

Officer Damon Morton - April 15, 2014
Further Recross-Examination by Mr. Garza

1 MS. VOHRA: No further question.

2 THE COURT: You may step down.

3 May this witness be excused and not
4 subject to recall?

5 MS. VOHRA: Yes, Your Honor.

6 MR. GARZA: Yes, Your Honor.

7 THE COURT: Thank you for your time.

8 Call your next.

9 MS. VOHRA: We call Officer Jose` Saenz.

10 THE COURT: You may proceed when you're
11 ready.

12 **DIRECT EXAMINATION**

13 **BY MS. VOHRA:**

14 Q. Can you please introduce yourself to the jury,
15 and spell your last name for the court reporter.

16 A. My name is Jose` Saenz. Last name S-a-e-n-z.
17 Police officer with the Houston Police Department.

18 Q. How long have you serving with the Houston
19 Police Department?

20 A. Two and a half years.

21 Q. Did you do anything prior to joining law
22 enforcement?

23 A. I was in the military.

24 Q. How long were you in the military for?

25 A. Four years.

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1 Q. What was your title and rank in the military?

2 A. I was a combat medic and sergeant.

3 Q. What does a combat and medic do?

4 A. We usually are assigned to a platoon. And we
5 are in charge of all the medical needs of the platoon
6 whether trauma injuries or just regular causes.

7 Q. So when you joined the Houston Police
8 Department, you said two and a half years ago?

9 A. Yes, ma'am.

10 Q. What kind of training did they give you guys?

11 A. Six months academy, and six months on-the-job
12 training probation period.

13 Q. What does on-the-job training mean?

14 A. You have a FTO, field training officer, you
15 spend two weeks with them, and then you get another one,
16 and another one. Then you get evaluated for three
17 weeks.

18 Q. And what kinds of experience do you have in
19 identifying weapons?

20 A. We have a four-day class to identify all kinds
21 of weapon, illegal weapons, prohibited weapons.

22 Q. And how do they give that class? Is it
23 hands-on?

24 A. It's PowerPoint with pictures, pictures mostly.

25 Q. What is your current assignment with the

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1 Houston Police Department?

2 A. Night shift, patrol officer, at Central.

3 Q. Central, does that refer to an area of town you
4 are assigned to?

5 A. Yes. West of downtown, north of Memorial, and
6 south of the loop.

7 Q. And so you -- were you also on patrol on the
8 date of May 17, 2013?

9 A. Yes, ma'am.

10 Q. I just want to turn our attention to that date:
11 Were you own duty?

12 A. Yes, ma'am.

13 Q. And at some point were you dispatched to some
14 kind of call, a weapons disturbance?

15 A. Yes, ma'am.

16 Q. Can you tell us the circumstances of that
17 incident?

18 A. We were dispatched to a weapon disturbance on
19 Richmond and Hazard. A man with a weapon. I'm unsure
20 of what it was. So they dispatched me and my partner
21 over to the area, and we drove down to the area.

22 Q. That area, you said 1901 Richmond?

23 A. Yeah. 1901 Richmond, apartment complex.

24 Q. Is that in Harris County, Texas?

25 A. Yes, ma'am.

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1 Q. What did the scene look like when you guys got
2 there?

3 A. When we got there we were looking for a white
4 male with no shirt and a bald head. We parked on the
5 Richmond side of the apartment complex, and we walked
6 toward Hazard trying to look for a guy we were looking
7 for. And before we could even turn the corner, we
8 smelled the strong smell of gasoline. When we turned
9 the corner we saw a white male, bald head, sitting at a
10 apartment complex with a tire iron, and basically a bomb
11 next to his feet.

12 Q. Approximately how far away were you when you
13 smelled the gasoline?

14 A. Fifty feet from the intersection to the corner
15 from where he was.

16 Q. Were there people standing outside?

17 A. I think he was by himself.

18 Q. So nobody was near him?

19 A. No.

20 Q. And do you know how many people were -- so when
21 you get there, what do you do at that point when you see
22 someone who matches the description on the call-slip for
23 a weapon?

24 A. We -- for our safety and his we ordered the
25 male to stand up and walk away from the tire iron and

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1 bomb that was there. He wasn't listening. He had his
2 head between his knees kind of slumped over not
3 responding to any of our commands.

4 Q. At some point did he start responding to your
5 commands?

6 A. Yes. We had to be a little more assertive and
7 a lit louder. And he stood up and walked toward us, and
8 we detained him for our investigation.

9 Q. And when you approached the device near him,
10 what kind of caution did you use?

11 A. Extreme caution.

12 Q. Did you have any weapons drawn at that point?

13 A. I did. I had my weapon drawn to my side
14 because when dealing with a weapon, even a tire iron
15 that can be used as a weapon, there's a 21-foot rule.
16 If he's within 21 feet, he could essentially grab the
17 weapon and use it against us before we had time to
18 react.

