

1 You may step down.

2 Call your next witness, please.

3 MR. MOSS: May this witness be excused?

4 THE COURT: May he be excused, Mr. Alford?

5 MR. ALFORD: No.

6 THE COURT: All right. You're on call.

7 MR. MOSS: State calls Sergeant Walker.

8

9

MIKE WALKER,

10 having been previously duly sworn, testified as follows:

11

DIRECT EXAMINATION

12

BY MR. MOSS:

13

Q. Is it Lieutenant Walker?

14

A. Yes, sir.

15

Q. Would you please state your name for the

16

record?

17

A. My name is Mike Walker.

18

Q. And how are you employed?

19

A. I'm a police officer with the Houston Police

20

Department.

21

Q. How long have you been with the Houston Police

22

Department?

23

A. For 15 years.

24

Q. What capacity do you hold right now? What's

25

your office?

1 A. I am the Lieutenant of Police and I work at
2 the Central Division, Central Patrol Division.

3 Q. What do you do? What's your job?

4 A. It's an administrative position. So, it's
5 basically a desk job.

6 Q. How long have you been doing that job?

7 A. For a little less than a year.

8 Q. Now, I want to talk to you about January 22nd,
9 2008. Do you recall that day?

10 A. Yes, sir.

11 Q. What position did you hold during that time?

12 A. I was a sergeant in the police department's
13 Homicide Division.

14 Q. What were your duties at that time?

15 A. I was on a murder squad. It's a term we use
16 for individuals, detectives who investigate certain
17 cases, homicides, questionable deaths, officer-involved
18 shootings and active kidnapping.

19 Q. And you say you're on a murder squad. How
20 many people were assigned to a squad?

21 A. There happened to be 12 in the squad that I
22 worked for. and as we work in pairs, that would be six
23 pairs or six teams of officers.

24 Q. How do you get a case?

25 A. Generally your duty lieutenant will come and

1 grab you and let you know it's your time.

2 Q. So, on January 22nd, 2008, were you assigned a
3 case?

4 A. Yes, sir, I was.

5 Q. Where was this case located at?

6 A. At 1320 West Pierce.

7 Q. So, about how long does it take you -- what do
8 you do when you get a case -- what do you do to get
9 prepared?

10 A. You and your partner generally grab your --
11 whatever materials you bring to a scene, which is at the
12 least a pen and a notepad and you travel to the scene.

13 Q. Who was your partner on that date?

14 A. Investigator Tommy McCorvey.

15 Q. Is he still with the department?

16 A. No, sir, he's not. He's retired.

17 Q. Okay. 1320 West Pierce, is that in Harris
18 County, Texas?

19 A. Yes, sir, it is.

20 Q. So, you drive out there. About what time do
21 you get this call?

22 A. We got it at about 1:15 in the afternoon.

23 Q. So, you grab your gear and you head out there?

24 A. Yes, sir.

25 Q. About how long does it take you to get to that

1 address?

2 A. We left at about 1:30 and we got there about
3 20 minutes later. So, about ten before 2:00.

4 Q. So, when you get to a crime scene as a
5 homicide investigator, what do you do?

6 A. First thing my partner and I generally did
7 was -- and it depends, it varies from partners to
8 partners, but we would make a decision on who was going
9 to handle documenting the scene itself and who was going
10 to talk to people, who was going to talk to witnesses on
11 the case. So, that was the first thing that we did.
12 And it was decided that my partner, McCorvey, was going
13 to handle the scene and I would speak with witnesses.

14 Q. Did you walk the scene before you went and
15 spoke to witnesses?

16 A. Yes, sir, we did, certainly.

17 Q. Who do you walk the scene with?

18 A. Generally we'll walk it with at least the
19 Crime Scene Unit if he happens to be there. The pair of
20 detectives will walk together. And we'll usually walk
21 with whatever patrol officer happens to have the
22 greatest degree of detail or knowledge of the scene.
23 And he relays the information -- he relays the
24 information to us regarding what they have learned so
25 far.

1 Q. On this case who did you walk with during the
2 scene walk-through?

3 A. There were several officers there. I don't
4 recall which of the patrol officers. But it was me, my
5 partner, McCorvey, and Crime Scene Unit 5, Jay Hammerle.

6 Q. So, you walked through the scene. After you
7 do the walk-through, what do you do next?

8 A. We -- once we've taken a look, the
9 walk-through and know what we're dealing with, know what
10 type of evidence we're dealing with, it was my turn to
11 speak with witnesses. Some of these individuals had
12 come forward and already identified themselves to the
13 officers there. So, I spoke to the witnesses. And
14 there happened to be three main ones at the scene.

