

1 MS. DREHNER: Yes, Your Honor. The State
2 calls Michael Baccus.

3 (Witness duly sworn.)

4 THE COURT: Let the record reflect the
5 witness has been sworn.

6 Ms. Drehner.

7 MS. DREHNER: Thank you, Your Honor.

8 MICHAEL BACCUS,
9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 QUESTIONS BY MS. DREHNER:

12 Q. Can you state your name?

13 A. Mike Baccus.

14 Q. And how are you employed?

15 A. With the Houston Police Department, Narcotics
16 Division.

17 Q. And, Officer Baccus, how long have you been
18 with H.P.D.?

19 A. I'll be employed with them 19 years in January.

20 Q. Where did you start out?

21 A. In the police department, I started in patrol.

22 Q. Where did you go from there?

23 A. I was with the Gang Task Force, worked as a
24 gang investigator; went to Street-level Narcotics; and
25 currently, I'm assigned to a HIETA Narcotic Squad.

1 THE WITNESS: That's H-I-E-T-A.

2 Q. (BY MS. DREHNER) Within the Narcotics Squad,
3 are you-all specialized as to what level of narcotics or
4 what kind of narcotics you investigate?

5 A. Yes. Currently, I'm assigned to the
6 Pharmaceutical Squad.

7 Q. And what do you-all do?

8 A. We focus primarily on pharmaceutical
9 medications, clinics, doctors, and illegal dealers of
10 prescribed medications.

11 Q. How long have you been with the Pharmaceutical
12 Squad?

13 A. I've been there since 2009.

14 Q. And what do your investigations consist of?

15 A. We do everything from undercover transactions
16 with individuals, we work with pill crews, doctors'
17 offices, clinics, and pharmacists.

18 Q. Would you say that these are street level, or
19 are these high-level narcotics?

20 A. We deal in higher level, multi-narcotic deals.

21 Q. I want to draw your attention to November --
22 late November of 2011. Were you employed in that
23 capacity in the Narcotics Squad in the Pharmaceutical
24 Division?

25 A. Yes.

1 Q. Around that time, what specifically were you
2 investigating?

3 A. In this particular case, or just at the time?

4 Q. Yes, sir.

5 A. On that day, I was contacted by a source of
6 information that informed me there was an Isuzu truck at
7 a pharmacy with six or more individuals obtaining
8 prescription medications.

9 Q. And just to go back a little, how do these
10 operations -- you call them "pill mills" -- typically
11 work?

12 A. Well, in this instance, we're familiar with
13 pill crews where individuals will hire either homeless or
14 unemployed individuals to go to clinics; obtain
15 prescriptions for controlled substances; and then after
16 the clinic visit, take them to the pharmacy to actually
17 purchase the bags of narcotics.

18 Q. So, essentially, the homeless people, then, are
19 the supplier?

20 A. The homeless people are used as a source to
21 obtain the prescribed medications.

22 Q. Okay. Do they then purchase it for a small
23 amount and then go on to sell it for a larger amount?

24 MS. QUINONES: Your Honor, I'm going to
25 object to the leading nature of the questions.

1 THE COURT: Sustain the objection.

2 Q. (BY MS. DREHNER) How does it work, in terms of
3 how these people are actually compensated and then go on
4 to sell?

5 A. Normally, an individual is employed to actually
6 pick up the people, the homeless or the unemployed, takes
7 them to the doctor. They are given money to actually see
8 the doctor. At that time, once they obtain their actual
9 prescription form, they are then transported to the
10 pharmacy that they're either directed to or the
11 individual knows about. At that time the individual
12 who's driving the homeless or unemployed people pays to
13 fill the prescriptions. Then they all leave the
14 location.

15 At some point the people that were hired
16 to obtain the prescriptions will be separated, you know;
17 and an individual will keep all of the narcotics for
18 street sales.

19 Q. And have you conducted these types of
20 investigations before?

21 A. Yes.

22 Q. So, let me draw you back to November 29th of
23 2011. How did you become involved in this investigation?

24 A. On that date, I was informed that a pill crew
25 was operating out of the Mayflower Pharmacy.

1 Q. Where is the Mayflower Pharmacy?

2 A. It's on the north side of town. I may have in
3 here where it's directly located. It's located at -- I'm
4 sorry. It's not on the north side of town. It's 11878
5 Wilcrest.

6 Q. Is that in Harris County, Texas?

7 A. Yes.

8 Q. And what was the information that you received?

9 A. Initially, I just received that the crew was at
10 that location obtaining prescriptions. At that time I
11 just stated, Well, hey, if you hear anything more, let me
12 know.

13 Q. Okay.

14 A. Later in the day, I was told that there was --

15 MS. QUINONES: Objection, Your Honor.

16 Nonresponsive, in addition to hearsay.

17 THE COURT: Sustained.

18 Q. (BY MS. DREHNER) What did you do as a result
19 of your initial conversation?

20 A. I waited after the initial conversation for
21 another call.

22 Q. What did you do after that?

23 A. I shortly received another phone call, and I
24 was told that the Isuzu was going to go to a Bass Pro
25 Shop.

1 MS. QUINONES: Objection, Your Honor.
2 Calls for hearsay.

3 THE COURT: Sustained.

4 Q. (BY MS. DREHNER) What did you do with the
5 information that you learned from the confidential
6 informant?

7 A. I went to a location I was informed about, that
8 we were told the Isuzu was going to.

9 Q. And what location did you actually go to?

10 A. It's the Bass Pro Shop, 1000 Bass Pro Drive,
11 near 288.

12 Q. And that's in Harris County, Texas?

13 A. Yes.

14 Q. How did you and the rest of the people in your
15 Narcotics Squad -- how did you set up that operation?

16 A. Well, what we did was -- since we've done the
17 same thing on previous investigations, knowing that
18 there's a possibility they would transfer the narcotics
19 at the scene, we got marked units and also had
20 individuals from my squad in unmarked cars and plain
21 clothes.

22 Q. Were you actually -- the undercover units
23 actually parked at the Bass Pro Shop?

24 A. Yes. As I arrived at the Bass Pro Shop, we
25 circled the parking lot; and I did notice a blue Isuzu

1 pickup truck sitting in the parking lot with several
2 individuals inside.

3 Q. And how many undercover vehicles do you think
4 were situated in the parking lot?

5 A. We had approximately -- I would say five to
6 six.

7 Q. Can you describe the parking lot at that time?

8 A. Yes. It was daytime. It was about 12:50.

9 Q. What was the traffic like?

10 A. Well, it's a major retail store. Several cars,
11 people walking through the parking lot going to the
12 store.

13 Q. Was it easy to conceal the cars and sort of
14 blend in?

15 A. Yes, yes.

16 Q. Where were you situated at this time?

17 A. I parked probably within six to eight spaces of
18 the blue Isuzu.

19 Q. And the blue Isuzu was a target vehicle?

20 A. That's the only vehicle we had information on.

21 Q. When you got there and you saw the blue Isuzu,
22 what did you see?

23 A. Well, we saw everybody remaining inside the
24 vehicle.

25 Q. How many people do you think were in that blue

1 Isuzu?

2 A. Well, we learned that there were seven.

3 Q. Seven people in that one vehicle?

4 A. Yes.

5 Q. What did you observe them do when you first got
6 there?

7 A. When I first got there, everyone set up so we
8 could have a clear view of the vehicle; and we just
9 noticed that they were staying inside the vehicle.

10 Q. Okay. What time was this?

11 A. 12:50.

12 Q. And how far were you from the blue Isuzu?

13 A. About six to eight spaces.

14 Q. Did you have an unobstructed view?

15 A. Yes.

16 Q. Did you have anything to enhance your visual of
17 them?

18 A. I had binoculars, but I didn't use them at the
19 time because I was close enough to see what was
20 happening.

21 Q. Now, after you see the blue Isuzu, what do you
22 see after that?

23 A. Shortly after locating the blue Isuzu and us
24 maintaining our focus on it, we noticed a Buick arrive on
25 the location and back in relatively close to the Isuzu.

1 Q. How close to the Isuzu was he?

2 A. I would say 30 to 40 feet.

3 Q. And with respect to where you were, where was
4 the Buick?

5 A. It would be kind of a triangle. It was to my
6 right and probably the same, 20 to 30 or 30 to 40 feet.

7 Q. So, they were not right next to each other?

8 A. No.

9 Q. The Isuzu and Buick were not right next to each
10 other?

11 A. No.

12 Q. What happened after that?

13 A. Pretty much as soon as the vehicle arrived, it
14 backed into a space. The driver from the blue Isuzu
15 exited carrying a bag, took it over to the driver of the
16 Buick, and passed it off to him. And they stood and
17 spoke for a while.

18 Q. What kind of bag were they carrying?

19 A. At that time it was just a large, plastic-type
20 bag.

21 Q. And what happened after that?

22 A. After that, the driver walked back to the
23 Isuzu, at which time the defendant arrived at the
24 location in a Dodge pickup truck and parked beside the
25 Buick.

1 Q. And how were they parked?

2 A. The Buick was backed into the space.

3 Q. Okay.

4 A. The defendant parked the Dodge on the passenger
5 side in the next spot with both passenger doors facing
6 each other.

