

1 old fashioned way.

2 ROBERT TORRES,

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (BY MS. ONCKEN) Sir, can you please
6 introduce yourself to the jury?

7 A. My name is Robert Torres. I'm a sergeant
8 with the City of Houston Police Department, homicide
9 division.

10 Q. How long have you been working for H.P.D.?

11 A. Twenty-eight years approximately.

12 Q. All right. How long have you been a
13 sergeant?

14 A. About 16, 17 years.

15 Q. And how long have you been assigned to the
16 H.P.D. homicide division?

17 A. I've been in two tours of duty in the
18 homicide division totaling about 14 years out of the
19 last 18.

20 Q. Okay. So, took about a four-year break?

21 A. Yes.

22 Q. All right. I want to turn your attention
23 back to March 31st of 2010 and ask if you were
24 working in the homicide division at that time.

25 A. Yes, I was.

1 Q. Now, what shift did you work? From what
2 time to what time?

3 A. Evening shift from 3:00 to 1:00 a.m.,
4 3:00 p.m. to 1:00 a.m.

5 Q. And at that time did you -- was it normal
6 that y'all would work with a partner?

7 A. Yes.

8 Q. Okay. And who was your partner on March
9 31, if you recall?

10 A. It was Sergeant Ben Williams.

11 Q. Okay.

12 A. Benjamin Williams.

13 Q. And was there a procedure in place by the
14 department that if you didn't completely finish a
15 case by the time your shift was over, would you keep
16 working on it or would it go to someone else?

17 A. There's a process in place to pass it -- if
18 it requires any significant amount of follow-up
19 investigation, that we pass it on to the following
20 shift or a day shift crew to pick it up and continue
21 with the investigation, yes.

22 Q. Okay. So, I want to talk specifically
23 about a case that involved an infant named Kamron
24 Kelly. Do you recall working on that case?

25 A. Yes, I do.

1 Q. How was it that you first became aware that
2 there was an infant in crisis?

3 A. We received a call in our office in the
4 homicide division from the patrol officer who had
5 gotten dispatched to the L.B.J. Hospital emergency
6 room regarding injury to a child.

7 Q. Is it typical that the homicide division
8 will work on a case involving an infant, even if the
9 infant is not deceased?

10 A. Yes. Yes. If it's going to be serious
11 bodily injury, yes. Or any infant deaths, yes, we do
12 work.

13 Q. Have you worked, over your 14 years in
14 homicide, few or many infant death cases?

15 A. Many. Many.

16 Q. What did you and your partner do in
17 response to receiving that call from the patrol?

18 A. We drove to the hospital to the emergency
19 room, and I -- we discussed it ahead of time. I
20 agreed to take what we call the "witness side," which
21 would be any people that might be witnesses or
22 parties, complainants, or suspects. And then he was
23 going to take the opposite side of the investigation
24 dealing with mainly physical evidence.

25 Q. Okay. And did you both travel to L.B.J.

1 Hospital?

2 A. Yes, we did.

3 Q. And when you arrived there, what kind of --
4 what sort of scene did you have at the hospital?

5 A. Well, I saw a couple of paramedics that
6 were in the emergency room that had transported the
7 child with patrol officers and then the patrol
8 officer had pointed out the child's mother and her
9 boyfriend who were still sitting in the emergency
10 room waiting.

11 Q. So, they were kind of able -- the patrol
12 officers gave you the lay of the land, here's who's
13 who?

14 A. Yes.

15 Q. Now, when you arrive at a situation like
16 this, especially involving an infant or anyone who
17 can't speak, what's the first thing you're just
18 trying to do?

19 A. Well, I try first to speak with the primary
20 patrol officers to see what they've gathered, what
21 information they've gathered so far, because usually
22 they have spoken with the reportee or complainant at
23 the apartments in this case, and get from them what
24 they have. And then it gives me a direction on which
25 way to go and who is a witness and who's not and who

1 needs to be interviewed first and so on.

2 Q. After you received some initial information
3 from the patrol officers, who did you feel like it
4 was important to speak to?

5 A. Well, the child's mother and her boyfriend
6 both.

7 Q. Okay. And you mentioned the child's
8 boyfriend. What was his name? I'm sorry. The
9 child's mother's boyfriend, what was his name?

