

1 (Open court, defendant and jury present)

2 THE COURT: Thank you. Please be seated.

3 First of all, let me introduce a couple of
4 people to you.

5 This is Mary Ann Rodriguez. She's the
6 court reporter this afternoon. She's filling in for
7 Ms. Lee.

8 And also we have Casey Romeyo (phonetic)
9 over here. And she's my intern for the semester. She's
10 a law student at the University of Houston. Thank you.

11 All right. You may continue.

12 MS. KNECHT: Thank you, Judge.

13 **R. SCHOBAY,**

14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 **CONT'D BY MS. KNECHT:**

17 Q. Okay. Sergeant, we were talking about some of
18 the evidence that you collected out at that scene on
19 March 3rd, 2011.

20 A. Yes, ma'am.

21 Q. Okay. If I could, I'd like to start by going
22 over what all you collected.

23 MS. KNECHT: Judge, may I approach the
24 witness? May I approach, Judge?

25 THE COURT: Yes, ma'am.

1 Q. (By Ms. Knecht) I'm going to start off by
2 showing you what's been pre-marked as State's Exhibit
3 No. 30. Do you recognize that (indicating)?

4 A. Yes, ma'am. This is the blue plastic bowl that
5 at one time contained the wet money and the wet wash
6 rags.

7 Q. And the rags you mentioned were wet at the
8 time?

9 A. Yes, ma'am.

10 Q. Okay. And did you bring this here to court
11 today?

12 A. Yes, ma'am.

13 Q. And has it been altered or changed in any way?

14 A. It looks like it's been crushed a little bit,
15 but I guess that happened when it was being stored in
16 the property room.

17 Q. Okay. Other than that?

18 A. Other than that, no, ma'am, it looks in tact.

19 Q. Are you the one who actually physically tagged
20 it over at the property room?

21 A. Yes, ma'am.

22 Q. How do we know that?

23 A. It's got my writing on the bag and -- pretty
24 much the writing on the bag is mine.

25 Q. Are your initials placed on the bag?

1 A. It's kind of rubbed, but, yes.

2 Q. Okay. Now, you mentioned money.

3 A. Yes, ma'am.

4 Q. Did you collect the money that was in the bag?

5 A. Yes, ma'am.

6 Q. What did you do with the money that you
7 collected?

8 A. Initially, we tried to count it, but since it
9 was all wet, it was sticking together. I tried to dry
10 it by placing it in a cardboard box with paper towels to
11 dry. That didn't work very good. So, I went ahead --
12 at the FBI, they have a big drying chamber that they
13 utilize to dry various articles of clothing or whatever.
14 And myself and an agent went through and we hung all the
15 money inside the dryer and turned it on.

16 Q. Okay. And so, at some point were you able to
17 count how much money you recovered?

18 A. Yes, ma'am.

19 Q. How much money did you recover from the car?

20 A. I believe \$9,228.

21 Q. Let me show you what I've marked as State's
22 Exhibit No. 15. What is that (indicating)?

23 A. This would be a 20-dollar bill that's also
24 dye-stained that was recovered in between the seat and
25 the center console. Now, the 9,228, that was from the

1 bowl.

2 Q. Okay. So, let me show you -- it's already been
3 admitted into evidence -- State's Exhibit No. 12. Is
4 that that same dollar-bill that you have up there
5 (indicating)?

6 A. Yes, ma'am, the same 20.

7 Q. It is?

8 A. Yes, ma'am.

9 Q. Okay. And then pulling the contents out of the
10 this bag here, is this the money that you recovered from
11 the actual bowl (indicating)?