7 Q. Do you know what's going on with the people in
8 the Isuzu at this time?

9 A. They're staying inside the Isuzu.

10 Q. Okay. Now, what happens when -- you said that
11 Mr. Bienvenue, who you later learned is the defendant, is
12 in a truck. What kind of truck was he in?

13 A. Dodge pickup. It was an extended cab.

14 Q. What happens after that?

15 A. When the defendant arrived at the location, the
16 driver of the Buick -- who we later identified as
17 Mr. Wilson -- exited. The defendant exited the Dodge
18 truck; and they met between the two vehicles, on the
19 passenger side of each vehicle, in between the space.

20 Q. Okay. And at this time how close were you to
21 the truck and the Isuzu?

22 A. I was still within the 30 to 40 feet from it.

23 Q. And your view was clear and unobstructed?

24 A. Yes.

25 Q. And what happened after that?

1 A. As Mr. Wilson exited the Buick, he was carrying
2 a Walmart bag. He met with the defendant between the two
3 vehicles, at which time they began to have a transaction.
4 The bag was traded off.

5 Q. Let me take a step back. How did you know they
6 were having some sort of transaction?

7 A. Well, because Mr. Wilson was holding a bag and
8 he gave it to the defendant, at which time there was also
9 money exchanged.

10 Q. Okay. Have you seen these kinds of
11 transactions in your experiences before?

12 A. This is very common with the activities of a
13 pill crew, dropping off the medications.

14 Q. And then exchanging currency?

15 A. Yes.

16 MS. QUINONES: Objection, Your Honor.
17 Leading.

18 THE COURT: Sustained.

19 Q. (BY MS. DREHNER) What is common about what you
20 saw there, versus the other narcotics transactions that
21 you've seen?

22 A. When a pill crew picks up the narcotics, at
23 some point they're going to take them to the individuals
24 that actually are sending them to obtain the narcotics.
25 It was very common with a narcotics transaction of people

1 meeting in parking lots, big open areas, common spaces to
2 make the transaction so they didn't stand out.

3 Q. Now, you said that you saw them exchange
4 currency?

5 A. Yes.

6 Q. Who was giving money to who?

7 A. The defendant handed Mr. Wilson the currency.

8 Q. Okay. You refer to the defendant. Do you see
9 the person who later became known to you as Troy
10 Bienvenue in this courtroom today?

11 A. Yes, ma'am.

12 Q. And can you identify him by an item of
13 clothing?

14 A. Yes, ma'am. He's the man wearing the gray
15 sweatshirt.

16 MS. DREHNER: Let the record reflect that
17 the witness has identified the defendant.

18 THE COURT: The record will so reflect.

19 Q. (BY MS. DREHNER) Now, after you saw the
20 transaction, what happened after that?

21 A. After we saw the transaction and with the
22 information that I was also provided, we had reason to
23 believe it was maybe a narcotics transaction taking
24 place. Myself and other officers drove to the two
25 individuals between the vehicles to detain them.

1 Q. Okay. And that would have been the defendant
2 and Mr. Wilson?

3 A. Yes, ma'am.

4 Q. Were you able to take them into custody?

5 A. Yes. Mr. Wilson, at the time we were driving
6 up to him, walked back to the Buick and was beginning to
7 sit down.

8 Q. Okay.

9 A. The defendant still had the bag in his hand.
10 As we walked towards the defendant, he placed the bag
11 behind the seat. I don't think he saw us coming to him
12 yet. But as he noticed the marked units and the
13 officers, he tried to elude towards the front of the
14 vehicle.

15 Q. During this takedown -- is it a combination of
16 unmarked and marked units during the takedown?

17 A. Yes, ma'am.

18 Q. And were you able to keep a visual surveillance
19 on the defendant as all this happened?

20 A. Yes, ma'am. As other officers went towards
21 Mr. Wilson, myself and uniformed officers went towards
22 the defendant.

23 Q. So, your attention at this time was towards
24 Mr. Bienvenue?

25 A. Yes.

1 Q. Okay. And there were other officers going for
2 the takedown on Mr. Wilson?

3 A. Yes, ma'am. And also, they were side by side.
4 The two vehicles were right beside each other; so, we
5 were all in a pretty tight area.

6 Q. And you said that there was a white plastic
7 bag. Where did this go during this takedown?

8 A. The Walmart bag?

9 Q. Yes, sir.

10 A. It was later found in the backseat of the
11 vehicle driven by the defendant.

12 Q. And where in the vehicle?

13 A. Where in the vehicle? The door was open as we
14 approached him. He placed it behind the front passenger
15 seat on the floorboard.

16 Q. And what did Mr. Bienvenue do as you-all were
17 approaching?

18 A. He started to run, but there wasn't enough room
19 to run. He started to make his way towards the front of
20 the vehicle. There was hedges there and we just asked
21 him to stop and he did stop.

22 Q. And you said that you were able to recover the
23 Walmart bag?

24 A. Yes, ma'am, once the defendant was detained.
25 The front door of the vehicle was open on the passenger

1 side still. I looked inside and noticed the pill bottles
2 from above. I noticed them from looking down into the
3 bag.

4 Q. And what actually was in that bag when you did
5 an inventory of it?

6 A. Later it was found that it was Hydrocodone and
7 Soma tabs.

8 Q. Okay. At the time, did you weigh out how much
9 it was?

10 A. Yes.

11 Q. Okay. How much was it?

12 A. It was 378 grams of Hydrocodone and 216 grams
13 of Soma.

14 Q. How much does -- approximately how many pills
15 is that?

16 A. It was, I believe, four bottles of 120 each.

17 Q. Okay. How much do they go for, each pill?

18 A. Hydrocodone?

19 Q. Yes, sir.

20 A. It varies, whether you're buying them
21 individually or in quantities. Normally, a Hydrocodone
22 tab individually being sold on the street could go for
23 around \$5.

24 Q. And the Soma, you said how many pills?

25 A. I'm not certain. I could check, but it was

1 several. I believe three bottles -- three or four
2 bottles.

3 Q. And how much do those go for?

4 A. Cheaper, usually, top dollar on the street.

5 Q. And in this case he was only charged with the
6 Hydrocodone?

7 A. Yes, ma'am.

8 Q. Were you able to search the defendant, his
9 person?

10 A. He was searched, yes, incident to arrest.

11 Q. Okay. Was there anything found on his person?

12 MS. QUINONES: Your Honor, at this time
13 may I take the witness on voir dire as to whether or not
14 he was the actual officer who searched the defendant?

15 THE COURT: Not at this time. You may
16 have your chance at cross-examination.

17 You may continue.

18 Q. (BY MS. DREHNER) Was there anything recovered
19 on the defendant's person?

20 A. Yes.

21 Q. What was recovered?

22 A. Currency.

23 Q. How much?

24 A. \$1,055.

25 Q. Was that in cash?

1 A. Yes.

2 Q. Were you able to speak to the defendant after
3 he had been detained?

4 A. Yes, he asked to speak with me.

5 Q. What did he tell you?

6 MS. QUINONES: Your Honor, I'm going to
7 object under grounds of 38.22. Once a defendant has been
8 detained, any type of interrogation, in order to be
9 admissible in a court of law, must be either recorded or
10 written, which I don't believe is present in this case.
11 So, any testimony given as to what the defendant said, I
12 would object.

13 MS. DREHNER: It was a noncustodial
14 interview, and the defendant asked to speak to the
15 officer.

16 MS. QUINONES: Your Honor, if the
17 defendant is arrested, he's in custody. I don't believe
18 it's noncustodial at that time.

19 THE COURT: Overrule the objection.

20 A. I'm sorry. Could you ask the question again?

21 Q. (BY MS. DREHNER) Yes, sure. You said that he
22 had wanted to speak to you. What did he tell you?

23 A. Yes. Well, initially, he asked me if there was
24 any way he could get out of the situation.

25 Q. Okay. And what did he -- how so?

1 A. Well, once we realized who the individual was,
2 we were aware that we had past dealings with him. He was
3 asking that if we could work a deal, maybe he could get
4 more narcotics to get out of this situation he was in.

5 Q. Okay. Was he able to supply -- as you were
6 saying, make any sort of deals -- the equivalent of the
7 amount of deals that he was doing in this case?

8 A. Well, we pretty much told him we weren't going
9 to do that because we knew he was out on a previous case
10 and we weren't going to make any deals at the time.

11 Q. Okay. And I want to go back to what you were
12 saying, "on a previous case." Has your pharmaceutical
13 squad had dealings with Mr. Bienvenue prior to November
14 29, 2011?

15 A. Yes.

16 Q. And in what capacity?

17 A. He was arrested on the same type of case by
18 Officer McClain in my squad.

19 Q. When was that?

20 A. I don't have it in front of me. I believe it
21 was 2010.

22 MS. QUINONES: And, Your Honor, I'm going
23 to object that there's been no notice of use of any
24 extraneous conduct in this hearing.

25 MS. DREHNER: Your Honor, this is the case

1 that he's on probation for.

2 THE COURT: Overrule the objection.

3 Q. (BY MS. DREHNER) So, the narcotics
4 investigation that your crew conducted back in 2009, was
5 it similar to the case that -- the incident on November
6 29, 2011?

