

1 THE COURT: Thank you.

2 You may proceed.

3 MS. ASSAAD: Thank you, Your Honor.

4 OFFICER CULLEN DUNCAN,

5 having been called as a witness and being first duly

6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ASSAAD:

9 Q. Officer, will you please state your name for
10 the record?

11 A. Cullen Duncan.

12 Q. How are you employed?

13 A. As a peace officer with the Houston Police
14 Department.

15 Q. So you're a certified peace officer in the
16 state of Texas?

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

18 Q. What is your educational background?

19 A. University of Texas at Austin for my bachelor's
20 degree.

21 THE COURT: Can you hear back there? A
22 little?

23 You might want to keep your voice up and
24 speak directly into the mic.

25 THE WITNESS: Yes, Your Honor.

1 Q. (By Ms. Assaad) Do you have any further
2 education?

3 A. Yes, ma'am. Mountain State University for a
4 master's degree in strategic leadership.

5 Q. How long have you been a certified peace
6 officer?

7 A. Six years.

8 Q. Is that six years with the Houston Police
9 Department?

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

11 Q. Did you go through training to become a peace
12 officer?

13 A. I did.

14 Q. What was that? What was the training that you
15 went through?

16 A. We go through six months in the academy, which
17 is -- they teach us Penal Code and the nuances of
18 traffic law, and then they proceed to teach us tactics
19 and so forth that we use out on the street. From that
20 point, we go through six months of field training with a
21 training officer.

22 Q. And were you employed by the Houston Police
23 Department on March 31st of 2014?

24 A. Yes, ma'am, I was.

25 Q. What was your assignment at that time?

1 A. I was assigned at that time to the Divisional
2 Tactical Unit of the Southwest Station.

3 Q. And did you have a partner at that time?

4 A. I did, ma'am.

5 Q. Who was that?

6 A. Officer Valdez, Eric Valdez.

7 Q. Is he now a sergeant?

8 A. Yes, he is.

9 Q. On March 31st of 2014, do you recall what hours
10 you were working that day or which shift?

11 A. Yes, ma'am. My shift hours that day were
12 12:00 p.m. to 8:00 p.m.

13 Q. And are you assigned to a certain area of town?

14 A. Yes, southwest Houston.

15 Q. Were you patrolling that area of town when you
16 came across the defendant in this case?

17 A. Yes, ma'am, that's correct. I was.

18 Q. What drew you to the defendant's vehicle in
19 this case?

20 A. In this case, the traffic violations that the
21 defendant was committing.

22 Q. What were those traffic violations?

23 A. Occupying two lanes of traffic, failure to
24 maintain a single lane of traffic, and therefore
25 impeding traffic flow.

1 Q. Do you recall what kind of vehicle the
2 defendant was driving?

3 A. Yes, a Corolla, Toyota Corolla.

4 Q. What did you do in this case when you noticed
5 that a vehicle was committing a traffic infraction?

6 A. We waited to see if he corrected his violation.
7 We wanted to give him a chance to do so. However, when
8 he didn't do it, as he proceeded through the
9 intersection and continued to create a hazard on the
10 road, at that point we felt it was important to make
11 contact with him and speak with him.

12 Q. What road was he traveling on when you first
13 noticed him?

14 A. He was coming off Olmara, which is an east-west
15 running street that runs perpendicular to Stella Link.

16 Q. And how many lanes are on that street?

17 A. Two for east and west traffic, I believe.

18 Q. He was turning onto which street?

19 A. He was coming from Olmara west, north onto
20 Stella Link.

21 Q. How many lanes are on Stella Link?

22 A. Two. However, as it reaches the intersection
23 there, it opens up into a three-lane road where traffic
24 can make a left turn westbound onto West Bellfort.

25 Q. So which lanes did you see him occupying with

1 both lanes?

