mr. Leslie.

11 *MR. LESLIE:* In the name and by
12 authority of the State of Texas: The duly organized
13 Grand Jury of Harris County, Texas, presents in the
14 District Court of Harris County, Texas, that in
15 Harris County, Texas, Andrew Gregory Ealy, hereafter
16 styled the Defendant, heretofore on or about April
17 23, 2013, did then and there unlawfully,
18 intentionally and knowingly cause the death of Robert
19 Deberry, hereafter called the Complainant, by
20 striking the Complainant with a brick.

21 It is further presented that in Harris
22 County, Texas, Andrew Gregory Ealy, hereinafter
23 styled the defendant, heretofore on or about April
24 23, 2013, did then and there unlawfully intend to
25 cause serious bodily injury to Robert Deberry,

1 hereinafter called the complainant, and did cause the
2 death of the complainant by intentionally and
3 knowingly committing an act clearly dangerous to
4 human life, namely, by striking the complainant with
5 a brick.

6 Against the peace and dignity of the
7 State. Signed by the foreman of the Grand Jury.
8 183rd Grand Jury. Against the peace and dignity of
9 the State.

10 *THE COURT:* Okay. And Mr. Ealy, to
11 which you plead guilty or not guilty?

12 *THE DEFENDANT:* Not guilty.

13 *THE COURT:* Okay. You can have a
14 seat. All right. I am instructed that-- I am told
15 we're missing one or two jurors back there. Let's
16 take a short break and as soon as they buzz that they
17 are present and ready to proceed then we'll begin
18 with opening statements. So don't go far.

19 ***(Recess taken)***

20 *THE COURT:* Back on the record in
21 Cause No. 1385088, the State of Texas vs. Andrew
22 Ealy. Mr. Ealy is present at counsel table with his
23 attorney Mr. Moore. And the State is represented by
24 Mr. Leslie. Are both sides ready to proceed with
25 trial?

1 MR. LESLIE: State is ready, Judge.
2 At this point we would like to invoke the Rule and on
3 that we have a question. The complaining witness'
4 mother, the State does not intend to call her during
5 the guilt/innocence portion. We do intend to during
6 the punishment phase. We would ask that she be
7 permitted to sit in the courtroom with the Court's
8 permission during the guilt/innocence phase.

9 THE COURT: Do you have any
10 objections, Mr. Moore?

11 MR. MOORE: We do, object, Your Honor.

12 THE COURT: Based on?

13 MR. MOORE: Based on the Rule as I
14 understand it doesn't allow for that kind of
15 bifurcation. There has to be a specific finding,
16 there is an essential need to the prosecution's case
17 in order to violate the Rule. And the fact that she
18 might like to do it doesn't meet that qualification.

19 THE COURT: Okay. Is she going to be
20 a fact witness even in punishment?

21 MR. LESLIE: No, Judge, just a victim
22 impact witness.

23 THE COURT: So, you do intend on
24 calling her in punishment?

25 MR. LESLIE: In the punishment phase,

1 not guilt/innocence phase. So, we would like for
2 her-- she would like to be here to watch the
3 guilt/innocence phase of the trial.

4 *THE COURT:* I understand she would
5 like to, but and I am going to have to rule on the
6 side of Defense. I don't think she meets either
7 qualifications of being excluded for the Rule. From
8 the Rule. And so, I'm going to have to exclude her
9 even though she may only be a victim impact witness
10 at punishment unless he agrees to do it. I am going
11 to have to exclude her. As I would for you if the
12 table were turned.

13 *MR. LESLIE:* I understand.

14 *THE COURT:* So, do you have any
15 witnesses present here in court?

16 *MR. LESLIE:* No, Judge, they're all
17 outside.

18 *THE COURT:* You want to bring them in
19 and we'll swear them in. Do you have any witnesses,
20 Mr. Moore?

21 *MR. MOORE:* Not at the moment; I may
22 want to swear them in when I begin my case in chief.

23 *THE COURT:* So, if you see any of your
24 witnesses come into the courtroom while we're in
25 trial please alert the Court so we can make sure and

1 not have them in violation of the Rule as well.