7 A. In regards to the narcotics, yes.

8 Q. Okay. How so?

9 A. It was also dealing with the same type of pill
10 crew investigation that Officer McClain conducted.

11 Q. Was it also out of a pharmacy?

12 A. You know, I don't have the specifics in front
13 of me right now about the case. All I can do is assume.

14 Q. Well, let me ask you this: On November 29,
15 2011, were you specifically seeking Mr. Bienvenue out?
16 Was it because you knew of this investigation back in
17 2009 so you decided to maybe look for him, see if he was
18 still doing it?

19 A. We had no idea that day who was going to be
20 involved in this incident.

21 Q. Did he say anything else about -- or did he
22 make any other statements to you?

23 A. No.

24 Q. Did he make any statements about his employment
25 status?

1 A. Only when I asked about the currency, if he was
2 employed at the time.

3 Q. So, what did he say with regards to how he had
4 the currency?

5 A. Well, we generally ask if it's their money and
6 how they obtained it; and we asked if he was employed at
7 the time. At the time he said that he was not employed.

8 Q. You said that the drugs were recovered in the
9 backseat of the defendant's vehicle?

10 A. The floorboard behind the front passenger seat.

11 Q. Did you recover the drugs?

12 A. Yes.

13 Q. And were you able to examine them?

14 A. Yes.

15 Q. What markings did they have on them?

16 A. The Hydrocodone was scored Watson 540 and
17 Watson 503.

18 Q. How were they packaged?

19 A. They were still in the prescription bottles.

20 Q. And from what pharmacy did it --

21 A. The Mayflower.

22 Q. Okay. Was that the same pharmacy that the
23 target Isuzu was listed as coming from?

24 A. Yes.

25 Q. Did you tag the evidence?

1 A. Yes.

2 MS. DREHNER: Your Honor, may I approach?

3 THE COURT: You may.

4 Q. (BY MS. DREHNER) I'm showing you what's been
5 previously marked as State's Exhibits 1 and 2. Do you
6 recognize it?

7 A. Yes.

8 Q. And how do you recognize it?

9 A. It's in the same bags that we tagged it in that
10 day; plus with the writing on it, indicating where it was
11 recovered; and the incident number.

12 Q. Okay. Now, when you recovered the drugs, did
13 you seal the drugs?

14 A. Yes.

15 Q. And did you initial it?

16 A. No, this was not initialed by me. It was
17 initialed by the lab. The outside packaging was.

18 Q. Okay.

19 MS. DREHNER: And for the record, we have
20 a larger package.

21 Q. (BY MS. DREHNER) And what's in the larger
22 package?

23 A. The larger package is the narcotics that were
24 recovered in Mr. Wilson's vehicle.

25 Q. Okay. So, these are all of the narcotics in

1 the entire transactions?

2 A. Some are narcotic, and some are non-controls.

3 Q. What is State's Exhibit 1 and 2, then?

4 A. Exhibit 1 is the Hydrocodone that was in the
5 Walmart bag in the Dodge pickup. Exhibit No. 4 contains
6 Soma, which being -- I combined. There were three
7 bottles of Soma that were also in the Dodge, and there
8 was one smaller bag in there that was Soma recovered from
9 the Buick.

10 Q. And was it in your custody once you took it
11 into evidence?

12 A. Yes.

13 Q. Where did you take it after you recovered it
14 from the vehicle?

15 A. I took it from the scene at the Bass Pro Shop
16 to our office at 1200 Travis, where I processed it,
17 separated it, marked it; and then I took it to the
18 narcotics lockbox in the same building on the first floor
19 of 1200 Travis.

20 Q. And is that in substantially the same condition
21 as you found it when you put it into evidence?

22 A. Yes.

23 Q. And has anybody opened it since?

24 A. Yes.

25 Q. And how do you know that?

1 A. Because the lab tech has initialed and dated
2 the date that they opened and tested the evidence.

3 Q. Okay. Have you had an opportunity to look at
4 the evidence prior to your testimony today?

5 A. Just when I picked it up this morning.

6 Q. Okay. And it's in substantially the same
7 condition as it was in when you dropped it off?

8 A. Yes.

9 MS. DREHNER: Your Honor, at this time
10 State would move into evidence State's 1 and 2.

11 MS. QUINONES: Your Honor, I would object
12 in that the chain of custody has not been established.
13 There is a link that is missing; specifically, the lab
14 that tested it. That individual needs to get on the
15 stand, and my client has a right to confront that witness
16 to insure that the chain of custody is perfected.

17 In addition to that, I would object that
18 all of that evidence is not relevant to this defendant's
19 case. Whatever they found in Rodney Wilson's vehicle has
20 nothing to do with Troy Bienvenue, and I would object on
21 those grounds.

22 MS. DREHNER: And, Your Honor, 1 and 2 is
23 specifically just the drugs that were found on the
24 defendant.

25 THE WITNESS: 1 and 4.

1 MS. QUINONES: Actually, I believe it was
2 1 and 4.

3 MS. DREHNER: Well, State's Exhibit 1 and
4 2 are specifically just the drugs from the defendant.

5 MS. QUINONES: And I believe that the
6 officer testified that in State's Exhibit No. 2, there
7 were also pills from Rodney Wilson's vehicle, as will.

8 MS. DREHNER: State's Exhibit 2 is the
9 Soma bottles.

10 MS. QUINONES: Exactly. And I believe the
11 officer testified that there were Soma pills from Rodney
12 Wilson's vehicle in that bag, as well.

13 And, again, I would object on those
14 grounds.

15 THE COURT: I'll overrule your objections.

16 State's Exhibits 1 and 2 are admitted.

17 Q. (BY MS. DREHNER) And the location of the Bass
18 Pro Shop, where is that?

19 A. After the incident, I had to do some research.
20 It's kind of an unusual spot. It's 1000 Bass Pro Shop,
21 Pearland, Harris County, Texas.

22 MS. DREHNER: Pass the witness.

23 THE COURT: Ms. Quinones.

24 MS. QUINONES: Thank you, Your Honor.

25

1 CROSS-EXAMINATION

2 QUESTIONS BY MS. QUINONES:

3 Q. Is it Detective Baccus or Officer Baccus?

4 A. "Officer" is fine.

5 Q. Okay. Officer Baccus, I'm Leticia Quinones.

6 I'm going to ask you some questions. If you don't
7 understand, please let me know. I've been known to talk
8 fast; so, I'll rephrase if I need to. Okay?

9 A. Okay.

10 Q. I want to first take you back to November 29th
11 of 2011. You talked about on direct that you received
12 information from a confidential source.

13 A. Yes.

14 Q. And that source informed you that they wanted
15 to remain anonymous?

16 A. Yes.

17 Q. Now, was that anonymous to you or anonymous to
18 other folks?

19 A. Well, they're not anonymous to me.

20 Q. Okay. So, then, whoever this individual --
21 what is that individual's name?22 MS. DREHNER: Your Honor, I would object.
23 There hasn't been a motion to disclose the C.I. in this
24 case.

25 MS. QUINONES: At this time, Your Honor,

1 we're making an oral motion to disclose the C.I. because
2 that C.I.'s credibility in the totality of the
3 circumstances in this Motion to Suppress is relevant to
4 my client's motion in regards to whether or not this
5 officer acted on reliable and credible information.

6 THE COURT: Do you wish to lay some more
7 predicate with the officer?

8 MS. DREHNER: Sure.

9 REDIRECT EXAMINATION

10 Q. (BY MS. DREHNER) The confidential informant in
11 this case, have you worked with him in the past?

12 A. He has worked with me in the past, yes.

13 Q. Okay. In what capacity?

14 A. As an informant.

15 Q. With narcotics or other illegal activities?

16 A. Mainly narcotics, yes.

17 Q. Okay. What kind of narcotics?

18 A. Primarily pharmaceutical medications.

19 Q. And have you found him to be reliable?

20 A. On numerous occasions.

21 Q. And how long have you known him?

22 A. Probably about two years now.

23 MS. QUINONES: Are you passing?

24 MS. DREHNER: I'm passing.

25 MS. QUINONES: Oh, I'm sorry. I didn't

1 know you were passing.

2 RE-CROSS-EXAMINATION

3 QUESTIONS BY MS. QUINONES:

4 Q. Now, you stated you've known this individual
5 for two years.

6 A. Approximately.

7 Q. To date or at the time?

8 A. Probably to date.

9 Q. So, today you've known him for two years?

10 A. Approximately.

11 Q. So, at that time you had only known him for one
12 year?

13 A. Yes.

14 Q. And how did you meet him?

15 A. He made himself available to us. He called us.

16 Q. So, this person voluntarily called you to say,
17 I want to give you information on individuals who are
18 selling drugs?

19 A. Yes.

20 Q. And at that time did you invite him in to the
21 station?

22 A. No.

23 Q. Where did you meet him?

24 A. I don't remember specifically where I met him,
25 but it was in -- what we say, out in the field.

1 Q. You met this unknown stranger out in the field?

2 A. Every day, yes, ma'am.

3 Q. Well, I'm only speaking to this one, not
4 anybody else. When you met this individual out in the
5 field, when would you say that you met him?