2 A. Sure. The No. 3 and No. 2 lane.

3 Q. And what intersection did you allow him to go
4 through to attempt to correct?

5 A. West Bellfort.

6 Q. How many lanes does Stella Link then have after
7 that intersection?

8 A. From that point, it converges to a two-lane
9 road.

10 MS. ASSAAD: May I approach the witness?

11 THE COURT: You may.

12 Q. (By Ms. Assaad) I'm showing you what's been
13 previously marked as State's Exhibits 1, 2, and 3. Will
14 you please look at those (indicating)?

15 A. Yes, ma'am.

16 Q. Are you familiar with what those depict?

17 A. Yes, ma'am.

18 Q. And do you believe that those pictures would
19 aid the jury in understanding the streets that we're
20 talking about?

21 A. Yes. Those are an accurate representation.

22 MS. ASSAAD: Your Honor, I'm going to
23 tender these to opposing counsel to review them. And I
24 offer State's Exhibits 1, 2, and 3 into evidence as
25 photos that are accurate depictions of the lanes that --

1 of the streets that we are talking about.

2 **(State's Exhibit Nos. 1 through 3 Offered)**

3 MR. GODINICH: No objections, Your Honor.

4 THE COURT: State's Exhibits 1, 2, and 3
5 are admitted.

6 **(State's Exhibit Nos. 1 through 3 Admitted)**

7 MS. ASSAAD: Thank you.

8 May I publish?

9 THE COURT: You may.

10 Q. (By Ms. Assaad) This is State's Exhibit 1.
11 There's a tiny little marker, the red dot that says
12 "West Bellfort" and "Stella Link Road." This is just a
13 depiction of the location in Harris County. Is this a
14 location in Harris County, Officer (indicating)?

15 A. Yes, ma'am, it is.

16 Q. Is that Harris County, Texas?

17 A. Yes.

18 Q. And State's Exhibit 2, will you tell me, what
19 does that depict (indicating)?

20 A. That's a depiction of the -- let's see --

21 Q. Sorry.

22 A. -- the intersection right there of Stella Link
23 and West Bellfort as well.

24 Q. Does that show the three lanes that you're
25 referring to on the south side of that intersection and

1 then the two lanes after the intersection?

2 A. That's correct, yes, ma'am.

3 Q. And then State's Exhibit 3, what does that
4 depict (indicating)?

5 A. That depicts the north side of that
6 intersection, West Bellfort Street where Stella Link
7 converges to a two-lane road.

8 Q. And is that the location where you initiated
9 your lights and sirens to then pull over the defendant?

10 A. The most accurate landmark that really
11 illustrates where that was would be close to that bus
12 stop right there, that Metro bus stop.

13 Q. What were the traffic infractions that you were
14 pulling the defendant over for at that time?

15 A. Failure to maintain a single lane of traffic,
16 which was, therefore, also impeding traffic flow in the
17 No. 3 lane on the south side of Bellfort and the No. 2
18 lane, and also as it converged on the north side that
19 No. 1 lane.

20 Q. So as it converged, was he still occupying two
21 lanes of traffic?

22 A. Yes, ma'am.

23 Q. So in this photo it would be both of those
24 lanes?

25 A. Yes, ma'am.

1 Q. What time of day was this?

2 A. It was daylight hours, in the evening.

3 Q. Was it -- were there -- was there heavy
4 traffic?

5 A. Yes, ma'am. I would say moderate traffic.

6 Q. Okay. And were -- did you notice any kind of
7 actions that other vehicles on the road were taking in
8 relation to the defendant's vehicle?

9 A. It was just essentially slowing traffic down.
10 Vehicles were -- from my perception and observations,
11 they were reluctant to pass because they were unaware
12 whether he was going to change lanes at that point, the
13 defendant, or correct that No. 3 lane -- or No. 2 lane,
14 rather.