10 A. Nathaniel Flowers.

11 Q. Do you see that individual, Nathaniel
12 Flowers, in court today?

13 A. I do, yes.

14 Q. Okay. Can you please point to him and tell
15 the jury what he's wearing?

16 A. He's wearing a blue shirt with a collar
17 sitting at this table -- at the desk here in the
18 center of the room.

19 Q. Is he wearing a jacket or no jacket?

20 A. No jacket.

21 MS. ONCKEN: May the record reflect
22 that he identified the defendant?

23 THE COURT: Record will so reflect.

24 MS. ONCKEN: Thank you.

25 Q. (BY MS. ONCKEN) I also would like to show

1 you State's Exhibit Number 91 and ask you if you can
2 identify the person in that photo.

3 A. That is Nathaniel Flowers.

4 Q. Okay. And would this photograph be taken
5 close in time to when the baby was killed?

6 A. Yes.

7 Q. When you first approached the defendant,
8 Nathaniel Flowers, did you have any idea whether or
9 not he would be a suspect in your case or just a
10 witness?

11 A. At that point I was expecting him to be
12 nothing more than a witness.

13 Q. Okay. What about the child's mother? Did
14 you know whether or not she witnessed anything?

15 A. The same with her. I just figured that
16 they were both witnesses. At this point, we didn't
17 even -- we weren't sure of the injuries to the child.
18 It could have been an illness at that point. So, I
19 was treating them both as witnesses.

20 Q. Okay. And, so, what is your procedure then
21 when you have a witness that you want to interview?
22 Do you go somewhere special to have that interview
23 conducted?

24 A. I usually introduce myself to them, explain
25 why we're there and that my objective is to take a

1 formal statement from each of them. Then I asked if
2 they're willing to go to our offices at the main
3 police headquarters on Travis downtown so that I
4 could take a formal statement from them there. And
5 at that point, there's not much in the way of
6 interviewing taking place there at the hospital. But
7 I just introduce myself and explain and ask them if
8 they're willing to go to the office to give a
9 statement.

10 Q. And I guess my question, too, is: Is that
11 your typical procedure to go to your office where you
12 have a space set up to do an interview?

13 A. Yes, it is.

14 Q. Okay. And what kind of space do you have
15 at your office --

16 A. We have --

17 Q. -- for interviews?

18 A. -- five different small, I guess, single
19 office size interview rooms that are set up with
20 video and audio recording equipment, a table, and two
21 or three chairs.

22 Q. And are those rooms kind of created
23 specifically to be able to do video and audio
24 interviews?

25 A. That's correct, yes.

1 Q. Then did the defendant agree to go and give
2 you an interview?

3 A. Yes, he did.

4 Q. Okay. Was he in custody?

5 A. No, not at all.

6 Q. Was he handcuffed by you?

7 A. No.

8 Q. Okay. Was he ever told, "You cannot go
9 anywhere. You are not free to leave"?

10 A. Never.

11 Q. So, how did then he get from the hospital
12 to your office?

13 A. I arranged to have a patrol officer
14 transport both of them to the office.

15 Q. And the other them is the mother, right,
16 Shara Kelly?

17 A. Yes. Yes.

18 Q. Did they go separately or in the same car?

19 A. Separately.

20 Q. Is that also standard procedure?

21 A. Yes, it is.

22 Q. When you arrive at your office, do
23 you -- did you offer him, "Do you need food? Do you
24 need something to drink? Do you need to go to the
25 bathroom"?

1 A. Yeah. It's customary for us to offer them
2 use of the restroom, coffee, water, anything like
3 that. And he didn't ask for any of that.

4 Q. Okay. At any point when you -- well, did
5 you, in fact, obtain a video and audiotaped statement
6 from the defendant, Mr. Flowers?

7 A. Yes, I did.

8 Q. And was this what we would call a
9 "custodial statement"? Was he in custody at the time
10 or --

11 A. No. It was a non-custodial setting. He
12 was informed that we were just going to be getting
13 his statement and we were going to be taking him back
14 to the hospital or wherever he wanted to go.

15 Q. Okay. And did he agree to give that kind
16 of an interview?

17 A. Yes, he did.

18 Q. After the interview was over, where did he
19 go?

20 A. To the hospital where the baby was
21 transferred.

22 Q. And, so, now that would be Texas Children's
23 Hospital?

24 A. Yes. Yes.

25 Q. And if you know, did someone pick him up or

1 did a patrol officer take him back where he needed to
2 go?