6 A. I could get all that information for you. I
7 don't know specifically when or what time or what date,
8 but I could make that available.

9 Q. Okay.

10 A. I do know that I did meet with him. There are
11 standard forms, and we also do a criminal history
12 background.

13 MS. QUINONES: Your Honor, I object.
14 Nonresponsive.

15 THE COURT: Please just answer the
16 question that's asked.

17 THE WITNESS: Yes, sir.

18 Q. (BY MS. QUINONES) My question, sir, is: When
19 did you meet this individual?

20 A. I couldn't give you a specific date or time
21 right now, ma'am.

22 Q. And at the time, this individual that you don't
23 know when you met him -- how many times prior to November
24 29, 2011, did he actually work for you?

25 A. Several. And I could also get that information

1 if needed.

2 Q. And when you say "several," is that three,
3 four, five?

4 A. I would hate to speculate. I'd rather give you
5 a solid answer if you need it.

6 Q. But, unfortunately, sir, we're here in court
7 today and the hearing is today; so, we don't have the
8 luxury of allowing you to go back and --

9 MS. DREHNER: Your Honor, I'm going to
10 object. There was no motion to disclose the C.I. She's
11 asking him to answer questions that he could have if we
12 were properly noticed about whether or not we were going
13 to disclose the C.I. He doesn't have that information in
14 front of him.

15 MS. QUINONES: My I respond, Your Honor?

16 THE COURT: You may.

17 MS. QUINONES: Your Honor, we are here
18 today in which the State does have notice that this is a
19 Motion to Suppress. On direct examination, the officer
20 testified that he received an anonymous tip. Based on
21 that anonymous tip, he reacted. He stated that that
22 information was reliable. At that time, they put that
23 into controversy. The defendant has a right, then, to
24 make any oral motions that the defendant needs to in
25 order to make sure that that person was, No. 1, credible

1 and reliable so that when the Court looks at the totality
2 of the circumstances, they can take this evidence into
3 consideration. They've opened the door on direct
4 examination by stating that they used an anonymous tip.

5 THE COURT: You may continue.

6 MS. QUINONES: Thank you.

7 Q. (BY MS. QUINONES) So, I'll ask you again, sir:
8 You don't know how many times you'd used him before
9 November 29, 2011?

10 A. I don't have a specific number for you right
11 now, no.

12 Q. Just so that we're clear, you don't know when
13 you met him?

14 A. I can't give you a specific date on it right
15 now, but we do have records of all that.

16 Q. Okay. My question, just right here today: Can
17 you give this Court any information about when you met
18 him? Your answer is "no," correct?

19 A. That is correct.

20 Q. And how much arrests did he help you make prior
21 to November 29, 2011?

22 A. Once again, I can supply with you that
23 information; but unfortunately today, sitting here right
24 now, I cannot. I cannot reveal that. I don't know a
25 certain number.

1 Q. So, then, based on this guy who we don't know
2 when you met him, how much arrests you had made or
3 anything like that, you react on a tip and you go to a
4 Mayflower Pharmacy?

5 A. No, ma'am.

6 Q. You never went to a Mayflower?

7 A. No, ma'am.

8 Q. Even though he told you that something was
9 going down there?

10 A. We have pill crews at pharmacies all the time.
11 I need more information --

12 MS. QUINONES: Objection. Nonresponsive,
13 Your Honor.

14 THE COURT: Sustained.

15 Q. (BY MS. QUINONES) My question to you, sir, is:
16 Even though he gave you information that something was
17 going down at Mayflower Pharmacy, you didn't go there?

18 A. Correct.

19 Q. But this guy is very credible, and he gives you
20 information like this all the time?

21 A. He's very credible, yes.

22 Q. But you didn't go to the Mayflower Pharmacy?

23 A. That's correct.

24 Q. And when he talked about the Mayflower
25 Pharmacy, not one time did he mention the name of Troy

1 Bienvenue, did he?

2 A. He never did, no.

3 Q. And, in fact, with all your dealings with this
4 individual, he never mentioned a Troy Bienvenue?

5 A. You're asking in all the dealings? You know
6 what? I couldn't answer that honestly because I didn't
7 know of the defendant prior to this incident and I don't
8 know where the original information came from, but I
9 could find that out for you.

10 Q. Well, if you didn't know about him prior to
11 November 29, 2011, then it would be fair to say that the
12 gentleman didn't give you information about him, right?

13 A. That's not correct. As we spoke of earlier, we
14 had arrested the defendant prior to this date.

15 Q. Okay. I'm not speaking of when you arrested
16 him. I'm talking about --

17 A. But you just asked -- I'm sorry -- but you just
18 asked me if I knew about him prior to the 29th.

19 Q. No, sir.

20 A. Yes, I did.

21 Q. What I asked you was: Did the confidential
22 informant inform you of Troy Bienvenue?

23 A. Prior to this day?

24 Q. Prior to November 29th.

25 A. And my response is: I'm not certain if he was

1 the one that --

2 Q. If you're not certain, that's all you have to
3 say.

4 A. Okay.

5 Q. Now, surely, though, when you write up your
6 reports, sir, you write up reports so that you can keep
7 track of information, so that you can remember
8 information because years from now when you have to
9 litigate issues, you may not remember them if you don't
10 write it in your report, correct?

11 A. It's to refresh information, yes, ma'am.

12 Q. Okay. And in your report, you put very vital
13 and important information; would you agree?

14 A. Yes.

15 Q. Do you have your report in front of you, sir?

16 A. Yes, ma'am.

17 Q. Can I draw your attention to page 2.008,
18 Supplement No. 2?

19 A. Okay. I see it, yes.

20 Q. I want you to notice under the Details of
21 Offense, the first paragraph. You notice that?

22 A. The first paragraph?

23 Q. Yes, sir. Under Details of Offense?

24 A. Yes.

25 Q. And in that first paragraph, you talk about

1 your confidential source, don't you?

2 A. Yes.

3 Q. And you talk about the information that he gave
4 you, do you not?

5 A. Yes.

6 Q. Nowhere in this paragraph do you state that he
7 gave you information about a Troy Bienvenue, did you?

8 A. He did not at the time.

9 Q. And, so, had he given you, surely, information
10 about a certain individual that you are reacting on, you
11 would have put it in there, wouldn't you?

12 A. Yes.

13 Q. But it's not in there, is it?

14 A. No. We had no information at this time about
15 specific individuals involved in the Isuzu.

16 Q. Okay. Fair enough.

17 Now, but you did have information that a
18 crew was going to the Mayflower Pharmacy?

19 A. They were there, yes.

20 Q. Okay. But we don't know how true that is
21 because you didn't go there?

22 A. That's correct.

23 Q. And then you also -- later on, you get
24 information from this same individual that the same crew
25 was going to the Bass Pro Shop?

1 A. Yes.

2 Q. And when you got this information from the
3 confidential source at that time, again, there was no
4 mention of a Troy Bienvenue, was there?

5 A. No, there was not.

6 Q. In fact, there was no descriptions of any
7 individual given to you by this source of information?

8 A. Just the vehicle. No individuals.

9 Q. And we'll get to that. But no individuals,
10 correct?

11 A. Correct. Other than the approximate number of
12 individuals inside the vehicle.

13 Q. Okay.

14 A. That's it.

15 Q. So, they gave you an approximate number inside
16 of a vehicle?

17 A. (Nods head affirmatively.)

18 Q. And, in fact, they gave you -- I'm sorry. She
19 has to take that down. Is that a "yes"?

20 A. Oh, I'm sorry. I was just waiting for your
21 question.

22 Q. He gave you an approximate number of
23 individuals inside of a vehicle?

24 A. Yes.

25 Q. And he also gave you a description of a

1 vehicle?

2 A. That's correct.

3 Q. And the description he gave you was a blue
4 Isuzu, correct?

5 A. That is correct.

6 Q. Never mentioned anything about a brown Dodge
7 truck, did he?

8 A. Never.

9 Q. So, then, you and your task force then take off
10 to Bass Pro Shop, right?

11 A. Yes.

12 Q. And when you get to Bass Pro Shop, you actually
13 saw the blue Isuzu?

14 A. We noticed the plate that was also provided.
15 Yes, ma'am, we found the Isuzu.

16 Q. Okay. So, he provided you with a license plate
17 as well?

18 A. Yes, ma'am.

19 Q. So, you had pretty detailed information about
20 what you were looking for?

21 A. That's correct.

22 Q. And when you get there, you notice the Isuzu,
23 correct?

24 A. Yes.

25 Q. And you shortly thereafter notice a Buick pull

1 up; is that right?