15 Q. What is the speed limit there?

16 A. I believe it's 35.

17 Q. Would you say that the defendant was traveling
18 the speed limit?

19 A. At that time, pretty close to the speed limit,
20 yes, ma'am.

21 Q. You can actually touch that screen --

22 A. Okay.

23 Q. -- and point to where you believe you initiated
24 your lights and sirens to show the jury.

25 A. Sure. Approximately right there (indicating).

1 Q. So what happened after you initiated your
2 lights and sirens?

3 A. We initially hit our lights, and we didn't get
4 an immediate response from the driver. We wanted to
5 make sure that the driver of the vehicle was aware that
6 we were indeed stopping him, and so we popped the sirens
7 at that point and, I guess, yelped them at that point.

8 Q. And what did he do?

9 A. At that point, the driver looked in the
10 rearview mirror. And after he looked in the rearview
11 mirror and made eye contact with us, he turned around in
12 his seat.

13 Q. Is that the first time you could see the
14 driver's face?

15 A. Yes, that's correct.

16 Q. Could you see his face clearly or only his
17 eyes, or how much of him could you see at that time?

18 A. A fairly clear description of his face.

19 Q. And were his -- was his back window tinted or
20 blacked out?

21 A. There was no tint.

22 Q. So what happened after he turned around? Did
23 he stop?

24 A. No, ma'am, he didn't. He proceeded driving
25 northbound on Stella Link at that point.

1 Q. Did he pass anyplace where he could have pulled
2 over safely?

3 A. Yes, ma'am. There are several locations on the
4 east side of Stella Link that are safe locations that he
5 could have stopped.

6 Q. While he continued on, what did you do?

7 A. As he continued on, we, at that point, hit our
8 sirens and engaged them to a continuous frequency, I
9 suppose. And I got on the P.A., our public announcement
10 system, and wanted to make sure that I reiterated that
11 we were indeed stopping him and he needed to pull over.

12 Q. So that's like the microphone, the speaker
13 system?

14 A. Yes, ma'am.

15 Q. Okay. What did you say?

16 A. "Please pull over."

17 Q. And did he pull over?

18 A. No, ma'am.

19 Q. Where did he then go once he reached -- well,
20 how far did he go on Stella Link?

21 A. He took Stella Link all the way to the
22 intersection of the South Loop West and Stella Link.

23 Q. How far would you estimate that distance from
24 the time you initiated your lights to the --

25 A. Approximately half a mile.

1 Q. What did he do at that intersection?

2 A. Upon reaching that intersection, he entered the
3 parking lot of the Valero gas station, which is situated
4 right there on the east side of Stella Link and the
5 South Loop service road, eastbound lanes, and proceeded
6 through that Valero gas station there, in essence
7 cutting through.

8 Q. And did he attempt to stop in that gas station?

9 A. No, ma'am.

10 Q. Were there spaces available for him to safely
11 pull over his vehicle in that gas station?

12 A. Yes.

13 Q. Did he -- what speed would you estimate that he
14 was traveling at when he traveled through that gas
15 station?

16 A. I would say approximately 35 to 40 miles per
17 hour.

18 Q. Did he then -- were there people present at
19 that gas station?

20 A. Yes.

21 Q. How close would you estimate he came to
22 pedestrians or other vehicles?

23 MR. GODINICH: Objection, Your Honor. Not
24 relevant.

25 THE COURT: Overruled.

1 A. Proceed? I'd say approximately 10 feet.

2 Q. (By Ms. Assaad) And where did he go after he
3 exited that gas station?

4 A. As he proceeded through the gas station, he
5 entered the service road portion of 610.

6 Q. Did he travel down the service road?

7 A. Yes, ma'am.

8 Q. And how far did he travel down the service
9 road?

10 A. From that point, upon entering the eastbound
11 lanes of the service road, he continued to the next
12 major intersection.

13 Q. And at any point had you turned off your sirens
14 or turned off your lights?

15 A. No, ma'am. At that point, once he reentered
16 the eastbound lanes of the service road, I myself got on
17 the radio and began notifying surrounding units that we
18 were in the midst of a vehicle pursuit at that point.

