

1 currently at Dartmouth University right now, but we have
2 spoken to him by phone and he is available to the Court
3 by telephone.

4 THE COURT: You can put him on the phone
5 and whatever it is that he wants to say and the State
6 can have the opportunity to cross-examine him, however,
7 at least ask him some questions.

8 MR. ALFORD: All right, Judge.

9 THE COURT: All right. Who was your
10 witness and when will they be here?

11 MR. MOSS: I have two officers on route,
12 your Honor, since we just got this motion.

13 THE COURT: All right. Let me know.

14 MR. ALFORD: Thank you.

15 (Short recess.)

16 MR. MOSS: State calls Officer Weller.

17
18 J.W. WELLER,

19 having been previously duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MOSS:

22 Q. Would you please state your name for the
23 record?

24 A. J.W. Weller.

25 Q. And Mr. Weller, how are you employed?

1 A. Houston Police Department.

2 Q. Okay. What division are you in?

3 A. I'm Central Patrol.

4 Q. What area of town do you patrol?

5 A. I patrol the Montrose and midtown area of the
6 city.

7 Q. What shift do you work?

8 A. Day shift, 6:00 a.m. to 2:00 p.m.

9 Q. Were you on duty yesterday, that would be
10 March the 10th, 2010?

11 A. Yes, I was.

12 Q. Did you get a call for service regarding a
13 shooting?

14 A. Yes, I did.

15 Q. Where was that call for service located at?

16 A. 1320 West Pierce.

17 Q. What time were you dispatched?

18 A. I was dispatched at 6:24.

19 Q. What time did you arrive?

20 A. 6:43.

21 Q. When you got to the scene, what did you see?

22 A. When I got to the scene, all I had there was a
23 bloodstain in the grass and a pistol laying in the grass
24 next to the bloodstain.

25 Q. Were there any witnesses?

1 A. Yes, there were witnesses.

2 Q. How many witnesses did you speak to?

3 A. I spoke to three witnesses.

4 Q. What were their names?

5 A. Well, their names were Jonathan Overman, Carl
6 Jordan and Merton Eugene Eignus.

7 Q. Which of these three witnesses, did any of
8 them find the body of the person who was involved in the
9 shooting?

10 A. Yes. That would be Jonathan Overman.

11 Q. Were you able to determine the identity of the
12 person who was shot?

13 A. Yes, sir.

14 Q. What was his name?

15 A. His name was David Earl Brown.

16 Q. Okay. So, what did Mr. Overman tell you about
17 finding the body?

18 A. Well, Mr. Overman said that at approximately
19 4:45 he thought he had heard what he thought was a
20 single gunshot, although he didn't get up at that time
21 to investigate. About a half hour later or so, he went
22 out to take his dog for a walk. And he was out walking
23 his dog for some time. Then he happened to look across
24 the street and he noticed something lying in the grass
25 in the residence across the street.

1. He walked across the street to investigate and
2 he saw an arm move and a pistol laying in the grass.
3 So, he backed up, waited a little bit and see what was
4 going on. And he went back over and looked and saw who
5 he recognized as the Complainant laying in the grass
6 with blood on his face.

7 Q. What did he do when he found the Complainant
8 lying in the grass?

9 A. Apparently he went and alerted Mr. Jordan, who
10 called 9-1-1.

11 Q. What was the Defendant wearing -- I'm sorry.
12 What was the Complainant -- the victim wearing at that
13 time?

14 A. I don't know. I never saw the Complainant.

15 Q. As he -- so, he called -- Carl Jordan called
16 9-1-1, right?

17 A. Yes, sir.

18 Q. Carl Jordan didn't see what was going on? Do
19 you know if Carl Jordan saw the Complainant?

20 A. I'm not sure if he did or not. I don't know
21 how close Carl Jordan went to the Complainant.

22 Q. You said you spoke to Mr. Eignus?

23 A. Yes.

24 Q. And what did he have to say?

25 A. Well, he said he hadn't seen the Complainant

1 since about 11:00 o'clock the night before. He woke up
2 about 6:00 o'clock. Had been unable to find him in his
3 room or in the house. And he went outside to look for
4 him. Didn't know anything had happened until he saw the
5 ambulance in the street. And HFD was already outside.

