

Selwyn Thomas - January 15, 2014
Direct Examination by Ms. Bacy

1 THE COURT: All right. Thank y'all for
2 your understanding and your patience with us. You can
3 all be seated.

4 State, please call your next witness.

5 MS. BACY: Thank you, Your Honor. The
6 State would like to call Officer Thomas to the stand.

7 THE COURT: Thank you. All right. You
8 may proceed, State.

9 MS. BACY: Thank you, Your Honor.

10 **SELWYN THOMAS,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 BY MS. BACY:

14 Q. Can you please state your name for the record.

15 A. Officer Selwyn Thomas.

16 Q. Officer Thomas, can you please tell us a
17 little bit about your employment or experience as a
18 peace officer?

19 A. I have been employed with the City of Webster
20 for five years -- a little over five years. I was
21 assigned to the patrol division. Many aspects of my job
22 touches many different things. It ranges from traffic
23 stops, patrol procedures, building clearances, dealing
24 with mentally-disturbed patients, family violence,
25 dealing with children, a wide range of aspects.

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1 Q. Okay. And let's talk about family violence
2 cases that you have dealt with or usually do. How many
3 family violence cases would you say you come into
4 contact with on a monthly basis?

5 A. I would say on a monthly basis, I usually come
6 into contact with -- it would be a lot easier -- I deal
7 with family violence about once a week.

8 Q. Okay. And how often do you deal with family
9 disturbances?

10 A. A little bit more often. Usually two to three
11 times a week I am dealing with some sort of domestic
12 disturbance.

13 Q. Okay. And do you file charges on all cases
14 that you investigate of this family violence or
15 disturbance?

16 A. I personally do not file charges on all cases
17 that I investigate from a patrol level. Sometimes it
18 just depends on the circumstances of the situation
19 whether charges are to be filed by myself or not.

20 Q. And what are those circumstances that it
21 depends on?

22 A. The circumstances will be if we have a
23 cooperating victim, if we have a suspect able to be
24 identified, he is in close proximity and we are able to
25 take him into custody.

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1 Q. Okay. And what happens if all those things do
2 not line up?

3 A. If all those things do not line up, then a
4 report is generated. As long as we do have a
5 cooperating victim that is going to move forward with a
6 complaint, a report is generated. It is then forwarded
7 to our criminal investigations division. And usually
8 what happens after that is it is investigated a little
9 bit further and usually ends up with a warrant being
10 filed for the arrest of the suspect.

11 Q. Okay. I want to take you back to September 8,
12 2013. Were you working on September 8th, 2013?

13 A. Yes, ma'am.

14 Q. Okay. And where were you working?

15 A. I was on duty that night patrolling.

16 Q. Okay. And were you dispatched to a call at
17 Clear Lake Hospital?

18 A. Yes, ma'am.

19 Q. And what -- where is Clear Lake Hospital
20 located?

21 A. It's in the 500 block of West Medical Center,
22 which is within Harris County.

23 Q. And is that Harris County, Texas?

24 A. Yes, ma'am.

25 Q. Okay. And why were you dispatched -- tell us

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1 a little bit about the call that you were dispatched to.

2 A. I was dispatched to a physical disturbance.

3 And I was to meet with the complainant inside the
4 emergency room.

5 Q. Okay. And do you remember the name of that
6 complainant?

7 A. Yes. It was -- it's Friedley, I believe.

8 Q. Okay. And what was Ms. Friedley's demeanor
9 when you met with her?

10 A. She was very quiet. She seemed a little
11 disoriented. She was holding her head. She said that
12 her head hurt. And she was kind of -- you know, she was
13 trying to walk a little bit, but I advised her to sit
14 back down. And she was trying to figure out what had
15 happened and what was going on.

16 Q. Did she seem intoxicated?

17 A. She did not seem intoxicated to me.

18 Q. Okay. And have you ever had training dealing
19 with intoxicated persons?

20 A. Yes, ma'am.

21 Q. Okay. So you are able to identify those from
22 a professional standpoint?

23 A. Yes, ma'am.

24 Q. Okay. Was she crying when you met with her?

25 A. She looked like she was crying a little bit.

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1 Q. Okay. And what did you ask her?