12 A. Yes, ma'am.

13 Q. Okay. And you tagged this after it dried?

14 A. Yes, ma'am. We counted it and tagged it.

15 Q. And so, I show here this is just a wad of
16 one-hundreds (indicating)?

17 A. Yes, ma'am. We separated it up into
18 denominations, rubber-banded it to make it easier for
19 counting.

20 Q. Fifties?

21 A. Yes, ma'am.

22 Q. Five dollars?

23 A. Yes.

24 Q. Twenties?

25 A. Yes.

1 Q. Two-dollar bills?

2 A. Yes.

3 Q. Ten-dollar bills and one-dollar bills.

4 A. Yes.

5 Q. And how much did you say it totaled?

6 A. 9,228.

7 Q. Set that to the side for me.

8 A. Yes, ma'am.

9 Q. And the bag that you brought the money in
10 today, are your initials on this bag (indicating)?

11 A. Yes, ma'am.

12 Q. I'm going to show you what we've marked as
13 State's Exhibit No. 14. Do you recognize that
14 (indicating)?

15 A. Yes, ma'am.

16 Q. Okay. And what is that?

17 A. That is the black cap that we had located
18 inside the vehicle.

19 Q. Okay. How would you describe this hat?

20 A. I've had several people describe it as either a
21 kaga (phonetic) or chauffeur type hat.

22 Q. Okay. And did you also tag that?

23 A. Yes, ma'am.

24 Q. Are your initials or writing also on this bag?

25 A. Yes, ma'am.

1 MS. KNECHT: Deputy Phillips.

2 Judge, at this time I have a firearm and
3 I'm going to ask the deputy to ensure it's clear.

4 THE BAILIFF: Your Honor, the weapon is
5 clear and safe.

6 THE COURT: Thank you.

7 Q. (By Ms. Knecht) Okay. I'm going to show you
8 what's now been tagged as State's Exhibit No. 16. Do
9 you recognize that (indicating)?

10 A. Yes, ma'am.

11 Q. What is that?

12 A. This is a Smith & Wesson 9-millimeter that was
13 recovered at the location where the vehicle was
14 recovered.

15 Q. Talk to us about what we see on that firearm.

16 A. Currently you see the red dye stains. I don't
17 like to point a gun at anybody, but, you know, you can
18 see it on here. Also underneath with the -- not
19 pointing it at you, but underneath the barrel you can
20 see there is dye stain on that, dye stain in the slide.
21 Back in here in the trigger area on the grip was dye
22 stain all around it.

23 MS. KNECHT: Judge, may I have permission
24 to walk this in front of the jury?

25 THE COURT: Yes, ma'am.

1 (Exhibit published)

2 Q. (By Ms. Knecht) And then also here I have
3 State's Exhibit No. 17. What do we see there
4 (indicating)?

5 A. This is a spent 9-millimeter casing and it was
6 found inside the weapon.

7 Q. And these both came in this particular bag; is
8 that right?

9 A. Yes, ma'am.

10 Q. And are your initials and writing on this bag
11 as well (indicating)?

12 A. Yes, ma'am.

13 Q. You tagged both of those items?

14 A. Yes, ma'am.

15 MS. KNECHT: Your Honor, at this time the
16 State is going to offer State's Exhibit Nos. 30 -- 14,
17 30 -- excuse me -- 31 -- Judge, I apologize. For the
18 record, State's Exhibit 31 would be the bag with the
19 cash that was recovered. State's Exhibits 17, 16, and
20 15.

21 (State's Exhibit No. 14 through 17, 30, 31
22 Offered)

23 MR. OWMBY: No objection.

24 THE COURT: All are admitted.

25 (State's Exhibit No. 14 through 17, 30, 31

1 **Admitted)**

2 Q. (By Ms. Knecht) At some point were you asked as
3 part of your investigation to take a buccal swab from an
4 individual by the name of Albert Thompson?

5 A. Yes, ma'am.

6 MS. KNECHT: Judge, may I approach the
7 witness?

8 THE COURT: Granted.

9 Q. (By Ms. Knecht) I'm going to show you what's
10 been marked State's Exhibit No. 22. Do you recognize
11 that (indicating)?

12 A. Yes, ma'am.

13 Q. Okay. When did you take the swab from him?

14 A. I took the swab June 1st of 2011.

15 Q. Okay. And if you could, walk us through the
16 procedure that you use whenever you swab an individual.

17 A. Basically, I put on a fresh pair of latex
18 gloves and explain to the individual the process that
19 we're going to do. I explain that the person needs to
20 open their mouth and take -- it's like a Q-tip, but a
21 longer wooden stick at the end of it, and I'll insert it
22 into the person's mouth and as I'm rubbing inside the
23 mouth, I rub it between my finger to allow the cotton
24 applicator to spin. And I'll rub on the inside of their
25 cheek and that gets the DNA from inside of their mouth.