19 Q. You approached him cautiously, and were you
20 able to get him to listen to your commands?

21 A. Yes.

22 Q. At that point did you notice other items near
23 him?

24 A. Yes. A glass bottle containing a liquid inside
25 of it.

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1 Q. Were you able to smell that liquid?

2 A. Yes. It was gasoline.

3 Q. And do you -- did he make any statement to you?

4 A. Yeah. He said -- I can't remember the exact
5 wording, but it was either them or the ones across the
6 street. I want to scare the bitches, something like
7 that.

8 Q. And do you believe he was referring to the
9 molotov cocktail?

10 A. Yes, he was.

11 Q. And do you see the person who made those
12 statements and was in possession of the molotov
13 cocktail, is he in the courtroom today?

14 A. Yes.

15 Q. Can you please identify him by an article of
16 clothing he's wearing?

17 A. He's the gentlemen over there with the gray
18 tie.

19 MS. VOHRA: May the record reflect that
20 the witness has identified the defendant.

21 THE COURT: The record will so shall
22 reflect.

23 MS. VOHRA: Thank you, Judge.

24 Q. (BY MS. VOHRA) And I understand you worked that
25 had day with another police officer, correct?

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1 A. Yes.

2 Q. What was his name?

3 A. Damon Morton.

4 Q. Once you were able to separate him from the
5 explosive weapon, what did you do next?

6 A. We tried to talk to the person who called, if
7 anyone was around, talk to see exactly what was going
8 on.

9 Q. Were you able to speak to any witnesses?

10 A. Yes.

11 Q. Did they make any statements to you?

12 A. Yeah. They told me they were scared of him.

13 MR. GARZA: Objection, Your Honor.

14 Hearsay.

15 THE COURT: Sustained.

16 Q. (BY MS. VOHRA) Let's talk about the evidence
17 that you collected at the scene. What did you guys end
18 up doing with the molotov cocktail?

19 A. We called our homicide department and asked us
20 what they would like us to do. And they advised us we
21 needed to call the bomb squad. We called them, they
22 told us they would not be coming out. So we took it to
23 a fire station that's right down the road on Richmond.

24 Q. And have you ever been dispatched to this type
25 of weapon before?

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1 A. No.

2 Q. You have been with the police department at
3 about two years at that point?

4 A. Yes.

5 Q. So this was about a year ago?

6 A. I guess it was over a year.

7 Q. So did you know what HPD's policy was on
8 disposable, flammable weapons?

9 A. We tried contacting the bomb squad, but I can't
10 quite remember what they said.

11 Q. But you took it to the fire station --

12 A. Yes.

13 Q. -- and they disposed of it?

14 A. Right.

15 Q. Did you feel comfortable disposing of it
16 yourself?

17 A. No.

18 Q. Why is that?

19 A. Because it was full of gasoline, I didn't want
20 to pour it out, you know, children around.

21 MR. GARZA: Objection, Your Honor.

22 Narrative.

23 THE COURT: Sustained.

24 MS. VOHRA: Why didn't you want to pour it
25 out? It's gasoline, and it was a hot day.

1 THE COURT: Anything further?

2 MS. VOHRA: Pass the witness, Judge.

3 **CROSS-EXAMINATION**

4 **BY MR. GARZA:**

5 Q. Did you actually see the bottle in Mr. Smith's
6 hands?

7 A. No, sir.

8 Q. Where was the bottle when you saw him, where
9 was it?

10 A. On the right side of his right foot.

11 Q. Did you takes photos?

12 A. No, sir.

13 Q. Officer Morton took photos?

14 A. Yes, sir.

15 Q. Did y'all have situated around a stairwell,
16 close to a stairwell there?

17 THE COURT: Do you understand the
18 question?

19 A. No.

20 Q. (BY MR. GARZA) Where was he sitting? Close to
21 a stairwell at the apartments?

22 A. There was a stairwell there, yes.

23 Q. Did you talk with Mr. Wieche?

24 A. I believe my partner did.

25 Q. And did he mention a video?

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1 A. No. I don't remember, but I don't believe.

2 Q. So no one tried to get a copy of the video?

3 A. No, sir.

4 Q. Did you test the contents of that bottle?

5 A. No, sir.

6 Q. Do you know if anyone tested the contents of
7 that bottle?

8 A. I don't know.

9 Q. Would you agree with me that even one drop of
10 gasoline could be a very potent smell?

11 A. No, sir.

12 Q. Two or three drops?

13 A. No, sir.

14 Q. So if you've -- say you dropped gasoline on
15 your hands or so and tried to wash your hands, does the
16 gasoline smell come off immediately?

17 A. No, sir.

18 Q. Takes two or three times to wash it?

19 A. Yes, sir. But if you're asking --

20 THE COURT: Y'all cannot talk at the same
21 time. Allow counsel to finish his question before you
22 make your answer, even though you know what your answer
23 is going to be. He's going to give you the same
24 courtesy and not interrupt you.

25 Q. (BY MR. GARZA) So you -- we've seen those

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1 photos.