15 Q. Now, when you got to the scene, Mr. Bruney,
16 the Complainant, was he -- was his body at the scene?

17 A. No, sir. He was no longer there.

18 Q. Who was the first witness you talked to?

19 A. Paula Davila.

20 Q. Who was the second witness?

21 A. Eric Mees.

22 Q. And the third witness?

23 A. Ronald Dean.

24 Q. Now, did you ever learn about the weapon in
25 this case?

1 A. Yes, sir, we did.

2 Q. What did you learn about it?

3 A. We learned that it was located on a coffee
4 table in the residence next door to where the murder had
5 occurred.

6 Q. Okay. Did you ever go in that residence?

7 A. Yes, sir, we did.

8 MR. MOSS: May I approach the witness,
9 your Honor?

10 THE COURT: Sure.

11 Q. (BY MR. MOSS) I'm going to show you what's
12 been previously marked as State's Exhibits 6 through 18.
13 Would you take a look at those for me? Do you recognize
14 all those photographs?

15 A. Yes, sir, I do.

16 Q. Are they true and accurate depictions of the
17 crime scene as it was on that day?

18 A. Yes, sir, they are.

19 MR. MOSS: Tendering to Defense counsel
20 State's Exhibits 6 through 18. Ask they be put into
21 evidence.

22 (State's Exhibit Nos. 6 through 18 offered)

23 MR. ALFORD: Defense has no objections to
24 State's Exhibits 6 through 18.

25 THE COURT: All right. Admitted.

1 (State's Exhibit Nos. 6 through 18 admitted)

2 MR. MOSS: May I publish to the jury, your
3 Honor?

4 THE COURT: Yes.

5 Q. (BY MR. MOSS) All right. Lieutenant, I'm
6 going to go through these kind of picture by picture.
7 And I'm going to show you State's Exhibits No. 6 and 7.
8 Can you tell the jury what they see in these pictures?

9 A. They're pictures depicting the driveway where
10 the shooting occurred.

11 Q. Now, there's glasses in these pictures, right?

12 A. Yes.

13 Q. What are those glasses there for?

14 A. Those were used to mark items of evidence
15 which in this case happened to be fired cartridge
16 casings.

17 Q. When you say "fired cartridge casings," are
18 they better known as shells?

19 A. Yes, sir.

20 Q. Now, 8, 9 and 10, if I can get this right, now
21 exactly what are these?

22 A. Those are closer-up views of the same -- of
23 the shells.

24 Q. And the glasses next to them?

25 A. Yes, sir.

1 Q. Is it normal to use glasses as evidence
2 markers?

3 A. No, sir. Although it's not atypical for first
4 responding officers to use whatever they can get on the
5 scene to mark it so that we don't lose evidence. The
6 Crime Scene Unit is going to come out and take pictures
7 of whatever is there in the first place to mark the
8 evidence. He'll often replace them with placards later.

9 Q. So, in this case, maybe -- I'm sorry. In this
10 case, this Crime Scene Unit didn't make the scene first.
11 Rather it was the first responder?

12 A. Yes, sir.

13 Q. Let me show you State's Exhibits 12 through
14 13. Would you please describe to the jury what are in
15 these photographs?

16 A. Those show the snake that the victim was using
17 to work on the house at the time he was shot.

18 Q. Now, can you tell from this photograph whether
19 it was presently being used before the murder occurred?

20 A. Yes, sir.

21 Q. How do you know that?

22 MR. ALFORD: Your Honor, that calls for
23 speculation as to whether or not these -- what's he
24 asking being used? The snake was being used?

25 MR. MOSS: Yes, sir. And I'm just about

1 to ask him how he knows that.

2 MR. ALFORD: Okay.

3 Q. (BY MR. MOSS) And how do you know that?

4 A. Because the snake part is actually in the
5 pipeline -- or pipe.

6 Q. Okay. Finally, let me show you State's
7 Exhibits No. 15 and 16. What are these pictures of?

8 A. They show a bloody shirt that was used to aid
9 the victim after he was shot.

10 Q. What do you mean? How was it used to aid the
11 victim?

12 A. Staunch the blood flow.

13 Q. Was there blood on those shirts?

14 A. Yes, sir, there was.

15 Q. Now, that was of the crime scene where the
16 murder occurred, right?

17 A. Yes, sir.

18 Q. All right. I'm going to show you --

19 MR. ALFORD: Your Honor, I object to the
20 prosecutor calling this a murder. That hadn't been
21 proven yet. It's a homicide investigation.