2 A. First I asked her if she was okay. Obviously
3 we just want to -- initially we find out if it's a --
4 what happened and if she's okay. We want to make sure
5 that she gets the proper medical attention before we can
6 start any of our investigation.

7 She did advise that her head hurt. I
8 felt it was a good thing that she was in the emergency
9 room already. And it appeared as though she had already
10 been admitted to triage to where she can be seen by a
11 medical professional.

12 And then once she got sent back to the
13 lobby, that is when I met with her.

14 Q. Okay. And when you were meeting with her,
15 what did she tell you had happened?

16 A. She said that her -- she was involved in an
17 assault, and her boyfriend had struck her out in the
18 parking lot.

19 Q. And did she tell you the name of her
20 boyfriend?

21 A. She did. She said it was Ivan.

22 Q. Okay. And, Officer Thomas, did you have an
23 occasion to meet Ivan during your investigation?

24 A. I did later on. My assisting officers were
25 able to locate him in proximity of the parking lot area

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1 of the hospital and brought him to the entrance of the
2 emergency room.

3 Q. Okay. And do you see Ivan in this courtroom
4 today?

5 A. I do.

6 Q. Can you please identify him by an article of
7 clothing?

8 A. White shirt, black tie.

9 Q. Excuse me. Say that again.

10 A. White, collared shirt, long sleeve and black
11 tie.

12 Q. Okay. Would you look at the color of the tie
13 again?

14 A. Probably blue.

15 Q. Okay.

16 MS. BACY: I would like the record to
17 reflect that the witness has identified the defendant.

18 THE COURT: Yes, it will. Thank you.

19 Q. (By Ms. Bacy) And did you ask -- did -- what
20 was the defendant's demeanor when you encountered him?

21 A. When I encountered him, he seemed a little --
22 a little agitated, wanting to know -- he was a little
23 impatient, why was he here and what was he doing or why
24 couldn't he go, couldn't leave.

25 Q. Okay. And was he with Ms. Friedley at this

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1 time?

2 A. Not at the time, he was not.

3 Q. Okay. Where was Ms. Friedley while you were
4 investigating the defendant?

5 A. I was with Ms. -- I was initially with Ms.
6 Friedley inside the emergency room. And then once I was
7 initially done with her and met with Mr. Ivan, Ms.
8 Friedley remained inside the emergency room.

9 Q. And now what did Ms. Friedley tell you had
10 happened?

11 A. She said that they were coming from a bar
12 and -- within our city. They had got into an argument.
13 She did not feel like arguing, so -- while they were
14 driving, so they pulled into the nearest parking lot,
15 which happened to be the parking lot of the hospital.
16 She got out. She started walking away to clear her
17 mind, but she was followed. She wanted to be by
18 herself, but she was followed by Ivan.

19 And then once -- the argument continued
20 while she was outside. She then did not feel like
21 arguing. She started coming back to her vehicle and sat
22 down in the vehicle. And I guess at that point, that is
23 when an altercation had happened -- a physical
24 altercation had happened between them, which led to her
25 getting struck in the face and thrown down on the

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1 ground.

2 Q. Did she tell you how he threw her down on the
3 ground?

4 A. I do not recall.

5 Q. Okay. Now, did this conclude -- well, were
6 you on the scene investigating by yourself?

7 A. No, I was not. I was assisted by two other
8 officers.

9 Q. And was one of those officers, Officer
10 Berryman?

11 A. Yes, ma'am.

12 Q. Okay. And did y'all learn that there was a
13 video -- or surveillance video that possibly showed this
14 assault?

15 A. We learned that there was surveillance video
16 of the parking lot.

17 Q. Okay.

18 A. And it was unsure as to if it would -- because
19 the video is on a pan, it does not focus in on one area.
20 It pans the whole parking lot. So there were bits and
21 pieces that captured this section or the portion of the
22 parking lot that the defendant and the victim were in at
23 the time.