3 A. I arranged for a patrol officer to take him
4 back to Texas Children's Hospital. From there, I
5 don't know how he got back home or...

6 Q. Understood. After the interview was
7 concluded, did you do anything else on this case
8 after you interviewed the defendant? And did you
9 also interview the child's mother, Shara Kelly?

10 A. Yes. I interviewed her first and then
11 Nathaniel second.

12 Q. After doing the interviews, do you know
13 whether or not Shara Kelly was there when this
14 happened?

15 A. Was at the apartment -- at the house?

16 MR. MARTIN: Objection. Calls for
17 hearsay.

18 THE COURT: Sustained.

19 Q. (BY MS. ONCKEN) Did you do anything else on
20 this case after conducting the interviews of Shara
21 Kelly and the defendant?

22 A. As far as followup investigation, I did
23 not. I just prepared the case to be turned over to
24 the subsequent investigators.

25 Q. Did you have an occasion to return to

1 either L.B.J or to go to Texas Children's Hospital?

2 A. No.

3 Q. Okay. Was that Sergeant Williams' part of
4 the investigation?

5 A. Sergeant Williams did part of that with
6 L.B.J. Hospital; and Investigator Avila and his
7 partner, I think, were going to continue the followup
8 at Texas Children's Hospital, is my understanding.

9 Q. Okay. And am I understanding then, based
10 on your office's protocol, you turned over the case
11 to the morning shift or the day shift that came on
12 the following day?

13 A. That's correct, yes.

14 Q. Okay. So, after your interviews, is your
15 investigation on this case complete?

16 A. Yes, it is.

17 Q. Okay.

18 MS. ONCKEN: May I approach the
19 witness?

20 THE COURT: Yes, ma'am.

21 Q. (BY MS. ONCKEN) I'm handing you what's been
22 marked as State's Exhibit 99-A, and I'll ask if you
23 recognize this DVD.

24 A. I do, yes.

25 Q. Okay. And is it marked with a long series

1 of numbers and a letter at the end?

2 A. It is, yes.

3 Q. What is that?

4 A. That's our internal departmental case
5 number that we use for our records, our case number.

6 Q. That's the H.P.D. case number?

7 A. The H.P.D. case number, yes.

8 Q. Okay. And is that case number associated
9 with the Nathaniel Flowers injury to a child case?

10 A. It is, yes.

11 Q. Okay. And do you recognize this DVD? Do
12 you know what it contains?

13 A. It contains the videotaped interview that I
14 had with him there at 1200 Travis.

15 Q. Okay. On March 31st --

16 A. On March 31st of '10. 2010.

17 Q. Okay. And with the exception of anything
18 that was Court-ordered, are there any deletions or
19 additions to this DVD?

20 A. No, none at all.

21 Q. Okay. And is it an accurate recording of
22 the statement that you took of the defendant?

23 A. It is, yes.

24 Q. Okay.

25 MS. ONCKEN: At this time State offers

1 99-A and tenders to counsel for any objection.

2 MR. MARTIN: No objections, other than
3 what we discussed pretrial.

4 THE COURT: All right. State's 99-A
5 will be admitted.

6 MS. ONCKEN: Okay. I'm not sure if
7 we're going to be able to play it at this time.

8 May we approach?

9 THE COURT: Okay.

10 (At the Bench)

11 MS. ONCKEN: I got so excited that I
12 could get the video on that I forget that we haven't
13 fixed the transcription. And this is very difficult
14 to listen to without the transcription. We just
15 printed it out. If even five minutes, we can get
16 copies for the jury made in the back. But I
17 completely forgot until it started that that was part
18 of this morning's --

19 THE COURT: The tech people are
20 supposed to be coming up at 12:30 to see if they can
21 figure out what the problem is with the -- maybe I
22 can get them to come up now.

23 MS. ONCKEN: Actually we're good now
24 on the computer. Yes. We just need to be able to
25 print out the transcription.

1 THE COURT: But not with the
2 deposition.

3 MS. ONCKEN: Is the depo working now,
4 too?

5 MS. DICKSON: I think so.

6 THE COURT: Okay. So, we'll take a
7 short break.

8 (In the hearing of the Jury)

9 THE COURT: All right. Members of the
10 jury, more technical difficulties. It should be just
11 a short break. Please retire to the jury room.
12 Don't leave, and don't talk about the case.

