

1 PLAINTIFF: Mr. Swanson

2 WITNESS:

3 COURT:

4 DEFENDANT: Mr. Stone

5

6 WARM UP

7 THE COURT: Okay. The People are indicating that they
8 intend to offer a purported admission or confession from
9 the defendant. So the burden is on the People / to
10 establish the foundation for that.

11 Do you have a witness in that regard?

12 MR. SWANSON: I do, your Honor. The People call
13 Officer Wagner to the / stand.

14 THE COURT: State your name and spell it for the
15 record.

16 THE WITNESS: Officer Sarah Wagner,
17 S-A-R-A-H W-A-G-N-E-R.

18 THE COURT: Have / a seat and speak into that
19 microphone so we can all hear you.

20 THE WITNESS: Thank you. Good morning, your Honor.

21 THE COURT: Good morning.

22 MR. SWANSON: Your Honor, for this / hearing we will
23 have two exhibits. I would ask to mark the recording
24 first as 1.

25 THE COURT: You have some sort of CD audio disc / or
26 something like that?

1 MR. SWANSON: Yes, sir.

2 THE COURT: The CD will be marked as 1.

3 MR. STONE: Do you have a transcript of the recording?

4 MR. SWANSON: I will mark / that next in order.

5 THE COURT: All right. Those are both marked as
6 exhibits.

7 MR. SWANSON: Thank you.

8 THE COURT: Let's proceed.

9 DIRECT EXAMINATION

10 Q. BY MR. SWANSON: Officer Wagner, tell me your
11 current occupation and assignment, / please.

12 A. I am a police officer for the Garden Grove Police
13 Department.

14 Q. And how long have you been a police officer?

15 A. Since 1993.

16 Q. Were */ you working at noon on October 21 of
17 2015?

18 A. I was.

19 Q. On that date at 11:00 a.m., were you dispatched
20 to the / area of Main Street and Acacia in the City of
21 Garden Grove, County of Orange?

22 A. Yes, I was.

23 Q. Now, when you were dispatched to that / area, did
24 you make contact with a person who had reported an assault
25 with a large knife?

26 A. Yes.

1 Q. As part of the investigation, did you / become
2 aware that your partner, Officer Mason, may have made
3 contact with the potential suspect?

4 A. Yes.

5 Q. Did you drive to Officer Mason's location to make
6 / contact with that potential suspect yourself?

7 A. I did not make contact with the suspect myself.

8 Q. At any point during that day did you make contact
9 / with a potential suspect?

10 A. Yes.

11 Q. Do you now see that person here in the courtroom
12 today?

13 A. Yes, I do.

14 Q. Can you tell me where he / is seated and what he
15 is wearing?

16 A. He is seated at the wooden table, wearing a light
17 blue shirt.

18 MR. SWANSON: Your Honor, that's the defendant,
19 please. /

20 THE COURT: She is talking about the defendant.

21 MR. SWANSON: Thank you.

22 THE COURT: Next question.

23 Q. BY MR. SWANSON: At any time did you have an
24 opportunity to interview Mr. Crawford regarding the
25 circumstances */ of that day's events?

26 A. I did.

1 Q. Where did that interview take place?

2 A. At the jail.

3 Q. Was Mr. Crawford in custody at the time that you
4 / interviewed him?

5 A. Yes, he was.

6 Q. Did you advise him of his Miranda rights?

7 A. Absolutely.

8 Q. Did you record your interview with him?

9 A. I did.

10 MR. SWANSON: Your Honor, / at this time I would ask
11 to play the recording for the court.

12 THE COURT: Okay. That's agreeable with you,
13 Mr. Stone?

14 MR. STONE: It is.

15 THE COURT: And you both / stipulate that my reporter
16 need not try to transcribe what we are about to hear. In
17 lieu of that, we have this other exhibit already / marked;
18 is that correct?

19 MR. STONE: Yes. So stipulate.

20 THE COURT: Is that agreeable with you?

21 MR. SWANSON: It is.

22 THE COURT: All right. We are back on the record. We
23 have now / listened to the exhibit in its entirety, pages
24 1 through 9.

