

Johnny Ogletree - September 30, 2014
Recross-Examination by the Defendant

1 (In open court)

2 THE COURT: Come on down.

3 Sorry to have to bring you down here
4 yesterday.

5 THE WITNESS: That's all right.

6 THE COURT: Took a little bit longer than
7 we thought, so let's see if we can get this wrapped up.
8 Speak clearly into the microphone.

9 MS. LITTLE: Your Honor, I don't believe
10 this officer has been sworn in.

11 THE COURT: He has.

12 MS. LITTLE: Oh, he has?

13 THE COURT: I swore him in.

14 MS. LITTLE: Perfect. You have a better
15 memory than I do.

16 THE COURT: Well, only because I marked it
17 on my sheet.

18 MS. LITTLE: Okay.

19 THE COURT: Okay. You may begin.

20 MS. LITTLE: Thank you, Your Honor.

21 **DEPUTY MICHAEL ALLBRITTON,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MS. LITTLE:

25 Q. Deputy Allbritton, can you please introduce

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 yourself to the jury?

2 A. Yes. Deputy Allbritton, Harris County
3 Sheriff's Department. This is my 23rd year on patrol.

4 Q. What are your duties as a patrol officer?

5 A. Just patrol, right now.

6 Q. And what does that mean?

7 A. Oh, I also do DWI STEP, if that's what you're
8 referring to.

9 Q. Okay. And when you're on patrol, you're
10 looking for what?

11 A. On DWI step, or just patrol?

12 Q. Just patrol, in general.

13 A. Patrol in general, you're just going to answer
14 calls; and then you can be proactive and look for
15 basically stuff going on, crime.

16 Q. And when you're talking about calls, you're
17 talking about 911 calls?

18 A. 911 calls, calls for service, domestic dispute.

19 Q. Do you -- so you don't only deal with traffic
20 violations, correct?

21 A. No, ma'am. We deal with pretty much
22 everything.

23 Q. Okay. Do you have specialized training
24 pertaining to intoxicated drivers?

25 A. Yes, I do, ma'am.

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 Q. Are you a part of a specialized division with
2 the Harris County Sheriff --

3 A. Well, I'm one of the few that work DWI STEP. I
4 have about 600 DWI's.

5 Q. Okay. What is the DWI STEP unit?

6 A. DWI STEP unit is a state traffic-initiated
7 program. Basically, I go out and look for DWI's.
8 Usually, I get -- the sergeants love it because I
9 basically take off -- take the DWI off another
10 patrolman's hands; and in this case, that's exactly what
11 happened.

12 Q. Okay. What kind of training do you have in
13 regards to DWI's?

14 A. Well, where do I begin? I've taken SFST's.
15 I've been certified since, I think, 2003 for SFST's.
16 I've taken all the updates. I'm also an Intox operator,
17 and the reason I did that is because you can't find an
18 Intox operator in the middle of the night. I'm also a
19 DRE, which is a drug recognition expert; and I also took
20 that course because you can't find a DRE in the middle
21 of the night.

22 Q. What is a -- you said you were an Intox
23 operator. What is that?

24 A. It's basically when I ask you for a breath
25 sample.

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 Q. Okay. Let's talk about how you identify
2 intoxicated drivers. What are some classic signs of
3 intoxication?

4 A. Well, basically, when I start my night on DWI
5 step, I'm looking for headlights not being on --
6 especially now since the cars -- the headlights come on
7 automatically -- people driving on rims, failure to
8 maintain a single lane of traffic, driving in the wrong
9 lane of traffic. I mean, pretty obvious signs. I mean,
10 it's not complicated. Everyone sees them.

11 Q. And when you make contact with a vehicle after
12 you stop them, what are some signs of intoxication that
13 you look for at that point?

14 A. Basically, I watch as they -- when I ask them
15 for their driver's license, when they step out of the
16 car, slurred speech, bloodshot eyes, odor of an
17 alcoholic beverage, their behavior. That's also a part
18 of it.

19 Q. And when you notice these signs, are you then
20 trained to conduct field sobriety tests?

21 A. Yes, ma'am.

22 Q. Let me direct your attention to December 29th
23 of 2012. Were you on duty that day?

24 A. Yes, ma'am. I was working DWI STEP.

25 Q. Okay. And while on duty, did you come into

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 contact with someone by the name of Nomathemba
2 Sitawisha?

3 A. Yes, ma'am.

4 Q. Do you see her in the courtroom today?

5 A. She's sitting right here, ma'am.

6 Q. Can you describe her by an article of clothing,
7 please?

8 A. She's wearing a sweater with a gold chain
9 necklace and gold earrings.

10 MS. LITTLE: Your Honor, may the record
11 reflect that this witness has identified the defendant.

12 THE COURT: Let the record reflect that
13 the witness identified the defendant.

14 Q. (By Ms. Little) Deputy, how did you first come
15 into contact with this defendant?

16 A. I was called to the scene by Deputy Ogletree.
17 Is that how you pronounce it?

18 Q. Yes, sir. And what had he called you to the
19 scene for?

20 A. He had a DWI.

21 Q. Okay. And when you said he had a DWI, it's
22 someone he had a suspicion that she was intoxicated?

23 A. Yes, ma'am.

24 Q. And he called you to come perform the field
25 sobriety tests?

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 A. Yes, ma'am.

2 Q. And when you arrived on scene, what did you
3 observe?

4 A. Basically, she was being uncooperative with
5 Mr. Ogletree. She didn't seem to be very fond of him.

6 Q. Okay. And did you observe her vehicle?

7 A. Yes, I did; but it's been awhile.

8 Q. Okay. Was she detained in the back of Deputy
9 Ogletree's vehicle?

10 A. I can't recall that.

11 Q. Okay.

12 A. It's been awhile.

13 Q. So when you arrived on scene, did you make
14 contact with her?

15 A. Yes, I did.

16 Q. And did you notice any signs of intoxication?

17 A. Yes, I did.

18 Q. What did you notice?

19 A. She had a strong odor of an alcoholic beverage;
20 bloodshot eyes; slightly slurred speech; a little
21 uncooperative, too; a little belligerent, mainly toward
22 Mr. Ogletree.

23 Q. Okay. How was she acting towards you?

24 A. She wanted to go with me because she didn't
25 want to be with Mr. Ogletree. She wanted me to cut her

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 loose because she hadn't done anything.

2 Q. What do you mean she wanted you to cut her
3 loose?

4 A. She wanted me to let her go.

5 Q. Did she want you to let her drive home?

6 A. Yes.

7 Q. On her vehicle with --

8 A. Two flat tires, yes.

9 Q. And a cracked windshield?

10 A. Yes, ma'am.

11 Q. Did you ask her whether she had been drinking?

12 A. I'm sure I did. I don't really recall.

13 Q. Okay. Were you able -- did you ask her to
14 perform some field sobriety tests?

15 A. Yes, ma'am, I did. First thing I try to do is
16 try to do HGN.

17 Q. What is the HGN? Can you explain --

18 A. Horizontal gaze nystagmus.

19 Q. -- that to the jury?

20 A. It's involuntary jerking of the eyes.

21 Q. Just make sure you let me finish talking before
22 you start talking.

23 A. I'm sorry.

24 Q. Because our court reporter is going to slap
25 both of our hands.

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 Can you explain to the jury what the HGN
2 is?