2 MR. GARZA: May I approach the witness,
3 Your Honor?

4 THE COURT: Yes, you may.

5 Q. (BY MR. GARZA) Show you this one photo.
6 State's Exhibit No. 7. Is that more consistent color of
7 a beer?

8 A. No, sir.

9 Q. Is gasoline more of a reddish color?

10 A. I don't believe so.

11 Q. So without testing the contents of that bottle
12 there's no way to really tell exactly what was in that
13 bottle, right?

14 A. We were 100 percent certain it was gasoline.

15 Q. Even though there could have been water in
16 there, other beer in there also?

17 A. The smell from the bottle was overwhelming.

18 Q. But even two or three drops of a little bit of
19 beer in a bottle like that could turn water or beer that
20 turn reeked of gasoline, couldn't it?

21 A. Well, I've dropped -- I've dropped gasoline in
22 my hand while fueling my car, and it was not the same
23 type of smell.

24 Q. I'm sorry. I may have asked you this, but did
25 the fire department check the contents of that either,

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1 or tested the contents of that bottle?

2 A. I don't believe so, sir.

3 Q. Y'all didn't think to keep the bottle?

4 A. No, sir. Because it had gasoline in it, and we
5 gave it all to the fire department.

6 Q. Or the rag?

7 A. No, sir.

8 Q. Officer Saenz, when you gave the commands to
9 Mr. Smith, did he step away from the bottle or the
10 crowbar?

11 A. He followed our commands, yes.

12 Q. So he was fairly cooperative besides the fact
13 he may have been high?

14 A. I don't believe I said that.

15 Q. Would you say he was cooperative?

16 A. Yes.

17 Q. And where were the -- I'm sorry. So he had
18 already stepped away from the crowbar and the bottle,
19 correct?

20 A. Yes, sir.

21 Q. Wasn't the defendant actually sitting further
22 away from the bottle --

23 A. It was within his reach.

24 THE COURT: Excuse me. Let counsel finish
25 his question before you begin to answer.

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1 Q. (BY MR. GARZA) Wasn't Mr. Smith sitting further
2 away from the bottle when y'all first arrived at the
3 scene?

4 A. It was within arm's reach.

5 Q. When y'all took those photos, did you move the
6 bottle and the crowbar away from the original scene?

7 A. Yes, sir.

8 Q. Why would you do that, if there was no danger?

9 A. There was an element of damage because there
10 was a bomb, but my partner took the photos. You'll have
11 to ask him that.

12 Q. But Mr. Smith had already moved away?

13 A. Yes.

14 Q. Did anybody take any fingerprints of the
15 bottle?

16 A. No, sir.

17 Q. No one at all?

18 A. No, sir.

19 THE COURT: Anything further?

20 MR. GARZA: Just checking, Your Honor.

21 Pass the witness, Your Honor.

22 THE COURT: Thank you.

23 MS. VOHRA: Nothing further from this
24 witness.

25 THE COURT: May this witness step down and

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1 be excused and not subject to recall?

2 MS. VOHRA: He may, Your Honor.

3 THE COURT: You're excused.

4 MS. VOHRA: At this time the State rest.

5 THE COURT: Very well.

6 All right. Ladies and gentlemen, at this
7 juncture of what we're going to do is ask you to go back
8 to the jury deliberation. I've got something I've got
9 to do regarding this trial. We'll probably be releasing
10 you for the day. Come back at 10:00 o'clock.

11 Let me see both sides.

12 Excuse you, for the day. Be back, you
13 know, where you are now. If you have any questions, be
14 sure to ask the Deputy.

15 I'll give you a couple of rules. These
16 are not arbitrary rules, these are rules jurors who have
17 ignored have called mistrials. Wear your badges when
18 you're around the complex. Do not be swayed by any
19 other source. That also means stay off the Internet
20 with regards to this case; cell phones, anything of that
21 nature. You may not discuss this case a amongst
22 yourselves or anyone else until such time we are through
23 with the testimony or evidence and you can begin your
24 deliberations.

25 Of course, you can tell your loved one or

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1 whomever that you're on the jury and what type of case
2 it is. That's it. You may not discuss the case during
3 breaks. Same rule. You are not to be influenced by any
4 other source except the evidence which you take from
5 this witness stand and or the physical evidence
6 presented.

7 Do you have any questions of me? If not,
8 I'll see you in the morning at 10:00 o'clock.

9 One last thing, I'm sorry. We can't start
10 unless all of you are here.

11 Thank you.

12 (Jury released for the day.)

13 MR. GARZA: He is not going to take the
14 stand, Your Honor.

15 THE COURT: Mr. Wieche is excused.

16 Outside the presence of the jury, what is
17 your position with witnesses?

18 MR. GARZA: The Defense would rest.
19 Mr. Smith has decided not to take the stand, Your Honor.
20 We have no other witnesses.

21 THE COURT: You have the absolute right to
22 do that, Mr. Smith, with your permission.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very well. The Defense and
25 State having rested; and then in the morning, let's get