2 A. Back into a space, yes, ma'am.

3 Q. Back into a space. And the driver of the Isuzu
4 then gets out and meets with the driver of the Buick,
5 correct?

6 A. Yes, ma'am.

7 Q. And that driver of the Buick -- I'm sorry --
8 the driver of the Isuzu hands the driver of the Buick --
9 which is Rodney Wilson, right --

10 A. Yes, ma'am.

11 Q. -- a blue and yellow bag?

12 A. I could refresh on the color; but, yes, ma'am,
13 he does. He does hand him a bag.

14 Q. Okay. Well, let's make sure we get it, for the
15 record, correct.

16 A. Okay.

17 Q. Would you turn your -- same page, 2.008.

18 A. Yes.

19 Q. And the second paragraph after the first
20 paragraph that I drew your attention to --

21 A. Yes, ma'am.

22 Q. -- if you look at the second to the last
23 sentence, read it to yourself and let me know when you're
24 done.

25 A. (Witness complies.) Read it.

1 Q. And, so, again, I'll ask you: That driver of
2 the Isuzu handed the driver of the Buick a blue and
3 yellow bag?

4 A. Yes, ma'am.

5 Q. And that driver of the Buick put that blue and
6 yellow bag in his vehicle?

7 A. Yes, ma'am.

8 Q. And sat in the vehicle for a while after that?

9 A. Yes.

10 Q. And the Isuzu sat in its place for a while
11 after that?

12 A. Shortly, yes.

13 Q. Okay. And, in fact, you stated that you
14 continued surveillance on both vehicles because neither
15 one of them drove off, correct?

16 A. That's correct.

17 Q. And it was at that time that you noticed the
18 brown Dodge pull up, correct?

19 A. Yes, ma'am.

20 Q. You will agree with me that driving into a Bass
21 Pro Shop and parking, there's nothing illegal about that?

22 A. Correct.

23 Q. So, surely, no one should be detained or
24 arrested for just pulling into a Bass Pro Shop. Would
25 you agree with me there?

1 A. Absolutely, I would agree.

2 Q. You then notice that the driver, which turns
3 out to be Mr. Bienvenue, exits the vehicle -- the brown
4 Dodge pickup truck?

5 A. Yes, ma'am.

6 Q. Nothing illegal about that?

7 A. No.

8 Q. And he walks up to -- or at least meets up with
9 the driver -- which will be Mr. Wilson -- meets up with
10 Mr. Wilson?

11 A. Yes, ma'am.

12 Q. And per your testimony, they meet up between
13 the vehicles.

14 A. Yes.

15 Q. Were the vehicles parked side by side?

16 A. Yes, ma'am, side by side.

17 Q. So, surely, there is nothing illegal about two
18 individuals getting out and talking to each other,
19 correct?

20 A. There is nothing illegal about that.

21 Q. Now, Mr. Wilson, he gets out of his vehicle;
22 but he doesn't get out with that blue and yellow bag,
23 does he?

24 A. No, he does not.

25 Q. And that blue and yellow bag, it came from the

1 target vehicle you were given information about?

2 A. Correct.

3 Q. And that bag, then, per your assumption, did
4 you ever see him take that blue and yellow bag out of his
5 Buick?

6 A. The only time we saw the blue and yellow bag
7 was when it was going from the Isuzu to the Buick and
8 then after, when we found it inside the Buick.

9 Q. So, at all times relevant, that blue and yellow
10 bag was still in that Buick?

11 A. Yes.

12 Q. And, so, he gets out with a Walmart bag,
13 correct?

14 A. Yes, ma'am.

15 Q. Now, there's nothing illegal about carrying a
16 Walmart bag, is there?

17 A. Correct.

18 Q. Especially if you don't know what's in it,
19 correct?

20 A. That's correct.

21 Q. And at that time, you didn't know what was in
22 that vehicle, did you -- in that bag -- I'm sorry -- did
23 you?

24 A. I didn't know. I had a suspicion of what was
25 in it.

1 Q. And we're not talking about suspicions.

2 Did you have articulable facts? You did
3 not know what was inside that bag, did you, sir, at that
4 time?

5 A. You're correct.

6 Q. Okay. So, then, again, someone possessing a
7 Walmart bag is not illegal, is it, sir?

8 A. It is not.

9 Q. And you never noticed Mr. Wilson taking
10 anything out of the blue and yellow bag and putting it
11 into the Walmart bag, did you, sir?

12 A. He was sitting inside his vehicle, ma'am. No.

13 Q. And, so, he then hands the bag to
14 Mr. Bienvenue, correct?

15 A. Correct.

16 Q. And at this time, you still don't know what's
17 in the bag, right?

18 A. You're correct.

19 Q. It's just a Walmart bag, correct?

20 A. That's all we can see is a Walmart bag, yes,
21 ma'am.

22 Q. And at this time Mr. Bienvenue, according to
23 you, hands Mr. Wilson cash?

24 A. Yes.

25 Q. And they begin to part ways at that point?

1 A. At that point Mr. Wilson begins to walk back to
2 his vehicle to get in the driver's side. And as we
3 approached, the defendant was still in between the
4 vehicles.

5 Q. So, Mr. Wilson leaves Mr. Bienvenue after
6 giving him the cash, or what have you?

7 A. Yes, they separate.

8 Q. Now, with not knowing what's in that Walmart
9 bag, Mr. Bienvenue very well could have been Mr. Wilson's
10 brother who came and brought him something, correct?

11 A. I had no idea of the relation prior.

12 Q. But it could have been possible, right?

13 A. Okay. Yes.

14 Q. Because you have no information about
15 Mr. Bienvenue being involved in this through your
16 confident source, right?

17 A. Nor Mr. Wilson. We had no information about
18 either one of the two.

19 Q. Didn't know what was in the bag, correct?

20 A. We were not certain what was in the bag.

21 Q. Okay. So, then at that point, sir, when you
22 didn't know what was in the bag, your confidential
23 informant never gave you any information about
24 Mr. Bienvenue; and it's fair to say that Mr. Bienvenue
25 had no contact with anyone in that blue Isuzu, correct?

1 A. Not that we had known of, no.

2 Q. Not that you witnessed that day?

3 A. That's right.

4 Q. Yet, it was because of that that you arrested
5 Mr. Bienvenue, correct?

6 A. No.

7 Q. Well, it was after he exchanged the Walmart
8 bag -- after he received the Walmart bag from Mr. Wilson
9 and handed Mr. Wilson money -- that you arrested him,
10 correct?

11 A. There is a difference between arrested and
12 detained. He was arrested after we found narcotics in a
13 bag. He was going to be detained prior to that.

14 MS. QUINONES: May I have a moment, Your
15 Honor?

16 THE COURT: You may.

17 Q. (BY MS. QUINONES) Now, did you or did you not,
18 sir, state that after the exchange between Mr. Wilson and
19 Mr. Bienvenue, that you made the bust signal? Is that
20 right?

21 A. I'm looking now for the exact words I used in
22 the report.

23 Q. If you go to page 2.009 --

24 A. Yes.

25 Q. -- the first paragraph, fourth sentence down.

1 A. Yes, ma'am.

2 That is a term we used.

3 Q. Okay. And so --

4 A. But if you continue in that same sentence, you
5 will notice where I worded it --

6 Q. Sir -- sir --

7 A. -- that he was detained.

8 Q. Excuse me. Just simply answer the questions
9 that I'm asking.

10 A. Okay.

11 Q. It was at that time that you made a quote,
12 unquote, "bust signal," correct?

13 A. That's correct.

14 Q. And is it fair to say that when you guys make a
15 bust, that means you're making an arrest?

16 A. No.

17 Q. So, is your testimony today that when officers
18 say they're "making a bust," they're not referring to
19 making an arrest?

20 A. Well, you're asking me about every officer.
21 When I use it if I signal, that phrase is a slang in
22 police lingo. No, I don't use that as an arrest.

23 Q. So, it's your testimony that when you use the
24 word "bust," you're not talking about arresting someone.
25 If you go "bust" someone, you're not arresting them?

1 A. I don't use the word "bust." I use the words
2 "bust signal." I don't use the word "bust."

3 Q. Well, sir, if you use the words "bust signal,"
4 are you not using the word "bust"?

5 A. Ma'am, I would be more than willing to --

6 Q. "Yes" or "no," sir? When you use the word
7 "bust signal," are you not using the word "bust"?

8 A. Well, of course. The word "bust" is being used
9 in the phrase.

10 Q. Okay. So, what do you mean by "bust," sir,
11 when you say "bust"?

12 A. That is a signal for the officers involved on
13 the scene to move in.

14 Q. To move in to do what, sir?

15 A. Well, depends on the situation. In this
16 situation, it was to detain the individuals on suspicion
17 they were dealing narcotics.

18 Q. Okay. So, then, it is your testimony now that
19 once this transaction is made, you move in to detain the
20 suspects?

21 A. Yes.

22 Q. Not to arrest them.

23 A. Well, the hope is to arrest them if they're in
24 possession of narcotics; but first we have to detain and
25 determine that there actually is narcotics on the scene.

1 Q. Okay. Well, I want to take you back -- and try
2 real hard to listen to the question I'm asking.

3 A. Okay.

4 Q. After this exchange is made, that's when you
5 decide you're going to go in and bust them to detain
6 them; is that correct? Yes or no?

7 A. No, ma'am.

8 Q. When the exchange is made, you make the bust
9 signal to detain the suspects to further investigate?

10 A. That's correct.

11 Q. So, you detained them by putting them in
12 handcuffs; is that correct?

13 A. I never put anyone in handcuffs, ma'am.

14 Q. Well, did one of your officers out there put
15 someone in handcuffs, sir?

16 A. Eventually, there were individuals put in
17 handcuffs.

18 Q. Okay. In fact, Mr. Bienvenue was placed in
19 handcuffs?

20 A. Once he was placed in custody under arrest,
21 yes, ma'am.

22 Q. So, when you detained him, sir, what is your
23 testimony in regards to whether or not he was handcuffed
24 or not? Are you stating that when you moved in, you did
25 not handcuff him?

