

1 on the third time did Daniel agree. That's not  
2 consent, Your Honor. That is acquiescence to lawful  
3 authority or in this case acquiescence to unlawful  
4 authority.

5 After being subjected to an illegal  
6 detention and an illegal pat down, Daniel finally  
7 after being worn down on his third time he said,  
8 okay, do what you got to do. You can search me.

9 I'm going to show the Court that that  
10 search was not an open invitation to fish through his  
11 pockets, just to look in his pockets. The officer  
12 didn't find a small amount of cocaine by looking in  
13 his pocket, he had to open his wallet and searched in  
14 the wallet. There will be no evidence that Daniel  
15 gave consent to search inside his wallet. We don't  
16 get to that issue, Judge, because prolonged detention  
17 knocks this whole case out and so does the Terry  
18 case. Thanks for listening.

19 MR. PHANCO: State waives his opening.

20 THE COURT: Thank you. You may proceed.

21 MR. PHANCO: Thank you.

22 **ARTURO CRUZ,**

23 having been first duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

25 BY MR. PHANCO:

Arturo Cruz - August 6, 2012  
Direct Examination by Mr. Phanco

1 Q. Go ahead and state your first and last name  
2 and smell it for the court reporter.

3 A. First name is Arturo, A-R-T-U-R-O, last  
4 name Cruz, C-R-U-Z.

5 Q. All right. And how are you currently  
6 employed?

7 A. Currently employed by the Harris County  
8 Constable's Office Precinct 8.

9 Q. How long have you been with the constable's  
10 office?

11 A. Been with Harris County Precinct 8 going on  
12 six years now.

13 Q. Six years. Did you do any law enforcement  
14 before you were --

15 A. No, sir.

16 Q. -- with the constable's office?

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

18 Q. So six years total law enforcement  
19 experience?

20 A. About five and a half or little over five  
21 and a half but close to six, yes.

22 Q. Did you go to school?

23 A. Yes, I did.

24 Q. Where did you graduate?

25 A. Sharpstown High School, went to HCC for

Arturo Cruz - August 6, 2012  
Direct Examination by Mr. Phanco

1       awhile and then U of H.

2           Q.       All right.  So in your six years -- well,  
3       let me ask you what's your current assignment?

4           A.       I work Patrol Division.

5           Q.       And how many years of your six were in  
6       patrol?

7           A.       All six of them.

8           Q.       All six patrol years?

9           A.       Correct.

10          Q.       I'm going to fast forward a little bit to  
11       February 19th, 2012.  Do you recall that date?

12          A.       Yes, I do.

13          Q.       Do you recall coming into contact with  
14       someone you know to be Daniel Glass?

15          A.       Yes, I do.

16          Q.       Is Mr. Glass in the courtroom today?

17          A.       Yes, he is.

18          Q.       If you could point him out using --

19                    MR. HELLER:  We'll stipulate as to  
20       identity, Your Honor.  That's not an issue here.

21                    THE COURT:  All right.

22                    MR. PHANCO:  Fantastic.

23          Q.       (BY MR. PHANCO) You come in contact with  
24       Daniel Glass.  What I want to do is go through the  
25       sequence of events, all right, on that traffic stop.

1 The sequence is very important, so break it down step  
2 by step.

3 A. Yes.

4 Q. How do you first come into contact with  
5 that vehicle that Daniel Glass is in?

6 A. I was traveling on the toll road, observed  
7 the vehicle throw a lit cigarette out the driver's  
8 side window.

9 Q. Are you rolling patrol or --

10 A. Rolling patrol.

11 Q. So you're traveling and you see a cigarette  
12 come out the window.

13 A. Correct. The driver's side window.

14 Q. Is that an offense you can stop a vehicle  
15 for?

16 A. Yes.

17 Q. Do you stop the vehicle?

18 A. Yes, I did.

19 Q. Tell us what happened next?

20 A. Stopped the vehicle, made contact with the  
21 driver, I --

22 Q. Real quick, before you go and make contact  
23 with the driver, do you do anything that you normally  
24 do in these situations like before -- I mean do you  
25 just pull over and immediately get out of your car or

1 do you do something else?