2 MR. MOORE: Yes, Your Honor.

3 THE COURT: All witnesses in the State
4 of Texas vs. Andrew Ealy, please, raise your right
5 hand.

6 *(Witnesses duly sworn)*

7 THE COURT: Very good. You may all put
8 your hands down. Now, the Rule has been invoked in
9 this cause. That means that any time that you are in
10 here testifying the other witnesses cannot be present
11 in the courtroom to hear the testimony of witnesses
12 on the stand. So, you are all excluded from the
13 courtroom unless you are testifying and while you're
14 outside of the courtroom you cannot discuss with any
15 of the other witnesses or any other person your
16 testimony until you are released from the Rule. You
17 can discuss it with the lawyers however. So, don't
18 even discuss it in the presence of other witnesses.
19 Does everybody understand that?

20 THE WITNESS: Yes.

21 THE COURT: Who will be your first
22 witness, Mr. Leslie?

23 MR. LESLIE: It will be Officer Pena.

24 THE COURT: All right. So Officer
25 Pena, we'll be calling you in just a moment. If you

1 will all step out we do have opening statements to
2 make and then we'll begin witnesses.

3 **(At the Bench)**

4 *THE COURT:* You may bring in the jury.

5 **(Jury enters the courtroom)**

6 *THE COURT:* Please be seated. Ladies
7 and gentlemen of the jury, you may be seated. And as
8 you come into the courtroom we stand for you. So
9 when you come in you can take a seat right as soon as
10 all seated then I will instruct the entire courtroom
11 to sit down. I want to thank you for being on time
12 this morning and we are back on the record in Cause
13 No. 1385088, The State of Texas vs. Andrew Gregory
14 Ealy. For purposes of the record, Mr. Ealy is
15 present at counsel table with Mr. Moore his attorney
16 and the State is represented by Mr. Leslie. The jury
17 is present in the courtroom. Are both sides ready to
18 proceed?

19 *MR. LESLIE:* State is ready, Your
20 Honor.

21 *MR. MOORE:* The Defense is ready.

22 *THE COURT:* Very good. State, please
23 arraign the defendant in the presence of the jury. I
24 did not swear them in yesterday. So, let me get that
25 done. I normally do that the day before and if you

1 will all stand and raise your right hand.

2 **(The oath was administered to the**
3 **jury)**

4 *THE COURT:* Very good. Thank you very
5 much. Take a seat. All right. And please proceed
6 with the reading of the indictment.

7 *MR. LESLIE:* In the name and by
8 authority of the State of Texas: The duly organized
9 Grand Jury of Harris County, Texas, presents in the
10 District Court of Harris County, Texas, that in
11 Harris County, Texas, Andrew Gregory Ealy, hereafter
12 styled the defendant, heretofore on or about April
13 23, 2013, did then and there unlawfully,
14 intentionally and knowingly cause the death of Robert
15 Deberry, hereafter called the complainant, by
16 striking the complainant with a brick.

17 It is further presented that in Harris
18 County, Texas, Andrew Gregory Ealy, hereinafter
19 styled the defendant, heretofore on or about April
20 23, 2013, did then and there unlawfully intend to
21 cause serious bodily injury to Robert Deberry,
22 hereinafter called the complainant, and did cause
23 the death of the complainant by intentionally and
24 knowingly committing an act clearly dangerous to
25 human life, namely, by striking the complainant with

1 a brick.

2 Against the peace and dignity of the
3 State. Signed foreman of the Grand Jury.

4 *THE COURT:* To which the defendant
5 pleads.

6 *THE DEFENDANT:* Not guilty.

7 *THE COURT:* Thank you, sir. You may
8 have a seat.

9 Mr. Leslie, would you like to make an
10 opening statement at this time?

11 *MR. LESLIE:* We would, Judge.

12 *THE COURT:* Please proceed.

13 *MR. LESLIE:* Ladies and gentlemen,
14 what you are about to hear is that the defendant and
15 the complainant were homeless. They were living
16 essentially on the streets of downtown Houston. On
17 the night and early morning of April 23, 2013, the
18 defendant, the complainant Robert Deberry and two
19 other young men were in a storage area near downtown
20 Houston. The complainant and the defendant got into
21 an argument. They got into an argument over who had
22 smoked the last of the little bit of synthetic
23 marijuana that they had. This made the complainant
24 angry. They got into a pushing match, they got into
25 a little bit of a wrestling scrap over it. At which

1 point the defendant left. The defendant however,
2 came back about ten, maybe 15 minutes later to get a
3 pillow and maybe some other items of his own. The
4 complainant was still angry. They resumed their
5 pushing match back and forth and at some point the
6 complainant pushed defendant trying to challenge him
7 into a fight, the defendant was pushed out of the
8 little storage area away from the complainant at
9 which point he decided instead of leaving to pick up
10 a large heavy concrete brick and strike the
11 complainant directly on the skull with it. Killing
12 him. These are the facts that you are going to hear
13 from the witnesses who investigated the case and who
14 were there that night. And these are the facts that
15 make the defendant guilty of murder.