22 THE COURT: Sustained.

23 MR. MOSS: I apologize, your Honor.

24 MR. ALFORD: We would ask that the jury be
25 instructed to disregard of the use of the word "murder."

1 THE COURT: Disregard that last statement
2 made by the prosecutor.

3 MR. ALFORD: And, Judge, we'd move for a
4 mistrial.

5 THE COURT: And that will be denied.

6 MR. ALFORD: Thank you, your Honor.

7 THE COURT: Yes, sir.

8 All right. You may proceed.

9 MR. MOSS: Thank you, your Honor.

10 Q. (BY MR. MOSS) I'm going to show you State's
11 Exhibit No. 17. And what is this?

12 A. That is a picture of the house next door.

13 Q. Okay. And this -- and what is about this
14 house? What did you do with this house?

15 A. That was where the weapon that was used in
16 this case was located.

17 Q. Finally, State's Exhibit No. 18?

18 A. A photograph of the weapon itself.

19 Q. Do you know what kind of weapon this was?

20 A. It's a Glock semiautomatic pistol.

21 Q. And is a Glock semiautomatic pistol a firearm?

22 A. Yes, sir, it is.

23 Q. Is it a deadly weapon?

24 A. Yes, sir, it is.

25 Q. Why is it a deadly weapon?

1 A. Because it can fire a projectile that can --
2 that is intended -- its actual intended use is to
3 seriously injure or kill.

4 Q. Okay. After you spoke with the three
5 witnesses and you secured the firearm, what did you do
6 next?

7 A. That was generally -- that was close of the
8 investigation that we had at the scene. We went back to
9 the office and spoke with the Defendant in this case.

10 Q. Okay. After you went back there and spoke
11 with the Defendant, did you do anything else?

12 A. No, sir, not that I recall specific on that
13 day.

14 Q. Now, did you follow up with an investigation
15 after the day of the accident?

16 A. Yes, sir, we did.

17 Q. What did you do in that case?

18 A. I constructed a photo array to show to two of
19 the witnesses in the case.

20 Q. Okay. Did you speak to any witnesses after
21 the day of the incident?

22 A. Yes, sir, I did. I spoke to some who were not
23 direct witnesses to the case but were peripheral or who
24 could give some background hopefully into what had
25 occurred.

1 Q. Now, there was a cell phone at the scene,
2 correct?

3 A. Yes, sir.

4 Q. Where was the cell phone located?

5 A. It was on the ground at the scene.

6 Q. Was there anything special about the cell
7 phone?

8 A. Yes, sir. It had a bullet strike in it.

9 MR. MOSS: May I approach?

10 THE COURT: Yes, sir.

11 Q. (BY MR. MOSS) Show you what's been marked as
12 State's Exhibit No. 26. Do you recognize this?

13 A. Yes, sir, I do.

14 Q. Okay. And what is it?

15 A. It's a cellular phone.

16 Q. Do you recognize it as a certain cellular
17 phone?

18 A. Yes, sir. It was the one that was recovered
19 at the scene of the crime.

20 MR. MOSS: Tendering to Defense counsel
21 State's Exhibit No. 26 and ask that it be put into
22 evidence.

23 (State's Exhibit No. 26 offered)

24 MR. ALFORD: May I take the witness on
25 voir dire?

1 THE COURT: All right.

2 VOIR DIRE EXAMINATION

3 BY MR. ALFORD:

4 Q. Lieutenant, this cell phone that's marked as
5 State's Exhibit No. 26, you didn't recover it, did you?

6 A. No, sir, I didn't.

7 Q. Who recovered it?

8 A. Crime Scene Unit.

9 Q. Do you know the officer?

10 A. Yes, sir. Officer Hammerle.

11 Q. Was the cell phone -- but you believe this to
12 be the cell phone that you saw in the driveway that day?

13 A. That's correct.

14 MR. ALFORD: Thank you, your Honor. We
15 have no objection.

16 THE COURT: All right. It's admitted, 26.

17 (State's Exhibit No. 26 admitted)

18 DIRECT EXAMINATION (Continued)

19 BY MR. MOSS:

20 Q. Showing you State's Exhibit No. 14. Is that
21 the cell phone in the picture, the cell phone here?

22 A. Yes, sir, correct.

23 Q. Now, when you did your investigation and you
24 saw the cell phone, what were some things about it you
25 noticed?

1 A. That it was opened at the time on the ground,
2 one; and, two, that the -- the bullet strike indicates
3 that it was open at the time that the shot was fired,
4 too.

