

Selwyn Thomas - January 14, 2014  
Direct Examination by Ms. Bacy

1 THE COURT: All right.

2 MS. BACY: Okay. So are we going to -- I  
3 guess now what is my question?

4 THE COURT: Let's go off the record. We  
5 cannot finish this hearing without the interpreter.

6 (Discussion off the record)

7 (*Open court, defendant present, no jury*)

8 THE COURT: All right. Ms. Bacy, you  
9 have called your next witness to the stand.

10 MS. BACY: Yes. For the record, at this  
11 time the State calls Officer Selwyn Thomas to the stand.

12 THE COURT: Okay. Thank you.

13 All right. Go ahead.

14 **SELWYN THOMAS,**

15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MS. BACY:

18 Q. Officer Thomas, can you please state your name  
19 for the record.

20 A. Officer Selwyn Thomas.

21 Q. And can you please tell us a little bit about  
22 your career in law enforcement?

23 A. My career began in January of 2009 where I  
24 entered the Alvin Community College Law Enforcement  
25 Academy. By May of the same year, 2009, I successfully

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1 completed that academy and also successfully passed the  
2 TCLEOSE state licensing exam.

3 Q. Okay.

4 A. So from that point, I was fortunate enough to  
5 be currently hired. Before I was licensed with the City  
6 of Webster and upon completion of that academy and  
7 passing of that test, I began my employment with them as  
8 a probationary police officer.

9 From that point, I successfully passed  
10 three months of the FTO phase; and then in addition,  
11 another six months of a probationary period before I was  
12 a full-time police officer.

13 Q. Okay. Great. Excellent.

14 And have you always worked with Webster?

15 A. Yes, ma'am.

16 Q. Okay. And were you working with the Webster  
17 Police Department on September 8th of 2013?

18 A. Yes, ma'am.

19 Q. Okay. And were you dispatched on September  
20 8th, 2013 to Clear Lake Hospital?

21 A. Yes, ma'am.

22 Q. Okay. And is Clear Lake Hospital in Harris  
23 County, Texas?

24 A. It is.

25 Q. Why were you dispatched to Clear Lake

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1 Hospital?

2 A. I was dispatched in regards to a physical  
3 disturbance that occurred in the parking lot. And there  
4 was -- I was to meet the complainant/victim inside the  
5 ER.

6 Q. Okay. And did you do so?

7 A. Yes, ma'am.

8 Q. Okay. After meeting with the complaining  
9 witness, did you identify a defendant?

10 A. Later on that --

11 Q. Or excuse me. A suspect.

12 A. Later on, a suspect was located by other  
13 officers and brought to the -- in proximity to the ER  
14 where he was then positively identified by the  
15 complainant/victim and also a witness who was the actual  
16 caller on the -- on the call.

17 Q. Okay. And when he was brought back to the  
18 scene, was he in handcuffs?

19 A. No, he was not.

20 Q. Okay. Was he walking on his own accord?

21 A. I believe he was transported in a vehicle,  
22 unhandcuffed, though. He was transported up to the --  
23 because he was in a -- he was located in the proximity  
24 of the parking lot where he was. He had walked away,  
25 but he was soon after located and brought back to the ER

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1 where the complainant was.

2 Q. Okay. And was he let out of the vehicle  
3 during the investigation?

4 A. He was.

5 Q. Okay. And was he let out of the vehicle  
6 unhandcuffed?

7 A. Yes, ma'am.

8 Q. Okay. And at that time, did you have an  
9 opportunity to talk with him?

10 A. After speaking with the complainant, I did  
11 have an opportunity to speak with the defendant.

12 Q. Okay. And while you were speaking with him,  
13 was he under arrest?

14 A. He was not.

15 Q. Okay. Did you give him his Miranda warning?

16 A. I did.

17 Q. If he was not under arrest, why did you give  
18 him his Miranda warning?

19 A. I did want to ask him a few questions about  
20 the events that led up to why I was here, why I was  
21 called and some of the accusations given by the  
22 complainant.

23 Q. Okay. And did you give his Miranda warning in  
24 English?

25 A. I did.

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1 Q. Okay. And did he respond to the Miranda  
2 warnings in English?

3 A. Yes, he did.

4 Q. What did he say?

5 A. He did say that he understood and he was  
6 willing to talk to me about what had happened.

7 Q. Okay. And what happened next?

8 A. We then just -- I then just conducted the  
9 interview, basically his side of the story, to just give  
10 him the opportunity to let me know his side of the story  
11 of what had happened before telling him -- or advising  
12 him of maybe some of the accusations that he was accused  
13 of to see if we can get a similar story.