1 Then I -- on the box, I write down the
2 pertinent case information, the date I took it -- or the
3 date I obtained the collection, and I will stick the
4 swab inside the box.

5 Q. And did you do that in this particular case?

6 A. Yes, ma'am.

7 Q. Once you stick the swab inside the box, what do
8 you do with it?

9 A. We submit it to the medical examiner's office
10 or the Institute of Forensic Sciences, the DNA
11 laboratory, for analysis or comparison.

12 MS. KNECHT: Judge, may we approach?

13 THE COURT: Granted.

14 (At the Bench, on the record)

15 MS. KNECHT: Judge, at this time, the line
16 of questioning is going into the photo array. And you
17 asked us to approach before asking any questions.

18 THE COURT: So, are you saying you need a
19 hearing?

20 MS. KNECHT: Yes, Judge.

21 (Open court, defendant and jury present)

22 THE COURT: Members of the jury, a legal
23 matter has come up which we have to hear outside your
24 presence. So, I'm going to ask that you step back in
25 the jury room for just a few minutes and then we'll

1 bring you back out.

2 All rise, please, for the jury.

3 (Open court, defendant present, no jury)

4 THE COURT: Thank you. Please be seated.

5 We'll proceed on the motion to suppress the
6 identification.

7 MS. KNECHT: Thank you, Judge.

8 **VOIR DIRE EXAMINATION**

9 **BY MS. KNECHT:**

10 Q. Sergeant Schobey, did you have an opportunity
11 to show a photo lineup to a witness by the name of
12 Tereva Ross?

13 A. Yes, ma'am.

14 Q. When you showed the lineup to Tereva Ross,
15 first off tell us how the lineup --

16 MS. KNECHT: Well, may I approach, Judge?

17 THE COURT: Yes, ma'am.

18 Q. (By Ms. Knecht) Let me show you State's Exhibit
19 No. 21 (indicating).

20 A. Yes, ma'am.

21 Q. Can you talk us through the procedure that was
22 used in comprising this particular lineup? What did you
23 do?

24 A. Okay. When Mr. Thompson was in custody with
25 the Katy -- or we took him to the Katy Police Department

1 where we could see if we could get him identified --
2 because he wouldn't speak to us at the scene -- I asked
3 one of the personnel at the Katy Police Department if
4 they could make a photo array for us. And Michelle
5 Miller created this photo array for us.

6 Q. Before you presented this photo array to Tereva
7 Ross, did you examine it?

8 A. Yes.

9 Q. Did you ensure that all of the individuals that
10 are contained within the photo array looked similar?

11 A. Yes.

12 Q. And had similar characteristics?

13 A. Yes.

14 Q. Are all the males that are contained within
15 State's Exhibit No. 21 African-American?

16 A. Yes, ma'am.

17 Q. And are they all approximately the same age?

18 A. Yes, ma'am.

19 Q. And do they have approximately the same
20 hairline?

21 A. Yes, ma'am.

22 Q. And what about facial hair?

23 A. Yes, ma'am.

24 Q. Is there anything about the photos, any one of
25 the photos that sticks out or unduly suggests who --

1 unfairly suggests who Tereva Ross should select?

2 A. No, ma'am. Even on other photo arrays, we made
3 sure we had a certain amount of stripes, we had some
4 with -- you know, we didn't want him to be the only
5 person with stripes or the only person wearing a certain
6 color. And when I showed it, I showed the black and
7 white and color version.