2 A. No, sir. For safety reason I run the plate  
3 to make sure it's not stolen or make sure it's not  
4 wanted for anything else.

5 Q. How long does that usually take?

6 A. Usually the returns are back in a few  
7 seconds.

8 Q. How long between the initial stop to when  
9 you first approached the vehicle would you say in a  
10 time -- approximate time?

11 A. When I lit the vehicle up to approach?

12 Q. Yes.

13 A. I'd say maybe a minute or two at the most.

14 Q. What do you do as you start to approach?

15 Tell us what happens?

16 A. As I approached the vehicle I observed it's  
17 occupied three times, look around --

18 Q. It was occupied three times?

19 A. Correct.

20 Q. By three persons?

21 A. Three persons, correct. Look around in the  
22 vehicle and see on the floor -- immediately notice --  
23 because for officer safety to make sure there aren't  
24 any pistols or knives, looked on the floor, noticed  
25 Whip-its which are little cannisters that people can

1 use to inhale.

2 Q. Inhale what?

3 A. It's a drug, it's a chemical that people  
4 inhale CO2 cannisters is what it is. It gets them  
5 high.

6 Q. So we're talking about cannisters?

7 A. Correct. Probably three, maybe four  
8 inches.

9 Q. You see these cannisters in the car when  
10 you first begin to approach before you talk to  
11 anybody or --

12 A. Correct. As I'm walking up in the backseat  
13 and I saw some in the center console as I'm talking  
14 to the driver.

15 Q. Give me rough estimate how many cannisters  
16 you saw in the car?

17 A. Maybe five or six.

18 Q. You see five, six cannisters throughout the  
19 backseat and in the center console?

20 A. Correct.

21 Q. You know these to be used for sniffing?

22 A. Correct.

23 Q. Then you made contact and what happens?

24 A. Made contact, identify all the individuals  
25 in the vehicle, come back to my patrol car and check

1       them on the computer.

2           Q.       Now Daniel Glass, the defendant, where was  
3       he situated in the vehicle?

4           A.       He was in the front right seat front  
5       passenger.

6           Q.       Front passenger. You returned to your  
7       vehicle after you identified all three?

8           A.       Correct.

9           Q.       What do you return to your vehicle with and  
10      what are you planning on doing?

11          A.       I returned to check them all, see if  
12      they're wanted and to possibly issue a citation.

13          Q.       So, again, give me approximate amount of  
14      time from the time that you made contact with him at  
15      the window, like how long is that preliminary, who  
16      are you, who's this, who's this, until you go back to  
17      your vehicle?

18          A.       That takes another two or three minutes.

19          Q.       Tell me what happened once you returned to  
20      your vehicle?

21          A.       When I returned to my vehicle I check on  
22      the individuals or once to make sure they're not  
23      wanted and then originally when I run the plate to  
24      make sure that I don't see, you know, any warrants  
25      for the vehicle, it also comes up with a history.

1 Didn't check it at first. I glanced through it but  
2 when I came back to the vehicle, I checked that  
3 previous history that somebody had come in contact  
4 with that vehicle, I --

5 Q. Real quick before we get to that.

6 A. Yes.

7 Q. So when you run the license plate in your  
8 system you get a history for that vehicle?

9 A. Absolutely, yes.

10 Q. When you first ran it before you made your  
11 initial approach, you didn't check what that history  
12 was?

13 A. I opened it but I didn't read it because I  
14 was in the process of conducting a traffic stop and  
15 my attention shouldn't have been there.

16 Q. You go and approach it, you come back and  
17 that's after you're checking all three of the  
18 passengers you look back in this history?

