

REPORTER'S RECORD
VOLUME 2 OF 8 VOLUMES
TRIAL COURT CAUSE NO. 1412198
COURT OF APPEALS NO. 14-15-00380

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14th COURT OF APPEALS
HOUSTON, TEXAS

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CHRISTOPHER A. PRINE
Clerk

THE STATE OF TEXAS * IN THE DISTRICT COURT OF
*
*
VS. * HARRIS COUNTY, TEXAS
*
*
GUSTAVO VASQUEZ * 230TH JUDICIAL DISTRICT

MOTION TO SUPPRESS HEARING

On the 22nd day of January, 2015, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Brad Hart, judge presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine; Reporter's Record produced by computer-aided transcription.

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1 THE COURT: This is Cause No. 1412198,
2 the State of Texas versus Gustavo Vasquez.

3 Mr. Vasquez is charged with the offense
4 of murder and is currently set for trial on February
5 9th of this year. Mr. Vasquez is represented by
6 Mr. Eric Davis of the public defender's office.
7 Mr. Davis is not present here with Mr. Vasquez today,
8 but instead Mr. Mark Hochglaube from the public
9 defender's office is here with Mr. Vasquez. Mr. Davis
10 and Mr. Hochglaube, for the purposes of the record,
11 work together in the public defender's office. And
12 Mr. Hochglaube is familiar with the case and, in fact,
13 may, in fact, be trying the case with Mr. Davis.

14 Is that correct, Mr. Hochglaube?

15 MR. HOCHGLAUBE: Yes, Your Honor.

16 THE COURT: All right. And y'all are
17 ready to proceed on the motion to suppress that you
18 filed?

19 MR. HOCHGLAUBE: Yes, Your Honor.

20 THE COURT: Okay. Is the State ready?

21 MS. ROBERTS: State's ready, Your Honor.

22 THE COURT: All right. Defense has filed
23 a motion to suppress oral statements of the defendant.
24 Both sides are ready to proceed

25 Ms. Roberts?

1 MS. ROBERTS: Your Honor, the State calls
2 Sergeant Robles.

3 THE COURT: Have these witnesses been
4 sworn in?

5 MS. ROBERTS: No, Your Honor. Neither of
6 them have been sworn. Would you like them both to come
7 in at this time?

8 THE COURT: Why am I not surprised by
9 that? Yes.

10 MS. ROBERTS: And, Your Honor, for
11 purposes of the record, I believe Sergeant Robles
12 stepped out for one moment. So, we decided to go ahead
13 and start with Lieutenant Lee instead to make -- so
14 that we can continue along.

15 THE COURT: Okay.

16 MICHAEL LEE,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. ROBERTS:

20 Q. Lieutenant Lee, can you --

21 MS. ROBERTS: I'm sorry. Your Honor, may
22 I proceed?

23 THE COURT: Um-hum.

24 Q. (BY MS. ROBERTS) Lieutenant Lee, can you
25 please state your name for the record?

1 A. Michael Lee.

2 Q. Okay. And what do you do?

3 A. I'm a lieutenant with the Houston Police
4 Department.

5 Q. All right. How long have you been with the
6 Houston Police Department?

7 A. 25 years.

8 Q. And what positions have you held while at the
9 Houston Police Department?

10 A. I've been a lieutenant for the past eight
11 years. Prior to that, I was a sergeant for four years.
12 Prior to that I was a police officer.

13 Q. Okay. And so, what is your role as a
14 lieutenant?

15 A. I manage the sergeants and all the officers
16 assigned to the evening shift, the Southwest Patrol
17 Division.

18 Q. Okay. And what do you mean by manage?

19 A. I oversee any special scenes, special threat
20 scenes. I manage the internal investigations at our
21 station and oversee the offense reports written by the
22 officers that are approved by the sergeants and just
23 miscellaneous administrative activities.

24 Q. Okay. So, as a lieutenant do you have any
25 other specializations?

1 A. I've been a trainer for our department, at one
2 period at the police academy. I've been a hostage
3 negotiator in our department for about 11 years.
4 Crisis intervention trainer for our department.
5 There's a number of other certifications that I have.

6 Q. Okay. And so, have you taken special training
7 to be a hostage negotiator through HPD?

8 A. Yes, I have.

9 Q. And what type of training or schools have you
10 been to for that?

11 A. When I was selected to be a SWAT negotiator
12 back in 2002, we did an in-house two-week training for
13 that. And then for the approximately 11 years I was a
14 negotiator, we trained monthly -- once a month.

15 Q. Okay. So, would you say that you have under
16 100 hours or over 100 hours in training in the hostage
17 negotiator area?

18 A. Over 100.

19 Q. Okay. And you said that you also were crisis
20 intervention. Is that something different?

21 A. Crisis intervention training and that program
22 really focuses on dealing with folks that are in a
23 mental crisis and that have mental health issues.

24 Q. Okay. So, you're trained in the area of
25 mental health as well?

1 A. Yes, ma'am.

2 Q. Okay. And so, what type of training did you
3 go to for that?

4 A. The initial was a 40-hour one-week school.
5 Then we have an eight-hour refresher class every year.
6 And I went through that every year. I still go through
7 that as a lieutenant.

8 Q. Okay. So, you're updated and you've gone to
9 training every year as necessary?

10 A. I have since 1999.

11 Q. Okay. So, in that one, would you say you also
12 have hundreds of hours of training?

13 A. I'm over -- I'm sorry repeat that.

14 Q. Would you say in that area, the crisis -- with
15 mental health, you have at least 100 hours of training
16 as --

17 A. Oh, yes, ma'am.

18 Q. Just make sure for the record that we don't
19 talk over each other. Okay?

20 A. Okay.

21 Q. Have you also given presentations or taught in
22 different areas that you are specialized in or have
23 this expertise in?

24 A. Yes, I have.

25 Q. All right. And is that just here in Houston

1 for HPD or have you done it elsewhere as well?

2 A. I've done it for various law enforcement
3 agencies. I've done it at conferences.

4 Q. And so, is this something that you've done
5 because of your training and the fact that you are a
6 lieutenant with HPD?

7 A. Yes.

8 Q. All right. Now, Lieutenant Lee, I'd like to
9 speak to you about a scene you went out to on December
10 20th of 2013. Do you remember that day?

11 A. I do.

12 Q. Okay. And do you remember specifically which
13 scene I'm talking about?

14 A. Yes, I do.

15 Q. All right. What is the address that you went
16 out to on that date?

17 A. The address is 5711 Vendi.

18 Q. And is that here in Houston, Harris County,
19 Texas?

20 A. It is.

21 Q. Now, why were you called out to that scene
22 that day?

23 A. That scene was a -- turned into -- looked like
24 it was going to be a standoff, possibly a SWAT
25 situation. And by policy, the lieutenants have to make

1 those scenes and act in the role of scene commander.