16 *THE COURT:* Thank you, Mr. Leslie.
17 Mr. Moore, would you like to make an openings at this
18 time?

19 *MR. MOORE:* Yes, Your Honor.

20 *THE COURT:* You may proceed.

21 *MR. MOORE:* May it please the Court.

22 Good morning. As we go throughout this trial today I
23 want you to keep in mind all of the complex and murid
24 of concepts that we discussed during jury selection.
25 Self-defense, adequate causation, those things. If

1 the story is told completely then you're going to
2 hear a story about a world that we don't like to
3 think exist. We know it, but we don't like to think
4 about it. You're going to hear more about the lives
5 of people who live on the streets than probably want
6 to know. And you are certainly going to be happy
7 that you do not live on the streets at the end of
8 this. You are going to hear about two fights. And
9 there is going to be no question who started both.
10 The complainant and his name was Robert Deberry.
11 There is going to be no question that Robert Deberry
12 towered over Andrew. There is going to be no
13 question that Robert Deberry was more than a little
14 drunk. He was the kind of drunk that most of us may
15 never get. When you hear about these two fights and
16 you're going to hear that Robert Deberry started both
17 of them. When I say started, you are going to hear
18 that Robert Deberry began the initial oral
19 confrontation that lead to the fight. You are going
20 to hear that Robert Deberry made first physical
21 contact that lead to the fight. You are going to
22 hear that Andrew Ealy over and over and over again
23 tried to end these fights without violence. You are
24 going to hear that he got up and left after the first
25 one. That he tried to leave during the second one.

1 That before the first fight he said over and over and
2 over I don't want to fight you. That before the
3 second fight he said over and over and over I don't
4 want to fight you. And then only after the
5 complainant had successfully fought Andrew not once
6 but twice, and only after the complainant picked up a
7 large heavy object and threw it at Andrew Ealy. Did
8 Andrew Gregory Ealy ever touch anything to throw
9 back? There's going to be things to talk about as to
10 exactly where people were standing when Andrew Ealy
11 touched that brick. There is going to be question
12 about exactly how the brick was handled. And exactly
13 where, how, and under what circumstances it struck
14 the complainant. Those are going to be gray areas as
15 we go through this trial. What is not a gray area is
16 that Robert Deberry was far bigger, far stronger,
17 immeasurably drunker and better at holding his
18 liquor, was belligerent, started all of it, both oral
19 and physical. And then you're going to hear that
20 things go into something of a gray area where exactly
21 what happened is not the kind of thing that can be
22 remembered. Maybe contained in the unknown memory of
23 people who were there. You hear that the exact
24 muscle movements, the exact was it over hand; was it
25 under hand. You may have some question about those

1 things. But there will be no question that whatever
2 was done was done in response to physical violent
3 provocation over and over and over again. And then
4 you will have to ask yourself the difficult
5 questions. You will have to decide what causation
6 was adequate, what threat was imminent, you will have
7 to make those decisions about for which the only test
8 we have is whatever you say. So, keep those concepts
9 in mind as we go forward. This trial is going to
10 play out for the most part in a very predictable way
11 and then be incumbent upon you to look into the gray
12 areas and decide what that means.

13 *THE COURT:* Thank you, Mr. Moore.

14 Mr. Leslie, please call your first
15 witness.

16 *MR. LESLIE:* The State calls Officer
17 Pena.

18 *THE BAILIFF:* Witness has been sworn,
19 Your Honor.

20 *THE COURT:* Thank you. Mr. Leslie, you
21 may proceed.

22 *MR. LESLIE:* Thank you, Judge.
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JOSE PENA,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LESLIE

Q. Can you please state and spell your name for the record.

A. Jose Pena, J-O-S-E, P-E-N-A.

Q. And where do you work?

A. Currently I'm assigned to the HPD south central patrol division.

Q. And by HPD, do you mean the Houston Police Department?

A. Yes, sir.

Q. How long have you worked with the Houston Police Department?

A. About 15 years.

Q. What did you do before that?

A. I was in the military for six and a half years in the Army.

Q. Have you always said that you are currently with the patrol division; is that correct?

A. I am, yes, sir.

Q. Have you always worked with patrol division with the Houston Police Department?

A. No, sir. Initially, I was assigned to