19 A. To see what it's about.

20 Q. What made you say -- after your initial  
21 stop, what made you say I'm going to go back and  
22 look?

23 A. I normally check to see what it was stopped  
24 for, if that's in the call slip or whether someone's  
25 arrested out of the vehicle.



1 Q. But what is it from your initial  
2 conversation when you first approached the vehicle  
3 and talked to the occupants, what made you want to  
4 come back and get more in detail?

5 A. The Whip-its. I wanted to investigate a  
6 little bit more what it was handled with before.

7 Q. The Whip-its, those are the cannisters?

8 A. CO2 cannisters.

9 Q. You start looking at the license plate and  
10 the history of that vehicle. What did you see?

11 A. I noticed somebody had been arrested and I  
12 recalled seeing that there were narcotics recovered  
13 or the person was arrested for narcotics.

14 Q. That car had been stopped for narcotics and  
15 people arrested out of that vehicle?

16 A. From what I recall, yes.

17 Q. Do you recall how close in proximity in  
18 date that was? Was it four years ago prior to the  
19 stop or --

20 A. I know it was several weeks ago, I want to  
21 say it was close to a month prior but I'm not  
22 100 percent sure.

23 Q. So talking about a couple weeks, weeks to a  
24 month that that car had been previously stopped for  
25 narcotics?

1           A.     Correct.

2           Q.     So you read through that history.  What do  
3 you do after you do that?

4           A.     I decide I'm going to ask the driver if I  
5 could search the vehicle.

6           Q.     So you then go approach the driver again?

7           A.     Correct.

8           Q.     How much time you spending in your car  
9 checking out the car history as well as all of their  
10 IDs?

11          A.     Just a few minutes I believe.

12          Q.     Give me approximation.

13          A.     Maybe three or four minutes.

14          Q.     So when you returned to the vehicle what  
15 happens?

16          A.     When I return to the vehicle I asked the  
17 driver for permission to search the vehicle, he  
18 granted me permission.

19          Q.     And so how does that happen?  He grants you  
20 permission while they're all sitting there and you  
21 start searching?

22          A.     Negative.  I asked the driver to step out  
23 first, pat him down.

24          Q.     Why do you pat down the driver --

25          A.     For weapons.  Original pat down.  I always

1 pat down for weapons.

2 Q. When you have a traffic stop and you're  
3 about to search the vehicle when you pull someone out  
4 of a vehicle, what makes you want to pat them down?

5 A. To make sure they don't have weapons. I  
6 check their waistbands, outside of their pockets,  
7 pant legs, boots if they're wearing boots.

8 Q. Then what do you do?

9 A. And every instance where I pat down I  
10 usually ask the person if I could search their  
11 pockets also --

12 THE COURT: What? I didn't hear.

13 THE WITNESS: Search their pockets.

14 THE COURT: All right.

15 Q. (BY MR. PHANCO) Because you don't do that  
16 in just your pat down?

17 A. No. Pat down is just to feel for bulky,  
18 for example, a knife or a gun.

19 Q. Then you ask additional permission to go  
20 inside the pockets?

21 A. Yes.

22 Q. So you did that with the driver?

23 A. Did that with the driver.

24 Q. And once you do that with the driver what  
25 do you do next?

1           A.     I talk to the passenger.

2           Q.     Do you remember which passenger you talked  
3 to first, Mr. Glass or the back passenger?

4           A.     Front passenger, Mr. Glass.

5           Q.     Tell me what happened when you pulled him  
6 out of the vehicle?

7           A.     I asked him to exit the vehicle, do a pat  
8 down. I asked him if I could search or check his  
9 pockets and he granted me permission as well.

10          Q.     What happened when you started checking his  
11 pockets?

12          A.     I checked his front and -- first his front  
13 pockets and then I checked his back right pocket and  
14 located a wallet.