3 A. Basically, you'll see it on TV. It's a little
4 pen test. Basically, I just use this. It's a
5 horizontal gaze nystagmus. What I'm looking for is
6 nystagmus. Nystagmus is the involuntary jerking of the
7 eyes. Basically, I'm looking for six clues.

8 Do you want me to explain the six clues?

9 THE COURT: We don't need to really go
10 into all that, unless you gave it -- unless they gave
11 it.

12 Q. (By Ms. Little) The only other question I want
13 to ask you is: The involuntary jerking, what causes
14 that?

15 A. Central nervous system depressants, which
16 alcohol could be. It could be Xanax; it could be any
17 pharmaceutical; a central nervous system depressant; you
18 also have a dissociative anesthetic, which is what y'all
19 know as PCP; I think there's -- and inhalants will also
20 cause involuntary --

21 Q. Okay. And did you attempt to perform the HGN
22 on the defendant?

23 A. Yes, ma'am, I did.

24 Q. And were you successful?

25 A. No, ma'am. She would not cooperate.

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 Q. Okay. Did you perform the one-leg stand with
2 her?

3 A. She would not cooperate, ma'am.

4 Q. Okay. What about the walk-and-turn?

5 A. Nothing. I couldn't -- she wouldn't cooperate
6 with Ogletree, and she wouldn't cooperate with me.

7 Q. So you were 0 for three?

8 A. Yes, ma'am.

9 Q. When -- at that point did you arrest the
10 defendant for driving while intoxicated -- the suspicion
11 of driving while intoxicated?

12 A. Yes, ma'am. I placed her in custody and took
13 her to 61 Riesner.

14 Q. Did you read her the DIC form before
15 transporting her?

16 A. I don't recall that I did. I probably did it
17 at 61 Riesner. That's what it says in my report.

18 Q. Okay.

19 MS. LITTLE: Your Honor, may I approach
20 the witness?

21 THE COURT: You may.

22 Q. (By Ms. Little) I'm showing you what's been
23 marked as State's Exhibit 5. Can you please tell me
24 what this is?

25 A. This is a DIC-24 form. It's a statutory

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 warning. Basically, I'm asking for a blood sample or
2 breath.

3 Q. Okay. And this is -- this warning gives the
4 defendant her rights, correct?

5 A. Yes, ma'am.

6 Q. And you read this to the defendant?

7 A. Yes, ma'am.

8 Q. And is this the same copy that you read her?

9 A. Yes, it is.

10 Q. Is that your signature on the bottom?

11 A. Yes, it is.

12 Q. Has this form been altered in any way?

13 A. No, ma'am. It's just a copy.

14 Q. Okay.

15 MS. LITTLE: Tendering to the defendant,
16 Your Honor.

17 THE DEFENDANT: Your Honor, I'd like a
18 moment just to go over this. I don't have this, and I
19 don't know why I don't. May I have --

20 THE COURT: Look.

21 THE DEFENDANT: -- just a couple moments?

22 (Brief pause)

23 THE COURT: Defense?

24 THE DEFENDANT: Nothing, Your Honor. I do
25 not have --

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 THE COURT: The question is --

2 MS. LITTLE: Any objection?

3 THE COURT: -- do you object to it coming
4 into evidence?

5 THE DEFENDANT: I do because I did not
6 have this prior to right now.

7 MS. LITTLE: Your Honor, the defendant
8 was -- the defendant was provided with all documents,
9 along with this offense report. It's part of the
10 offense report, she has the offense report, she has this
11 as well. I don't know if she doesn't have it right now.

12 THE DEFENDANT: It's not there, Your
13 Honor. It's not in anything I ever was given.

14 THE COURT: State's Exhibit 5 will be
15 entered into evidence over objection.

16 MS. LITTLE: Your Honor, may I publish to
17 the jury?

18 THE COURT: You may.

19 Q. (By Ms. Little) Officer, we won't go through
20 these warnings; but did you ask her for both breath --
21 both a sample of both her breath or blood?

22 A. Yes, ma'am, they're both checked off.

23 Q. Okay. And did she refuse?

24 A. Yes, she did.

25 Q. And what did that refusal indicate to you?

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 A. I needed a warrant.

2 Q. And did you obtain a warrant?

3 A. Yes, ma'am, I did. I think you have a copy of
4 it here.

5 MS. LITTLE: Your Honor, may I approach
6 the witness?

7 THE COURT: You may.

8 Q. (By Ms. Little) I'm showing you what's been
9 marked as State's Exhibit 7. Can you please take a look
10 at that?

11 A. (Complies). That's the warrant.

12 Q. Okay. And has it been altered in any way?

13 A. No, ma'am. There's her thumbprint.

14 Q. Okay.

15 MS. LITTLE: Tendering to opposing
16 counsel, Your Honor.

17 Any objections?

18 THE DEFENDANT: No.

19 THE COURT: No objection?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Okay. State's Exhibit 7 will
22 be entered into evidence without objection.

23 THE DEFENDANT: Your Honor, may I come
24 back to the State's Exhibit 5 when it's my -- can we
25 come -- because I don't have a copy of it, will we be

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 able to come back to that?

2 THE COURT: You can cross-examine on
3 anything you want.

4 THE DEFENDANT: I need to on this one
5 if --

6 THE COURT: Sit.

7 THE DEFENDANT: Okay.

8 Q. (By Ms. Little) Officer, when you transported
9 the defendant to 61 Riesner, did you have a camera in
10 your vehicle?

11 A. Yes, ma'am.

12 Q. And were you recording everything that was
13 going on?

14 A. Of course.

15 MS. LITTLE: Your Honor, may I approach
16 the witness?

17 THE COURT: You may.

18 Q. (By Ms. Little) I'm showing you what's been
19 marked as State's Exhibit 6. Have you seen this video
20 before today?

21 A. Yes. Y'all showed it to me yesterday.

22 Q. And does it fairly and accurately depict the
23 events on that night?

24 A. It's very accurate.

25 Q. Has it been altered in any way?

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 A. No, ma'am. You can't alter those.

2 MS. LITTLE: No objections?

3 THE DEFENDANT: No objection, Your Honor.

4 THE COURT: All right. State's Exhibit 6
5 will be entered into evidence without objection.

6 MS. LITTLE: May I publish, Your Honor?

7 THE COURT: You may publish.

8 (State's Exhibit No. 6 published)

9 THE DEFENDANT: Your Honor, can we make
10 sure the volume is turned up louder?

11 MS. LITTLE: The volume is on. It's quiet
12 for the first few minutes.

13 THE DEFENDANT: It's very hard to hear the
14 officer in this recording. I want to make sure --

15 THE COURT: We'll get it up.

16 THE DEFENDANT: Okay.

17 (State's Exhibit No. 6 published)

18 THE DEFENDANT: Your Honor --

19 THE COURT: Sit down.

20 (State's Exhibit No. 6 published)

21 Q. (By Ms. Little) Deputy, you said that -- you
22 stated earlier that you have worked over 600 DWI cases;
23 is that correct?