5 Q. Now, let me show you State's Exhibit No. 29 --

6 MR. MOSS: May the witness step down?

7 THE COURT: Yes.

8 Just keep your voice up, Lieutenant.

9 THE WITNESS: Yes, ma'am.

10 Q. (BY MR. MOSS) Okay. Now, where was the cell
11 phone found?

12 A. It was located, and as you can see in that
13 picture, adjacent to the wall, what was the east wall of
14 the house.

15 Q. And where were the shells located?

16 A. They're in a sequential order from north to
17 south just about roughly in the middle or center part of
18 the driveway.

19 Q. And what is this up here?

20 A. Those are the shirts.

21 Q. Now, do you know if the shirts were found near
22 the body or not?

23 A. Not having been there when the body was
24 removed from the scene, I don't know.

25 Q. Okay. But the cell phone was here when you

1 walked through the scene?

2 A. Yes, sir, that's correct.

3 Q. Have a seat.

4 So, you said after the initial day, you went
5 out and spoke to more witnesses?

6 A. Yes, sir.

7 Q. Which witnesses did you speak to?

8 A. I spoke with Randy Yost, Michael Goodner.

9 Those are the two primary witnesses that I can recall
10 having spoke with the day after -- in the days after the
11 case, that's correct.

12 Q. Do you recall meeting with Ms. Davila again --

13 A. Oh, yes, sir. I'm sorry.

14 MR. ALFORD: Objection, leading.

15 THE COURT: Sustained.

16 Q. (BY MR. MOSS) I'm sorry. Do you remember
17 meeting with Ms. Davila again?

18 A. Yes, sir, I do.

19 Q. Did you meet with anybody else other than
20 that?

21 A. No, sir.

22 Q. Do you remember calling anyone?

23 A. I remember calling the Defendant's roommate.

24 Q. How many times did you call him?

25 A. I recall twice.

1 Q. And did he want to talk to you?

2 MR. ALFORD: Objection, Judge. Hearsay.

3 MR. MOSS: I'm not asking what he said,
4 your Honor.

5 THE COURT: Overruled.

6 You can answer that "Yes" or "No" only.
7 Not what he said.

8 A. (CONTINUING) No.

9 Q. (BY MR. MOSS) So, after you did all that, did
10 you make a conclusion about your investigation?

11 MR. ALFORD: Objection, your Honor. The
12 very question states what the answer that he wants is to
13 make a conclusion about something that's going to call
14 for him to make a legal conclusion, Judge.

15 MR. MOSS: It's not a legal --

16 THE COURT: It's overruled.

17 MR. ALFORD: Could -- I'd request that we
18 could approach the bench to determine what the
19 question's going to be before he blurts it out in front
20 of the jury.

21 THE COURT: Sure. Why not?

22 (At the bench, on the record)

23 THE COURT: Go ahead.

24 MR. MOSS: I was going to ask him about
25 the conclusion of the investigation, what led him to the

1 conclusion and what he did with that. I suspect he's
2 going to say his opinion as to an investigator,
3 homicide. While it was a homicide, he called the
4 District Attorney's Office and got charges filed.

5 MR. ALFORD: Judge, just -- if he asks a
6 question regarding what his conclusion is about, whether
7 or not he should file charges of homicide, I don't have
8 a problem with that.

9 THE COURT: Sounds like that's what he's
10 going to ask.

11 MR. ALFORD: I was afraid of -- I
12 appreciate the Court letting us come up here -- is that
13 what he was going to ask, what do you think happened as
14 far as the shooting? That's obviously objectionable.

15 THE COURT: Okay. Yeah, I agree with you,
16 but he's not going to.

17 MR. MOSS: I was going to ask about what
18 factors at the scene led to him conclude it was a
19 homicide.

20 THE COURT: That's fine.

21 (Open court, Defendant and jury present)

22 Q. (BY MR. MOSS) So, did you come to any
23 conclusions about your investigation?

24 A. Yes, sir.

25 Q. What was that conclusion?

1 A. The conclusion was that the case had
2 represented the elements of a murder.

3 Q. What factors led you to conclude that, like
4 what facts at the scene without going into what people
5 said?

6 A. From the evidence at the scene and -- while
7 not going into what was said, but what -- from the
8 testimony of the evidence that was told me at the
9 scene --

10 MR. ALFORD: Objection, your Honor. Then
11 it's clearly an answer based on hearsay, what was told
12 him at the scene.

13 THE COURT: Sustained.

14 You can't say what anybody said.

15 MR. MOSS: Let me rephrase it.

16 Q. (BY MR. MOSS) So, what factors at the scene
17 itself led you to believe it was a homicide?

18 A. The cartridge casings, the cell phone, the
19 bloody shirts.

20 Q. Okay. And what about the cartridge casings?

21 A. They were basically in a line that suggested
22 that the Defendant in the case, or whomever the suspect
23 was, was advancing on the victim in this case.