15          Q.     Now did you open the wallet?

16          A.     Yes, I did.

17          Q.     Why'd you open the wallet?

18          A.     In past from experience I've seen knives --  
19 not knives but razors recovered from wallets,  
20 sometimes drugs or drug paraphernalia recovered from  
21 wallets, items like that. I even -- one deputy, if I  
22 recall correctly, recovered a handcuff key.

23                    THE COURT: A what?

24                    THE WITNESS: Handcuff key.

25          Q.     (BY MR. PHANCO) You've seen weapons inside

1 of the wallet, you stated you saw razor blades or  
2 something like that?

3 A. No.

4 Q. In the past?

5 A. Yes.

6 Q. But not in this particular defendant?

7 A. No.

8 Q. When you opened this defendant's wallet,  
9 what did you find?

10 A. First I noticed where the ID should have  
11 been I seen little cocaine baggie, you know, it's  
12 white powdery substance in a baggie that I suspected  
13 to be cocaine.

14 Q. What do you do?

15 A. I take it out of the wallet and ask him if  
16 he knew what it was.

17 Q. What'd he say?

18 A. He said he knew it was cocaine.

19 Q. You placed him under arrest at this point I  
20 assume?

21 A. Correct.

22 Q. Give me a ballpark time frame from the time  
23 when you first lit him up to the point where you  
24 found the cocaine in the defendant's possession, how  
25 long would you say that was?

1           A.       Maybe 15 minutes.

2           Q.       How long total was the traffic stop would  
3 you say after you found the drugs and then you went  
4 through the entire traffic stop, give me a ballpark?

5           A.       I don't recall the total time. If I issued  
6 the driver a citation it might have taken longer. I  
7 don't recall if I issued the driver a citation.

8           Q.       Let me ask you this, after you pulled out  
9 Mr. Glass and searched him and placed him under  
10 arrest, did you continued to check the back  
11 passenger?

12          A.       Correct, I searched the back passenger.

13          Q.       Did you search the vehicle?

14          A.       I searched the back passenger.

15          Q.       So I'm not going to hold you to it, give me  
16 approximation how long the total traffic stop might  
17 have lasted?

18          A.       From the time I cleared the scene and went  
19 downtown, maybe 30 to 40 minutes.

20          Q.       Now do you recall if on -- when you patted  
21 down the defendant Daniel Glass, when you gave him  
22 the initial pat down for weapons, when you pulled him  
23 out of the car and then you asked to go in his  
24 pockets, did you have to ask him once or did you ask  
25 him several times to go in his pockets?

1           A.       I asked him several times but I didn't hear  
2 him when he replied so I asked him again to make  
3 sure.

4           Q.       Is that only two times you asked him?

5           A.       Correct.

6                    MR. PHANCO: Pass the witness, Your  
7 Honor.

8                    THE COURT: All right. Counsel.

9                    MR. HELLER: May I proceed, Your  
10 Honor?

11                                   **CROSS-EXAMINATION**

12 BY MR. HELLER:

13           Q.       Officer, my name is Wayne Heller, I'm Mr.  
14 Glass' lawyer. How are you?

15           A.       Good.

16           Q.       Have you and I ever discussed anything  
17 about this case?

18           A.       You and I, no.

19           Q.       Let me ask you this, why do you write  
20 police reports?

21           A.       To document what happened on an arrest or  
22 any other incident.

23           Q.       So it recollects what happened, correct?

24           A.       Right.

25           Q.       Also gives the prosecutor an idea what is

1 important evidence in this case, right?

2 A. Yes.

3 Q. Do you have a copy your report today?

4 A. I don't have one.

5 Q. It's important for you to write down key  
6 evidence in your report, correct?

7 A. I'd say so, yes.

8 Q. Did you write anything at all about these  
9 Whip-it cannisters in your record?

10 A. No, I did not.

11 Q. So it was important for you to do so but  
12 you made a decision not to write that in the report  
13 that night?

14 A. I didn't make that decision, no. At that  
15 time it wasn't important to me.

16 Q. Okay, but it's important today?

17 A. No, I don't believe so.

18 Q. So that's not an important issue. Perhaps  
19 one of the reasons why is those aren't against the  
20 law, are they?