24 A. Yes, ma'am.

25 Q. And based on your training and experience, do

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 you believe that the defendant had lost the normal use
2 of her mental faculties on December 29th, 2012?

3 A. Yes, ma'am. She was impaired.

4 Q. Do you believe that she lost the normal use of
5 her physical faculties?

6 A. Yes, ma'am.

7 Q. And do you believe that she was intoxicated?

8 A. Yes, ma'am.

9 Q. While in the back of your patrol vehicle, could
10 you smell a strong odor of alcohol coming from her?

11 A. Yes, ma'am. Unfortunately, yes.

12 Q. And as we all just saw, she did admit that she
13 had been driving, correct?

14 A. Yes, ma'am.

15 Q. And she did admit that she had hit a curb,
16 correct?

17 A. Yes.

18 Q. And you obtained a search warrant, correct?

19 A. Yes, ma'am, I did.

20 Q. Can you -- can you explain to the jury how you
21 go about obtaining a search warrant?

22 A. Basically, I took her in; and, you know, you
23 should -- there should be two other videos here. I
24 mean, you've got the -- usually, I read a DIC-24 form on
25 video. There's also the blood draw video. So I don't

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 know what transpired with the --

2 Q. Okay. But you read her her DIC-24 form,
3 correct?

4 A. Yes, ma'am, I always do.

5 Q. And can you please explain to the jury how you
6 obtained a search warrant?

7 A. I basically run down to the DA what I have.
8 Basically, in this case, what the two officers -- as far
9 as the probable cause was, and what my part was, which
10 wasn't very much in this case but --

11 Q. And what does the District Attorney do?

12 A. District Attorney draws up a warrant.
13 Basically, we put her in the blood draw room, the
14 warrant is read to her, and we go from there. We take a
15 blood sample.

16 Q. And was there a blood sample taken in this
17 case?

18 A. Yes, ma'am.

19 MS. LITTLE: Your Honor, may I approach
20 the witness?

21 THE COURT: You may.

22 Q. (By Ms. Little) I'm showing you what's been
23 marked as State's Exhibits 8, 9, 10, and 11. Can you
24 please take a look at those?

25 A. (Complies). That's the blood.

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 Q. And this is the -- State's Exhibit 8 and 9 is a
2 photograph of the bag that you sealed the blood in?

3 A. Yes, ma'am.

4 Q. The evidence bag? And as far as you know,
5 these have not been tampered with or altered in any way,
6 correct?

7 A. No. They stay with me until I drop them off at
8 the ME's Office.

9 Q. And right after you drew -- her blood was drawn
10 by a nurse, did you drop them off at the ME's Office?

11 A. I put them right here, we walk in, I book her,
12 and then I go to the ME's Office.

13 Q. Okay.

14 MS. LITTLE: Tendering to opposing
15 counsel, Your Honor.

16 Q. (By Ms. Little) And, Deputy, to be clear: The
17 ME's Office is where the blood is analyzed, correct?

18 A. Yes, ma'am.

19 THE DEFENDANT: No objection to the
20 pictures, Your Honor.

21 THE COURT: All right. State's Exhibit 8
22 through 11 will be entered into evidence without
23 objection.

24 MS. LITTLE: Your Honor, may I publish?

25 THE COURT: You may.

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 (State's Exhibit No. 8 published)

2 Q. (By Ms. Little) Officer, I'm showing you
3 State's Exhibit 8. Can you please tell the jury what
4 this is?

5 A. Basically, that's your evidence tag that's
6 printed up through the computer.

7 Q. And is this your name on the --

8 A. Yes, ma'am.

9 (State's Exhibit No. 9 published)

10 Q. (By Ms. Little) And State's Exhibit 9?

11 A. Those are also tags that they scan.

12 Q. And is this the bag -- the evidence bag that
13 you placed the blood in?

14 A. Yes, ma'am.

15 Q. Did you seal it?

16 A. Yes, I did.

17 (State's Exhibit No. 10 published)

18 Q. (By Ms. Little) And State's Exhibit 10. Are
19 these the vials of blood that were drawn from the
20 defendant?

21 A. Yes, they are. And those are the nurse's
22 initials there.

23 Q. Is this the defendant's name?

24 A. Yes, ma'am.

25 (State's Exhibit No. 11 published)

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 Q. (By Ms. Little) And State's Exhibit 11. Just
2 the backside of the blood vials; is that correct?

3 A. Yes, ma'am.

4 Q. Once you arrived to 61 Riesner, was there a
5 nurse there who drew the defendant's blood?

6 A. Yes, ma'am.

7 Q. And did you observe the blood being drawn?

8 A. Yes.

9 Q. What kind of vials -- what kind of kit did she
10 use? Did you provide her with a kit? Or do they have
11 them there at 61 Riesner?

12 A. They usually have them there. This is a Harris
13 County program that's funded by Harris County.

14 Q. And what is 61 Riesner? We both know what it
15 is but --

16 A. It's Central HPD. Basically, they've got it
17 really -- they've got the District Attorney there. They
18 even have a judge on Friday nights. In this case, I
19 think -- what was it? A Saturday night? I don't know.

20 Friday night. Yes, they had a judge
21 there. Basically, you get the warrant, walk it
22 downstairs to the judge. They've got it all set up.
23 It's very nice. They even have a video room where you
24 can do the SFST's, and you have your blood draw room
25 with the video.

Michael Allbritton - September 30, 2014
Direct Examination by Ms. Casey Little

1 Q. Okay. And you stated that, typically, there's
2 a video of the DIC and the blood being drawn?

3 A. Yes.

4 Q. For some reason, there isn't one in this case;
5 but typically there would be one, correct?

6 A. Yes. There probably is one. That's what I was
7 asking about.

8 Q. Okay. Probably just wasn't provided.

9 A. Okay.

10 Q. Was the blood drawn correctly, from what you
11 have observed in your 600 DWI's?

12 A. Yes, it was, ma'am. They're very --

13 MS. LITTLE: State passes the witness,
14 Your Honor.

15 THE COURT: Defense?

16 **CROSS-EXAMINATION**

17 BY THE DEFENDANT:

18 Q. Good afternoon, Officer. Now, I just want to
19 jump right to those videos that we haven't been
20 provided.

21 THE COURT: You can have a seat, ma'am.

22 Q. (By The Defendant) So there are definitely two
23 videos regarding the DIC-24 form and the blood draw,
24 that should --

25 A. I know they were --

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 Q. They were taken, right?

2 A. They were -- they were taken. I do know that.

3 Q. Okay.

4 A. And, basically, when I read you the DIC-24
5 form --

6 Q. Yes.

7 A. And then your brood draw video, make sure we're
8 doing everything correctly.

9 Q. Officer, do you know of any reason why we don't
10 have that, why they didn't provide -- just from your own
11 experience, do you know any reason why they didn't
12 provide us with that?