24 Q. It could be advancing or walking away?

25 A. That is correct, yes, sir.

1 Q. So, once you came to this conclusion, what did
2 you do?

3 A. I called the District Attorney's Office and
4 spoke with a prosecutor regarding the acceptance of
5 murder charges in this case.

6 MR. MOSS: Pass the witness.

7 THE COURT: All right.

8 Mr. Alford?

9 CROSS-EXAMINATION

10 BY MR. ALFORD:

11 Q. Lieutenant, my name is Matt Alford. We met
12 before the trial, correct?

13 A. Yes, sir, we did.

14 Q. Congratulations on your promotion since this
15 all started.

16 A. Thank you.

17 Q. I want to go over some of the testimony that
18 you have previously done with Mr. Moss at the District
19 Attorney's Office and then ask you about a few other
20 things. Okay?

21 A. Yes, sir.

22 Q. You said, first of all, that -- in response
23 here towards the end of your questioning, that you made
24 a conclusion that the case was -- or the evidence
25 supported it was a homicide, correct?

1 A. Well, no, sir --

2 Q. The death of Mr. Whitt Bruney was a homicide,
3 correct?

4 A. Yes. But I think I actually used the other
5 term as well.

6 Q. Right. You said -- then later on you added
7 "murder"?

8 A. Yes, sir, correct. Initially, yes, sir.

9 Q. And the -- a homicide is the killing of
10 another person, a death that's caused by someone else as
11 opposed to a natural death or an accidental death,
12 correct?

13 A. That's my layperson's understanding, yes, sir.

14 Q. Well, you're noticed as an expert on the
15 witness list, so you're more than just a layperson,
16 right?

17 A. I'm flattered.

18 Q. Would you agree with me?

19 A. Well, yes, sir. I mean, I certainly agree
20 that that as my determination that it was a homicide.
21 And I agree with your definition, yes, sir.

22 Q. Okay. Great. So, you called the District
23 Attorney's Office and you had murder charges --
24 requested the DA file murder charges on Mr. Brown?

25 A. Yes, sir.

1 Q. Having worked in the Homicide Division as a
2 sergeant for a number of years, you don't make a
3 determination based -- when you call the District
4 Attorney about whether or not someone is guilty or not
5 guilty, do you?

6 A. No, sir, I don't.

7 Q. You're only making the determination of a much
8 lower level of proof of whether or not you believe
9 there's probable cause that the homicide occurred,
10 correct?

11 A. I would say that's correct, yes, sir.

12 Q. Now, when you were out there at the scene --

13 MR. ALFORD: Judge, may I approach this
14 witness?

15 THE COURT: Yes, sir.

16 Q. (BY MR. ALFORD) Lieutenant, when you arrived
17 at 1320 West Pierce Street, you said by the time you
18 arrived out there, Mr. Bruney's body had already been
19 removed from the scene, correct?

20 A. Yes, sir, that's correct.

21 Q. What time did you arrive at the scene of
22 Mr. Bruney's death?

23 A. We got there at about ten minutes before
24 2:00 o'clock in the afternoon.

25 Q. So, 1:50, ten minutes to 2:00 in the

1 afternoon?

2 A. Yes, sir, that's correct.

3 Q. Therefore, the calls started -- began to drop
4 on this shooting at about ten minutes to 1:00; is that
5 correct?

6 A. The only thing I can tell you about that is
7 that we were first notified at about 1:15. So, the
8 calls must have started dropping sometime prior to that.

9 Q. Prior to that?

10 A. Yes, sir.

11 Q. So, did you use anything to prepare for your
12 testimony today, to refresh your recollection before you
13 testified?

14 A. Yes, sir, I did.

15 Q. What did you use? Is it the paperwork in
16 front of you?

17 A. It is, yes, sir.

18 Q. What is that?

19 A. This is the offense report to this case.

20 Q. Okay. Do you think you could look in there
21 and see if it might refresh your recollection as to when
22 the calls for dispatch were first made to this scene?

23 A. Yes, sir.

24 MR. MOSS: Objection to hearsay. This is
25 from his personal knowledge, your Honor.

1 THE COURT: You can use it to refresh your
2 memory.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Ask him a question so he can
5 use his report to refresh his memory.

6 Q. (BY MR. ALFORD) What time were the -- what
7 time did the initial call for service come to HPD?

8 MR. ALFORD: Thank you, your Honor.

9 A. (CONTINUING) I have the call first being
10 dropped at 1252 hours. So, the officers first responded
11 at that time -- or dispatched.