1 A. I did not, no.

2 Q. Or no one handcuffed him?

3 A. Yes. He attempted to flee.

4 Q. So, then you handcuffed him?

5 A. He was detained, yes, ma'am.

6 Q. Okay. And, so, when you're detained, you're
7 not free to go; is that correct?

8 A. That's correct.

9 Q. So, at the time -- or after the transaction,
10 Mr. Bienvenue was detained and not free to go?

11 A. That's correct.

12 Q. And it was then -- now, when he was detained,
13 where was he placed, sir?

14 A. He was standing outside the vehicle initially.

15 Q. Okay. After the officers detained him because
16 he was trying to flee, where did they place him exactly?

17 A. At one point he was moved from in between the
18 vehicle.

19 Q. Uh-huh.

20 A. And at one point he was standing behind his
21 pickup.

22 Q. Okay. And he was -- it's your testimony he was
23 standing behind his pickup? Was he handcuffed at that
24 time?

25 A. I cannot remember specifically whether he was

1 handcuffed at that time or not, but I would assume that
2 he was.

3 Q. Okay. But he was behind the vehicle, and it's
4 fair to say that he was in the custody of officers?

5 A. Yes, he was detained. Yes, ma'am.

6 Q. And it was then that you looked inside of his
7 vehicle?

8 A. The door was open; and, yes, I did.

9 Q. And you noticed the Walmart bag?

10 A. Yes.

11 Q. And you grabbed it?

12 A. No, not initially.

13 Q. So, you didn't grab it?

14 A. At a point I did.

15 Q. And what specific point was it that you grabbed
16 the bag, sir?

17 A. After I looked in the top that was open and
18 noticed the prescription bottles inside.

19 Q. So, it is your testimony that you looked in
20 that vehicle, saw the Walmart bag, looked inside the bag,
21 and noticed the prescription bottles?

22 A. Yes, ma'am.

23 Q. It was this plain view of the prescription
24 bottles that caused you to then grab the bag?

25 A. We're leaving out some steps; but that is one

1 of the reasons why I did obtain the evidence, yes.

2 Q. Because you saw it in quote, unquote, plain
3 view?

4 A. Well, that is one of the reasons, yes.

5 Q. And, so, that's pretty crucial information --
6 if you see contraband in plain view, that's pretty
7 important to note, wouldn't you agree?

8 A. Yes.

9 Q. So, let's turn, then, sir, back to page 2.009
10 of your offense report. Take a moment to please look at
11 that and show me where you wrote in your offense report
12 that when you looked in the car and saw the Walmart bag,
13 you saw the pill bottles in plain view. Let me know when
14 you find it.

15 A. Well, it's not in here. As we talked earlier,
16 this is a tool used to refresh me on the incident.

17 Q. It is the same tool that you used to mark what
18 the confidential informant told you, right?

19 A. Yes.

20 Q. Same tool you use to say that crews were going
21 to the Mayflower Pharmacy, right?

22 A. Yes.

23 Q. Then to Bass Pro Shop?

24 A. Yes.

25 Q. Where the vehicles were parked?

1 A. In proximity. There are some of the details
2 that weren't in there that we've added to that.

3 Q. Okay. But in here you talked about there was a
4 blue Isuzu parked.

5 A. Yes, ma'am.

6 Q. There was a Buick that pulled up and backed in.

7 A. Yes.

8 Q. And that the brown Dodge parked there.

9 A. That's correct.

10 Q. You talked about how many individuals were
11 inside of the car.

12 A. Yes.

13 Q. That's all in here, right?

14 A. Yes, ma'am.

15 Q. You also talked about how the driver of the
16 Isuzu got out the vehicle and met the driver of the
17 Buick, right?

18 A. That's correct.

19 Q. You talked about what color the bag was that
20 was exchanged between Mr. Wilson and the driver of the
21 Isuzu.

22 A. That's correct.

23 Q. You even talked about what color and what type
24 of bag Mr. Wilson and Mr. Bienvenue exchanged.

25 A. Yes.

1 Q. You even talked about the exact location as to
2 where the Walmart bag was found, in this offense report,
3 right?

4 A. That's correct.

5 Q. But you want us to believe that you just did
6 not include the fact that you, in plain view, saw pill
7 bottles inside of that car?

8 A. It doesn't change the fact that that's what
9 happened.

10 Q. You're not listening to my question, sir.
11 You did not include that in your offense
12 report, although --

13 A. Let me --

14 Q. Let me finish -- although you included all the
15 other details I just mentioned.

16 A. The way it's worded, yes, you're right.

17 Q. It's not in there, is it?

18 A. I'm sorry. What fact?

19 Q. The fact that when I looked in the car and saw
20 the Walmart bag, I saw pill bottles. That's not in
21 there, is it?

22 A. It's not in there in those words.

23 Q. Well, anywhere in there, does it say that when
24 you looked in that vehicle and saw the Walmart bag, you
25 saw pill bottles? Is it worded any other way that maybe

1 I'm missing?

2 A. There's no -- it's not worded the way you're
3 describing it.

4 Q. There's no reference about you seeing any pill
5 bottles in that vehicle, speaking of the brown Dodge, is
6 there?

7 A. That's correct.

8 Q. You didn't have a warrant to get inside that
9 vehicle, did you?

10 A. No.

11 Q. There were no exigent circumstances because the
12 defendant was being detained at this time, correct?

13 A. That's incorrect.

14 Q. Well, was the defendant being detained?

15 A. He was being detained, but that's not the
16 question you just asked me.

17 Q. Well, I'm asking: Was the defendant detained?

18 A. At what point, ma'am?

19 Q. Maybe I lost you somewhere. After the
20 defendant was detained -- that's where I'm at, okay?

21 A. Okay.

22 Q. After the exchange was made --

23 A. Okay.

24 Q. -- you stated that in the back of his vehicle,
25 he was detained?

1 A. No.

2 Q. Okay. Well, where --

3 A. You asked was he moved. At one point you asked
4 me if he was moved anywhere once he was detained.

5 Q. Tell me --

6 A. And I answered you and said that he was at one
7 point moved from in between the vehicles to behind his
8 vehicle, the truck.

9 Q. Okay. And, so, it is at that point that -- at
10 least that's what you just stated before -- that he was
11 detained?

12 A. Ma'am, yes, he was detained at the scene.

13 Q. Okay. And, so, if he's detained by officers,
14 he cannot access the inside of his vehicle. Is that fair
15 to say? You guys are not going to just let him go run
16 inside his vehicle, are you?

17 A. After he was detained, he did not have an
18 opportunity to access his vehicle.

19 Q. Okay. And no one else would have access to
20 that vehicle. You guys are not going to let someone else
21 come and drive that vehicle off, are you?

22 A. That's correct.

23 Q. In fact, that's a crime scene now, according to
24 you, correct?

25 A. At the point we found the narcotics, you're

1 correct.

2 Q. And, so, then, no one is going to have access
3 to that vehicle at that point?

4 A. Well, yes. The officers at the scene have
5 access.

6 Q. Other than the officers.

7 A. That's correct.

8 Q. So, then, sir, there were no circumstances that
9 existed that could deteriorate the evidence that could
10 have been in that vehicle?

11 A. That's incorrect.

12 Q. What circumstances, sir, were the exigent that
13 could deteriorate the evidence in that vehicle?

14 A. You're talking about the circumstances that led
15 us to obtain the evidence without a warrant? Is that the
16 question you're asking?

17 Q. No. I'm asking you: What exigent
18 circumstances existed that could have deteriorated that
19 evidence before you went in and grabbed it without a
20 warrant?

21 A. Well, No. 1, he was in a public parking lot.

22 Q. But he was detained. He wasn't --

23 A. He had the bags in his hand as soon as --
24 before we went up to him. It was an open door, and it
25 was in plain view.

1 Q. Sir, I'm speaking now of when Mr. Bienvenue was
2 detained. It was after he was detained that you found
3 the drugs; isn't that true?

4 A. It was after he was moved out from between the
5 vehicles. Yes, it was after he was detained.

6 Q. And it's fair to say, sir, with all the
7 officers with 19, 15, 16 years' experience -- if you're
8 at a crime scene, with six or seven of you guys out there
9 armed and ready to go, you're not going to allow a
10 defendant to run back to his vehicle to get inside?

11 A. That's correct, yes.

12 Q. Okay. And, so, sir, you say that the exigent
13 circumstance is that he had access to the vehicle?

14 A. I never said that.

15 Q. Okay. Then let me rephrase the question. What
16 was your exigent circumstance?

17 A. I didn't have exigent -- by law, I had access
18 to the narcotics in the fashion in which we found and
19 recovered it.

20 Q. That's not the question I asked you. I said:
21 What was your exigent circumstance?

22 MS. DREHNER: Your Honor, I believe he's
23 already answered that question.

24 MS. QUINONES: No, Your Honor, he hasn't.

25 THE COURT: I tell you what. Let's do

1 this for a few moments. I need to take a break because I
2 have some pleas to take. So, we'll stop at this point;
3 and then we'll continue after I take the pleas.