8 Q. Okay. So, this is one of the versions that you
9 showed her?

10 A. Yes, ma'am.

11 Q. And this, for the record, is the black and
12 white version?

13 A. Correct.

14 Q. Contained within State's Exhibit No. 21, talk
15 to us about the admonitions that you gave Ms. Ross.

16 A. Yes, ma'am. On the admonishment part, we
17 utilized the Harris County Sheriff's Office admonishment
18 form. And with this form, I'll allow the person to read
19 it, I'll ask if they understood it. And if they say
20 yes, you know, I ask them to go ahead and indicate they
21 understood the instructions on the admonishment form by
22 placing their initials by each of the admonishments.
23 And a lot of times I'll go back with them and say:
24 You're not obligated to identify anyone. It's better
25 not to pick anyone than to guess. I really stress that

1 they're not to guess.

2 Q. And so, did you give those admonishments to
3 Ms. Ross?

4 A. Yes.

5 Q. And did she indicate that she understood all of
6 those instructions?

7 A. Yes, ma'am. After she read it, she signed it
8 and then she placed her initials by each line of the
9 instructions.

10 Q. So, by each instruction she initialed?

11 A. Yes, ma'am.

12 Q. When you showed her the photo array, were there
13 any other witnesses around?

14 A. No, ma'am.

15 Q. At any time did you suggest to her who she
16 should select?

17 A. No, ma'am.

18 Q. Did you ever tell her, after she made her
19 selection: Hey, great job, you picked the right person?

20 A. No.

21 Q. Did you ever encourage her in any way or tell
22 her -- or draw her attention to the defendant's
23 photograph?

24 A. No.

25 Q. Was Ms. Ross able to make an identification?

1 A. Yes, ma'am.

2 Q. Okay. And who did she select?

3 A. She selected the picture in the upper right
4 column, which would be Mr. Thompson.

5 Q. Did she have any trouble doing so?

6 A. No, ma'am.

7 Q. Did you ask her to do anything when she made
8 her selection?

9 A. Yes, ma'am. I asked her -- well, as I'm
10 showing her I said: If you see the individual that
11 robbed the bank, go ahead and circle the entire image,
12 place your name and date within that area.

13 Q. And did she do that?

14 A. Yes, ma'am.

15 Q. And then did she also write a comment?

16 A. Yes, ma'am.

17 Q. Okay.

18 A. Yes. She wrote: I'm positive this is the guy.

19 Q. And on what date did you show her this photo
20 array?

21 A. That would be the date that Mr. Thompson was
22 arrested, which would be March 3rd.

23 Q. 2011?

24 A. 2011. I'm sorry. Yes.

25 Q. Okay.

1 MS. KNECHT: Your Honor, I pass this
2 witness for purposes of the hearing.

3 MR. OWMBY: Is that the photospread there?

4 MS. KNECHT: I have it. Here you go, Joe.

5 **VOIR DIRE EXAMINATION**

6 **BY MR. OWMBY:**

7 Q. Now, if I understand, you showed her a color
8 photospread and this one photospread?

9 A. Yes, sir.

10 Q. Do you have the color photospread?

11 A. I believe I have a copy, yes.

12 MR. OWMBY: Your Honor, we're going to mark
13 this Defendant's 1 for purposes of the hearing.

14 THE COURT: Yes, sir. Admitted for
15 purposes of the hearing then, I guess?

16 MR. OWMBY: Yes. We're going to offer it
17 for purposes of the hearing.

18 MS. KNECHT: We'll mark it, Judge.

19 MR. OWMBY: We'll let them mark it with
20 their --

21 THE COURT: With their number. Okay.

22 Q. (By Mr. Owmbly) Just for purposes of the
23 hearing, what's been marked as State's Exhibit 32 is the
24 color version of the --

25 A. Yes, a copy of the color version.

1 Q. Copy of the color version.

2 Where did you show the photospread.

3 A. I met Ms. Ross or Ms. Smith at her place of
4 employment.

5 Q. At the bank?

6 A. Yes, sir, the Wells Fargo Bank.

7 Q. Where was Ms. -- I can't remember her name
8 right now. Was it Bridget --

9 A. Bridget Tate? Or which one are you referring?
10 The one who did this photo array? Tereva Ross?

11 Q. Let me ask the question a different way. Who
12 was present at the bank while you were showing the photo
13 array, do you recall?