12 Q. (BY MR. ALFORD) Okay. So, it would be fair
13 to say that you and Detective McCorvey arrived at the
14 scene about an hour after the first calls dropped to the
15 shooting?

16 A. Yes, sir, that's correct.

17 Q. So, you have no personal knowledge whatsoever
18 of anything that occurred in the scene of Mr. Bruney's
19 death for approximately one hour until you got there?

20 A. That's correct, yes, sir.

21 Q. You don't know who could have come and gone
22 from the crime scene during that hour, correct?

23 A. Well, from the time that they got there, I
24 mean, we knew that the officers had secured the scene,
25 which was evidenced -- or indicated in their report.

1 So, after that time period, I mean, I can reasonably
2 assume that it was --

3 Q. Let me stop you there. I don't want you to
4 reasonably assume anything. I appreciate that. But my
5 question is not that. My question is you have no
6 knowledge of what went on, no personal knowledge of what
7 went on at that scene for an hour or so until you got
8 there?

9 A. Yes, sir, that's correct.

10 Q. So, who was coming and going prior even to the
11 initial police arrival out there by Officer Kessler, you
12 have no idea what was done at that crime scene, do you?

13 A. You are correct, yes.

14 Q. Now, if -- if we look at State's Exhibit
15 No. 14, Lieutenant, I believe you identified this as the
16 snake that was used to do some plumbing work?

17 A. Yes, sir.

18 Q. All right. And you stated that it was in use
19 because it was stuck into the side of the four-plex?

20 A. Yes, sir.

21 Q. But in actuality, that's a potential that it
22 could have been in use, correct?

23 A. That was what I assumed from its being in that
24 position, that it was in use at the time.

25 Q. Right. But if it was a lady individual that

1 don't know much about plumbing, they could have stuck
2 that snake in the side of that house two days before the
3 shooting, correct? That's a possibility?

4 A. Yes, sir, that's possible.

5 Q. And you have no knowledge one way or the other
6 whether it was done the day of the shooting or two days
7 prior or anything else. You have no personal knowledge
8 of that, do you?

9 A. Well, from witness testimony --

10 Q. That's a "Yes" or "No" question. You don't
11 have any personal knowledge of that, do you?

12 A. Yes.

13 Q. You have personal knowledge?

14 MR. MOSS: Objection to asked and
15 answered.

16 THE COURT: Sustained.

17 Q. (BY MR. ALFORD) You know that that machine --
18 was the machine running when you got there?

19 A. I -- yes, sir. I misunderstand your question.
20 I have no personal knowledge of whether or not it was
21 being used at the time.

22 Q. Okay. Thank you, Lieutenant.

23 You interviewed, in response to the State's
24 questioning, a woman by the name of Paula Davila,
25 correct?

1 A. Yes, sir.

2 Q. You interviewed her the day of the shooting;
3 is that correct?

4 A. Yes, sir.

5 Q. And you had a subsequent follow-up interview
6 with her, that's correct?

7 A. Yes, sir, I did.

8 Q. Do you know where she lived in relation to the
9 driveway where the shooting occurred?

10 A. She lived --

11 MR. MOSS: I'm going to object to hearsay,
12 unless he has personal knowledge.

13 THE COURT: Sustained.

14 Q. (BY MR. ALFORD) Do you know where she lived?
15 Do you have any knowledge of where she lived? Do you
16 know where she lived out there in relation to the
17 driveway?

18 A. Yes, sir.

19 MR. MOSS: I'm going to object unless it's
20 from his personal knowledge, not from what she said.

21 THE COURT: Do you know of your own
22 personal knowledge?

23 THE WITNESS: No, ma'am. No.

24 THE COURT: All right. Sustained.

25 Q. (BY MR. ALFORD) Let me show you State's

1 Exhibit No. 11. Would you take a look at that for me?
2 Do you see Ms. Davila's house in that picture?

3 A. Yes, sir, I do.

4 Q. Where is it?

5 A. It is the house right here.

6 Q. The only house that's shown in the picture at
7 the bottom of the driveway?

8 A. Yes, sir, that's correct.

9 MR. ALFORD: Let the record reflect, your
10 Honor, that the witness has pointed to the one house
11 that's at the top right portion of the photograph that
12 has been admitted as State's Exhibit No. 11.