2 Q. Okay. So, is that what you were doing on the
3 scene that day?

4 A. Yes, ma'am.

5 Q. Do you remember approximately what time you
6 arrived at the scene?

7 A. Looks like around 5:00, 5:30 in the afternoon.

8 Q. Okay. And once you made it to that scene, at
9 some point was somebody taken into custody?

10 A. Eventually.

11 Q. Okay. Not right when you arrived, but at some
12 point that evening?

13 A. Yes.

14 Q. And did you have anything to do with actually
15 taking that person into custody?

16 A. I didn't physically take him into custody, but
17 I spoke with him verbally and got him to exit the
18 house.

19 Q. Okay. So, you -- did you act as a hostage
20 negotiator or a -- speaking to somebody trying to get
21 them to come out of the standoff?

22 A. I did.

23 Q. Okay. And once he was actually taken into
24 custody, did you identify that person?

25 A. What do you mean by identify?

1 Q. Did somebody figure out who he was?

2 A. Yes.

3 Q. And do you see him in the courtroom today?

4 A. Yes.

5 Q. Okay. If you can just point to him and
6 identify him by an article of clothing?

7 A. In the orange jumpsuit.

8 MS. ROBERTS: Your Honor, just so the
9 record reflects, this lieutenant has identified the
10 defendant as the person on the scene that day.

11 THE COURT: It will.

12 Q. (BY MS. ROBERTS) Now, once this defendant was
13 taken into custody, did you have any interactions with
14 him?

15 A. I did.

16 Q. Okay. Now, talking about him being in
17 custody, where was he?

18 A. He was in handcuffs in the backseat of a
19 police car.

20 Q. And was it your police car?

21 A. No, it wasn't.

22 Q. Okay. And why did you originally approach the
23 defendant that day?

24 A. I had -- while I was managing the scene, I had
25 looked over at the police car where the suspect was.

1 There was a lot of -- as you can imagine a lot of
2 activity going on. I turned to check on the suspect
3 seated in the backseat of the car and I noticed that he
4 appeared to be slumped over. So, I went over to check
5 on him.

6 Q. Do you know about how long he had been slumped
7 over or did you just notice that he was?

8 A. I don't know how long. I just -- when I
9 looked over, I noticed it and addressed it at that
10 moment.

11 Q. Okay. As being the person on scene who's kind
12 of charge of everything, what did you do?

13 A. I went over to the car to check on his
14 welfare.

15 Q. Okay. Did you say anything or speak to him?

16 A. I did.

17 Q. All right. And when you were speaking to him,
18 were you asking questions about the crime or were you
19 just generally -- what were you trying to do?

20 A. No, I didn't ask him about the crime. I just
21 checked on his health.

22 Q. Okay. Do you know specifically what you said?

23 A. I went up to -- I believe he was slumped over.
24 He was in the right side of the backseat of the patrol
25 car slumped up against the door. I went around to the

1 left side. Opened the left side door. I asked Gustavo
2 do you have any health issues we need to know about.

3 Q. Okay. And so, with this question, what type
4 of response were you trying to get from him?

5 A. I was trying to find out if he actually was in
6 distress medically and whether we needed to get EMT or
7 paramedics to the scene to check on him.

8 Q. Okay.

9 A. Which is part of my duties.

10 Q. All right. So, you were just following what
11 you were supposed to do --

12 A. As scene handler, you're there to make sure
13 the scene is secure, that everyone is safe and
14 including the suspect.

15 Q. Okay. Just make sure I finish my question
16 first. All right?

17 A. I'm sorry.

18 Q. And so, the question was very specific as to
19 his health concerns?

20 A. Yes.

21 Q. All right. Now, did he reply to you?

22 A. He did.

23 Q. All right. Did the answer specifically
24 respond to what you were asking?

25 A. No, it did not.

1 Q. All right. What did he respond with?

2 A. After I asked him that, he replied I'm sorry.
3 I shouldn't have done it. I've just been under so much
4 stress lately.

5 Q. Okay. And so, as he said this to you, did you
6 take that as him talking about health issues?

7 A. No, I did not.

8 Q. Okay. And at any time at this point were you
9 trying to ask him about the crime that had occurred
10 inside the location that you were at?

11 A. No, I was not.

12 Q. All right. And after that, did you ask him
13 any other questions?

14 A. I did. I repeated a question about his
15 health.

16 Q. Okay. And so, was it the same question you
17 stated earlier?

18 A. It was phrased differently. I said do you
19 have any health issues that we need to be aware of.

20 Q. Okay. And at that point did he respond?

21 A. He did.

22 Q. Okay. And what was his response that time?

23 A. Gustavo replied no, but can I get a rag to
24 wipe the sweat off my head and maybe some water to
25 drink.

1 Q. Okay. And so, at this point was it actually
2 responding to or answering the question you asked him?

3 A. I believe that was, yeah, the response I was
4 looking for.

5 Q. Okay. So, overall was this interaction for
6 the purposes of interrogating or questioning him as to
7 what occurred inside the home?

8 A. No, it was not.

9 Q. Okay. What was the overall purpose of this
10 interaction?

11 A. To check on his welfare.

12 Q. Is that something you were in charge of doing
13 as being on the scene?

14 A. Yeah. I would do that at any scene where I
15 believed the suspect appeared to be distress.

16 Q. All right. Had he stated that he had health
17 issues or needed medical attention, would you have
18 followed -- would you have found a way to get him that?

19 A. Of course.

20 Q. Just to go back and clarify, you stated he was
21 in the backseat of a patrol car. Was he in handcuffs
22 at this time?

23 A. He was in handcuffs.

24 Q. Was he free to leave?

25 A. No, he was not.

1 MS. ROBERTS: At this time, Your Honor, I
2 pass the witness.

3 THE COURT: Mr. Hochglaube?

4 MR. HOCHGLAUBE: Thank you, Judge.

5 CROSS-EXAMINATION

6 BY MR. HOCHGLAUBE:

7 Q. Lieutenant Lee, I want to go back and talk
8 about your training just for moment.

9 You said you received a lot of training
10 regarding mental health issues. Is that true?

11 A. That's true.

12 Q. So, you would agree with me that people with
13 mental health issues oftentimes, not always, but
14 oftentimes there is a drug intoxication sort of
15 contributing factor to that. Is that true?

16 A. It's not unlikely that someone that can be on
17 drugs can appear or display symptoms of mental illness.

18 Q. And that's been part of your training as well,
19 right?

20 A. Yes, it has.

21 Q. And in addition to dealing with people who are
22 mentally ill, you run into people who are high on all
23 kinds of different drugs in these types of crisis
24 situations, right?

25 A. Yes.

1 Q. And when you were interacting with the
2 defendant, did you develop any thoughts as to whether
3 he might be intoxicated?

4 A. I don't think our communication lasted long
5 enough for me really to form an opinion whether he was
6 intoxicated or --

7 Q. Prior to actually talking to him in person,
8 you had talked to him a little bit on the phone, right?

9 A. I did.

10 Q. And you had also gathered information there at
11 the scene as the scene commander, correct?

12 A. Yes.

13 Q. Was there any indication you had that he might
14 be high on PCP?

15 A. None at all.

16 Q. Okay. At that point you did not have any
17 notion that he was high on PCP?

18 A. No, I did not.

19 Q. Now, you noted that he was sweating and he
20 wanted a rag to dry off his sweat, correct?

21 A. Correct. He asked for a rag to dry off his
22 sweat.

23 Q. And sweating profusely is common for people
24 who are high on PCP, is it not?

25 A. I'm not really an expert on what the -- all

1 the symptoms are with PCP abuse or being high on PCP.