21 A. No, they're not.

22 Q. You can buy them at Spec's, right?

23 A. I don't know if you can buy them at Spec's,  
24 I have never seen them at Specs but I've seen them at  
25 Wal-Mart.



1 Q. People use them to make whipped cream,  
2 right?

3 A. I don't know.

4 Q. Also why they're called Whip-it?

5 A. I have no idea.

6 Q. They're used to make seltzer water, too?

7 A. I have no idea.

8 Q. In fact, you said it was CO<sub>2</sub>, it's actually  
9 nitrous oxide, correct?

10 A. I know they're used for paint ball guns.

11 Q. For paint ball guns? There's another legal  
12 use for them?

13 A. Yes.

14 Q. So the fact there were Whip-it cannisters  
15 in the car, that's not an indication of unlawful  
16 behavior, it is?

17 A. In my opinion it could be.

18 Q. Could be, right? Correct?

19 A. Uh, hum.

20 Q. But it's not necessarily is it? It might  
21 be?

22 A. Correct.

23 Q. Kind of give you idea something was going  
24 on, right?

25 A. Fair.

1 Q. You said that it took about 15 minutes from  
2 the time you pulled the vehicle over until you found  
3 the cocaine, correct?

4 A. Rough estimate but, yes.

5 Q. Would it surprise you in your call records  
6 if it was about twice that long?

7 A. No, it wouldn't.

8 Q. So it could have been up to 30 or 40  
9 minutes, correct?

10 A. Correct, it could have.

11 THE COURT: Could you ask that  
12 question again? Thirty or 40 minutes before the  
13 arrest was over?

14 Q. (BY MR. HELLER) In between the time you  
15 stopped the vehicle to when you found the cocaine, it  
16 could have been a lot longer than 15 minutes, right?

17 A. It could have.

18 Q. Thank you, sir. The initial purpose of  
19 this stop was to investigate the littering, correct?

20 A. Correct. Throwing a lit cigarette out the  
21 window.

22 Q. How long did it take you to investigate the  
23 littering?

24 A. Not very long, I just identified the driver  
25 and advised him why I stopped him.

1 Q. So the rest of your investigation, did that  
2 have anything to do with the littering offense?

3 A. Pursuant to that, no.

4 Q. At what point in the investigation did you  
5 decide to investigate for drugs?

6 A. Once I walked up to the vehicle after I  
7 identified everybody and started to notice the  
8 cannisters everywhere.

9 Q. So your testimony when you noticed these  
10 legal cannisters that's when you decided to hold them  
11 and further investigate, correct?

12 A. Correct.

13 Q. Now, also helped your investigation that  
14 you saw this car was somehow involved in some sort of  
15 arrest for drugs previously, right?

16 A. Yes, sir.

17 Q. But you don't know how long ago?

18 A. No, I don't remember exactly how long.

19 Q. And there's no evidence or information  
20 whatsoever that Daniel Glass was in the vehicle at  
21 that time, right?

22 A. Not that I know of, no.

23 Q. No evidence it was even the same owner of  
24 that vehicle at the time, right?

25 A. Not that I know of, no.

1 Q. No evidence that whoever was in that  
2 vehicle was convicted of that offense, correct?

3 A. No.

4 Q. In fact, you don't know anything about that  
5 except for that somehow sometime that car was  
6 involved in some sort of drug offense?