25 Next question, please.

26 MR. SWANSON: All right. Thank you, your Honor.

1 Q. BY MR. SWANSON: Now, at the end of / the
2 recording we hear you telling the defendant that the
3 interview is over, correct?

4 A. Yes.

5 Q. But the defendant is speaking when the sound cuts
6 out; / is that right?

7 A. Yes.

8 Q. Do you remember this interview?

9 A. Yes.

10 Q. Did the defendant say anything relevant after the
11 tape was cut off?

12 A. No, he didn't. */

13 **END OF WARM UP**

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1 EXAM

2 Q. BY MR. SWANSON: Officer Wagner, let me ask you a
3 simple question. If the defendant had said something
4 relevant after the sound had turned off, would you have /
5 noted that in your report?

6 A. Yes, I would have.

7 Q. Okay. Do you recall what exactly it is that he
8 was saying?

9 A. I don't recall.

10 MR. SWANSON: No / further questions.

11 THE COURT: Mr. Stone.

12 MR. STONE: Thank you, your Honor.

13 CROSS-EXAMINATION

14 Q. BY MR. STONE: Officer Wagner, good morning.

15 A. Good morning.

16 Q. So you were called out to Acacia and Main in
17 Garden / Grove at 11:00 a.m. on October 21, 2015; is that
18 right?

19 A. Yes, sir.

20 Q. At the time that you made contact with Mr. /
21 Crawford at the Garden Grove Police Department, do you
22 recall what time of day that was?

23 A. I do not recall the time.

24 Q. How much time / had passed from your first
25 contact with people at the intersection of Main and Acacia
26 at 11:00 o'clock or 12:00 o'clock to when you spoke / with

1 Mr. Crawford?

2 A. About one hour.

3 Q. So that would put the time frame somewhere in the
4 late afternoon on October 21; is that right?

5 A. Yes. /

6 Q. Do you recall how much time you had actually
7 spent with the defendant prior to heading back to the
8 Garden Grove Police Department?

9 A. I had */ spent the entire time with him from when
10 I first contacted Mr. Crawford until it was determined to
11 drive him back to the department.

12 Q. Okay. /

13 A. I hadn't done anything other than that in
14 between.

15 Q. So when you gave your estimate of an hour, that
16 was including the time you were / on scene; is that
17 correct?

18 A. Yes.

19 Q. When you were at the scene you made contact with
20 several witnesses; is that right?

21 A. Yes.

22 Q. In the course / of your investigation, did you
23 take some notes as far as your contacts with those
24 individuals?

25 A. Yes.

26 MR. SWANSON: Objection. Relevance.

1 THE COURT: Why do I care about that / in the context
2 of this motion, Mr. Stone?

3 MR. STONE: I am going to the practices of this
4 officer in terms of how she keeps her notes / prior to
5 writing a report.

6 THE COURT: The statement at issue was recorded and we
7 just heard that. Why would notes in other cases be
8 relevant here? /

9 MR. STONE: Well, I will be asking questions about
10 this officer's practices in working cases when she has
11 recorded the interviews.

12 THE COURT: Well, I am going to sustain / the
13 objection at this point. Now, if it becomes relevant,
14 then you can ask it once again.

15 MR. STONE: That's fine. Thank you.

16 THE COURT: All right. Next question. */

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1 START TYPING

2 Q. MR. STONE: Does the interview room have the
3 capacity to conduct video recordings as well?

4 A. It does.

5 Q. To your knowledge, when you spoke with
6 Mr. Crawford on / that date, was that recorded on the
7 video system?

8 A. Yes.

9 Q. And does that function independently from the
10 audio?

11 A. I do not know.

12 Q. Okay. And at / the jail is there a designation
13 as far as the two rooms which are used for interviews?

14 A. I don't really know what you mean.

15 Q. Are / the rooms numbered?

16 A. I don't believe so.

17 Q. In the interview room that Mr. Crawford was in
18 when you made contact with him, when you began / your
19 discussion with him, were you then responsible for
20 starting the recording device so as to capture the audio
21 and the video of his interview? /