6 Q. Did he say anything about the Complainant's
7 demeanor the night before?

8 A. He said he had been despondent over the way
9 the Court proceedings were going and that they had
10 discussed how he wanted Mr. Eignus to handle his, you
11 know, affairs if he got convicted in Court.

12 MR. MOSS: I'll pass the witness.

13 THE COURT: Okay.

14 Mr. Alford?

15 CROSS-EXAMINATION

16 BY MR. ALFORD:

17 Q. Officer, you stated that -- who was the first
18 witness that found Mr. Brown?

19 A. Mr. Overman.

20 Q. All right. And Mr. Overman believes that he
21 heard a gunshot some half an hour before he went to
22 the -- before he discovered Mr. Brown?

23 A. Right. Half hour or more before he discovered
24 the --

25 Q. Half hour or more. So, he was not a witness

1 to the actual shooting, correct?

2 A. That's correct.

3 Q. In fact, there are no witnesses to the actual
4 shooting of Mr. Brown, correct?

5 A. That's also correct.

6 Q. And, therefore, were you able to -- of all the
7 witnesses you spoke to out there, you were able to
8 determine that neither those witnesses, anyone else that
9 you talked to or any other officers talked to was a
10 witness of any kind to the shooting of Mr. Brown,
11 correct?

12 A. Correct.

13 Q. So, obviously as you testify here today, there
14 is no way to know whether or not someone -- there's no
15 way for you to know who shot Mr. Brown, correct?

16 A. That's correct.

17 MR. ALFORD: Thank you, your Honor. I'll
18 pass the witness.

19 THE COURT: Anything else?

20 REDIRECT EXAMINATION

21 BY MR. MOSS:

22 Q. Do you have an opinion as to who shot
23 Mr. Brown?

24 MR. ALFORD: Objection, your Honor.
25 That's an improper question. It calls for speculation.

1 THE COURT: All right. Well, that's
2 overruled. This is an informal hearing.

3 Go ahead and answer that if you can.

4 A. (CONTINUING) My opinion would be that the
5 wound was self-inflicted.

6 MR. MOSS: Pass the witness.

7 THE COURT: All right. You can follow up.

8 RECROSS-EXAMINATION

9 BY MR. ALFORD:

10 Q. Officer, your opinion of whether or not
11 Mr. Brown -- those wounds were self-inflicted is -- it's
12 not based on your own personal knowledge, is it? You've
13 already stated that you never saw the -- I mean, you
14 never saw Mr. Brown, the victim, in this case --

15 A. That's correct.

16 Q. -- correct? And you had no opportunity to
17 examine Mr. Brown in this case and even see how or why
18 he was shot, correct?

19 A. That's correct.

20 MR. ALFORD: Thank you.

21 Pass the witness.

22 THE COURT: I have a question. What is
23 that opinion based on?

24 THE WITNESS: Well, it's based on the
25 investigation. It's based on HFD apparently was of the

1 opinion that the wound was self-inflicted, the nature of
2 the wound and the fact that the pistol was laying there
3 in the grass next to the -- Mr. Brown, where he was
4 discovered.

5 THE COURT: Thank you very much.

6 Call your next witness.

7 MR. MOSS: State calls Officer Leos.

8
9 DANIEL LEOS,

10 having been previously duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MOSS:

13 Q. Would you state your name for the record?

14 A. Daniel Leos.

15 Q. And, Officer Leos -- I'm sorry, Mr. Leos, how
16 are you employed?

17 A. With the City of Houston Police Department.

18 Q. And what division are you with?

19 A. I'm in Central Patrol.

20 Q. What part of town do you patrol?

21 A. The Montrose, near midtown area.

22 Q. Were you on patrol yesterday, March 10th,
23 2010?

24 A. Yes, sir.

25 Q. Okay. Were you dispatched to a shooting?