14 Q. Okay. And did you get a similar story?

15 A. There were some similarities up and to the  
16 point to where the physical contact came into play.

17 Q. Okay. And eventually was the defendant placed  
18 under arrest?

19 A. Eventually he was placed under arrest.

20 Q. And what solidified that arrest?

21 A. There was another officer, Officer Berryman,  
22 while I was standing with the victim in front of my --  
23 after being Mirandized and my questions asked and his --  
24 his actions that he stated took place. I then was  
25 standing with the victim while Officer Berryman went and

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1 reviewed the video.

2                   And while we were standing there, I was  
3 just simply telling him that, you know, there was a  
4 video in the parking lot. I am unsure what it may have  
5 captured. Is what potentially has been seen on the  
6 video going to be the same as what you are telling me.

7                   And at that point, he confessed to what  
8 his true actions were.

9           Q.     Okay. And now this question might seem a  
10 little bit silly, but when you asked him the question:  
11 Is what the video captured going to tell me what you  
12 told me, is that a yes or a no question?

13           A.     It should be a yes or a no.

14           Q.     Did you spur any conversation after you asked  
15 that question?

16           A.     I don't recall.

17           Q.     Before his admission, did you follow-up that  
18 question?

19           A.     I followed up in -- just to make sure. And he  
20 eventually confessed, which was different from what  
21 we -- what he initially said after he was Mirandized.

22           Q.     Okay. So that confession came -- that  
23 confession was not an immediate result of the  
24 conversation that was had when you said: Is this -- the  
25 video going to show something else?

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1           A.    Correct.  It did come -- that confession came  
2 after I asked him.

3           Q.    Immediately after?

4           A.    Yes.

5           Q.    Okay.  And then you followed up after the  
6 confession with more questions?

7           A.    I do believe so.

8           Q.    Okay.  And is that what -- the order of the  
9 time line with the question -- the yes or no question,  
10 the admission and then the follow-up question?

11          A.    Yes.

12          Q.    Okay.  And did you have a chance to view that  
13 video?

14          A.    I did not.

15          Q.    Okay.  From your knowledge, was that video in  
16 the custody of the Webster Police Department?

17          A.    It was not.

18          Q.    Okay.  Did you make a notation of that video  
19 in your offense report?

20          A.    I did make a notation.  I did make a notation  
21 that video was not requested due to it being  
22 inconclusive, being blurry and not being able to  
23 directly or clearly see the events that may have took  
24 place --

25          Q.    Okay.

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1 A. -- outside of speculation.

2 Q. Okay. And as far as the defendant's statement  
3 goes, was that recorded?

4 A. That statement was recorded.

5 Q. Okay. And where is that statement today?

6 A. That statement is no longer available to be  
7 reviewed due to the 90 days that it is kept on file  
8 through us.

9 Q. Okay. But do you remember talking to me,  
10 Akilah Bacy, back in early December about that  
11 statement?

12 A. I do recall.

13 Q. Okay. Well, not early December, about  
14 December 16th or so, right before Christmas, correct?

15 A. Yes.

16 Q. And at that time, did we attempt to retrieve  
17 that statement?

18 A. We did.

19 Q. Okay. And were we successful in doing so?

20 A. We were not.

21 Q. Okay. And had you asked for that video to be  
22 destroyed?

23 A. No.

24 Q. Okay. Did you ask if there was anyway we  
25 could actually get that video?



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1 A. I did.

2 Q. Okay. And you learned that there was no way?

3 A. Correct.

4 Q. Okay.

5 MS. BACY: At this time, State passes the  
6 witness.

7 THE COURT: Okay. Mr. Ash?

8 **CROSS-EXAMINATION**

9 BY MR. ASH:

10 Q. You stated in your testimony that you  
11 transported the defendant in a vehicle. Was it you or  
12 was somebody else transporting him?

13 A. It was someone else.

14 Q. Okay. And do you recall which officer  
15 transported him?

16 A. I don't recall.

17 Q. And when he was transported by a police  
18 officer, I am assuming it was a Webster Police officer?

19 A. Yes, sir.

20 Q. Okay. And that police officer transported him  
21 in his Webster police car?

22 A. Yes, sir.

23 Q. And he transported him from -- did he tell  
24 you -- I am assuming it was a male police officer,  
25 right?

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1 A. Yes, sir.