13 A. Probably the age of this case.

14 Q. Okay.

15 A. It's two years.

16 Q. Okay, Officer. Okay. So, Deputy, for that
17 evening, you were a patrol officer, which you took over
18 the actual -- just the transport; is that correct?

19 A. Well, I took over the case.

20 Q. Okay. And what does that mean? At what point
21 in time did you take over?

22 A. Basically, when I was called to the scene by
23 Deputy Ogletree.

24 Q. Okay. And --

25 THE DEFENDANT: Permission to approach the

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 witness regarding his statements? Should I read it
2 first?

3 THE COURT: No.

4 THE DEFENDANT: No.

5 THE COURT: Ask him a question.

6 THE DEFENDANT: Okay.

7 THE COURT: Because -- but it --

8 THE DEFENDANT: I just --

9 THE COURT: Just ask a question and --

10 THE DEFENDANT: See if it refreshes --

11 THE COURT: -- see if it can come in.

12 THE DEFENDANT: Okay.

13 Q. (By The Defendant) Officer, since it's been so
14 long, I'm going to read a little bit of the excerpt from
15 your incident report --

16 THE COURT: No, you can't.

17 THE DEFENDANT: No? Don't? Okay.

18 Q. (By The Defendant) Officer, did Deputy
19 Ogletree --

20 THE COURT: No, that's hearsay.

21 THE DEFENDANT: Okay.

22 Q. (By The Defendant) Officer, how did it come --
23 how did it come to your knowledge of the type of vehicle
24 you were looking for?

25 A. Deputy Ogletree described the car; and when I

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 showed up on scene, I just looked at the car. I didn't
2 really take any notes.

3 Q. Okay. Is there any possibility, just from your
4 experience and your own mind, that the car that the 911
5 dispatch was looking for may not have been the car that
6 you actually encountered --

7 MS. LITTLE: Objection.

8 Q. (By The Defendant) -- that I was sitting in?

9 MS. LITTLE: Objection, speculation.

10 THE COURT: Sustained. Just ask him what
11 car he had --

12 THE DEFENDANT: Okay.

13 THE COURT: -- towed or put in the report.
14 If that's what you are trying to get out, just ask him.

15 THE DEFENDANT: Well, I wanted -- because
16 he was told to look for a certain car.

17 MS. LITTLE: Objection --

18 THE COURT: He wasn't told to look for
19 anything. He was told to come to the scene and take
20 over a DWI.

21 THE DEFENDANT: Okay.

22 THE COURT: We know that.

23 THE DEFENDANT: Yes.

24 THE COURT: So you can ask him what car
25 was put down in his report.

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 Officer, tell them what car was put down
2 in your report.

3 THE WITNESS: Yes, sir. Apparently, here,
4 it's a red Toyota Corolla, bearing Texas registration
5 David, David, 4, Charles, 246.

6 THE COURT: All right. There you go.

7 Q. (By The Defendant) Okay, Officer, if I were to
8 say that -- okay. Did you authorize the tow?

9 A. No, ma'am. That's Deputy Ogletree.

10 Q. Okay. Was my car still on the scene when you
11 arrived?

12 A. Yes, ma'am. Apparently so.

13 Q. Do you have any reason to disbelieve that my
14 car is, in fact, a Toyota Solara and not a Corolla?

15 A. It's a possibility, ma'am.

16 Q. It's a possibility?

17 A. It's just what I was told by Deputy Ogletree.

18 Q. Okay. So, yeah, you were just told that; so
19 you followed what you were told. Okay.

20 Officer, do you remember if the car I was
21 sitting in -- well, did you ever see me seated in the
22 car; or did you take over directly from Officer
23 Ogletree? How did that transition?

24 THE COURT: We already know he took over.
25 He came to the scene afterwards. We know that. Let's

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 move on.

2 THE DEFENDANT: Okay.

3 Q. (By The Defendant) Officer, did you ever ask me
4 what I was doing there that particular night?

5 A. Ma'am, I don't recall.

6 Q. You don't recall? Okay.

7 A. It's been --

8 Q. Can you talk to me about what you've put here
9 about the horizontal nystagmus test?

10 THE COURT: No. You can ask him a
11 question about it.

12 THE DEFENDANT: Okay.

13 THE COURT: It's hearsay.

14 Q. (By The Defendant) Okay, Officer, is it true
15 that here in your report at --

16 THE COURT: No, that's hearsay.

17 THE DEFENDANT: Hearsay. Okay.

18 Q. (By The Defendant) Officer, did you actually
19 find that my pupils were equal when you did the test?

20 THE COURT: Ask him: Did you do the test?

21 Q. (By The Defendant) Did you do the test,
22 Officer.

23 A. I attempted to do the test, ma'am.

24 Q. How far along in the test did you get?

25 A. Let's read it. I was attempting to do the

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 first clue, apparently; and you kept closing your eyes
2 and turning your head.

3 Q. Were you able to see -- did you see equal pupil
4 size?

5 A. That's what it says here, yes, ma'am.

6 Q. Did you see equal tracking?

7 A. Yes, ma'am.

8 Q. Is it a fact that you did not observe -- I'm
9 sorry. Is it a fact that you did not observe resting
10 nystagmus and that both -- let's see.

11 Both of my eyes tracked equally, and was
12 there anything that gave you any indicators that -- just
13 from the nystagmus testing that you were doing, that
14 there was anything odd about my demeanor?

15 A. You weren't very cooperative. I mean, I
16 don't --

17 Q. Well, before -- okay.

18 A. What exactly are you trying to ask me, ma'am?

19 Q. Besides closing eyes and turning head, the part
20 that you were able to do --

21 THE COURT: Why don't you ask him what
22 equal tracking and pupil size mean. If that's what
23 you're trying to get, ask him what that means.

24 Q. (By The Defendant) Did you discover anything
25 odd in my eyes after doing that portion of the testing?

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 A. No. What I've got here is equal tracking,
2 equal pupil size.

3 Q. Thank you, Officer.

4 A. Resting -- well --

5 Q. Okay. And -- all right. Officer, can you
6 describe the conditions of the road that night and the
7 weather, also?

8 A. Apparently, it was cold because I had a jacket
9 on. I can't tell you anything other than that, and it
10 was 3:00 in the morning.

11 Q. Was there -- according to you, that night, was
12 visibility fair due to artificial lighting?

13 MS. LITTLE: Objection, Your Honor. She's
14 reading from something not in evidence.

15 THE COURT: Can't do that. Sustained.

16 Q. (By The Defendant) Officer, from your notes,
17 what -- do you assert that the roadways were wet?

18 A. I'd have to refer back to my report. It's been
19 awhile.

20 THE COURT: You can do that. Refresh your
21 memory.

22 A. (Complies). Yes, that is accurate.

23 Q. (By The Defendant) Okay. And would everything
24 that is there in your notes be exactly how you -- well,
25 how long had you been on patrol that evening? Do you

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 have any recollection of that?