19 Q. Did you know who he was before you pulled him
20 over?

21 A. No.

22 Q. Did you have any idea what kind of person you
23 were dealing with?

24 A. No, ma'am.

25 Q. So you said you continued to an intersection.

1 What intersection is that?

2 A. The next major intersection is Main, runs north
3 and south, intersects with the South Loop West.

4 Q. And what did he do at that intersection?

5 A. At that intersection, there's a designated turn
6 lane which allows one to turn south onto Main Street.
7 However, he didn't take that turn there. He
8 proceeded -- well, it looked like he was going to
9 continue through the intersection and continue
10 eastbound. However, he did turn from a nondesignated
11 lane southbound onto Main.

12 MS. ASSAAD: May I approach the witness?

13 THE COURT: You may.

14 Q. (By Ms. Assaad) I'm showing you what's been
15 previously marked State's Exhibits 4 through 10
16 (indicating).

17 A. Yes, ma'am.

18 Q. Will you please look at those and see if they
19 accurately depict the streets and areas that we're
20 referring to?

21 A. Yes, ma'am.

22 That's accurate. Yes, that is also -- and
23 so is this one. Yes, ma'am, these are accurate.

24 Q. Thank you.

25 MS. ASSAAD: I'm tendering these to

1 opposing counsel.

2 MR. GODINICH: No objections, Your Honor.

3 MS. ASSAAD: And move to enter them into
4 evidence as accurate depictions of the streets that
5 we're referring to.

6 **(State's Exhibit Nos. 4 through 10 Offered)**

7 MR. GODINICH: Again, no objections, Your
8 Honor.

9 THE COURT: State's Exhibits Nos. 4 through
10 10 are admitted.

11 **(State's Exhibit Nos. 4 through 10**
12 **Admitted)**

13 Q. (By Ms. Assaad) This is State's Exhibit No. 4.
14 Is this Stella Link Road the road the defendant traveled
15 on before the first gas station (indicating)?

16 MR. WAKEFIELD: You can tap the right-hand
17 corner of that screen.

18 THE WITNESS: Oh, sure.

19 THE COURT: It's not working.

20 Q. (By Ms. Assaad) Despite the extra arrows and
21 the blue dots, is this an accurate depiction of Stella
22 Link, the road that he was traveling down before the
23 first gas station (indicating)?

24 A. Yes, ma'am, that's correct. That's the school
25 right there as well (indicating).

1 Q. That's a school that he passed?

2 A. Yeah.

3 Q. And then showing you State's Exhibit No. 5, is
4 this that Valero gas station that you're referring to
5 (indicating)?

6 A. That's correct, yes, ma'am.

7 Q. And can you point, making a mark, where he
8 entered and drove through the gas station?

9 A. Sure. (Indicating.)

10 Q. And then he exited onto the service road?

11 A. That's correct, ma'am. He went through the gas
12 station, the gas station right there, and entered the
13 east lanes of the service road from there.

14 Q. And State's Exhibit No. 6, is this the Shell
15 gas station that he finally pulled over (indicating)?

16 A. Yes, ma'am.

17 Q. This is -- what is this road here on the left
18 (indicating)?

19 A. On the left?

20 Q. Is that the feeder, the service road?

21 A. What we're looking at right here is the
22 eastbound lanes of the South Loop West service road, and
23 this is Main Street, the intersection right here
24 (indicating).

25 Q. So this would be the service road and this is

1 Main Street (indicating)?

2 A. That's correct, ma'am.

3 Q. And did he enter through this entrance
4 (indicating)?

5 A. No, ma'am, he didn't.

6 Q. And when you said he made an illegal turn, are
7 you referring to going into this lane and making a turn
8 at the light as opposed to this turn lane here
9 (indicating)?