22 MR. SWANSON: Objection. Compound.

23 THE COURT: No. Overruled.

24 You can answer that if you understand it.

25 THE WITNESS: Yes, sir.

26 MR. SWANSON: May I be heard, your Honor?

1 THE COURT: Yes, you may.

2 MR. SWANSON: If we / can, I just wanted to clarify
3 whether the two systems use separate recording devices.

4 THE COURT: I think Mr. Stone asked that and the
5 witness said that she / wasn't sure.

6 MR. SWANSON: Okay. I didn't hear that. Thank you.

7 MR. STONE: If I can just have a moment to try to
8 collect my train of thought.

9 THE COURT: That's */ fine. Take a minute.

10 MR. SWANSON: I'm sorry.

11 THE COURT: That's fine.

12 Q. BY MR. STONE: Now, when you had your first
13 interview with Mr. Crawford, you started your recorder so
14 as to / capture the statements and comments that you had
15 with Mr. Crawford in the jail; is that right?

16 A. Yes.

17 Q. So you physically activated your own recording /
18 device when you spoke with him?

19 A. I did.

20 Q. And then at the termination of your interview
21 with him, you actually turned off the recording device /
22 in order to cease the recording of the interview; is that
23 right?

24 A. Yes.

25 Q. Were there some other people present in the room
26 at the Garden / Grove Police Department when you spoke

1 with Mr. Crawford on that day?

2 A. No.

3 Q. It was just you and him?

4 A. That's right.

5 Q. Are you aware of / any other people who may have
6 had the chance to view or listen in on the interview
7 between you and Mr. Crawford on that day? /

8 A. Not to my knowledge.

9 MR. SWANSON: Objection. Speculation. Move to strike
10 the answer.

11 THE COURT: Overruled. Next question.

12 Q. BY MR. STONE: During the course of your
13 interview with Mr. Crawford, did you / engage in any
14 notetaking that you used to generate your report?

15 A. Yes, I did.

16 Q. And was that in a personal notebook? Was it on
17 scratch */ paper?

18 A. It was in a notebook.

19 Q. Do you still maintain those notebooks today?

20 A. I do not.

21 Q. What happened to those notebooks?

22 A. I don't retain my / notebooks.

23 Q. And when do you discard those notebooks?

24 A. Whenever my notebook fills up, I get a new one.

25 Q. So during the course of your contact / with
26 Mr. Crawford in the interview room, you are taking notes

1 as he was speaking; is that correct?

2 A. Correct.

3 Q. And then you prepare a report / from those notes?

4 A. Correct.

5 Q. When we heard the recording stop, was that the
6 end of the interview?

7 A. Yes.

8 Q. In your mind, you made the determination / that
9 the interview was over; is that correct?

10 A. Yes.

11 Q. And Mr. Crawford kept talking to you; is that
12 right?

13 A. I don't recall anything specific he / was saying
14 to me. Just normal conversation.

15 Q. And you made the decision that the statement that
16 he was making to you when you turned off / the recording
17 device was irrelevant to the conversation that you had
18 with him; is that right?

19 A. At the time when he was making the statement, / I
20 was already standing up and stopping the recorder so that
21 I could place him back into his cell.

22 Q. But, in your mind, you had */ determined that the
23 interview was over. You felt you did not need to take any
24 more statements from him, correct?

25 A. That's right.

26 Q. So you made / the decision it was not relevant to

1 your case; is that right?

2 A. Yes.

3 Q. Do you have any specific notes reflecting exactly
4 what the content of / the statement was that Mr. Crawford
5 made to you?

6 A. I do not.

7 Q. Your testimony is that the defendant's last
8 comment to you at that time / wasn't relevant?

9 A. That is correct.

10 Q. But you have no recollection as to what the
11 content of the statement was; is that correct?

12 A. That is correct. /

13 Q. At the time that you are escorting him back to
14 his holding cell, do you then have the ability to have
15 your recording device on / at that point?

16 A. I have the ability to do so, but I did not do so.

17 MR. STONE: No further questions. Thank you.

18 THE COURT: I have a few / questions. I want to make
19 sure I understand about the jail procedures.

20 You said that there is video that is always recording
21 at the jail? /

22 THE WITNESS: Yes, your Honor.

23 THE COURT: And is that as a result of some sort of
24 security measure to record everything for liability
25 purposes?