2 Q. Well, have you noticed that before?

3 You've dealt with people who have been
4 high on PCP, I take it?

5 A. Yes.

6 Q. Have you noticed sweating on people who are
7 high on PCP?

8 A. Yes.

9 Q. And there's no question in your mind that when
10 you were talking to the defendant that he was in police
11 custody; is that correct?

12 A. Correct.

13 Q. And you're not making any statements to this
14 Court that you Mirandized the defendant in any way
15 prior to your questioning, right?

16 A. No, I did not.

17 Q. And you're not making any statement to this
18 Court that your interaction with the defendant was
19 recorded in any way, right?

20 A. It was not.

21 Q. And you're aware through, I guess, your
22 various types of trainings that in order for a typical
23 confession to be admitted into evidence, that
24 Mirandized warnings -- Miranda warnings must be
25 recorded prior to the actual statement of the suspect,

1 right?

2 A. Yes.

3 Q. In order for it to be admissible in court, I
4 should say.

5 A. Okay.

6 Q. You're aware of that rule?

7 A. Yes, if you're going to interrogate them.

8 Q. Right. And so, when you approached the
9 defendant, you specifically asked him what his -- what
10 are his health issues; is that right?

11 A. Correct.

12 Q. And you -- you asked him that question
13 expecting him to provide you with an answer, correct?

14 A. Correct.

15 Q. And you said that his answer included
16 something along the lines of him being under a lot
17 stress, right?

18 A. That was part of his answer.

19 Q. And part of what the prosecutor was saying was
20 that his response wasn't really -- didn't -- it didn't
21 really seem to be in response to your specific
22 question, right?

23 A. Yes.

24 Q. Like you asked the question are you okay,
25 basically in physical health, right?

1 A. Correct.

2 Q. And his response is -- involves him talking
3 about how much stress he's under, right?

4 A. That was part of it.

5 Q. And, I guess, my point is, is that you know
6 from your training that stress is a key symptom in
7 people who are mentally ill, right?

8 A. Not necessarily.

9 Q. Well, routinely people that are in these
10 crisis situations, right?

11 A. Okay.

12 Q. And you've talked about how you've received
13 the mental health training because frequently they are
14 suffering from mental health ailments, right?

15 A. Correct.

16 Q. And by the very nature of being in a crisis
17 situation, it's a stressful situation, right?

18 A. Yeah, okay.

19 Q. And, I guess, the point that I'm drawing --
20 and I don't think I'm saying anything too controversial
21 here -- is that people who are in these crisis
22 situations and are suffering either from intoxication
23 or from mental illness, it's common for them to be
24 feeling like they're under stress, right?

25 A. That would be for that person to say if they

1 were under stress. I mean, I can't say just because
2 they were mentally ill and possibly, you know, off
3 their medication that that's a stressful situation for
4 them.

5 Q. Sure. But, I guess, his response to your
6 question in talking about his stress in a way is
7 responsive to what you are asking because you were
8 asking about his physical condition. And he's telling
9 you he's under a lot of stress, right?

10 A. Okay. I'm not sure what you're asking me.

11 Q. Well, do you agree with that?

12 A. Can you repeat it?

13 Q. Sure. Your question is asking about his
14 physical condition, right?

15 A. Correct.

16 Q. And his response includes references to his
17 physical stress or emotional stress?

18 A. Yeah. I mean, I don't know what the stress
19 factors were, whether they were financial stress,
20 emotional stress. I --

21 Q. Sure.

22 A. I'm not --

23 Q. But you can see how his response actually
24 could have been responsive to the question you were
25 asking?

1 A. Possibly. It's not what I mean. When I'm
2 checking on someone's physical health, I'm basically --
3 we're checking to make sure they don't have heart
4 ailments. They don't need medication, that they're --
5 you know, that type of health.

6 Q. I understand that you weren't expecting him to
7 make the response he made. Is that fair to say?

8 A. Well, I wasn't expecting any type of response.
9 I was just asking him a question about his health. And
10 however he responds, he responds. I have no control
11 over the way he responds.

12 Q. Right.

13 A. I mean, I didn't -- I mean, when he made a
14 statement and I repeated it because I was there asking
15 about his health. He made a statement that didn't
16 apply to what I believe I was asking him, so I asked it
17 again.

18 Q. Okay. You'd agree with me that but for you
19 asking this question of him while he's in custody, he
20 would not have given you the answer that he's sorry and
21 he shouldn't have done it, right?

22 It was your question prompting him to
23 speak back to you, correct?

24 A. Yes. I mean, I asked him a question and I
25 was, you know, checking on his health. I mean, I

1 didn't know what he was going to say.

2 Q. Right. And so, other than you opening the
3 door and asking him this question, right, you taking
4 note he was just slumped over there, right?

5 A. He was.

6 Q. And he isn't going make a statement to a door,
7 right, presumably?

8 A. Correct.

9 Q. He's -- he's answering what you're asking him?

10 A. Correct.

11 MR. HOCHGLAUBE: I pass the witness.

12 THE COURT: Ms. Roberts?

13 MS. ROBERTS: No further questions, Your
14 Honor.

15 THE COURT: All right. Thank you, sir.
16 I appreciate your time.

17 Do y'all need him for anything else? Can
18 he be excused?

19 MR. HOCHGLAUBE: No.

20 MS. ROBERTS: Nothing else.

21 THE COURT: All right. You're excused.
22 Call your next witness, please.

23 MS. ROBERTS: Your Honor, the State calls
24 Sergeant Robles.

25 JASON ROBLES,

1 having been first duly sworn, testified as follows:

2 THE COURT: Ms. Roberts?

3 MS. ROBERTS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MS. ROBERTS:

6 Q. Sergeant Robles, can you please introduce
7 yourself just for the Court?

8 A. I'm Jason Robles, Houston Police Department
9 police sergeant, homicide.

10 Q. All right. So, you stated you're the --
11 you're a police sergeant in homicide?

12 A. Correct.

13 Q. And how long have you been with Houston Police
14 Department?

15 A. It's my 18th year.

16 Q. 18th.

17 And how long have you been in homicide?

18 A. Seven to eight years.

19 Q. Now, in homicide what kind of training did you
20 have to go through in order to hold your position that
21 you have right now?

22 A. We have multiple training classes we attend
23 every year, different sorts of stuff, basic
24 investigative crime scene stuff. The list goes on and
25 on.

1 Q. Okay. And so, does this include interviews
2 and just trying to talk to different witnesses or
3 suspects on crime scenes?

4 A. Correct.

5 Q. And have you been to specific schools or
6 trainings for that?

7 A. Yes.

8 Q. And do you know how many hours -- how many
9 hours of training you've been through in order to hold
10 your position as a sergeant in homicide?