2 A. I started at 9:00 P.M. I had already had a DWI
3 prior to you.

4 Q. Okay. And, Officer, when you say that the
5 weather is partly cloudy and the roadways are wet --

6 MS. LITTLE: Objection, Your Honor. She's
7 reading from something not in evidence.

8 Q. (By The Defendant) Officer, please describe
9 your full description of the conditions that evening
10 that's listed -- that are there in your notes, please.

11 MS. LITTLE: Objection. Please do not
12 read.

13 THE COURT: Look at your notes; refresh
14 your memory; and if they recollect, please tell us what
15 the weather conditions were.

16 A. Basically, it was partly cloudy; and the
17 roadways are wet.

18 Q. (By The Defendant) Officer, in your experience,
19 could -- have roads that are wet ever caused someone to
20 veer off, hit a curb, and perhaps flatten a tire, ever?

21 A. Of course.

22 Q. Yes. Have you ever known the impact from
23 someone skidding out from a wet road having -- causing
24 any kind of damage to their vehicle?

25 A. Yes, ma'am.

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 Q. Officer, that evening, how would you
2 characterize my speech pattern when we were having our
3 conversations?

4 A. It was slightly slurred. And you were kind
5 of --

6 Q. Just my speech pattern?

7 A. -- a happy intoxicated person, let's put it
8 that way.

9 Q. Okay. So did you have any problem
10 understanding the things that I was saying -- when we
11 were conversing, did you have any problem understanding
12 any of it?

13 A. No, ma'am.

14 Q. Okay. During your questioning, did you have
15 any impression that I couldn't understand any of what
16 was going on or being said?

17 A. Were you impaired? Yes, I believe you were
18 impaired.

19 Q. No, Officer. I was only asking: During our
20 conversations, did you get the impression that I
21 couldn't -- did not understand what you were asking me?

22 A. You understood what I was saying. I don't
23 think you understood what was going on.

24 Q. And you mentioned impaired. Would you say that
25 there are levels of being impaired?

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 A. Levels?

2 Q. In your professional opinion.

3 A. Yes. But I would have to be able to conduct a
4 test.

5 Q. So if you're attributing impaired, what would
6 be a very low level of being impaired? Just an example.

7 THE COURT: Okay. Come up here.

8 (At the Bench, on the record)

9 THE COURT: Okay. You're going down the
10 wrong road here, because any impairment is intoxicated.

11 THE DEFENDANT: Okay.

12 THE COURT: Low level, mid level, high
13 level.

14 THE DEFENDANT: Okay.

15 THE COURT: Stay away from it.

16 (In open court)

17 Q. (By The Defendant) Officer, along with every
18 other determination that you made about my demeanor, did
19 I also appear tired, from the best -- to the best of
20 your recollection?

21 A. Ma'am, I couldn't answer that two years later.
22 I can only look at my report and refer to it.

23 Q. Do you have any other notes, besides what's in
24 the report, for that evening?

25 A. I'd have to refer back to DIC forms, and that

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 would be the only ones.

2 Q. Okay.

3 THE COURT: Officer.

4 THE WITNESS: Yes, sir?

5 THE COURT: I'm a little deaf, and you're
6 talking low.

7 THE WITNESS: Oh, okay.

8 THE COURT: So speak up for me, too.

9 THE WITNESS: Sure.

10 Q. (By The Defendant) So there could be something
11 more in the DIC form?

12 A. Yes, ma'am. That would be the only notes but I
13 apparently referred it back to the report so the report
14 is what we have.

15 Q. Okay. So is there a possibility that there are
16 additional notes that you put down that would be not in
17 this report but just in the DIC form? Is that true?

18 A. The only thing we have is what I have in front
19 of me, ma'am.

20 Q. Yeah. Okay. And, Officer, you stated earlier
21 that you did not ask me if I had been drinking -- or you
22 did not recall.

23 A. Yes, ma'am, that's correct.

24 Q. Okay. Is there a reason why you likely did not
25 ask me if I -- in your own view?

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 A. Ma'am, I probably did; but I can't recollect
2 what transpired.

3 Q. Is that typically something you would put in
4 your report, that you asked a person?

5 A. It's about 99 percent that I would've asked
6 you.

7 Q. That you would've asked me. But it doesn't
8 necessarily have to be in the report to have occurred;
9 is that sometimes true?

10 A. Okay. Ask me -- what are you trying to ask me,
11 ma'am?

12 Q. Well, just that if it had happened, is it more
13 likely than not to have been in your report? Since it
14 was so long ago, could it have happened -- I mean, is
15 there any way it could've happened and not be in your
16 report?

17 A. Each DWI is different. That's all I can
18 explain to you. Every one is different.

19 Q. Okay. Now, Officer, would you say that I
20 screamed at you at any point in time during our contact
21 or throughout?

22 A. No, ma'am. Just I recollect you were not very
23 happy with Mr. Ogletree.

24 Q. Okay. Did I ever curse at you or disrespect
25 you in any way?

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 A. Not that I can recall, ma'am.

2 Q. Okay. So to the best of your recollection, my
3 demeanor was -- was different from what Deputy Ogletree
4 had experienced?

5 A. Okay.

6 MS. LITTLE: Objection, Your Honor,
7 speculative.

8 THE COURT: Unless he knows -- unless he
9 saw your demeanor towards him. Okay? But I won't let
10 him speculate on what he thinks. Okay? So --

11 THE DEFENDANT: Yes.

12 THE COURT: Did you see any interactions
13 between him and the other officer -- her and the other
14 officer?

15 THE WITNESS: No, I did not.

16 Q. (By The Defendant) So, Officer, when you became
17 primary and you took over, beginning at the very start,
18 did you have any disruptive behavior -- belligerent,
19 screaming, yelling, anything like that -- happen toward
20 you in any way?

21 A. No, ma'am.

22 Q. And, Officer, you mentioned earlier that when
23 you began to do the nystagmus testing that sometimes,
24 what you see, those results are yielded by things such
25 as Xanax and allergy inhalants; is that correct? Is

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 that what you had said?

2 A. I said it can be caused by -- there's
3 seven categories -- drug categories. Central nervous
4 system depressant is one of them, which alcohol falls
5 underneath that. Xanax falls underneath that. But if
6 you're taking Xanax, you definitely should not be
7 driving. You also have a dissociative anesthetic that
8 will also cause horizontal gaze nystagmus, which is what
9 we refer to as PCP. You also have inhalants that cause
10 nystagmus that will cause nystagmus, like you just --
11 inhalants are very short-lived so you would have to
12 inhale something and then it would be within five or ten
13 minutes and I would still be able to observe nystagmus.
14 But after that, it dissipates very quickly.

15 Q. So would prescription inhalants, things like
16 that, be included in that list?

17 A. Inhalants like gasoline and stuff like that.

18 Q. So nothing medically -- that you could
19 associate medically with an inhalant that you can think
20 of --

21 A. That is medically.

22 Q. Okay. But, Officer, did you conclude that,
23 just based on the portion of the horizontal nystagmus
24 test you gave, that it was not conclusive to link it to
25 alcohol?

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 A. I can't perform the test if you're not
2 cooperative, ma'am. I mean, that's the whole basis
3 of --

4 Q. So the portion you were able to conduct -- what
5 portion were you able to conduct? What percentage were
6 you able to conduct?