26 THE WITNESS: Yes, it is.

1 THE COURT: Okay. */ Does that include both of the
2 interview rooms, as far as you know?

3 THE WITNESS: Yes.

4 THE COURT: So when there is nobody sitting in there,
5 the video is / just operating and recording an empty room?

6 THE WITNESS: Yes.

7 THE COURT: All right. Mr. Swanson, do you have some
8 redirect?

9 MR. SWANSON: Yes, please.

10 THE COURT: All right. You may proceed.

11 REDIRECT EXAMINATION

12 Q. BY MR. SWANSON: Have / you ever had a case you
13 were working on and had an occasion to review the
14 recording that's the product of this system?

15 A. The actual / recording, no. But I have seen the
16 live feed.

17 Q. So there are monitors somewhere in the jail where
18 people can watch what's going on?

19 A. Yes. /

20 Q. Do you know if someone was watching on the
21 monitor as you interviewed Mr. Crawford?

22 MR. STONE: I object.

23 THE COURT: Sustained.

24 Next question, please.

25 Q. BY MR. SWANSON: Was there a detective / assigned
26 to the case at this point when you were interviewing him?

1 A. There was not a detective assigned yet. The
2 incident had just happened.

3 Q. And / you said that you aren't aware of the audio
4 that is recorded on this video system that runs 24 hours a
5 day; is that right? /

6 A. Yes.

7 Q. Last one I wanted to ask you about. We all heard
8 the recording of your interview with the defendant. That
9 was just played here */ in open court, and you heard that;
10 is that correct?

11 A. I heard it today. I have also heard it prior to
12 today.

13 Q. To clarify, that / recording is the product of a
14 personal audio system you had that day; is that correct?

15 A. Yes, it is.

16 Q. You started recording the conversation when / you
17 turned your recorder on, correct?

18 A. That's correct.

19 Q. And then it stops recording because you shut it
20 off when you are finished, correct?

21 A. That's correct. /

22 Q. And you did that as you stood up. So if I were
23 watching that video, I would see you standing up and
24 then -- well, you / have a microphone on the front of your
25 vest. Is that your recorder?

26 A. This is my handset so I can communicate with

1 dispatch. This is / the microphone for that, not my
2 recorder.

3 Q. Do you have your recorder on you today?

4 A. I do not.

5 Q. Where do you normally carry it?

6 A. I / would carry it in my field bag.

7 Q. How big is it?

8 A. Maybe about this big.

9 MR. STONE: Well, could we please have an estimate for
10 the record? /

11 THE COURT: You are indicating maybe six inches long
12 and three inches wide?

13 THE WITNESS: Yes, your Honor.

14 Q. BY MR. SWANSON: Officer Wagner, would that be
15 similar to an old cassette recorder? */

16 A. Similar.

17 Q. You are maybe too young to know what that is, but
18 there was a time when some officers would use those for
19 interviews and / things like that. Are you familiar with
20 that?

21 A. I remember those very well, yes. My recording
22 device is exactly like that, but it isn't tape / anymore.
23 We all use digital recorders.

24 Q. Is that something that is given to you by your
25 department?

26 A. I believe there are some units that are /

1 provided. I have always just used my own.

2 Q. Is this something you personally have purchased
3 for use in the field?

4 A. Yes. I own the recorder / that I carry in the
5 field. I know the department has some, but I don't know
6 if they are standard issue or only on request. /

7 Q. Do you need to notify any of your supervision
8 when you are using personal equipment in the course of
9 your job duties?

10 A. I don't believe / so. I don't know of any
11 requirement for that practice.

12 Q. And do you upload any recording you make to a
13 computer at the department?

14 A. Yes, / I do.

15 Q. Do you ever take the recordings home and work on
16 them on your personal computer?

17 A. No, I do not.

18 MR. SWANSON: Thank you, your Honor. */
19 That's enough for me.

20 THE COURT: Okay. Anything further, Mr. Swanson?

21 MR. SWANSON: No further questions, your Honor.

22 THE COURT: Mr. Stone, do you have any more questions?

23 MR. STONE: Yes. Just a / couple, if I may.

24 THE COURT: Proceed.

25 RE-CROSS-EXAMINATION

26 Q. BY MR. STONE: Do you normally carry your

1 recorder on your person when you are in the field?