24 Q. Okay. And did you have an occasion to go and
25 view this video?

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1 A. I personally did not have an occasion to go
2 review the video, but Officer Berryman did.

3 Q. Okay. And did he report to you what he saw on
4 that video?

5 A. He did. He reported that the video was
6 unclear.

7 MR. ASH: Your Honor, I am going to
8 object to that as hearsay. It's cumulative. The
9 officer already testified to that.

10 THE COURT: Overruled. Go ahead.

11 A. That the video was unclear and really did not
12 show -- it showed the defendant and it showed the
13 victim -- actually it showed the victim walking and --
14 but it did not show any part of the assault that took
15 place.

16 Q. (By Ms. Bacy) Okay. And did you get a copy
17 of this video?

18 A. I did not get a copy of the video.

19 Q. Is it normal procedure for you to request a
20 copy of a surveillance video?

21 A. Not "normal procedure." If it benefits the
22 case or if I felt that it would have benefited the case
23 in regards to actually being able to help show that the
24 victim was assaulted, I would have requested that video,
25 yes, ma'am.

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1 Q. Okay. So you used your professional
2 discretion not requesting the video; is that correct?

3 A. Yes. It appeared to me that it would have
4 been open to too much speculation as to who did what in
5 an unclear video and not showing an actual assault on
6 the video.

7 Q. And another thing, did you further -- you
8 further investigated your case, right?

9 A. Yes.

10 Q. And did you happen to -- you -- excuse me --
11 did you view any injuries to the complaining witness or
12 Ms. Friedley?

13 A. I did.

14 Q. What did you -- what injuries did you view?

15 A. When I first -- when I first initially met
16 with her, she was holding her head and she stated that
17 her head was hurting. And the longer that -- and that
18 she was struck in the face. And the longer that I
19 talked to her and interviewed her, I began to see that
20 her cheek started to swell up.

21 Q. Okay. And do you remember which side of her
22 cheek was swollen?

23 A. It was the left side.

24 Q. Okay. And do you -- and is that where she
25 told you she was struck?

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1 A. Yes. She basically said she was struck in the
2 face. She was a little disoriented, so she couldn't
3 really remember which side, but she knows that she was
4 struck in the face.

5 Q. Okay. And what about on her arms or anything,
6 did you see any evidence of injury?

7 A. She did advise that she was grabbed and it
8 caused her some pain while she was being grabbed, so she
9 had some minor bruising on her arms that was starting to
10 turn red.

11 Q. Okay. And just to be clear, you came and took
12 those photos perhaps an hour or so after this assault,
13 correct?

14 A. Within the hour, yes.

15 Q. Within an hour?

16 A. Uh-huh.

17 Q. And from your experiences, are bruises
18 typically -- I guess are they in their full color or do
19 the extent of the bruises show immediately after an
20 assault?

21 A. They are usually not in their full color
22 initially. Usually after a period of time, it --
23 usually in a day, then you will get the full aspect of
24 what the bruise would show.

25 Q. But you could visibly see those bruises --

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1 A. Yes.

2 Q. -- that day?

3 A. Yes.

4 Q. An hour after -- not even an hour after the
5 assault?

6 A. Correct.

7 Q. Okay. And what happened after you completed
8 your investigation?

9 A. With the complainant or with the defendant?

10 Q. With the entire assault. What happened after
11 you completed your investigation?

12 A. After the entire assault took place, based on
13 my investigation, I felt beyond a reasonable doubt that
14 an assault had occurred to Ms. Friedley and, therefore,
15 I contacted the Harris County DA's Office.

16 Q. Now, your standards for arrest is not beyond a
17 reasonable doubt, is it?

18 A. No.

19 Q. What is your standard for an arrest?

20 A. That it was -- to me, that it was clear that
21 an offense had taken place.

22 Q. Okay. All right. And with this one, you
23 believe it occurred beyond a reasonable doubt?

24 A. I did.

25 Q. Okay. Thank you.

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1 MS. BACY: State pass the witness.

2 THE COURT: All right. Mr. Ash.

3 MR. ASH: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. ASH:

6 Q. Okay. In your testimony, you stated that when
7 you spoke with Ms. Friedley that she was quiet. Did you
8 feel that she was depressed?