4 MS. QUINONES: Your Honor, do you mind if
5 we go grab something? I just need a little something.

6 THE COURT: Go right ahead. If you could
7 be back here, say, by 1:20.

8 MS. QUINONES: Yes, sir.

9 THE COURT: All right. So, we'll stand in
10 recess on this matter till 1:20.

11 MS. QUINONES: And, Your Honor, may I ask
12 that the witness adhere to -- I'd like to invoke the Rule
13 at this point and ask that the witness adhere to the Rule
14 and ask that the witness not be allowed to confer with
15 counsel while he's on the stand.

16 My basis is we're in the middle of
17 cross-examination. I don't want anything to taint the
18 cross-examination of this witness, and I'm asking that
19 the Court instruct the witness not to discuss the case
20 while he's in the middle of cross-examination.

21 THE COURT: Well, he's going to have the
22 right to confer with the State's attorney at some point
23 in time. I mean, he has the right to talk to the
24 attorneys.

25 MS. QUINONES: And I agree, Your Honor.

1 I'm just asking the Court not to allow it in the middle
2 of cross-examination.

3 THE COURT: How much longer will your
4 cross-examination be?

5 MS. QUINONES: Oh, maybe 30 minutes.

6 THE COURT: All right. So, at this point,
7 step down.

8 But you're going to be back in 20 minutes,
9 right?

10 MS. QUINONES: Yes, sir. Ten.

11 THE COURT: All right. Step down; and if
12 you need to grab something real quickly to eat, you may.
13 And at this point you won't be conferring with counsel
14 because you're still under cross.

15 THE WITNESS: Okay. The only concern I
16 have is the evidence. I didn't know if -- do I leave it
17 here or --

18 THE COURT: It's in the custody of the
19 court reporter.

20 THE WITNESS: Okay.

21 MS. QUINONES: Thank you, Your Honor.

22 (Recess.)

23 THE COURT: All right. Ms. Quinones, you
24 may continue.

25 MS. QUINONES: Thank you, Your Honor.

1 CROSS-EXAMINATION (Continued)

2 QUESTIONS BY MS. QUINONES:

3 Q. Officer Baccus, where we left off, I was asking
4 you what was your exigent circumstance, if any.

5 A. For recovering the narcotics?

6 Q. Yes.

7 A. The fact that he placed the bag in the car and
8 he tried to flee the scene and also I saw the narcotics
9 in plain view.10 Q. So, your testimony today is that the exigent
11 circumstances that you're claiming is that, one, that the
12 defendant placed the bag in the vehicle and tried to
13 flee?14 A. Tried to separate himself from us and the
15 evidence, yes.16 Q. But it's true that he was not able to flee; you
17 were able to detain him?

18 A. He was in a bad spot.

19 Q. But it's true, sir, he was not able to flee;
20 you were able to detain him?

21 A. That's correct.

22 Q. And your second exigent circumstance that you
23 mentioned is that you saw the evidence in plain view --
24 the pill bottles in plain view?

25 A. Yes.

1 Q. Even though that is not in your offense report.

2 A. It's not worded that way. You are correct.

3 Q. Well, can you tell me where in your report,
4 where it's worded in any way, that you saw in the vehicle
5 a Walmart bag and pills inside of it?

6 MS. DREHNER: Your Honor, I'm going to
7 object to asked and answered and also relevancy. In
8 terms of exigency, it's not something that we're arguing
9 under. We'll have an opportunity to argue later on, but
10 it's been asked and answered.

11 THE COURT: Sustain the objection.

12 Q. (BY MS. QUINONES) And you did not have a
13 warrant?

14 A. No, ma'am.

15 Q. And, surely, there were enough officers on the
16 scene that day -- how many officers were on the scene
17 that day?

18 A. I would say there was approximately ten.

19 Q. And Mr. Wilson was detained without incident?

20 A. Yes.

21 Q. Mr. Bienvenue was detained without incident?

22 A. Yes.

23 Q. And the occupants of the Isuzu Rodeo, you guys
24 let them go?

25 A. Eventually, yes. There was another individual

1 that was arrested for a parole violation.

2 Q. Okay. That was Darrell Walker?

3 A. Yes, ma'am.

4 Q. And the other individuals were then free to go
5 from the Isuzu, eventually?

6 A. Eventually, yes.

7 Q. So, how long would you say that you guys were
8 on the scene that day?

9 A. Oh, we were there over an hour.

10 Q. And, surely, you could have been there longer
11 if the situation necessitated so. You could have been
12 there as long as you needed to to get your business done.

13 A. That's correct.

14 Q. So, if you needed a warrant, surely, out of the
15 ten officers that were there, there were officers who
16 could have secured the scene?

17 A. Yes.

18 Q. And other officers who could have obtained a
19 warrant, if needed?

20 A. If we had needed a warrant, we would have
21 gotten a warrant; and we would have stayed there.

22 Q. Now, you stated -- when we talked earlier, you
23 stated that nothing that Mr. Bienvenue did in and of
24 itself was criminal but it was your suspicion. Is that
25 right, or did I characterize what you stated wrong?

1 A. Well, yeah, I think you may be characterizing.
2 I mean, nothing he was doing there was illegal, I think
3 would be a correct statement.

4 Q. Okay. Let me rephrase it.

5 Him pulling into the parking lot was not
6 illegal.

7 A. That's correct.

8 Q. Him getting out of his vehicle to go talk to
9 another individual was not illegal?

10 A. That's correct.

11 Q. And passing over a Walmart bag without knowing
12 what's in it -- because you've already testified that you
13 didn't know what was in it at the time that he passed it
14 off, correct?

15 A. I testified I had a suspicion of what was in
16 it.

17 Q. Okay. So, that's what I'm speaking of. You
18 had a suspicion?

19 A. Yes.

20 Q. But you didn't know for certain?

21 A. There was no way of knowing for certain until I
22 saw it.

23 Q. So, then, it was your suspicion that caused you
24 to detain him?

25 A. That was one of the -- yes, one of the reasons

1 was my suspicion that they were making a narcotics
2 transaction.

3 Q. And it was based on that suspicion that you
4 detained him and then looked inside of his vehicle and
5 grabbed the bag?

6 A. Also along with the other circumstances we
7 spoke of earlier.

8 Q. None of which included Mr. Bienvenue, correct?

9 A. Incorrect.

10 Q. Well, the informant didn't give you any
11 information.

12 A. Well, but you're speaking of circumstances.
13 And the circumstances I'm speaking of is the actions
14 we've already discussed: Him placing the bag and trying
15 to flee the location.

16 Now, if we're going back to the informant,
17 then, yes, the informant knew nothing of anybody
18 involved. Didn't know any names. Never gave me any
19 names that I'm aware of.

20 Q. And you said that when he tried to flee the
21 location, he was unable to get very far because there
22 were ten officers and the way the vehicles were situated?

23 A. Right. The vehicles were side by side; and we
24 were coming from what would be the trunk of his truck and
25 the hood of the vehicle, coming from the front. Where he

1 was standing was, of course, a narrow space because of
2 the two vehicles; and behind him was hedges. So, he
3 turned and tried to go where the hedges were, but there
4 was nowhere to go because we were approaching from the
5 other side.

6 Q. Okay. So, then once you detained him, then at
7 that point the bag was already in the vehicle, correct,
8 once he was detained?

9 A. Yes.

10 Q. And he didn't have access to it at that point?

11 A. He was being --

12 MS. DREHNER: Your Honor, again, I'm going
13 to object to asked and answered. I think we've asked and
14 answered this five times.

15 THE COURT: Sustained.

16 Q. (BY MS. QUINONES) Did you ever see the driver
17 of the blue Isuzu with the Walmart bag?

18 A. No.

19 MS. QUINONES: May I have one moment, Your
20 Honor?

21 THE COURT: You may.

22 Q. (BY MS. QUINONES) Prior to you looking in
23 the -- this is my final question. Prior to you looking
24 in the bag, sir, you had no articulable facts or any
25 direct evidence that Mr. Bienvenue had committed any

1 crime?

2 MS. DREHNER: Your Honor, I'm going to
3 object. It calls for a legal conclusion.

4 MS. QUINONES: Well, may I respond, Your
5 Honor?

6 It goes directly to this witness' state of
7 mind at the time that they detained the defendant and
8 whether or not probable cause existed at the time to
9 arrest him or detain him, for that matter.

10 THE COURT: Sustain the objection.

11 Q. (BY MS. QUINONES) Had you noticed, sir, any
12 crime being committed by Mr. Bienvenue before you looked
13 in the bag?

14 MS. DREHNER: Objection, Your Honor.
15 Asked and answered.

16 THE COURT: Sustained.

17 Q. (BY MS. QUINONES) Your suspicions were not
18 verified until you looked in the bag; is that true?

19 A. Well, I don't know whether there was -- you're
20 talking in regards to your client only?

21 Q. I'm only speaking of -- Mr. Walker is not my
22 concern.

23 A. Okay. Well, I was just going to get it
24 straight.

25 But, yes, in regards to your client, I

1 couldn't be fully sure that he was in possession of a
2 controlled substance until I looked in the bag.