7 A. Correct.

8 Q. Was Daniel in the car at that time? The  
9 previous offense?

10 A. I'm not sure on the previous offense, I  
11 wasn't present.

12 Q. Did Daniel know about that car being  
13 involved in a previous offense?

14 A. Not that I know of, no.

15 Q. Was Daniel the owner of that car?

16 A. No, he was not.

17 Q. He's just the passenger, right?

18 A. Correct.

19 Q. When you were asking Daniel for consent to  
20 search, did you tell him he had a right to refuse  
21 you?

22 A. No, I did not.

23 Q. When you were patting him down did you tell  
24 him he had the right to refuse your pat down?

25 A. No, I didn't.

1 Q. When you were holding him at the scene did  
2 you tell him he had the right to leave the scene?

3 A. No, I didn't.

4 Q. What would you have done if you pulled the  
5 car over, Daniel opened passenger door and walked  
6 away? What would you have done at that point, sir?

7 A. Nothing. I'd ask him to step -- to come  
8 back but I mean ultimately if he wanted to walk away,  
9 it's his choice.

10 THE COURT: Ultimately if he wanted to  
11 walk away?

12 THE WITNESS: It would have been his  
13 choice.

14 THE COURT: All right.

15 Q. (BY MR. HELLER) It's your testimony you  
16 would have just let him walk away?

17 A. Correct.

18 Q. Let me ask you this, sir, did you have any  
19 information at all that any of the occupants in that  
20 vehicle were currently armed?

21 A. No, I didn't.

22 Q. Did you have evidence or indication in any  
23 way, shape or form that those three individuals were  
24 currently dangerous?

25 A. No, I did not.

1 Q. Did they make any threats towards you?

2 A. No, they did not.

3 Q. Did they appear to have any weapons in  
4 their pockets?

5 A. No, they did not.

6 Q. Did they appear to be intoxicated?

7 A. No, they did not.

8 Q. Did you find any information when you ran  
9 the records that they had ever been convicted of  
10 anything assaultive or in particular any sort of  
11 attitudes towards police officers?

12 A. No.

13 Q. As far as you know these were totally non  
14 violent threats to you?

15 A. Correct.

16 Q. Your testimony is when you patted them down  
17 it was part of your routine procedure because you  
18 always pat down people when you go to cars to check  
19 for weapons?

20 A. Correct.

21 Q. I'm going to ask you a specific question  
22 here. I'm going to use some legal language. Do you  
23 have any justification to believe that these  
24 individuals were currently armed and dangerous at the  
25 time you performed the pat down?

1 A. No, I do not.

2 Q. Did you, in fact, believe that they were  
3 currently armed and dangerous when you performed the  
4 pat down?

5 A. No, I did not.

6 Q. Did you know -- have you ever heard of  
7 Terry v Ohio?

8 A. Correct.

9 Q. Let me ask you this and I want your opinion  
10 on whether or not you think this is the law, are you  
11 allowed to just pat everybody down or do you need  
12 reasonable --

13 MR. PHANCO: Object to speculation.

14 THE COURT: You're asking for his  
15 legal conclusion, not a lawyer. I want you to ask  
16 something about facts.

17 MR. HELLER: Okay.

18 Q. (BY MR. HELLER) During your routine  
19 investigations, is it true that you pat people down  
20 all the time without a reasonable belief that they  
21 are presently armed and dangerous?

22 MR. PHANCO: I'll object to  
23 speculation on that, Judge.

24 MR. HELLER: If he knows.

25 THE COURT: If he does something all

1 the time not relevant to what happened in this case.  
2 Just what happened in this case.

3 Q. (BY MR. HELLER) In this case here, did you  
4 pat them down -- specifically, did you pat down  
5 Daniel Glass because it was your policy to pat down  
6 everybody?

7 A. Correct. Also the way we're trained, yes,  
8 sir.

9 THE COURT: I'm not understanding you  
10 well. Could you answer that again?

11 THE WITNESS: Also the way we're  
12 trained.

13 THE COURT: Okay. Go ahead.

14 Q. (BY MR. HELLER) Of course, Daniel Glass had  
15 nothing to do with throwing the cigarette out the  
16 window, correct?

17 A. No, he didn't.

18 Q. Let me ask you this, the consent that  
19 Daniel gave you, he told you you can go ahead and  
20 look in his pockets, right?