13 THE COURT: All right.

14 Q. (BY MR. ALFORD) Now, did you interview
15 Ms. Davila there or did you have her go down to the
16 police station?

17 A. I spoke with her at the scene.

18 Q. Did you take a statement from her at the
19 scene?

20 A. Yes, sir, I did.

21 Q. Written statement?

22 A. No, sir. An audio-recorded statement.

23 Q. Okay. Did you bring that with you today?

24 A. No, sir, I didn't.

25 Q. Do you know where it is?

1 A. It would be in the case file.

2 Q. Your case file?

3 A. That's correct.

4 Q. Okay. Did you give a copy to the District
5 Attorney?

6 A. Yes, sir.

7 Q. So, they should have a copy of it as well?

8 A. Yes, sir, that's correct.

9 Q. Did she make a written statement in this case?

10 A. No, sir.

11 Q. Lieutenant, let me show you what I've marked
12 as Defendant's Exhibit No. 2. Would you take a look at
13 that for me, please?

14 A. Oh, I'm sorry.

15 Q. What is that?

16 A. That is -- I'm sorry. That is a written
17 statement from the witness, Paula Davila. I apologize
18 to the Court.

19 Q. You don't have to apologize. It's just a
20 two-page written statement by Paula Davila?

21 A. Yes, sir.

22 Q. Given to you, correct?

23 A. No, sir. Not to me.

24 Q. I mean, to the Houston Police Department
25 Homicide Division?

1 A. Yes, sir, that's correct.

2 Q. But you stated that there wasn't one. Why?

3 A. Because I forgot. It's generally -- I don't
4 initially make a habit of always sitting the witnesses
5 down if I can take an audiotaped statement.

6 Q. Also, there's an audiotaped statement out
7 there somewhere and then there's this statement also
8 made at a later time?

9 A. No, sir. That was made the date of the
10 incident.

11 Q. But at the Homicide Division?

12 A. Correct, yes, sir.

13 Q. So, after you made a recorded statement?

14 A. Yes, sir.

15 Q. Were there any other statements that she made
16 any other time?

17 A. No, sir.

18 Q. Didn't you meet with her again the day after
19 the homicide -- I mean, after the statement was made at
20 the scene of the homicide?

21 A. Yes, sir.

22 Q. Okay. Did you talk to her about the case
23 then?

24 A. Yes, sir.

25 Q. All right. In fact, you showed her a

1 photospread, correct?

2 A. Yes, sir.

3 Q. A photospread that included a picture of the
4 Defendant, David Brown, correct?

5 A. Yes, sir.

6 Q. And when you asked her to identify -- if she
7 could identify the person that she saw shooting
8 Mr. Whitt Bruney, she, in fact, identified another
9 person incorrectly and not Mr. Brown, correct?

10 A. That's correct.

11 Q. If we look at the photos, when you said if we
12 could see the photographs that have the shell casings,
13 and I'm referring to State's Exhibits 6, 7, 8, 9 and 10.
14 Do you recall those photographs?

15 A. Yes, sir.

16 Q. You said that the officers -- the first
17 responder potentially will put any object they can next
18 to something like a shell casing in order to mark it?

19 A. Yes, sir, that's correct.

20 Q. And that generally later on there's placards
21 put by it to identify what the things are?

22 A. Yes, sir.

23 Q. Well, those things were never done in this
24 case, I guess; is that correct?

25 A. I believe they were.

1 Q. Okay. By whom?

2 A. By the Crime Scene Unit.

3 Q. Okay. Have you ever seen any other
4 photographs other than these that show different things
5 that were by -- different placement cards or different
6 things by the shell casings or just the ones with these?

7 A. Those are the ones that I recall.

8 Q. Cups?

9 A. Yes, sir.

10 Q. Who took these photographs?

11 A. The Crime Scene Unit.

12 Q. Does he have some photographs that have other
13 things in it?

14 MR. MOSS: Object to speculation.

15 THE COURT: Sustained.

16 MR. ALFORD: All right.

17 Q. (BY MR. ALFORD) If you look at these --
18 you've stated that the shell casings, when you saw them
19 as in these photographs, they were in a row, one, two,
20 three, correct?

21 A. Yes, sir.

22 Q. And in response to the prosecutor's question,
23 Mr. Moss, he stated that it could have been consistent
24 with someone advancing down the driveway, correct?

25 A. Yes, sir.

1 Q. And also -- or someone advancing or going the
2 other direction down the driveway, correct?

3 A. Yes, sir, that's correct.

4 Q. In fact, it's possible that when shells
5 eject -- I mean, you know a lot about guns, right?

6 A. I know a little bit about guns.

7 Q. Are you an expert with firearms?

8 A. No, sir, I'm not.

9 Q. Okay. Have you ever had any training in
10 firearms training?

11 A. Yes, sir, I have.

12 Q. Is it possible that when a -- if you know, I
13 just want to ask you. Is it possible -- would you agree
14 with me that just because where a shell lands and lays
15 on the ground is no indication where it was fired from?
16 Would you agree with that?