7 THE COURT: We understood what he
8 conducted. Now, again, if you want to ask him what does
9 that prove or what he's looking for in those two things,
10 then ask him.

11 THE DEFENDANT: Okay.

12 THE COURT: Okay? But he's already told
13 you what he did.

14 THE DEFENDANT: Yes.

15 Q. (By The Defendant) Now, Officer, you mentioned
16 that I kept turning my head -- turning my head during
17 the start of the testing while you were trying to
18 conduct it. You got a portion of the way through, but I
19 turned my head. In your experience, if someone is maybe
20 a little sensitive to light or tired, whatever, could
21 that shining light give them any -- have you known
22 anyone to have any discomfort with that?

23 A. No, ma'am.

24 Q. And you say it was cold out that night. Do you
25 recall if I was wearing a jacket?

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 A. I do not recall.

2 Q. Okay. So, Officer, would you agree that if the
3 conditions are -- you know, if I was cold and didn't
4 have a jacket, could that have at all played into me not
5 being able to be out in the elements for a length of
6 time, trying to do these field sobriety tests? Could
7 that have been a factor?

8 A. No, ma'am.

9 Q. And, Officer, you mentioned earlier that when
10 we talk about the blood kits and who had it, did you
11 arrive with it or was it already there, you did mention
12 that at 61 Riesner, they usually have it. But we are
13 not in -- we don't actually know where the blood kit
14 came from; is that true?

15 A. It came from 61 Riesner, ma'am.

16 Q. Okay. And what would we see if we are -- if we
17 were ever able to get ahold of the blood draw video?

18 A. The blood being drawn and you being read the
19 warrant.

20 Q. Okay. And can you describe what that procedure
21 looks like, since we don't have the video here to show?

22 A. He's usually -- you would be sitting in a
23 chair. Obviously, you did not struggle or anything like
24 that. You obviously held your arm out, because I
25 would've put it in my notes.

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 Basically, he reads her the warrant and
2 she sticks her arm up there and the nurse basically ties
3 it up, finds a vein, draws two tubes of blood.

4 Q. And because we don't have the video to show our
5 jurors today, who would've normally been in the room
6 that particular night?

7 A. An HPD officer, who is also a DRE; myself; and
8 the registered nurse. They also get the registered
9 nurses from Ben Taub or someplace that they're used to
10 violence, basically.

11 Q. Where did you say they get the registered nurse
12 from?

13 A. Generally, from Ben Taub.

14 Q. Okay.

15 A. In the emergency --

16 Q. In your experience, ever during a blood draw,
17 has there ever been a different collection of
18 individuals in the room?

19 A. No, ma'am.

20 THE COURT: What's the relevance of that?

21 THE DEFENDANT: Well, my next question was
22 going to be: Is it always a registered nurse who
23 actually does the blood draw; or is there some other
24 person who sits in that capacity and does that, ever.

25 THE COURT: Well, the question -- that's

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 irrelevant. The question is on this blood draw. Who
2 was it on this blood draw?

3 Q. (By The Defendant) On this --

4 THE COURT: We don't care about any other
5 blood draw but this one.

6 Q. (By The Defendant) On this blood draw, Officer,
7 because we don't have the video, do you actually
8 remember who was in the room that night?

9 A. I put it in my report. I didn't -- as far as
10 the HPD officer goes, I couldn't tell you. We could --
11 you can -- basically, they do have it recorded. You can
12 actually find that information out, if that's what
13 you're really serious about finding, who was in the
14 room.

15 THE COURT: Do you have the register
16 nurse's name?

17 THE WITNESS: Yes, sir, I do.

18 THE COURT: Do you want it?

19 THE DEFENDANT: I do.

20 A. Do you have a copy of the report?

21 THE COURT: Refresh your memory and give
22 it to her.

23 A. It's Registered Nurse Leicht, L-e-i-c-h-t. It
24 was drawn at 5:03 that date in the morning.

25 Q. (By The Defendant) And from the moment we

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 arrived in that particular room and this entire blood
2 draw took place, there would be video footage of all of
3 that?

4 A. Yes.

5 Q. Or should be. Okay. Officer, at any point in
6 time, from the moment you made contact with me, did you
7 ever feel in any danger by my demeanor or behaviors?

8 A. No, ma'am.

9 Q. Now, Officer, you did mention the words "would
10 not cooperate" a little earlier, in terms of wanting to
11 perform the field sobriety tests. Did you ask me would
12 I submit to a field sobriety test that evening?

13 A. Yes, ma'am, I did.

14 Q. Okay. And, Officer, at any point, would me not
15 having a jacket in what you described as cold weather
16 possibly have gone into the reasoning behind me not
17 wanting to submit, in your opinion?

18 MS. LITTLE: Your Honor, objection,
19 speculation.

20 THE COURT: Sustained. Speculation.

21 Q. (By The Defendant) Would you have any reason to
22 disagree with the fact that I was not wearing a jacket
23 that evening, if that's what I --

24 MS. LITTLE: Objection, speculation. He's
25 already said he doesn't remember, Your Honor.

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 THE COURT: Sustained.

2 Q. (By The Defendant) Officer, has -- any time in
3 your experience, have you had individuals who did not
4 want to complete the field sobriety tests on the scene
5 for reasons other than admission of guilt or anything
6 like that?

7 THE COURT: Sustained. I'm not -- we're
8 dealing with this one. What somebody else did has no
9 bearing on this case. Please continue.

10 Q. (By The Defendant) Officer, do you have any
11 knowledge as to my reasoning for not -- did I tell you
12 at any point why I did not want to submit to the field
13 sobriety tests out there in the elements?

14 A. Well, I can refer back to my report, but I
15 believe there's a section in there.

16 THE COURT: There's what?

17 THE WITNESS: There's a --

18 THE COURT: Go ahead.

19 THE WITNESS: (Complies).

20 A. Basically, you said you hadn't done anything
21 wrong.

22 Q. (By The Defendant) Officer, can you refer to
23 the first line of paragraph 5 of your notes, in your
24 narrative, beginning with the word --

25 MS. LITTLE: Objection.

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 THE DEFENDANT: I'm sorry. Withdrawn.

2 THE COURT: Just let him refresh his
3 memory.

4 A. (Complies) okay.

5 What am I supposed to be reading here,
6 ma'am?

7 THE COURT: If she said anything to you
8 that would make her not want to do --

9 THE WITNESS: SFST's.

10 THE COURT: -- the field sobriety.

11 A. Basically, I just gave the answer.

12 Q. (By The Defendant) Well, no -- I had gone --
13 gone on to -- I want to go to paragraph 5, the first
14 sentence where you detail --

15 MS. LITTLE: Objection. It would help if
16 you would show him.

17 THE COURT: Just let him -- you can walk
18 up there. Just ask to approach.

19 THE DEFENDANT: Yes, Judge.

20 THE COURT: And let him look at it and
21 refresh his memory and if it's something you told him --

22 THE DEFENDANT: Yes.

23 THE COURT: -- then --

24 Q. (By The Defendant) I'm talking about right
25 here, Officer. I'm going to ask you about writing

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 anything right here -- because it looks like you're
2 saying you did not detect any -- I don't know if it's a
3 typo?