10 A. Yes, that's correct.

11 Q. State's Exhibit 7, is this Main Street
12 (indicating)?

13 A. Yes.

14 Q. So once he made the turn through here, did he
15 enter here (indicating)?

16 A. Yes, ma'am.

17 Q. And that's the first driveway on State's
18 Exhibit 7 coming from the intersection, just for the
19 record.

20 MR. GODINICH: Objection. Is that a
21 statement or a question? I would object. It's not
22 proper, Your Honor.

23 THE COURT: Sustained.

24 Rephrase your question.

25 Q. (By Ms. Assaad) Then State's Exhibit 8, what

1 does this depict (indicating)?

2 A. This is an aerial -- I guess a higher aerial
3 view of Main Street, the, I believe, southbound lanes of
4 Main Street and, once again, the entry into the Shell
5 station right there (indicating).

6 Q. So what highway is this?

7 A. South Loop West.

8 Q. And is this the service road he was traveling
9 down?

10 A. Yes, ma'am. Yes, ma'am.

11 Q. And what road is this (indicating)?

12 A. Main.

13 Q. And is this the entrance where he went into the
14 Shell station (indicating)?

15 A. Yes.

16 Q. State's Exhibit 9, will you explain to the jury
17 what Point A is?

18 A. Certainly. Point A would be the approximate
19 location in which our emergency lights and sirens were
20 activated.

21 Q. And what is the distance between "A" and the
22 Loop?

23 A. Approximately half a mile.

24 Q. What is located at this location (indicating)?

25 A. Valero gas station.

1 Q. And then what is "B"?

2 A. The Shell station.

3 Q. So would you estimate the total distance from
4 the time that you initiated your lights to the time that
5 the defendant finally stopped his vehicle --

6 MR. GODINICH: Objection, Your Honor, to
7 leading.

8 THE COURT: Well, I haven't heard the
9 entire question yet.

10 Q. (By Ms. Assaad) What amount of distance would
11 you estimate Point A to Point B?

12 THE COURT: Overruled.

13 You may answer.

14 THE WITNESS: Yes, ma'am.

15 A. Approximately a mile.

16 Q. (By Ms. Assaad) And State's Exhibit 10, does
17 that depict the same area that we just saw on State's
18 Exhibit 9, except just the aerial view (indicating)?

19 A. Yes, that's correct.

20 Q. Once he pulled into Shell gas station, what did
21 he do?

22 A. As he entered the Shell gas station, he pulled
23 alongside this region right here. There's some -- a pay
24 phone, I believe, on this side. And the actual gas
25 pumps are going to be on this side (indicating).

1 Q. And was that a gas station -- were there other
2 people at the gas station?

3 A. Yes.

4 Q. How many pumps would you say that gas station
5 has?

6 A. Approximately ten.

7 Q. Was this -- were there people who were out of
8 their cars?

9 A. Yes.

10 Q. Were there cars at the pumps?

11 A. Yes, ma'am.

12 Q. What did the defendant do once he pulled into
13 the gas station?

14 A. He stopped his vehicle.

15 Q. And did you -- or did your partner, who was
16 driving, pull behind him?

17 A. Yes. Yes, we did.

18 Q. What do you do per policy in these types of
19 situations?

20 A. Because it's considered a high-risk vehicle
21 approach due to the nature of the offense, which is
22 evading in a motor vehicle. We're directed by
23 departmental policy to do what's called a felony traffic
24 stop.

25 Q. What does that mean?

1 A. It means that we are taught to give verbal
2 commands. We have our weapons out due to the nature of
3 the events that usually constitute a high-risk vehicle
4 approach. And we begin doing our best to establish
5 verbal commands with the individual or individuals in a
6 vehicle.

7 Q. Did you -- how many people were in the vehicle?

8 A. Two.

9 Q. When did you learn that there were two people
10 in that vehicle?

11 A. On Stella Link near West Bellfort.

12 Q. And how did you learn that?

13 A. Because the passenger also was -- also turned
14 around and made eye contact with us as well.

15 Q. So how did you and your partner proceed?

16 A. Officer Valdez proceeded giving verbal
17 commands, instructing the driver to exit the vehicle,
18 make his hands visible. At the same time, due to the
19 high traffic of people in this gas station at the time,
20 I was trying to direct them out of the gas station
21 because they were in a bad stop, unsafe position, in the
22 gas station if for some reason things escalated.