11 A. I've been through thousands of hours of
12 training.

13 Q. Okay. Now, before you were in homicide, what
14 other positions did you hold at HPD?

15 A. I worked the solo motorcycles, DWI Task Force,
16 radar and patrol.

17 Q. Okay. So, DWI Task Force, were you certified
18 in DWI investigations and DREs?

19 A. Yes, I was.

20 Q. Are you still certified in D --

21 A. No.

22 Q. Okay.

23 A. Sorry.

24 Q. Yeah, just make sure I finish first. Okay?

25 When was the last time you took

1 certification for the DWIs and DREs?

2 A. I would say maybe 10, 11 years ago.

3 Q. Okay. But with your training or with your
4 experience at HPD, have you observed people on PCP or
5 other drugs or alcohol before?

6 A. Yes.

7 Q. All right. And do you deal with intoxicated
8 people often even now in homicide division or through
9 other parts of HPD?

10 A. Yes.

11 Q. And would you say -- can you say about how
12 many years you have been -- how many homicide
13 investigations you have actually conducted while in
14 homicide?

15 A. The last time I checked it was about 150.

16 Q. Okay. And so, about how many interviews or
17 statements have you taken from people?

18 A. Hundreds.

19 Q. Now, you said you've been with HPD for 18
20 years. What did you do prior to HPD?

21 A. I worked for a couple of other police
22 departments before we decided to stay in Houston.

23 Q. So, about how many years total have you been a
24 certified peace officer?

25 A. 22.

1 Q. All right. Now, I want to talk to you about a
2 scene that you went out to on December 20th, 2013. Do
3 you remember that day?

4 A. Yes.

5 Q. All right. Now, do you remember where you
6 were dispatched or told to go out to?

7 A. Yes.

8 Q. What was the address there?

9 A. 5711 Vendi.

10 Q. All right. And do you remember about what
11 time you arrived on the scene?

12 A. I arrived at 7:12 p.m.

13 Q. Okay. And so, just knowing that your arrival
14 is then, was somebody already detained and was the
15 scene already kind of walked through by the time you
16 arrived?

17 A. As far as walk through?

18 Q. Had people been inside the house at the
19 location --

20 A. Yes.

21 Q. -- you went to?

22 Can you give us a basic -- do you know
23 what time the -- sorry.

24 Do you know what time the original call
25 went out to go have officers go out to that scene?

1 A. Officers were dispatched at 5:02 p.m.

2 Q. All right. And do you know through call slips
3 or other things that you have looked at about what time
4 officers arrived at that scene?

5 A. Roughly 5:08, somewhere in there.

6 Q. Okay. And do you know what time the
7 defendant, Gustavo Vasquez, was placed in custody that
8 day?

9 A. Placed from the scene or charged with the
10 crime?

11 Q. Placed from the scene.

12 A. I don't know what time he left the scene. It
13 was right about the time I arrived.

14 Q. And do you -- so, do you know if at any point
15 what time officers had put him in the backseat of a car
16 at the scene?

17 A. When I had arrived, he was standing outside of
18 the car. I don't know if he had gotten out of the car
19 or was put -- about to be put in. I don't know what
20 his situation was at the time.

21 Q. Okay. And we're talking about Gustavo
22 Vasquez. Do you see him here in this room today?

23 A. That's correct.

24 Q. All right. Can you please point to him and
25 identify him by an article of clothing?

1 A. The defendant's in the orange jumpsuit.

2 MS. ROBERTS: Your Honor, may the Court
3 and the record reflect that this witness has identified
4 the defendant?

5 THE COURT: It will.

6 Q. (BY MS. ROBERTS) So, you said you arrived at
7 the scene at 7:12 p.m. Did you have any interaction
8 with Gustavo Vasquez at that time?

9 A. No real interaction.

10 Q. Okay. What was the first time that you had an
11 interaction with this defendant?

12 A. It was the following day.

13 Q. Okay. That night, did you have any
14 observations of him?

15 A. Just the brief few minutes at the scene.

16 Q. Okay. And while you were observing him, what
17 did you notice about him?

18 A. Nothing -- really nothing that stood out.

19 Q. Okay. So, that night -- so, we're talking
20 about December 20th, just to be clear.

21 Were you given any information or had
22 anybody else observed him and noticed anything about
23 the defendant?

24 A. When I arrived I began to hear conversations
25 from officers about maybe he had been under the

1 influence of some type of narcotic.

2 Q. Okay. And with this, did you speak to anybody
3 -- any of the other officers about what type of
4 behaviors he was having as to whether he was under the
5 influence of any narcotic?

6 A. No, not specifically.

7 Q. Okay. At some point that evening, did you
8 speak to anybody specifically, I believe it's Sergeant
9 Brady?

10 A. Sergeant Brady, correct.

11 Q. Okay. And did you get information from
12 Sergeant Brady?

13 A. Yes.

14 Q. And so, with that information, did you
15 determine whether or not you should be interviewing the
16 defendant, Gustavo Vasquez, that night of the 20th?

17 A. Based on just the totality of everything, I
18 didn't want to interview him that night.

19 Q. Okay. And why is that?

20 A. Just in case he was under the influence of
21 anything.

22 Q. Okay. And so, although he was placed in
23 custody sometime that evening and I believe booked into
24 jail sometime that night, you chose not to speak to him
25 on the day of the offense?

1 A. That's correct.

2 Q. Okay. And is this a procedure that HPD
3 requires or is this a precaution used when interviewing
4 suspects who are possibly under the influence?

5 A. Just based on my experience and based on the
6 scene itself, I felt it would be better to interview
7 him the following day.

8 Q. Okay. And so, at what point did you meet up
9 to interview Gustavo Vasquez?

10 A. The following day at 5:41 p.m.

11 Q. Okay. Where was this interview done?

12 A. At 61 Riesner.

13 Q. All right. Is that the Harris County jail?

14 A. No, that's the city jail.

15 Q. The city jail.

16 And so, was he held overnight at homicide
17 or at 61 Riesner?

18 A. At 61 Riesner.

19 Q. Okay. And what kind of conditions did he have
20 that night?

21 A. I'm guessing regular holding cell, food,
22 water, restroom.

23 Q. Okay. So, was he held alone in an interview
24 room overnight or did you pull him out to do the
25 interview?

1 A. No. I took him out of the custody of the
2 jail.

3 Q. Okay. And so, he was -- was he held by
4 homicide or regular jailing facilities?

5 A. Jailing facility.

6 Q. And in a jail generally, do you know, are they
7 given food, water and able to use the restroom or sleep
8 when they need to?

9 A. Yes, ma'am.

10 Q. Do you have any reason to believe that this
11 defendant, Gustavo Vasquez, was not given the same
12 opportunities that every other person held in the jail
13 has?

14 A. No.

15 Q. Okay. So, nothing tells you that he wasn't
16 allowed to sleep or wasn't allowed to use the restroom
17 or have water if he needed it?