9 A. It did not feel as though she was depressed.

10 Q. And you stated that also she was crying a
11 little bit. Now, which is it? Was she quiet, and she
12 cried a little bit? Was she quiet for a while, and then
13 crying?

14 A. She was quiet, but she also had been crying a
15 little bit.

16 Q. Okay. And you also said that she did not
17 appear to have been intoxicated. What clues gave you --
18 were you -- when you saw her that it didn't appear that
19 she was intoxicated?

20 A. I did not smell any -- an odor of an alcoholic
21 beverage on her breath. From her telling me that she
22 had been thrown to the ground and was kind of staggering
23 on her feet, I took that into consideration not -- of
24 being something that was introduced by alcohol, clues
25 like that. She did not have --

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1 Q. So you are saying she was staggering on her
2 feet?

3 A. She was staggering because she was dizzy from
4 being thrown to the ground.

5 Q. Any other clues that indicate to you -- so she
6 did not smell of alcohol. She was staggering, but you
7 think the staggering was because of the -- being on her
8 feet. What other clues?

9 A. That was it.

10 Q. Okay. You did not perform a breath test or --

11 A. No, sir.

12 Q. Okay. Did you identify her by her ID or
13 something like that?

14 A. Yes, sir, I did.

15 Q. And you also stated that you did not request
16 the video surveillance?

17 A. Yes, sir.

18 Q. And you did not request the video surveillance
19 because you did not think it would show the assault
20 occurred?

21 A. Correct.

22 Q. So the video surveillance may have shown
23 something other than an assault?

24 A. Correct.

25 Q. And for that reason, you decided that it would

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1 not benefit the case by proving -- it wouldn't prove
2 that he was guilty of an assault? That is basically
3 what you are saying.

4 A. Well, from what I was told, the video showed
5 the defendant in the area next to the victim. It showed
6 the victim at some point walking in the parking lot.
7 And at one point, it showed the defendant standing and
8 it looked -- appeared to be over the victim, but it did
9 not show the defendant with his hands on the victim. It
10 did not show him striking the victim. It did not show
11 the pushing.

12 Q. Have you seen the videotapes at this hospital
13 before in other cases?

14 A. Yes, I have.

15 Q. Okay. And if there was an assault, would you
16 say that it may or may not show or sometimes does or
17 does not? I mean, what is your experience with that?

18 A. My experience is sometimes it shows. The
19 cameras that are usually still are the ones that have
20 the best --

21 Q. Was this still?

22 A. This was not a still camera.

23 Q. Were there any other cameras besides that?
24 Was it one camera or several videos?

25 A. It was one camera for that portion of the

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1 parking lot.

2 Q. And it was a moving --

3 A. It was a moving camera, yes, sir.

4 Q. And it was in -- is it in color or in
5 semi-color or was it in --

6 A. It's in --

7 Q. -- black and white?

8 A. It's in color, but it was very distorted. And
9 it was very blurry I was told, and it was very unclear.

10 Q. No. I am not asking about what you were told,
11 but what you have seen with those cameras in that
12 particular hospital before.

13 A. Right.

14 Q. That is what I am talking about.

15 A. Yes, sir.

16 Q. Okay. Now, you observed the defendant's
17 demeanor. And you stated that he appeared agitated.
18 Did you personally go looking for him?

19 A. No, I did not.

20 Q. Okay. So when you saw him, he already was
21 with the other officers?

22 A. Yes, sir.

23 Q. How many officers was he with?

24 A. Two officers.

25 Q. And then you showed up. So that would have

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1 been three officers?

2 A. Yes, sir.

3 Q. Okay. And y'all were in uniform?

4 A. Yes, sir.

5 Q. And you looked at him. And when you say
6 "agitated," was -- he looked nervous?

7 A. He did not look nervous. He just seemed
8 agitated.

9 Q. Were his clothes out of place or --

10 A. No, sir.

11 Q. All right. Did you -- okay. Did you search
12 him?

13 A. I did not search the defendant. The defendant
14 should have been patted down for weapons just for our
15 safety, but he was not fully searched until he was
16 placed into custody.