23 Q. So what kind of commands did your partner order
24 the defendant to comply with?

25 MR. GODINICH: Objection to hearsay, Your

1 Honor.

2 THE COURT: Your response?

3 MS. ASSAAD: It goes to the impression of
4 the defendant and it explains the defendant's behavior.

5 THE COURT: The objection's overruled.

6 Q. (By Ms. Assaad) You may answer.

7 A. Officer Valdez was instructing the driver to
8 make his hands visible, to exit the vehicle. We were
9 trying to establish verbal compliance for our safety and
10 the safety of the driver and the passenger.

11 Q. Were you -- was he loud when he was making
12 these commands?

13 A. Yes.

14 Q. Do you think that the defendant -- was the
15 defendant at such a distance where he could have heard?

16 A. Yes. The distance was close enough that he
17 could hear.

18 Q. How did the defendant respond?

19 A. He was aggressive with us. Initially, he
20 didn't exit the vehicle and we saw him reaching around
21 furtively within the vehicle. At that point, we
22 continued -- Officer Valdez continued giving verbal
23 commands.

24 Q. How long did it take for the defendant, from
25 the first command, to get out of the vehicle to the

1 defendant actually stepping out of the vehicle?

2 A. Approximately 30 to 45 seconds.

3 Q. And did he step out -- what side of the vehicle
4 did he step out of?

5 A. Driver's side.

6 Q. What did he do after he got out of the vehicle?

7 A. When he exited the vehicle, his behavior was
8 what I normally don't see from individuals in those
9 situations. I've been in those situations before. He
10 was aggressive and confrontational and verbally abusive.

11 Q. What do you mean by "verbally abusive"?

12 A. He was cursing at us. At one point, after he
13 exited the vehicle, he turned towards us in an
14 aggressive manner, doubled his fists up. Throughout
15 this whole time he was yelling at us.

16 Q. What kinds of things was he yelling?

17 MR. GODINICH: Objection to hearsay, Your
18 Honor.

19 THE COURT: Overruled.

20 Q. (By Ms. Assaad) If they are curse words, you
21 can say them in the courtroom.

22 A. Okay. He was calling us racist mother-fuckers,
23 fuck you, things like that. Those are specific things I
24 remember from that day. And all the while, when he
25 would turn his back to us, he was reaching around his

1 waistband.

2 Q. And what kind of commands were you or your
3 partner giving him?

4 A. Officer Valdez proceeded in a very calm manner
5 to instruct the driver to make his hands visible. And
6 at that point -- so he could approach the driver because
7 he wasn't coming back towards us. He was disobeying our
8 commands at that point.

9 Q. Why do you want him to get away from his
10 vehicle?

11 A. Well, it's safer for us. And also, there was
12 another occupant in the vehicle, the passenger. We're
13 taught that -- we're taught not to render a vehicle or
14 house safe until we've actually checked it. In that
15 case, we hadn't done that.

16 Q. What happened next?

17 A. From that point, the defendant did get in
18 position -- after these continued verbal commands, he
19 did get in a position to where we were able to safely
20 put him in handcuffs. However, he was still berating us
21 with his verbal words.

22 Q. So the interaction with the defendant from the
23 time he got out of the vehicle to the time he was in
24 handcuffs, how would you characterize it?

25 A. Confrontational, aggressive, and noncompliant,

1 until it was a time when he had to be.

2 Q. Was he disrespectful?

3 A. Yes.

4 Q. What happened after he was placed in handcuffs?

5 A. We did our best to maintain eye contact with
6 the passenger and we found him to be more receptive. He
7 was compliant with us and kept his hands up in the
8 vehicle. And from that point, we escorted the defendant
9 back to the patrol vehicle until we could make contact
10 with the passenger.