18 A. That's correct.

19 Q. Now, I want to talk to you about when you
20 spoke with Gustavo Vasquez. You said it was about 5:00
21 o'clock that evening?

22 A. That's when we left and decided to go
23 interview him was about 5:00 o'clock. The interview
24 started at 5:41.

25 Q. Okay. And when you started this interview, do

1 you remember if you offered him any water or restroom
2 breaks or food if he needed it?

3 A. Yes.

4 Q. Okay. And did you do that?

5 A. I offered him the same thing, if he needed a
6 drink or to use the restroom. He said he was thirsty.
7 So, I planned on getting him some water here in a few
8 minutes after talking to him.

9 Q. Okay. And just to be clear, we're talking
10 about 5:00 o'clock. And we keep saying 5:00 o'clock or
11 5:00 in the evening. It's 5:41 p.m. that you started
12 the interview, correct?

13 A. That's correct.

14 Q. And so, as you entered the interview room did
15 you make any observations of the defendant?

16 A. Nothing out of the ordinary.

17 Q. Okay. So, did you see anything that would
18 make you believe he was intoxicated at that time?

19 A. No.

20 Q. All right. Did you see him profusely
21 sweating?

22 A. No.

23 Q. Okay. Or babbling or not making sense?

24 A. No.

25 Q. Did he smell of alcohol or any other

1 intoxicant?

2 A. No.

3 Q. Okay. Are these things you are trained to
4 look for?

5 A. Yes.

6 Q. Is there anything else that you generally look
7 for while trying determine if somebody's intoxicated?

8 A. No. Just the things you indicated from
9 initial contact.

10 Q. Now, when you started the statement with this
11 defendant, did you promise him or tell him you would
12 give him anything to talk to him?

13 A. No.

14 Q. And so, there was no telling him that you
15 would give him in exchange a good deal or anything by
16 talking to him?

17 A. No.

18 Q. Did you threaten him in any way when you were
19 beginning your -- throughout the entire interview?

20 A. No.

21 Q. Let's talk about the beginning of the
22 interview a little bit more.

23 After offering him basic necessities such
24 as water, did you then Mirandize the defendant?

25 A. Yes.

1 Q. Okay. Now, how did you do -- how did you
2 Mirandize him? Was it question by question or all at
3 once?

4 A. Question by question.

5 Q. Okay. And so, at this point did you advise
6 him of his right to an attorney?

7 A. Correct.

8 Q. And did he tell you he understood that
9 question?

10 A. Yes.

11 Q. All right. And did he waive his right to his
12 attorney at the time?

13 A. Yes.

14 Q. And did you advise him of his right to remain
15 silent?

16 A. Yes.

17 Q. Did he waive that right?

18 A. Yeah. He -- he generally waived all the
19 rights by speaking to me.

20 Q. Okay. I'm going to go through them just to --

21 A. Okay.

22 Q. -- make sure we've got them.

23 So, did he tell you that he understood
24 and then waive the right?

25 A. He told me he understood, yes.

1 Q. Did you tell him that anything he said could
2 be used against him?

3 A. Yes.

4 Q. All right. Did he understand it?

5 A. Yes.

6 Q. Did he waive it?

7 A. He waived it, yes.

8 Q. Did you tell him he had a right to have an
9 attorney present prior to and during any questioning?

10 A. Yes.

11 Q. All right. And did he say he understood that
12 right?

13 A. Yes.

14 Q. Did he waive that right?

15 A. Yes.

16 Q. Did you tell him that he had the right to have
17 an attorney appointed to and advise him prior to and
18 during the questioning?

19 A. Yes.

20 Q. All right. So, did he also say he understood
21 and waived that right?

22 A. Yes.

23 Q. Did he -- did you tell him he had the right to
24 terminate the interview at any time?

25 A. Yes.

1 Q. Did he state that he understood that?

2 A. Yes.

3 Q. And did he state that he waived it?

4 A. Yes. He didn't state he waived it. He waived
5 it.

6 Q. Okay. And so, how do you know that he
7 understood and waived these rights?

8 A. Well, he indicated he understood all the
9 rights as being read to him and then he waived them by
10 answering my questions and speaking to me.

11 Q. Okay. And did you ever ask him like the
12 overarching question of do you waive all of these
13 rights or was it just through the -- through the
14 continued conversation?

15 A. Just through the continued conversation.

16 Q. Do you remember if he nodded or if he actually
17 said yes during the interview?

18 A. I usually require everybody to acknowledge
19 verbally. I'm pretty sure he did it the entire time.

20 Q. And so, after you advised him of all of these
21 rights, did he indicate to you somehow that he would
22 like to speak to you and continue the conversation?

23 A. Yes.

24 Q. All right. Did he ever make a statement,
25 gesture or make you feel in any way that he wanted to

1 stop the interview or have an attorney present?

2 A. No.

3 Q. I think I've already asked you if you
4 threatened him. But did you coerce Gustavo Vasquez in
5 any way in order to have him give you a statement?

6 A. No.

7 MS. ROBERTS: Your Honor, may I approach
8 the witness?

9 THE COURT: Yes, ma'am.

10 Q. (BY MS. ROBERTS) Officer, I'm showing you
11 what's been marked as State's Exhibit No. 1. Do you
12 recognize what the statement is through the writing on
13 it?

14 A. Yes.

15 Q. Okay. And what is this?

16 A. It's a copy of the interview -- a video
17 recorded interview.

18 Q. Okay. And so, the room that you had the
19 interview in, you said it had a video recording. Is
20 that a video recording device?

21 A. Yes.

22 Q. Okay. And is that -- is that at 61 Riesner?

23 A. That's correct.

24 Q. And does that video recording device have the
25 ability of making correct and accurate copies of what's

1 going on in that room?

2 A. Yes.

3 Q. And did you ever have an opportunity to review
4 the statement afterwards?

5 A. Yes.

6 Q. Okay. And was the recording of this statement
7 a true and accurate depiction of what occurred inside
8 the room?

9 A. Yes.

10 Q. Did you recognize all the voices that were on
11 that statement?

12 A. Yes.

13 Q. All right. Who all was on the statement?

14 A. Myself, the defendant and my partner at the
15 time, Investigator Bailey (phonetic).

16 Q. And just to be clear, is it just an audio or
17 is it also a video recording?

18 A. It's audio and video.

19 MS. ROBERTS: Your Honor, at this time
20 I'm going to tender to opposing counsel and offer
21 State's Exhibit No. 1 into evidence for the purpose of
22 this hearing.

23 MR. HOCHGLAUBE: I don't have any
24 objection to that for the purpose of the hearing.

25 THE COURT: All right. State's 1 will be

1 admitted for the purposes of the motion to suppress
2 hearing.

3 MS. ROBERTS: And, Your Honor, may I
4 publish it for the Court to hear it?

5 THE COURT: Sure. It's how long?

6 MS. ROBERTS: 22 minutes, Your Honor.

7 THE COURT: Okay. Is this your last
8 witness?

9 MS. ROBERTS: Yes, Your Honor.

10 THE COURT: Are you going to have any
11 witnesses, Mr. Hochglaube?

12 MR. HOCHGLAUBE: No, sir.

13 (State's Exhibit 1 published, but not
14 reported).