17 Q. Okay. Now, did you identify Mr. Osuna-Ayuste
18 from some sort of identification like you identified the
19 complaining witness?

20 A. He was in -- he had a passport.

21 Q. Could you tell me more about that?

22 A. He had a passport on his person, and he was
23 identified by that passport.

24 Q. Do you know anything other than, like, what
25 the passport looked like, maybe the country, maybe

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1 the --

2 MS. BACY: Objection. Relevance.

3 THE COURT: Overruled. He said he saw
4 it.

5 A. Blue cover, passport on the front.

6 Q. (By Mr. Ash) Did you look through the
7 passport?

8 A. I believe I looked through the passport.

9 Q. Do you remember what you saw?

10 A. I do not recall.

11 MR. ASH: I do not have any further
12 questions.

13 THE COURT: Okay. Thank you. Anything
14 else from the State?

15 MS. BACY: One question.

16 THE COURT: Okay.

17 **REDIRECT EXAMINATION**

18 BY MS. BACY:

19 Q. In what language did you talk to the
20 defendant?

21 A. English.

22 Q. And did he understand you?

23 A. Yes, ma'am.

24 MR. ASH: I am going to approach on that,
25 can I?

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1 THE COURT: Approach? Do you have an
2 objection?

3 MR. ASH: Yeah, I have an objection to
4 his testimony. I think we covered it. Can I go ahead
5 and approach, please?

6 THE COURT: Overruled.

7 MR. ASH: Judge, I think this witness was
8 advised.

9 THE COURT: Okay. Approach the bench.

10 *(At the Bench, on the record)*

11 MR. ASH: I think we went over the fact
12 that he wouldn't be alluding to having made a statement.

13 MS. BACY: I am not.

14 THE COURT: She asked him if he spoke to
15 him in Spanish, that is all.

16 MR. ASH: Then that would say that he
17 spoke to him and that he took a statement from him.

18 THE COURT: No. Did you speak to him in
19 Spanish or what language did you speak to him in and did
20 he understand the questions.

21 MR. ASH: Well, then what is the
22 relevance of this? I mean, where are we going with
23 this?

24 THE COURT: Just to make sure he
25 understood everything. Okay. Is your objection

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1 relevance?

2 MR. ASH: Well, it would be relevance and
3 it should not --

4 THE COURT: Overruled.

5 *(Open court, defendant and jury panel*
6 *present)*

7 THE COURT: Anything else, State?

8 MS. BACY: Huh-uh. Nothing further from
9 the State, Your Honor.

10 THE COURT: All right. Anything else,
11 Mr. Ash?

12 MR. ASH: Nothing further.

13 THE COURT: No? Okay. Thank you. You
14 may step down, Officer.

15 State, call your next witness, please.

16 MS. BACY: The State would like to call
17 Renee Roberts to the stand.

18 THE COURT: Okay. Renee Roberts. And
19 this witness has been sworn in already, ladies and
20 gentlemen.

21 MS. BACY: Your Honor, may this witness
22 be excused?

23 THE COURT: May Officer Thomas be
24 excused, Mr. Ash? Do you have any objection to that,
25 sir?

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1 MR. ASH: No objection.

2 THE COURT: No objection. Okay. Thank
3 you.

4 Ms. Roberts, come on up, ma'am.

5 All right. Ms. Roberts, just a couple of
6 rules before you begin to testify. And I know it is
7 probably your first time to be on a witness stand.

8 THE WITNESS: Yes.

9 THE COURT: All right. I ask that you
10 please answer in words rather than uh-huhs, huh-uhs or
11 just nodding your head, okay?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: And then also wait until the
14 question is asked before you begin to answer it. In
15 other words, do not speak over anyone.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Thank you. You
18 may proceed, State.

19 MS. BACY: Thank you, Your Honor.

20 **RENEE ROBERTS,**
21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 BY MS. BACY:

24 Q. Ms. Roberts.

25 A. Yes, ma'am.