13 (Jury leaves courtroom)

14 THE COURT: All right. So, we'll be
15 in recess on the trial case for a very short period
16 of time.

17 (Recess taken)

18 (Jury enters courtroom)

19 THE COURT: Be seated, please.

20 Ms. Oncken.

21 MS. ONCKEN: At this time the State
22 would ask to publish State's 99-A.

23 THE COURT: Okay.

24 MS. ONCKEN: And before we do so, we'd
25 like to offer into evidence State's Exhibit 103,

1 which is a transcription of the statement of the
2 defendant and including Officer Torres' part of it.

3 Q. (BY MS. ONCKEN) And I'll ask, Officer
4 Torres: Have you had an opportunity to review a copy
5 of State's 103, a transcription of your interview
6 with the defendant on March 31st, 2010?

7 A. Yes, I have.

8 Q. And is that a true and accurate
9 transcription of the statement that you took that's
10 been offered in front of this jury as 99-A?

11 A. Yes, it is.

12 MS. ONCKEN: State would offer 103 at
13 this time and tender any -- you have a copy right
14 there in front of you -- for any objections?

15 THE COURT: For demonstrative
16 purposes?

17 MS. ONCKEN: For demonstrative
18 purposes only, yes, Judge.

19 MR. MARTIN: We have no objection, for
20 demonstrative purposes.

21 THE COURT: Okay. So, for
22 demonstrative purposes, it will be admitted.

23 Members of the jury, you're each going
24 to get a copy of that to follow along. But let me
25 give you this instruction in addition to that: It's

1 just to aid you, if it does. If you hear something
2 differently from what's typed on that piece of paper,
3 you go with what you hear. Okay? It's just to help
4 you, if it does. But go with what you hear. And
5 that's not going to ever go back into the jury room
6 with you. So, anything that's admitted into evidence
7 for regular purposes, you can review when you
8 deliberate later on if you want to; but this will not
9 go back with you.

10 (Audio and video statement played in
11 open court)

12 MR. MARTIN: Can we approach?

13 THE COURT: Sure.

14 MS. ONCKEN: We're trying to get it
15 back. The computer just completely froze.

16 (At the Bench)

17 MR. MARTIN: Could we ask that --
18 Judge, I ask that we ask the jury to stop reading the
19 exhibits, they're not evidence, and to hold up on it.

20 THE COURT: Okay.

21 (In the hearing of the Jury)

22 THE COURT: Members of the jury, I ask
23 you to stop and go back to where we were because
24 actually what you're reading there is just to assist
25 you as you're listening. So, please don't just keep

1 reading.

2 Anybody have a laptop? You know, just
3 play it on a laptop the old fashioned way and let
4 people look at it as opposed to using all this fancy
5 tech stuff that doesn't seem to be working?

6 Is that a no?

7 *MS. ONCKEN:* There's a laptop in our
8 I.T. division, but they'd have to come up, unhook
9 this, and hook the laptop, I think, into it. But
10 we're -- it's just this computer is not playing it,
11 but we're almost there.

12 *THE COURT:* I mean, if you had a
13 laptop, you could put it on counsel table and plug it
14 into the wall. Forget all that other stuff.

15 The court reporter has one in her
16 office.

17 Would you go get it for us? That
18 would be great.

19 *(Audio and video attempted to be
20 played in open court)*

21 *THE COURT:* Just eject it, and just
22 use the laptop. You want some books or something to
23 put it on?

24 *MS. ONCKEN:* We can put it on top of
25 these.

1 (Audio and video played in open court)

2 THE COURT: Can y'all see that? Can
3 you hear it?

4 Is that as loud as it goes?

5 MS. ONCKEN: That's as loud as it
6 goes.

7 We have a second copy. Here it's
8 coming back, too.

9 (Audio and video attempted to be
10 played in open court)

11 THE COURT: Approach real quick.

12 (At the Bench)

13 MS. ONCKEN: I think that we had two
14 copies of the same thing, but the problem is that, I
15 guess, we'd have to interchange 99-A or we could have
16 him relook at it. But he made two copies for us --
17 Melissa is trying to look for the other one right now
18 to see if there's another one that's any better.
19 We've just dubbed it and redubbed it and redacted it
20 so many times that -- I'm just at the end of my rope
21 in terms of the technology. But I can check the
22 other one. But I want to make sure that it's the
23 same thing and it's what you wanted. Because the
24 first redaction had the video, and then we redid it
25 where it cut the video and the audio out. And that's

1 the one that we're playing. But we listened to it
2 earlier. This is at the point where it was redacted.