15 Q. (BY MS. ROBERTS) Sergeant Robles, I just have
16 a few more questions for you. All right?

17 A. Okay.

18 Q. First, I just want to ask you again: Does the
19 recording accurately reflect the Miranda rights as you
20 read them and the answers as the defendant gave them?

21 A. Yes.

22 Q. Okay. Just another thing. We hear a few
23 times in the statement Gustavo Vasquez saying I just
24 want to go home. I'm afraid or I'm confused or I'm
25 scared. At that time is he telling you I don't want to

1 do this anymore or were his words just saying he wanted
2 to go home?

3 A. No. He just wanted to go home.

4 Q. At any time did he tell you we [sic] don't
5 want to speak to you anymore?

6 A. No.

7 Q. And did he ever say I want to stop?

8 A. No.

9 Q. Okay.

10 MS. ROBERTS: Your Honor, I pass the
11 witness.

12 THE COURT: Mr. Hochglaube?

13 CROSS-EXAMINATION

14 BY MR. HOCHGLAUBE:

15 Q. Sergeant, there's a moment in that video where
16 you asked him a question about a phone call he had made
17 and then you stopped and you say never mind, I don't
18 want to ask you about that.

19 A. Yes, sir.

20 Q. What did the defendant say?

21 A. You know, I don't recall.

22 Q. Did he say he had tried to call an attorney?

23 A. Yeah. During -- he was telling me that he
24 tried to call his attorney. He had called and spoken
25 with his attorney.

1 Q. Okay. And he -- he gave a name of a person
2 that was --

3 A. Yes, sir.

4 (Simultaneous speaking).

5 A. Correct.

6 Q. (BY MR. HOCHGLAUBE) Okay. Up until that
7 point, were you aware that he had an attorney?

8 A. No.

9 Had been assigned an attorney? No, sir.

10 Q. But he's telling you at that point he has an
11 attorney, right?

12 A. Correct.

13 Q. And he's telling you that while he's in the
14 house, he tried to call that attorney, correct?

15 A. He tried to call his attorney, correct.

16 Q. Okay. So, he made clear to you that at least
17 at some point prior to your interview he wanted to
18 speak with an attorney, correct?

19 A. No. He indicated that he tried to call his
20 attorney from the shooting scene.

21 Q. Right. And I think we're saying the same
22 thing.

23 At some point prior to your interview --
24 maybe it's at the shooting scene -- whenever it was, he
25 made an effort to contact a lawyer, right?

1 A. He tried to call his attorney, correct.

2 Q. Okay. Now, he tells you a number of times
3 that he's confused during your interview with him,
4 correct?

5 A. A couple of times, yes, sir.

6 Q. And at the point of the interview you had read
7 the -- you had read the supplements that other officers
8 had written for this offense report?

9 Before you go into that interview, had
10 you -- had you read what the other officers had
11 submitted as offense reports?

12 A. I couldn't tell you. On our computer system,
13 I don't know if any of them had been downloaded yet
14 since it was such a short time. So, I don't know what
15 supplements I had read or not read.

16 Q. Well -- because there was some reference you
17 made to his mother saying he used a knife and cut the
18 walls, right?

19 A. I believe that was from -- Investigator Bailey
20 had made mention of his mother saying something about
21 using the knife on the walls.

22 Q. And I guess the point that I'm trying to get
23 to is there's some mention -- you've read the offense
24 report now, have you not?

25 A. Yes, sir.

1 Q. All right. There's some mention in the
2 supplements to the offense report prior to this
3 interview that the defendant was high, not just on any
4 drug, but specifically on PCP --

5 A. Correct.

6 Q. -- at the time of the shooting, right?

7 A. Correct.

8 Q. And when you went into that interview, you
9 were aware that there was some suspicion that he had
10 been high on PCP at the time of the shooting, correct?

11 A. There was some suspicions, correct.

12 Q. And your testimony, I think was, you did not
13 want to interview him on the same day as the shooting
14 because you were concerned about his state of
15 intoxication.

16 A. For this incident, yes, correct.

17 Q. Right. And -- and I guess in a larger sense,
18 you don't want to go and interview suspects who are
19 intoxicated and may not be able to -- may not be able
20 to voluntarily talk to you, correct?

21 A. I couldn't make a general blanket statement
22 about not interviewing people under the influence of
23 certain drugs or narcotics or alcohol. For this case
24 in particular, I didn't think it was a big rush to
25 interview him for any reason.

1 Q. Okay. But I guess my point is, you received a
2 lot of training about how to do interrogations, right?

3 A. Correct.

4 Q. And you received training about how to take
5 precautions not to make -- not to make your
6 interrogation involuntarily as the Court might see it.

7 A. Correct.

8 Q. And one of those things that you've been
9 trained about is in interrogating people who might be
10 intoxicated, right?

11 A. To some extent. There's really no set rule
12 that you cannot interview somebody who's under the
13 influence.

14 Q. Correct. That's my point, is you've received
15 training about this, right?

16 A. We've talked about case law in the past based
17 on interviews for people who were intoxicated. But we
18 don't have specific training within the department that
19 says you can't interview somebody that's under the
20 influence.

21 Q. Okay. And it was based on your training,
22 knowing that courts are sensitive to the idea of
23 intoxicating -- of interrogating intoxicated people,
24 right?

25 And based on that, you chose to postpone

1 talking to him, right?

2 A. That, combined with the overwhelming evidence.

3 Q. Okay. Now, when you talked to him the next
4 day, you make a point of not asking him whether he's
5 under the influence of any intoxicating influences,
6 right?

7 A. That's correct.

8 Q. You never say to him: We were worried that if
9 you were intoxicated yesterday, are you still
10 intoxicated now?

11 A. That's correct.

12 Q. And PCP -- you've had some training on the
13 effects of drugs on people, right?

14 A. Yes, sir.

15 Q. And you've certainly had experience dealing
16 with people who were high on PCP.

17 A. Yes, sir.

18 Q. And it's very unpredictable the way people
19 behave, correct?

20 A. It is from the four to six hours, three-to-six
21 hour mark. Usually where in eight hours, it's pretty
22 much dispersed from a person's body.

23 Q. Usually, but not always, right?

24 A. The majority of the time -- I mean, I couldn't
25 tell you specifically.

1 Q. And point in fact, one of the dangerous things
2 about PCP is that it can have long-lasting effects
3 where people, even days later, are effected by the PCP
4 that they appeared to have sort of overcome, right?

5 A. No, I have to disagree with that.

6 Q. Okay.

7 A. Based on my training, I think maybe more LSD
8 or hallucinogens with it, not so much PCP.

9 Q. Okay. You specifically go through the Miranda
10 warnings with the defendant, right?

11 A. Yes, sir.

12 Q. And you're aware that some officers in their
13 practice will make the additional question of saying do
14 you waive these rights and agree to talk to me, right?