3 MS. QUINONES: I pass the witness.

4 MS. DREHNER: Very briefly.

5 REDIRECT EXAMINATION

6 QUESTIONS BY MS. DREHNER:

7 Q. Just in terms of the C.I., whenever you sign up
8 a C.I., is there a standard protocol that you-all follow?

9 A. Yes.

10 Q. What is that protocol?

11 A. First, we obtain all their information. We run
12 it to make sure they're not wanted or on probation or
13 parole. We have to verify information that they give us.
14 We don't just go out on the first time, on their
15 information. We do confirmation buys, confirmation
16 arrests, to build their credibility, to make sure they
17 are a credible informant and not just trying to give us
18 information for their benefit.

19 Q. And they have to fill out paperwork and be
20 verified by you-all?

21 A. Yes.

22 MS. QUINONES: Objection. Leading, Your
23 Honor.

24 THE COURT: Sustained.

25 Q. (BY MS. DREHNER) Did you do so in this case?

1 A. Yes.

2 Q. And though you didn't want to just guess how
3 many times you've used him, you can say that you've used
4 him in the past before?

5 MS. QUINONES: Objection. Leading.

6 MS. DREHNER: I will rephrase. I'm sorry.

7 THE COURT: Rephrase your question.

8 Q. (BY MS. DREHNER) Have you used him before?

9 A. Yes, numerous times.

10 Q. Okay. Let me move on to November 29, 2011.

11 Did you ever see the defendant or his
12 codefendant go into Bass Pro Shop?

13 A. No.

14 Q. What were their -- did you ever see them go
15 into any of the other shops? Well, are there any other
16 shops nearby?

17 A. It's a major parking lot strictly for Bass Pro
18 Shop.

19 Q. Okay. But they never made any sort of attempt
20 to go into the --

21 A. No. They were parked in the rear of the
22 parking lot.

23 Q. Based on your training and experience, is it
24 typical in narcotics transactions that the people
25 involved in the narcotics transactions will park right

1 next to each other?

2 A. Yes.

3 Q. Passenger to passenger?

4 A. Yes. They're going to want to get close so
5 they can try to -- not have to be seen, what they're
6 doing.

7 Q. What other aspect of this transaction was
8 typical of a narcotics transaction, based on your
9 training and experience?

10 A. Well, like I said earlier, generally after a
11 pill crew obtains pills, they're going to go to a
12 location where the pharmaceutical bags are going to be
13 separated from the individuals who actually obtained them
14 to the individual that's paying for them.

15 Q. Okay. What about the exchange of money?

16 A. Well, of course. Once they were exchanging
17 money and we knew the circumstance -- the information we
18 had off the Rodeo and the bags, the exchange of money
19 between the vehicles, all was similar to several other
20 narcotics investigations I've been involved in.

21 Q. As you were approaching the defendant after you
22 had done the takedown signal, did you see where he was
23 putting the bag?

24 A. Yes.

25 Q. In regards to State's Exhibits 1 and 2, when

1 you recovered the drugs, were you able to verify the
2 markings on them?

3 A. Yes.

4 Q. And how did you know it was Hydrocodone?

5 A. I've done hundreds of investigations. I've
6 purchased them in an undercover capacity and also worked
7 numerous investigations on Hydrocodone.

8 MS. QUINONES: Your Honor, I'm going to
9 object, No. 1, for this witness to testify as what
10 exactly a pill is without any scientific testing to that
11 effect. He can talk about what he thinks it is, but he
12 surely can't make any conclusions.

13 MS. DREHNER: And I'm just asking based on
14 his training and experience at that point in the
15 investigation.

16 MS. QUINONES: That wasn't the question.

17 THE COURT: Overrule the objection.

18 Q. (BY MS. DREHNER) Do you know what Hydrocodone
19 looks like?

20 A. Yes, ma'am. The tabs are scored with markings
21 that are put on there by the manufacturers.

22 Q. What's the common manufacturer?

23 A. Well, one major one that we deal with is
24 Watson. It's Watson 540s and Watson 503s, and the fact
25 that they were obtained from a pharmacy and still had the

1 label on them.

2 Q. And does the label actually state that it is
3 Hydrocodone?

4 A. Yes, ma'am.

5 Q. One more question: With regards to the Walmart
6 bag, was it sealed; or was it open?

7 A. It was open.

8 MS. DREHNER: Nothing further.

9 THE COURT: Ms. Quinones.

10 MS. QUINONES: Briefly.

11 RECROSS-EXAMINATION

12 QUESTIONS BY MS. QUINONES:

13 Q. Did you bring the Walmart bag with you today,
14 sir?

15 A. No, ma'am. It's in the property room.

16 Q. Would it not have been beneficial for us to see
17 the Walmart bag, sir?

18 A. It could be beneficial, and it can be provided.

19 Q. But did you bring it with you today?

20 A. No, ma'am.

21 Q. Isn't it true that the windows of that Dodge
22 truck were tinted?

23 A. I'm not certain. The doors were open.

24 Q. So, you're stating that the door was open?

25 A. Yes, ma'am. The front passenger door was open.

1 Q. And you're stating that also the driver's side
2 door -- the passenger door of Mr. Wilson's vehicle was
3 open, as well?

4 A. Yes, because he was entering the vehicle as we
5 came in. It was open.

6 Q. So, both vehicles' doors were open?

7 A. Yes. The driver's side of Mr. Wilson's and the
8 passenger side of the defendant's.

9 Q. And they were parked side by side?

10 A. Yes. They were parked -- the Buick was backed
11 in --

12 MS. QUINONES: Objection, Your Honor.
13 Nonresponsive. He answered my question. He said yes.

14 THE COURT: Just answer her question.

15 THE WITNESS: Yes, sir.

16 THE COURT: Don't add any more. Thank
17 you.

18 Q. (BY MS. QUINONES) Now, you stated that they
19 did not go into the shop -- actually go into Bass Pro
20 Shop, correct?

21 A. At no time did I see them go into Bass Pro
22 Shop.

23 Q. So, you arrested them, though, before they
24 started to drive off, correct?

25 A. Yes.

1 Q. And, in fact, according to you, Mr. Bienvenue
2 was not even at the driver's side of his vehicle at the
3 time that he was apprehended, correct?

4 A. That's correct.

5 Q. So, you don't know where they could have gone
6 after the transaction, do you?

7 A. They could go anywhere they wished after the
8 transaction, I assume, if we weren't there.

9 Q. Okay. And, so, then, they could have gone into
10 the Bass Pro Shop had you not apprehended them; is that
11 right?

12 A. I would assume, yes.

13 Q. And, surely, you're not telling this Court that
14 an individual -- or if you met your brother somewhere and
15 you owed him some money or something like that and he had
16 something that Mom wanted to give you in a bag, that's
17 not illegal, right?

18 A. Correct.

19 Q. And as far as you know, that could have been --
20 at the time that that exchange happened, that could have
21 been what was going on then. Could have been.

22 A. I don't understand the question you're asking
23 me.

24 Q. No problem. I'll rephrase.

25 At the time Mr. Bienvenue got the Walmart

1 bag from Mr. Wilson and gave him money, at that
2 particular time, you did not know exactly what was going
3 on, did you?

4 A. I think I know what question you're asking; and
5 I'll answer it yes. I did not know what was in the bag,
6 and I did not -- I couldn't be certain at that time what
7 was in the bag.

8 Q. And it could have fit the hypothetical that I
9 just gave you concerning your brother, if you had one.
10 It could have fit that hypothetical.

11 A. No.

12 Q. So, it's your testimony that when you saw
13 Mr. Bienvenue give Mr. Wilson money, without knowing
14 what's in the bag, it couldn't have been a situation
15 where he may have owed Mr. Wilson money? Is that what
16 you're saying?

17 A. My testimony was this was a transaction, yes.
18 It was a transaction of money and a bag.

19 Q. And that's all you knew at that point?

20 A. At that point.

21 MS. QUINONES: I'll pass the witness.

22 MS. DREHNER: Nothing further, Your Honor.

23 THE COURT: May the witness be excused?

24 MS. QUINONES: Subject to recall, Your
25 Honor.

1 THE COURT: All right. Thank you, sir.
2 You may stand down. Keep in touch with Ms. Drehner in
3 case she needs you.

4 THE WITNESS: Yes. I'll wait.

5 THE COURT: All right. Thank you.

6 Ms. Drehner, do you have another witness?

7 MS. DREHNER: James Miller.

8 THE COURT: All right.

9 THE BAILIFF: Your Honor, the witness has
10 not been sworn.

11 (Witness duly sworn.)

12 THE COURT: Let the record reflect the
13 witness has been sworn.

14 All right. Ms. Drehner, you may proceed.

15 MS. DREHNER: Thank you, Your Honor.

16 JAMES MILLER,

17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 QUESTIONS BY MS. DREHNER:

20 Q. Would you please state your name?

21 A. James Miller.

22 Q. What do you do for a living?

23 A. I'm a chemist with the Houston Police
24 Department Crime Lab.

25 Q. And how long have you been with H.P.D. Crime