3 *THE COURT:* Uh-huh. That's exactly
4 what I was thinking.

5 *MS. ONCKEN:* And we listened to it,
6 and it was fine. That's what I don't understand, why
7 all of a sudden it's scratching right there. But I
8 can check the other one. I just can't -- I mean, I
9 don't want them to hear anything they're not supposed
10 to hear.

11 *MR. HOCHGLAUBE:* Is there any way to
12 just skip that point?

13 *MS. ONCKEN:* That's what I'm trying,
14 to fast forward it, and it's not working. But maybe
15 somebody smarter than me can figure out how to do it.
16 But the audio on that is so poor, they're never going
17 to be able to hear that.

18 *(In the hearing of the jury)*

19 *(Audio and video playing in open*
20 *court)*

21 *MS. ONCKEN:* I think she got it.

22 *THE COURT:* Let's see how this goes.

23 *(In the hearing of the Jury)*

24 *(Video and audio continued to play in*
25 *open court)*

1 MS. ONCKEN: Pass the witness.

2 CROSS-EXAMINATION

3 Q. (BY MR. MARTIN) Sergeant Torres, from the
4 time you got the call, did it take you just a few
5 minutes to get to L.B.J. Hospital?

6 A. It took me, I think, about -- I guess,
7 about maybe 30 or 40 minutes, I believe, just from
8 downtown to L.B.J. I went directly.

9 Q. Do you recall who of the family was there
10 at the hospital when you got there?

11 A. I don't recall other family members there.
12 I saw the mother of the child and Nathaniel --

13 Q. All right.

14 A. -- Flowers, but --

15 Q. All right, sir. You don't remember if
16 Shara's mother, the baby's grandma, was there?

17 A. I don't recall that, sir.

18 Q. All right, sir. Did you make any notes or
19 notation of Mr. Flowers' behavior or attitude or
20 demeanor there at the hospital?

21 A. No.

22 Q. All right. How about the mom, Shara? Do
23 you remember anything about her attitude or demeanor
24 or behavior or anything you made a note of?

25 A. No. I remember them sitting there

1 together, you know, talking, little small talk.

2 Nothing --

3 Q. All right, sir.

4 A. -- loud. No conversations that were loud
5 enough for you to hear. Just I could see them
6 talking. But not much conversation really, until I
7 came in and started talking to them and explained to
8 them what I wanted to do.

9 Q. All right. And both of them agreed to go
10 with you back for -- to be transported back to the
11 police station?

12 A. Yes.

13 Q. And I take it -- we've heard they were
14 transported in separate cars. That would have been
15 normal H.P.D. protocol?

16 A. That's correct, yes.

17 Q. And I take it from your interview with Mr.
18 Flowers that you had talked to the mom, Shara, first?

19 A. Yes, that's correct.

20 Q. Okay. Anything you remember about her
21 attitude or demeanor in that interview or anything
22 that struck you as strange or unusual?

23 A. Well, she didn't seem to -- she didn't
24 indicate that there was anything -- any serious
25 illness with the child. And when I asked her during

1 that interview if I thought maybe -- if she thought
2 that maybe Nathaniel might have done something
3 intentionally, she just told me that she didn't think
4 that he would be capable of doing that, that he loved
5 the child, that she didn't believe so.

6 Q. Did she say anything about the baby having
7 been sick, ill, say the week or so before --

8 A. She did say he had a cold and he'd been
9 taking cold medications.

10 Q. Did she say anything about --

11 MS. ONCKEN: I'm going to object to
12 the line of questioning as hearsay.

13 THE COURT: Sustained.

14 Q. (BY MR. MARTIN) Have you talked to Shara --
15 I'm sorry. You said you had no more to do with the
16 investigation after the 31st; is that right?

17 A. That's correct.

18 Q. All right. Thank you, Sergeant.

19 MR. MARTIN: I'll pass the witness.

20 THE COURT: Anything else?

21 MS. ONCKEN: Pass the witness.

22 THE COURT: Thank you, sir. You can
23 step down.

24 If your food is here, we're going to
25 stop. If it's not here, we're going to keep going