4 THE COURT: Okay. Does that refresh your
5 memory?

6 THE WITNESS: Yeah?

7 A. It's a typo, ma'am.

8 THE COURT: Well.

9 THE DEFENDANT: Your Honor, may --

10 THE COURT: What did it say?

11 THE WITNESS: Basically -- basically,
12 wrote --

13 THE COURT: What's your typo, that --

14 THE WITNESS: Yes, that I detected any
15 alcoholic beverage.

16 Q. (By The Defendant) I'm sorry, I'm sorry. People
17 were talking. Can you say that sentence again?

18 A. It says: "I detected any alcoholic beverage."

19 It should say: "I detected an alcoholic
20 beverage."

21 I just -- it was 5:00, 6:00 in the morning
22 when I was typing this.

23 Q. So there may be mistakes throughout?

24 A. They're typos, yes.

25 Q. Okay. 6:00 in the morning, yeah, of course, we

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 would have to understand that. So do you recognize in
2 your notes any other mistakes that you can tell us
3 about?

4 A. I would have to reread it, ma'am.

5 Q. Okay.

6 THE DEFENDANT: Can we take a few moments?

7 THE COURT: No. If there's something you
8 want to point out to him --

9 THE DEFENDANT: Point it out?

10 THE COURT: -- then point it out to him.

11 Q. (By The Defendant) Now, Officer, you did -- you
12 did state earlier that you recognized slurred speech.
13 During our 20-minute car ride --

14 MS. LITTLE: Asked and answered, Your
15 Honor.

16 THE DEFENDANT: I haven't completed it.

17 THE COURT: Okay. Let's -- I think it was
18 when he first made initial contact.

19 THE DEFENDANT: Yes.

20 THE COURT: But now if you're asking
21 him --

22 THE DEFENDANT: About the car ride.

23 THE COURT: -- did you detect it on the
24 car ride, ask him that.

25 Q. (By The Defendant) Officer, during the car

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 ride, the 20-minute car ride, did you detect slurred
2 speech?

3 A. It was slightly; but it wasn't, compared to
4 when I was first introduced to you.

5 Q. Do you -- listening to me now, do you recognize
6 a slight lisp in my -- just a slight one, in my speech
7 pattern?

8 A. No, ma'am.

9 Q. Okay. Do -- did I sound different that
10 particular night than I sound now, and how so?

11 A. Well, yes, ma'am.

12 Q. Okay. How so?

13 A. A little different.

14 Q. Okay.

15 A. You had been drinking.

16 Q. That's fine, Officer.

17 THE COURT: I think the jury has their own
18 ears. They can make the determination on their own.

19 THE DEFENDANT: Okay. Yes.

20 THE COURT: Let's go.

21 THE DEFENDANT: All right. I pass for the
22 time being, Your Honor.

23 MS. LITTLE: Your Honor, very brief
24 redirect.

25 THE COURT: Please. We're breaking for

Michael Allbritton - September 30, 2014
Cross-Examination by the Defendant

1 lunch after this; so, please.

2 MS. LITTLE: Yes, Judge.

3 **REDIRECT EXAMINATION**

4 BY MS. LITTLE:

5 Q. Okay. HGN, let's clarify. When you were doing
6 HGN, what do you do to begin the test?

7 A. Well, I check for, basically, equal pupil size,
8 because if they don't, it usually indicates a tumor or
9 brain -- some brain injury.

10 Q. Does it also indicate a concussion?

11 A. Yes.

12 Q. Or some head injury?

13 A. Yes.

14 Q. So you check for equal pupil size; and you
15 check for equal tracking, correct?

16 A. Yes, ma'am.

17 Q. Did you do -- were you able to do that in this
18 case?

19 A. Yes, ma'am. Also, resting nystagmus, I was
20 trying to explain, is, basically, when your eyes are
21 just -- you're looking straight ahead and it's very
22 rare, but there are people that do have it. Basically,
23 you have involuntary jerking of the eyes as you're
24 looking straight ahead.

25 Q. And if somebody has resting nystagmus --

Michael Allbritton - September 30, 2014
Redirect Examination by Ms. Casey Little

1 A. You can't perform --

2 Q. -- that would affect the test.

3 A. -- the test. No, you can't do it.

4 Q. Okay. So in this case, we had equal pupil
5 size, correct?

6 A. Yes, ma'am.

7 Q. We had equal tracking, correct?

8 A. Yes.

9 Q. We had no resting nystagmus, correct?

10 A. No, ma'am.

11 Q. So that meant we had no head injuries, correct?

12 A. Yes, ma'am.

13 THE DEFENDANT: Objection, Your Honor.

14 This test alone cannot determine a head injury.

15 THE COURT: I'll let him give his opinion
16 on it ruling out of what he was looking for and why he
17 does -- does those two prior tests.

18 Q. (By Ms. Little) And, in your opinion, looking
19 at the defendant's eyes, did she have any head injuries?

20 THE DEFENDANT: Objection, Your Honor. He
21 cannot speculate as to a head injury, in my eyes.

22 MS. LITTLE: He can testify to his
23 opinion, Your Honor.

24 THE COURT: He can testify what he rules
25 out and the jury already knows that he didn't see

Michael Allbritton - September 30, 2014
Redirect Examination by Ms. Casey Little

1 anything so, therefore, let's proceed.

2 Q. (By Ms. Little) And the three -- there are
3 three parts to the HGN, correct?

4 A. Yes, ma'am.

5 Q. Okay. What are they?

6 A. Okay. You're talking about just the clues,
7 okay?

8 Q. Yes. Just the actual clues because --

9 A. You do have an initial stage, which is testing
10 equal pupil size, equal tracking. Then you have your
11 six clues, one clue in each eye; and, basically, what
12 you're looking for is a lack of smooth pursuit. It's
13 two seconds out, two -- always starting with the left.
14 It's two seconds out, two seconds back in with your pen,
15 basically. That's your -- you are looking in both eyes.
16 You always start off with the left. You're going two
17 seconds in -- it's kind of hard to do it on yourself --
18 two seconds back. And then two seconds out, two seconds
19 back. That's four seconds on each eye. You're looking
20 for the eye -- basically, the eye to look kind of like
21 this. It's going to be involuntary jerking.

22 Your second one is you're looking for
23 maximum -- distinct nystagmus at maximum deviation. I
24 have to say it like that but it's basically involuntary
25 jerking as your pen is out here at 45 and your pupil is

Michael Allbritton - September 30, 2014
Redirect Examination by Ms. Casey Little

1 going to be jerking, bouncing back and forth. I do --
2 each eye, I do the test twice in each eye for lack of
3 smooth pursuit. Twice on each eye, distinct and
4 sustained at maximum deviation.

5 And then you have an onset, basically,
6 prior to 45 degrees that you do the test twice. That's
7 four seconds. You basically run your pen at four
8 seconds; but you stop that pen once you see the jerking
9 of, basically, the pupils, horizontally. You do that
10 twice, and that will give you six clues.