2 Q. Okay. And did he tell you where he  
3 transported him from?

4 A. I don't recall, but I remember that he was  
5 just in proximity of the area of the hospital.

6 Q. So you would not say it was more than a few  
7 blocks?

8 A. I would not say it was more than a few blocks.

9 Q. Okay. And you said he was located and brought  
10 to the scene. When you refer to "the scene," do you  
11 mean where the alleged assault may have taken place?

12 A. No. When I say brought back to the scene, I  
13 mean he was brought back at -- when I initially arrived  
14 on the scene, even though the alleged acts occurred in  
15 the parking lot, I was -- I was personally dispatched to  
16 the ER, to the emergency center to meet with the  
17 complainant, so he was brought to the ER.

18 Q. Inside the building?

19 A. No, sir. He was not brought inside the  
20 building.

21 Q. He was brought at the front door?

22 A. Yes, he was brought out front.

23 Q. And at the front door, you decided to question  
24 him?

25 A. Yes. Right outside of the front -- after he

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1 was identified by the victim and the witness as being  
2 the suspect.

3 Q. And he was questioned there at the front door  
4 of the ER by you?

5 A. Yes, sir.

6 Q. How many officers were present with you?

7 A. I believe -- well, while I was questioning  
8 him?

9 Q. Yes.

10 A. I believe two additional officers were  
11 present.

12 Q. All right. And you decided to give him a  
13 Miranda warning?

14 A. Yes, sir.

15 Q. And so you gave him a Miranda warning in front  
16 of the other two police officers?

17 THE COURT: Yes. That is what he  
18 testified to.

19 A. Yes, sir.

20 MR. ASH: Oh, that is what you testified.  
21 Okay. I'm sorry.

22 Q. (By Mr. Ash) And you recorded it through your  
23 video camera?

24 A. Yes, sir.

25 Q. From your car?

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1 A. Dash Cam, yes, sir.

2 Q. Okay. So that dash camera, how far was the  
3 dash camera away from him, from where you were doing the  
4 questioning?

5 A. Very close proximity. You can actually see  
6 sometimes that the defendant was actually leaned up  
7 against the patrol vehicle.

8 Q. So you have the door to the emergency room,  
9 then you have your car with the Dash Cam, how much space  
10 was between the two?

11 A. I would say maybe approximately 20 feet.

12 Q. Twenty feet. And two officers? Were the two  
13 officers standing on each side?

14 A. I don't recall where they were standing.

15 Q. Now, how long was the recorded statement? Was  
16 it 10 minutes, 15 minutes? Do you know?

17 A. I don't. I don't recall.

18 Q. And did you make one or two -- did your Dash  
19 Cam make one or -- did your Dash Cam make one or two  
20 recordings? Was there one recording made?

21 A. Yes, sir, one recording.

22 Q. One -- there was no other recordings, but one  
23 recording?

24 A. My recording. My Dash Cam recording. There  
25 was one recording.

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1 Q. Okay. Well, did you in any way indicate to  
2 Mr. Osuna-Ayuste that he was free to leave?

3 A. I did not.

4 Q. Okay. And the other question that I have is  
5 with respect to the surveillance video. You noted it in  
6 your report, that's what you testified to?

7 A. Yes, sir.

8 Q. And did you notify anybody in your department  
9 or the City of Webster to make attempts to preserve that  
10 video recording?

11 A. I did not due to the fact that it was unclear  
12 and I didn't feel at the time that that would be able to  
13 assist or --

14 Q. Well --

15 A. -- help the case.

16 Q. -- you said it was not unclear, but you -- did  
17 you view it?

18 A. I did not --

19 Q. I mean --

20 A. -- view it.

21 Q. Well, so --

22 A. I took the -- I took the --

23 THE COURT: I'm sorry. Hold on. If you  
24 would let him finish the answer before you begin your  
25 answer [sic].

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1 MR. ASH: Sorry.

2 THE COURT: I mean, the question.

3 MR. ASH: Sorry.

4 Q. (By Mr. Ash) So you said it was unclear, but  
5 you did not view it?

6 A. Right. I was told that the video was  
7 inconclusive and did not show --

8 Q. Do you remember who told you that? Do you  
9 remember who told you that the video was inconclusive  
10 and --

11 A. Officer Berryman.

12 Q. Okay. The other question I have is with  
13 respect to the complaining witness, Ms. Friedley. Did  
14 you question her?