14 A. Well, in the room it was just she and I.

15 Q. Okay. And did you show more than one person
16 that day?

17 A. Yes.

18 Q. And who else was present the day you showed her
19 the photospread?

20 A. Well, like I said, in the room where I was
21 showing her the photo array, it was just us.

22 Q. Who was in the bank that day waiting in line to
23 show you --

24 A. Okay. The next person I showed the photo array
25 to would be Bridget Tate.

1 Q. And I assume you borrowed one of the bank's
2 offices to get privacy to show it?

3 A. Yes, sir.

4 Q. Were the witnesses together before you showed
5 them the photospread?

6 A. They were working.

7 Q. Now, had you -- had they previously seen images
8 of the defendant before you showed them the photospread?

9 A. They were there when he robbed it.

10 Q. Images.

11 A. Oh, images. I'm sure they saw the images the
12 day of the robbery. As far as that, I really don't
13 know.

14 Q. There were flyers and circulars out with
15 pictures on them, were there not?

16 A. Yes.

17 Q. Did these witnesses comment to you that they
18 had seen these flyers and circulars?

19 A. No, sir.

20 Q. One other thing. Did you tell the defendant at
21 some point before you returned to the bank that they
22 already had a positive I.D.?

23 A. I wouldn't have known who he was before I went
24 to the bank.

25 Q. Right. You were at the arrest scene on March

1 3rd?

2 A. Right.

3 Q. And when you first encountered the defendant
4 that's here today, you had not shown any photospreads,
5 he had not been identified?

6 A. Correct.

7 Q. Nonetheless, did you tell him at that scene
8 that you had a positive I.D.?

9 A. I don't think I did.

10 MR. OWMBY: We'll pass this witness for the
11 motion.

12 THE COURT: Any redirect?

13 MS. KNECHT: No, Judge.

14 THE COURT: You will be calling the
15 complainant next?

16 MS. KNECHT: Yes.

17 THE COURT: Sir, you may step down
18 temporarily. You'll have to wait out in the hall.
19 Thank you.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Have you taken the oath?

22 THE WITNESS: No.

23 THE COURT: All right. Would you raise
24 your right hand?

25 (Witness sworn)

1 THE COURT: Thank you. You may have a seat
2 there.

3 MS. KNECHT: May I proceed, Judge?

4 THE COURT: Yes, ma'am.

5 **TEREVA ROSS,**

6 having been first duly sworn, testified as follows:

7 **VOIR DIRE EXAMINATION**

8 **BY MS. KNECHT:**

9 Q. Ms. Ross, if you would, spell your first name.

10 A. T-e-r-e-v-a.

11 Q. And I want to talk to you about an
12 identification that you made based on the robbery that
13 occurred at the bank you worked at back on February
14 19th, 2011. Okay?

15 A. Yes.

16 Q. Do you recall meeting with Sergeant Schobey who
17 asked you to take a look at a series of photographs?

18 A. I do.

19 MS. KNECHT: Your Honor, may I approach the
20 witness?

21 THE COURT: You may.

22 Q. (By Ms. Knecht) First off, I'm going to show
23 what's been marked as State's 21. Do you recognize this
24 (indicating)?

25 A. Yes, ma'am.

1 Q. Okay. What is that (indicating)?

2 A. My signature.

3 Q. Okay. Were you read this series of
4 instructions prior to you viewing the photographs with
5 Sergeant Schobey?

6 A. Yes, ma'am.

7 Q. Did you understand the instructions?

8 A. Yes, ma'am.

9 Q. And did he tell you that you did not have to
10 pick anyone?

11 A. Yes, ma'am.

12 Q. Did he tell you that just because there were
13 photographs there that it didn't mean the defendant was
14 actually involved in those photographs?

15 A. Yes, ma'am.

16 Q. Did he tell you that you should not guess?

17 A. Yes, ma'am.

18 Q. Did he tell you that you were actually not
19 obligated to pick anyone?

20 A. Yes, ma'am.

21 Q. Did he tell you that you shouldn't discuss who
22 you I.D.'d with any of the other witnesses or anything
23 like that?

24 A. Yes, ma'am.

25 Q. Okay. And did you understand all those