15 A. Other states -- other state laws, other
16 agencies, yes.

17 Q. Well, they're -- I mean, it's a personal
18 practice with different officers. Some of them ask
19 that further question, some of them don't, right?

20 A. For us, we read exactly what the Harris County
21 District Attorney's blue card is.

22 Q. Right.

23 A. What they deem the questions to be asked.

24 Q. So, you specifically choose not to ask the
25 question: Will you waive these rights and agree to

1 talk to me?

2 A. I specifically choose to abide by the district
3 attorney's blue card that they set forth for us.

4 Q. All right. And are you -- are you glad not to
5 have to ask that question for fear that the person
6 might invoke their right or might not be willing to
7 waive their rights?

8 A. No.

9 Q. Okay. The Miranda warnings we see on that
10 video, those are the only Miranda warnings that you
11 gave the defendant, right?

12 A. Yes, sir.

13 Q. You didn't -- you didn't give them to him --
14 'cause it -- my understanding is you checked him out of
15 the city jail.

16 A. Yes, sir.

17 Q. And then about 41 minutes later, you began
18 that interrogation, right?

19 A. No. 40 minutes prior we were at 1200 Travis
20 in our office and we decided to go over to interview
21 him. So, the time it took us to drive there, go find
22 him in the jail, sign him into an interview room, turn
23 on the recording was roughly 40 minutes.

24 Q. All right. And throughout all of the time
25 that you're in the presence of the defendant, prior to

1 that video you do not give the defendant Miranda
2 warnings, right?

3 A. That is correct.

4 Q. Now, you check him out of the city jail,
5 right?

6 A. Yes, sir.

7 Q. And you then drive him from the city jail over
8 to 61 Riesner?

9 A. No, sir. 61 Riesner is the city jail.

10 Q. Okay. That's where -- and so, you walk with
11 him from wherever he's checked out to --

12 (Simultaneous speaking).

13 THE COURT: One at a time.

14 COURT REPORTER: I didn't get the rest of
15 your question.

16 Q. (BY MR. HOCHGLAUBE) You walked with him from
17 where you check him out all the way to the
18 interrogation, right?

19 A. That's correct.

20 Q. And do you introduce yourself to him?

21 A. I'm sure, yes.

22 Q. Do you tell him that -- what you're there to
23 talk to him about?

24 A. When we sign people out, yeah, I usually
25 introduce myself. Shake their hand, you know, so they

1 understand what's going on.

2 Q. And -- and you say I'm here to talk to you
3 about the murder charge that's pending.

4 A. Either that or I'm here to talk to you about
5 last night or here to talk to you about what happened
6 to your wife or whatever. I don't remember
7 specifically what I told him.

8 Q. All right. And did he say anything to you
9 prior to -- prior to you guys -- well, I guess while
10 you're walking into that interview room?

11 A. Not that I recall.

12 Q. Did he say anything to you about how he's
13 sorry and he was stressed and --

14 A. I don't recall if he made any comments at all.

15 Q. So, you're not sure whether he did or not?

16 A. Yeah. No, I'm not sure. Nothing of
17 significance to be documented.

18 Q. Well, you're not sure what he said, right?

19 A. That's correct. But if it was significant, if
20 it was a res gestae statement in regards to what
21 happened, I would have probably documented it, I'm
22 sure.

23 Q. Okay. When -- when you walked in and you
24 first told him, you know, we're here to talk to you
25 about a murder charge and his very first response was

1 that he didn't understand what you were talking about,
2 right?

3 A. I'd have to watch it again specifically about
4 what you're referring to.

5 Q. Okay. Did it seem to you throughout the video
6 like -- like he was confused?

7 A. No. He would -- like he would make a general
8 comment about something. And I would follow up with a
9 question to see if he was confused. And he was pretty
10 cognizant of everything that was going on and what had
11 happened, in my opinion.

12 MR. HOCHGLAUBE: Judge, I pass the
13 witness.

14 THE COURT: Ms. Roberts?

15 MS. ROBERTS: Nothing further from this
16 witness, Your Honor.

17 THE COURT: All right. Thank you, sir.
18 You may be excused.

19 Call your next witness.

20 MS. ROBERTS: Your Honor, the State has
21 no more witnesses. The State rests for this motion.

22 THE COURT: What says the defense?

23 MR. HOCHGLAUBE: The defense rests.

24 THE COURT: I'll listen to argument.

25 MR. HOCHGLAUBE: It doesn't matter.

1 At the Court's pleasure.

2 THE COURT: Okay. Go ahead.

3 MR. HOCHGLAUBE: Thank you.

4 Judge, there's a number of points that I
5 just want to make sure I've raised for purposes of the
6 record.

7 In regards to Lieutenant Lee, the first
8 witness, we'd submit that when he asked the defendant a
9 question while he was in custody, that was custodial
10 interrogation. And I understand that Lieutenant Lee
11 may not have intended in asking that question to elicit
12 incriminating information. But nevertheless, the
13 defendant is in custody at the time. It's unrecorded.
14 It's un-Mirandized. And the defendant's getting asked
15 a question by a police officer. That's custodial
16 interrogation. So, our position is that that testimony
17 from that officer should be excluded from admission
18 into evidence.

19 With regard to the video, there's a
20 couple of different points. No. 1, it's clear from the
21 video that the defendant had tried to call a lawyer
22 prior to any of the interrogation from Lee or during
23 this video. And we would suggest -- we would argue
24 that he had an attorney/client relationship with the
25 lawyer that he mentioned in the video. And as a

1 result, all of the interrogation that followed was
2 impermissible and should be suppressed for that reason.

3 Additionally, we would argue that it's
4 clear from the evidence that the defendant was under
5 some sort of intoxicating effect. And we're aware of
6 that for sure in the hours leading up to this
7 statement. And despite the fact that there was a
8 significant delay of about 24 hours between when the
9 scene -- the crime scene is being surrounded by the
10 police, up until -- about 24 hours between then and the
11 time of that statement, we'd submit that the evidence
12 shows that he was high and under the influence of PCP
13 at the time of the statement. And that that affected
14 the voluntariness of him being -- intelligently waiving
15 his rights in talking to the police.

16 Lastly, it's clear that the officers did
17 not Mirandize the defendant prior to this video and
18 that there was conversation of some sort between the
19 officer and the defendant prior to -- prior to this
20 video being turned on. And under Siebert versus
21 Missouri, we'd submit that anything that defendant
22 might have said to those officers outside of this
23 video, not having been apprised of his Miranda
24 warnings, that that would taint what he ultimately told
25 the officers on video after being Mirandized. And --

1 THE COURT: Are you talking when they
2 checked him out and walked him to the room?

3 MR. HOCHGLAUBE: Yes, sir.

4 THE COURT: Okay.

5 MR. HOCHGLAUBE: So, once again, we'd
6 argue that -- that his statement to Sergeant Robles
7 should be suppressed for that reason.

8 And just for the purposes of the record
9 that he -- that the officers did not obtain an actual
10 affirmative waiver from the defendant to his Miranda
11 warnings, again makes a statement inadmissible.