11 Now, if they're turning their head down
12 and closing their eyes, of course, you can't do the
13 test.

14 Q. So you weren't able to do any part of those
15 three parts, correct?

16 A. No, ma'am.

17 Q. And the portion that you were able to conduct,
18 that was just the initial steps to confirm that you can
19 do those three steps, correct?

20 A. Yes, ma'am.

21 Q. What time was the blood drawn at?

22 A. At 5:03 in the morning, ma'am.

23 Q. And what time did you arrest her?

24 A. Well, I placed her in custody at 2:00 --
25 2:00 something. 2:54, 2:50 something. You would have

1 to go back to the tape.

2 Q. So the blood was drawn at least two hours after
3 she was arrested?

4 A. Yes, ma'am.

5 MS. LITTLE: Pass the witness, Your Honor.

6 THE DEFENDANT: Your Honor, may I refer
7 back to the Exhibit 5, the statutory warning, briefly?

8 THE COURT: Sure, if you're talking to him
9 about it.

10 THE DEFENDANT: I am.

11 THE COURT: Okay. Go ahead. Put it on.

12 (State's Exhibit No. 5 published)

13 **RECROSS-EXAMINATION**

14 BY THE DEFENDANT:

15 Q. Officer, I'd like to draw your attention at the
16 bottom where just after breath and blood is checked --
17 Officer, I want to draw your attention to, first, here
18 where it says that I'm now requesting a specimen of
19 breath and blood.

20 Is there any reason why the next section,
21 neither box is checked where it says refusal?

22 A. I didn't complete the form.

23 Q. Why is that?

24 A. I couldn't tell you.

25 Q. Who completed this form?

Michael Allbritton - September 30, 2014
Recross-Examination by the Defendant

1 A. I filled the form out.

2 Q. And you can't recall why you didn't complete
3 it?

4 A. Why I didn't get a signature?

5 Q. Well, no, why the refusal portion is not
6 marked, where it says "subject refused" -- "subject
7 refused to allow the taking of a specimen and further
8 refused to sign below as requested by this Officer" or
9 "subject refused to allow the taking of a specimen, as
10 evidenced by her signature below." Why have neither of
11 us participated in that section?

12 A. I couldn't tell you.

13 Q. Did I ever see this form?

14 A. Yes, you did. You were given a copy of it.

15 Q. I'm sorry?

16 A. You were given a copy of it that night.

17 Q. Okay. Does my signature belong here?

18 A. Well, yes, but -- it's basically showing that I
19 read you the form.

20 Q. And if my signature is not there, could that
21 mean that I was not given a copy of this form at all?

22 A. No, ma'am.

23 Q. No?

24 A. You're always given a copy.

25 Q. Should one of those boxes be checked?

Michael Allbritton - September 30, 2014
Recross-Examination by the Defendant

1 A. Yes, ma'am.

2 Q. So that is a mistake?

3 A. It's an overlook, but the form is still good.

4 It's just basically for statutory warning.

5 Q. Is it a mistake?

6 A. I couldn't tell you. At 5:00, 6:30, 7:00 in
7 the morning, we just didn't check it off or you didn't
8 want to sign it and I'm trying to get a warrant. You've
9 got to understand that, basically, I read this form to
10 you; and we go from there.

11 Q. So, Officer, you would've read this form to
12 me --

13 A. Uh-huh.

14 Q. -- we would've bypassed the portion where my
15 signature belongs; but, yet, I would've been given a
16 copy with no signature and no checks right there?

17 A. Yes.

18 Q. That's what -- is that standard procedure?

19 A. Yes.

20 Q. Okay. Very briefly, Officer. So you had gone
21 back to detailing how you perform the horizontal
22 nystagmus testing and you were unable to go forward with
23 it -- I don't know, because I was cold or whatever was
24 the reason, I didn't go forward --

25 MS. LITTLE: Objection, Your Honor.

Michael Allbritton - September 30, 2014
Recross-Examination by the Defendant

1 Defendant is testifying.

2 THE COURT: Sustained.

3 Q. (By The Defendant) Well, Officer, you don't --
4 you don't know why I wouldn't go forward with it but you
5 couldn't complete the testing so is the totality of a
6 test like that necessary to make a solid judgment about
7 much of what you've detailed here for us today?

8 A. It would basically be more evidence against
9 you.

10 Q. Okay. So only performing a small portion is a
11 good enough determinant to make that entire, I guess,
12 determination or come to that full conclusion from just
13 a portion of the test?

14 THE COURT: Wait. I'm confused. What are
15 you trying to ask?

16 THE DEFENDANT: Well, he was mentioning --

17 THE COURT: He just --

18 THE DEFENDANT: Earlier --

19 THE COURT: -- said that he did the first
20 part of the test --

21 THE DEFENDANT: Yes.

22 THE COURT: -- which if you couldn't do
23 that, you wouldn't be able to do the other part of the
24 test.

25 THE DEFENDANT: Well, earlier, the

Michael Allbritton - September 30, 2014
Recross-Examination by the Defendant

1 Prosecution did ask him all of these slew of questions
2 that he was able to determine from what he did perform.

3 THE COURT: If he would've been able to
4 perform.

5 THE DEFENDANT: Okay.

6 I pass for the time being, Your Honor.

7 THE COURT: State?

8 MS. LITTLE: Your Honor, we have no
9 further questions for this witness. May he be excused?

10 THE COURT: You may. You are excused.
11 Thank you so much.

12 THE WITNESS: Thank you.

13 THE COURT: Ladies and gentlemen, at this
14 time we are in recess for lunch. Y'all have a great
15 lunch.

16 (Jury exits courtroom)

17 THE COURT: We'll see y'all back here at
18 2:30.

19 MS. LITTLE: Okay. Thank you, Judge.

20 (Lunch recess)

21 (Jury enters courtroom)

22 THE COURT: Welcome back, guys. Did y'all
23 go to The Church?

24 A JUROR: Yes, sir.

25 THE COURT: It's pretty good, huh?

Michael Allbritton - September 30, 2014
Recross-Examination by the Defendant

1 Okay, guys, we're going to get started
2 here. Try to wrap this thing up today.

3 State, call your next witness.

4 MS. LITTLE: Your Honor, State calls Nurse
5 Amanda Leicht.

6 And, Your Honor, she has not been sworn
7 in.

8 THE COURT: I know.

9 Could you raise your right hand.

10 (Oath administered to the witness)

11 THE COURT: Please, come have a seat.
12 Speak clearly into the microphone.

13 And, State, you may begin.

14 MS. LITTLE: Thank you, Your Honor.

15 **AMANDA LEICHT,**

16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MS. LITTLE:

19 Q. Ms. Leicht, can you please introduce yourself
20 to the jury?

21 A. My name is Amanda Leicht, and I'm a registered
22 nurse for the State of Texas.

23 Q. And where are you currently working?

24 A. I'm currently employed at Memorial Hermann.

25 Q. And do you still work at 61 Riesner?