21 A. I asked for permission and he gave me  
22 permission.

23 Q. Let me ask you, sir, do you remember your  
24 exact words? You asked for permission to do what?

25 A. After I did the pat down or frisk the outer



1 clothing, I asked him do you mind if I check inside  
2 of your pockets and he said yes.

3 Q. Not the first time but --

4 A. First time he said something but I didn't  
5 understand him so I wanted to be sure what he said  
6 and then he said yes.

7 Q. You sure it wasn't three times?

8 A. Yes.

9 Q. You said two times?

10 A. Two times.

11 Q. You didn't hear him say yes the first time?

12 A. I didn't understand what he said.

13 Q. You didn't hear him say yes the first time,  
14 correct?

15 A. Correct.

16 Q. Okay. You never asked him if you could  
17 look inside his wallet, did you?

18 A. No, I didn't.

19 Q. He never gave you permission to look inside  
20 his wallet, did he?

21 A. No, I didn't ask him permission.

22 Q. Did you have probable cause to look inside  
23 his wallet at that point?

24 MR. PHANCO: Objection, legal  
25 conclusion.

1                   THE COURT: Sustained.

2           Q.       (BY MR. HELLER) When you looked inside his  
3 wallet were you looking for drugs?

4           A.       Not additionally, no, I just came upon the  
5 drugs when I opened his wallet. I was -- my initial  
6 reason for opening the wallet was primarily weapons  
7 or things that can be officer safety issues.

8           Q.       Your testimony is you looked inside his  
9 wallet to see if he had any weapons inside his  
10 wallet?

11          A.       Correct.

12          Q.       But you had no information at all that he  
13 was dangerous, correct?

14          A.       Correct.

15          Q.       Did he do anything threatening toward you?

16          A.       No, he did not.

17          Q.       He was very respectful to you, wasn't he?

18          A.       Very quiet, nervous, but I wouldn't -- I  
19 guess you could say respectful.

20          Q.       You didn't put anything in your report  
21 about him looking nervous, did you?

22          A.       Negative.

23          Q.       That's pretty important, isn't it?

24          A.       This situation I don't think so.

25          Q.       Let me ask you this, sir, when do you think

1 your memory would be better about this case, the  
2 night you wrote the report or six months later,  
3 today?

4 A. The night I wrote my report.

5 Q. When you wrote your report you didn't  
6 remember to put in Whip-its?

7 A. I'm sorry?

8 Q. You didn't remember to put in nitrous oxide  
9 cannisters?

10 A. No.

11 Q. You didn't remember to say Daniel was  
12 nervous?

13 A. No, I didn't.

14 Q. But you remember that today?

15 A. Correct.

16 Q. You remember that after talking to the  
17 prosecutor, correct?

18 A. No.

19 Q. You remembered that before you talked to  
20 the prosecutor?

21 A. Correct.

22 Q. But you didn't file a supplemental report,  
23 did you?

24 A. No.

25 MR. HELLER: Your Honor, I think

1 that's all.

2 I think that's all I have for you.

3 Thanks a lot.

4 MR. PHANCO: I have one quick question  
5 Judge.

6 **REDIRECT EXAMINATION**

7 Q. (BY MR. PHANCO) Are weapons common in like  
8 narcotics activity?

9 A. Absolutely, yes.

10 MR. PHANCO: Pass the witness.

11 **RECROSS-EXAMINATION**

12 Q. (BY MR. HELLER) And you had no evidence  
13 there was narcotic activity going on before you  
14 performed the weapons search, right?

15 A. Just the history but none for the  
16 individuals in that vehicle or no reason to believe  
17 that anybody in that vehicle in particular, no.

18 Q. Appreciate your honesty, sir. Thank you.

19 THE COURT: Thank you. You may step  
20 down.

21 If you'd call your next.

22 MR. PHANCO: State rests.

23 THE COURT: What says defense?

24 MR. HELLER: We rest. Just ask for  
25 argument.