15 A. I did.

16 Q. You did question her?

17 A. I did.

18 Q. Did you question her before you questioned  
19 Mr. Osuna-Ayuste?

20 A. Yes, sir.

21 Q. Okay. And the other question -- I asked this  
22 of the other officer, but I am going to ask you: Did  
23 you ever identify Mr. Osuna-Ayuste through  
24 identification of some sort?

25 A. He was in possession of a passport, and there

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1 was another piece of identification. I do not recall  
2 the specifics of it right now. But it was actually in  
3 Ms. Friedley's possession, and he asked for it. So  
4 there were two forms of identification. One was a  
5 passport and another one was something else.

6 Q. So when you saw those two pieces of  
7 identification, did you go to your patrol car and run a  
8 background to see if there was any warrants or anything  
9 with respect to him?

10 A. Yes. He was ran for -- to be clear of any  
11 warrants.

12 Q. And you saw that passport. Did you see what  
13 country that passport was from?

14 A. I do not recall which country it was from.

15 Q. Did it -- did it seem to you that he may not  
16 be -- that English may not have been his native  
17 language?

18 A. Not at the time.

19 Q. And you gave that passport to whom when you --  
20 you got the passport from Ms. Friedley, and then what  
21 did you do with that passport?

22 MS. BACY: Your Honor, I object at this  
23 time to the relevance.

24 THE COURT: Sustained. How is that  
25 relevant to his statements or the video?

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1 MR. ASH: Well, it just -- it goes to  
2 show what was in the officer's mind when questioning --

3 THE COURT: What he did with the  
4 passport?

5 MR. ASH: When he questioned him and  
6 what --

7 THE COURT: Sustained.

8 Q. (By Mr. Ash) Oh, one last question. You said  
9 you ran a background on him for warrants. Did you find  
10 any?

11 A. No, sir, no warrants were found.

12 MR. ASH: Okay. I don't have any further  
13 questions.

14 THE COURT: Okay. Anything on redirect?

15 MS. BACY: Just very briefly, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY MS. BACY:

18 Q. Officer Thomas, when was the defendant placed  
19 under arrest?

20 A. The defendant was placed under arrest after he  
21 was advised that there was a video. And then after his  
22 confession, he was then detained at that point. From  
23 that point, the -- your DA's office was contacted and  
24 charges were accepted by the intake DA and then he was  
25 placed under arrest.



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1 Q. And when he was placed under arrest, did you  
2 tell him he was under arrest?

3 A. Yes.

4 Q. And did you tell him he was under arrest any  
5 time before that?

6 A. I did not.

7 MS. BACY: Okay. No further questions at  
8 this time.

9 THE COURT: Okay. Anything else,  
10 Mr. Ash?

11 MR. ASH: No further questions.

12 THE COURT: All right. Thank you. You  
13 may step down, Officer.

14 And, Ms. Bacy, I ask that you -- well,  
15 Officer Thomas -- is it Thomas or Thompson?

16 THE WITNESS: Thomas.

17 THE COURT: Officer Thomas, the Rule has  
18 been invoked. And I know you folks were not in here, I  
19 don't believe, when the Rule was invoked earlier. And  
20 so please be advised that the Rule has been invoked. So  
21 please do not discuss your testimony with any of the  
22 other witnesses, including your predecessor here on the  
23 witness stand. Anyone found to be in violation of that  
24 Rule will be held in contempt of court, okay? And I  
25 will admonish your partner in just a moment. All right.

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1 You may step outside, sir.

2 All right. I will hear argument. Ms.  
3 Bacy, since it is a warrantless arrest, I guess you  
4 carry the burden at this point.

5 **STATE'S ARGUMENT** ON MOTION TO SUPPRESS

6 MS. BACY: All right. Your Honor, the  
7 State will begin with defense's motion to suppress the  
8 admission and statements that were made.

9 And after reviewing the defendant's  
10 motion, basically what they talk about is the recording  
11 requirement. They reference Article 3, 38.22, Section  
12 3, which says that a recording is required for custodial  
13 interrogation, okay.

14 However, when looking at custodial  
15 interrogations, I would like to turn the Court to what  
16 State has offered -- or excuse me -- the case that State  
17 referenced and gave to the Court and defense counsel,  
18 *Shiflet*, which says that in order for there to be a  
19 custodial interrogation, there is a custodial predicate  
20 that must be met and an interrogation predicate that  
21 must be met in order for a custodial interrogation to  
22 apply.

23 We have looked at that. And if the Court  
24 would turn with me to Page 5. And where there is a  
25 highlighted mark, where it says: If the focus concept