2 A. I did at that time, / correct.

3 Q. So you keep it in your pocket or something like
4 that?

5 A. Yes.

6 Q. You reach in and turn it on if you want to engage
7 / it?

8 A. I only use that during actual interviews.
9 Usually we are at the jail or the police station.

10 Q. Okay. So when you walked into the / interview
11 room with Mr. Crawford that afternoon, you had retrieved
12 your personal recorder and brought it in there with you
13 because you decided you were / going to record the
14 conversation?

15 A. Yes.

16 Q. Was it visible to him? Did you pull it out and
17 display it on the table, or where was / it?

18 MR. SWANSON: Objection. Compound.

19 THE COURT: Overruled.

20 You may answer that.

21 THE WITNESS: It was on the table.

22 Q. BY MR. STONE: So someone you were interviewing,
23 like Mr. Crawford, would have been able / to see it?

24 A. Yes.

25 Q. And then you stood up at the conclusion, and you
26 reached down and immediately picked it up, and you pressed

1 the */ button to stop recording?

2 A. Correct.

3 Q. What happened then?

4 A. I stood him up, and we walked out. Crawford was
5 then placed into the cell by the / deputy jailer.

6 Q. Do you have an estimate how much longer you
7 remained in the interview room after you turned the
8 recorder off?

9 A. Approximately two to / three seconds. Just
10 however long it took him to stand up and walk out of the
11 room.

12 Q. So you are standing up. You are reaching / over
13 to get him up and return him back to the jailer to put
14 back into the holding cell?

15 A. Correct.

16 Q. Officer Wagner, did you indicate / that your
17 system syncs with your vehicle for recording things in
18 your unit?

19 A. No.

20 Q. That's a different one altogether; is that right?

21 A. Yes. The video / and audio that's recorded from
22 my patrol car is completely different.

23 Q. And as it relates to the video that you had
24 testified to that shows / all the rooms at the Garden
25 Grove Police Department, do you know how long all those
26 videos are held by the department?

1 A. I do not. /

2 Q. In this case here as it relates to your interview
3 with Mr. Crawford on that day, did you make an effort to
4 see if there */ was any video saved from your first
5 interview with Mr. Crawford?

6 A. In regards to the system at the jail?

7 Q. Yes.

8 A. No.

9 Q. Do you know if / any of your colleagues who were
10 involved with this case checked to see if that recording
11 of your interview with Mr. Crawford was preserved?

12 A. No. /

13 MR. STONE: No further questions.

14 THE COURT: Mr. Swanson, anything else?

15 MR. SWANSON: No.

16 THE COURT: May we let the witness go back to work but
17 still be on call for the trial? /

18 MR. SWANSON: That's fine.

19 THE COURT: Is that agreeable, Mr. Swanson?

20 MR. SWANSON: Yes.

21 THE COURT: Mr. Stone, is that agreeable?

22 MR. STONE: It is.

23 THE COURT: Thanks for joining us. You are now
24 physically excused, but / I suspect we will see you again
25 next week.

26 THE WITNESS: Yes, your Honor. Sounds good.

1 THE COURT: Don't go on vacation.

2 THE WITNESS: No, your Honor.

3 THE COURT: All right. See you / Tuesday.

4 THE WITNESS: Yes. Thank you.

5 THE COURT: While I am thinking of it and before I
6 hear anything else -- Mr. Swanson, maybe you have already
7 done this, but / I will just ask you.

8 MR. SWANSON: Yes, your Honor.

9 THE COURT: Have you inquired of the department
10 whether they have retained that video from that date?

11 MR. SWANSON: I can / do that again.

12 MR. STONE: I request we ask one more time because I
13 don't have that one.

14 THE COURT: Counsel will check if there is still one
15 available. */

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18 *****EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE**
19 **SLIGHTLY DIFFERENT*****
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