12 THE COURT: Okay. Ms. Roberts?

13 MS. ROBERTS: Thank you, Your Honor

14 First, we would address Lieutenant Lee's
15 testimony. Lieutenant Lee stated that he -- the only
16 reason he ever spoke to the defendant while he was in
17 the backseat of a different police car was for the
18 welfare general-health questioning of the defendant.
19 The law clearly states in Pennsylvania V Muniz out of
20 the U.S. Supreme Court that there are certain questions
21 that are not considered interrogation. And routine
22 booking questions, including healthcare is one of those
23 -- one of those questions that are not considered to be
24 interrogation.

25 Further in Rhode Island V Innis, it says

1 that interrogations are questions or comments that will
2 be considered interrogations if they intended to elicit
3 an incriminating response. Lieutenant Lee specifically
4 said he only went over there because as the lieutenant
5 on scene, he saw that the defendant was slumped over.
6 He wanted to make sure he did not have a heart
7 condition or any other health condition that would
8 require medical attention. So, he went over with the
9 intention of making sure that the defendant was all
10 right, not to actually question him.

11 And further, since the question was about
12 healthcare and the defendant's response was completely
13 not about healthcare. He was saying he didn't mean to
14 do it. Those questions are absolutely not
15 interrogation questions. He was not eliciting a
16 response in which he was trying to figure out whether
17 or not the defendant committed the crime.

18 Sergeant Robles, first, we'll talk about
19 the fact that the defendant spoke about a lawyer in the
20 custodial interrogation after being Mirandized. The
21 defendant does say that. He says at some point that he
22 called an attorney after calling his mom. But he
23 doesn't make it clear that it's his attorney
24 representing him, that anything he has been decided by
25 his attorney. And he actually -- the -- luckily -- or

1 Sergeant Robles then continues to say, I don't want to
2 know what you guys said. Because he doesn't want to
3 infringe upon anything that may have happened. But at
4 the same time, this defendant had never made the
5 comment that he had an attorney or wanted an attorney
6 present. He just merely made the comment that he
7 called an attorney, not that he was representing him.

8 As to the intoxication, as Sergeant
9 Robles said, they waited a significant time period.
10 It's 24 hours from the time of the actual offense.
11 It's 17 hours after the defendant was booked into
12 custody. So, Sergeant Robles says he does not believe
13 the defendant was intoxicated and took every precaution
14 to ensure that he wasn't intoxicated. And Sergeant
15 Robles says he did not observe anything that the
16 defendant was saying or doing that would make him
17 appear to be intoxicated.

18 But if the defendant were to be
19 intoxicated, we can look at Colorado V Connelly out of
20 the Supreme Court. And it says that voluntariness of
21 -- sorry. That a defendant's statement is only
22 suppressible due to intoxication if there's police
23 overreaching. So, it would require some coercion or
24 other threatening by an officer, not just merely the
25 defendant speaking to an officer while intoxicated. It

1 requires something more of the officer in order to say
2 that the statement is not voluntary based on
3 intoxication.

4 As to the last point of the officer not
5 Mirandizing the defendant on a walk over to the
6 interview room, this kind of goes back to what is
7 interrogation. If the officer, as Robles said, he's
8 just introducing himself, kind of saying hey, I'm going
9 to talk to you for a little bit, but not asking
10 questions, that's not an interrogation. And so, it
11 would say -- it would not actually be ruining
12 everything afterwards or tainting the custodial
13 interrogation after because an interrogation was not
14 done before Miranda. He was just merely being
15 pleasant, introducing himself and bringing him to the
16 interview room at that time.

17 Thank you, Your Honor.

18 THE COURT: Okay. All right. I will
19 first make a finding that the defendant was lawfully
20 detained and in custody at the time of both of the
21 statements that we've been talking about, first, with
22 the lieutenant and the second with the sergeant.

23 I will find that although the defendant
24 was lawfully in custody, that based upon the credible
25 testimony of the officer, since he appeared to be

1 slumped over and the officer was specifically -- as he
2 stated, worried about his well-being, the question that
3 he asked him -- clearly, it was a question. But it
4 was, I'm going to find, not interrogational. It was
5 about his health and for the purposes of making sure
6 that the defendant's health was okay because he was
7 worried about that. So, the defendant's response: I'm
8 sorry, I should not have done it. I've been under a
9 lot stress. Though that may, in fact, be considered by
10 a trier of fact to be an incriminating statement, that
11 is not a statement made as a result of custodial
12 interrogation that was made to elicit comments about
13 the offense itself. But was instead made in order to
14 provide healthcare or treatment if needed to the
15 defendant.

16 That lieutenant, who I guess from the way
17 I heard it, had had phone conversations with the
18 defendant and also had that brief time with him, said
19 he didn't see any indication that the defendant was
20 high on PCP. But even if he had taken PCP, I make a
21 finding that that particular statement to the
22 lieutenant was not -- was freely and voluntarily made
23 even though it didn't directly relate to the question
24 that was asked by the officer.

25 Regarding Sergeant Robles' statement,

1 which he stated that he purposefully waited, I believe
2 -- whatever the time frame turns out to be -- 24 hours
3 later just to make certain, No. 1, that the defendant
4 was not still under the influence of PCP, if he was.
5 But also because they felt time was not of the essence.
6 So, he waited that time frame in order to make -- take
7 the statement from him.

8 During the time of the interview -- prior
9 to the interview that's recorded, the officer testified
10 that it was only basically small talk, introducing
11 himself, nothing out of the ordinary happened and the
12 defendant did not make any statements of note prior to
13 the videotaped interview. During the first portion of
14 the interview, the officer reads off each of the
15 required mandatory -- required Miranda warnings in
16 which the defendant indicates quite clearly that he
17 understands each of those warnings. The officer does
18 not ask for, nor does the defendant give an explicit
19 waiver of those rights. But based upon the
20 interactions with the officers and the answers given by
21 the defendant, he -- at least there is an implied
22 waiver of those Miranda warnings and continued to
23 freely, voluntary and intelligently speak with the
24 officers about the situation surrounding this event.

25 I think it does go to the intelligent --

1 or the understanding of the situation in that the
2 defendant does mention that he did call a lawyer so
3 they could straighten out what was going on. But
4 there's no indication that he retained a lawyer, spoke
5 to a lawyer or anything of that nature or at any point
6 wanted to stop his statement or have the lawyer present
7 during that statement.

8 So, I will find that the defendant
9 voluntarily and knowingly waived his rights that were
10 given to him. And the motion to suppress the statement
11 -- both statements will be denied.

12 (Proceedings adjourned).
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1 THE STATE OF TEXAS)

2 COUNTY OF HARRIS)

3 I, Trisha Matthews, Official Court Reporter in
4 and for the 230th District Court of Harris County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to be
9 included in this volume of the Reporter's Record, in
10 the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported
12 by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 26th day
17 of May, 2015.

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/s/ Trish Matthews
Trisha Matthews, Texas CSR#6606
Expiration Date: 12/31/15
Official Reporter, 230th District Court
Harris County, Texas
Houston, Texas 77002