17 A. Can you -- I'm sorry. Can you repeat the
18 question?

19 Q. Sure, sure. I'm talking about the Glock --
20 you do realize a Glock, the model Glock that was used in
21 this case is a semiautomatic firearm, correct?

22 A. Yes, sir.

23 Q. Semiautomatic means it fires a round. The gas
24 from the round pushes the slide. A shell casing is
25 ejected. And another round is slid into the chamber,

1 correct?

2 A. Yes, sir.

3 Q. Okay. We can agree on that. So, when a round
4 is fired, the gas forces the slide back. The shell
5 casing flies out. There is no predetermined angle of
6 flight or anything else of where that shell is going to
7 go when it come out of that gun, is it?

8 MR. MOSS: Object to this as expert
9 testimony, your Honor. He's not an expert in firearms.

10 MR. ALFORD: Your Honor, he's listed as an
11 expert I'm asking if he knows.

12 THE COURT: Overruled.

13 You can answer that if you can answer
14 that.

15 A. (CONTINUING) I would -- no, sir, I don't
16 think I have the detail or degree of knowledge that
17 would be required. Although I think it's possible to
18 make some preliminary determinations regarding where a
19 cartridge may lie. It's beyond my ability to do so or
20 beyond my knowledge.

21 Q. (BY MR. ALFORD) Okay. Well, it wasn't beyond
22 your knowledge to say that made you think that someone
23 was going up the driveway or back the driveway. You
24 testified to that, correct?

25 A. Yes, sir.

1 Q. Okay. My question is: Shells -- let's see if
2 you can agree with me on this. A shell --

3 MR. MOSS: Objection to argumentative and
4 sidebar, your Honor.

5 THE COURT: Sustained.

6 Rephrase.

7 MR. ALFORD: Certainly, your Honor. I had
8 no intention of that.

9 Q. (BY MR. ALFORD) A shell -- would you agree
10 with me that a shell casing, when it hits the ground,
11 can bounce or roll?

12 A. Yes, sir.

13 Q. All right. Going one step further, a shell
14 casing can hit the ground from initially where it comes
15 out of that firearm. It may not end up exactly where it
16 hit, correct? It might bounce or roll to another
17 location, correct?

18 A. Yes, sir, that's correct.

19 Q. So, although you might be able to say or you
20 might want to say that something might indicate where a
21 shot was fired from, there's no way to be certain where
22 the location of the gun fired, is there?

23 A. Well, I'm speaking only of whether or not
24 there was an individual in advance or retreat just from
25 the fact that --

1 Q. And I appreciate that, Lieutenant. That's not
2 my question. This is a "Yes" or "No" question. Is
3 it -- there's no way to determine based on shells being
4 able to bounce or roll or be kicked by individuals
5 running up and down a driveway, there's no way to
6 determine where they actually were fired from, is there?

7 A. No, sir. That is correct.

8 Q. Thank you, Lieutenant.

9 MR. ALFORD: Pass the witness.

10 THE COURT: All right.

11 Anything else?

12 MR. MOSS: Briefly, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MOSS:

15 Q. When you're doing a crime scene investigation,
16 do you take into account all sorts of factors that could
17 have contaminated the crime scene?

18 A. Yes, sir.

19 Q. And you've done a lot of crime scenes?

20 A. Yes, sir.

21 MR. ALFORD: Objection, your Honor.

22 That's bolstering.

23 THE COURT: Overruled.

24 Q. (BY MR. MOSS) So, when you're looking at this
25 crime scene, are you going in as -- let me rephrase

1 that.

2 You take what you're given to you, right, as
3 far as --

4 MR. ALFORD: Objection, leading.

5 THE COURT: That's sustained.

6 Don't lead, please.

7 MR. MOSS: Pass the witness.

8 THE COURT: All right.

9 Mr. Alford, anything else?

10 MR. ALFORD: Not at this time, Judge.

11 THE COURT: May he be excused?

12 MR. ALFORD: No, your Honor.

13 THE COURT: You're on call. Thank you,
14 Lieutenant. You may step down.

15 Ladies and gentlemen, let's take a 10- to
16 15-minute break. Please don't discuss the case with
17 each other.

18 (Short break)

19 (Open court, Defendant and jury present)

20 THE COURT: All right. You may be seated.
21 Call your next witness.

22 MR. MOSS: State calls Officer Duffy.

23 THE COURT: Let the record reflect that
24 Mr. Duffy is seated.

25 MR. MOSS: Have you been sworn yet?