11 Q. What happened with the passenger?

12 A. He was placed in handcuffs as well.

13 Q. And as the defendant was being taken back to
14 the patrol car, did anything occur?

15 A. Yes. As we escorted him back to the rear
16 portion of the patrol vehicle, we were conducting a
17 search of his person, and Officer Valdez was with me at
18 that point. And at that point, the defendant took some
19 actions that were aggressive further, physically this
20 time.

21 Q. What were those actions?

22 A. He pushed off the vehicle and lunged towards my
23 partner, Officer Valdez, who was attempting to search
24 him, wouldn't allow him the opportunity to check him for
25 weapons or anything like that, and attempted to knock

1 him on the ground.

2 Q. Why was Officer Valdez attempting to search the
3 defendant?

4 A. Because he was under arrest at that point.

5 Q. Do you search everybody before you put them in
6 the patrol car?

7 A. Yes, yes.

8 Q. What happened to Officer Valdez?

9 A. Officer Valdez and the defendant went to the
10 ground. As the defendant pushed off the vehicle and
11 attempted to knock Officer Valdez down, they both fell
12 to the ground and -- yes.

13 Q. Was -- at this point, have other officers made
14 the scene?

15 A. Yes, other officers are responding.

16 Q. Why did they come to the scene?

17 A. Because it's an assist-the-officer event, which
18 is a higher priority. It's the highest priority call
19 that we have.

20 Q. And why is it that priority? Why are you
21 categorizing this case as the highest priority?

22 A. Because it puts the public in danger when we
23 have citizens take these actions, and it also puts us in
24 danger as well, and themselves.

25 Q. Is the gas station still filled with people or

1 have people left?

2 A. People have, in essence, cleared out of the gas
3 station at that point.

4 Q. Were they -- was this kind of a quiet event
5 that no one was really noticing or have they -- do you
6 think that the other people had noticed what was
7 happening?

8 A. People absolutely noticed what was happening.
9 And I was doing my best in a very chaotic situation to
10 protect the public and get them out of a situation that
11 could be dangerous to them.

12 Q. What happened with the vehicle once the
13 defendant was finally in the patrol car?

14 A. We did a search of the vehicle. It initially
15 began as an inventory search of the vehicle. However,
16 as soon as I entered the vehicle to begin that inventory
17 search, I immediately smelled that strong chemical odor
18 of PCP.

19 Q. Before we talk about the PCP, what is an
20 inventory search?

21 A. An inventory search is a search of the interior
22 of the vehicle, portions of it that are not locked for
23 towing reasons.

24 Q. And why was the vehicle going to be towed?

25 A. Well, first of all, we had recovered evidence

1 from the vehicle that was hazardous. But also the -- I
2 don't believe the passenger had an I.D. on his person, a
3 driver's license, a valid driver's license. We didn't
4 have anybody that we could release the vehicle to. And
5 it had been involved in a felony offense at that point.

6 Q. So you couldn't release the vehicle to the
7 passenger?

8 A. Right.

9 Q. Pursuant to the inventory search, because the
10 vehicle would be towed, you said you smelled PCP?

11 A. Yes. As I stuck my head in the vehicle, I was
12 immediately hit with that very strong chemical odor.

13 Q. Have you had training on the smell of PCP or is
14 that based on experience?

15 A. It's -- we do receive some training in the
16 academy where they bring in evidence that's PCP and give
17 us a chance to smell it. That way we recognize it,
18 because once you smell it once, it's something you don't
19 forget, but also street experience as well.

20 Q. Can you describe the smell of PCP?

21 A. It's very acidic, almost -- it's -- if you've
22 ever smelled formaldehyde, it's got that smell to it.

23 Q. So what did you find in the vehicle?

24 A. As we -- as I proceeded checking the vehicle at
25 that point, I located a Newport -- I believe it's a

1 Newport cigarette box that contained remnants of
2 where -- it was still wet and it had -- it had contained
3 a PCP cigarette, a dipped cigarette in there at one
4 point.

5 Q. What else did you find?

6 A. We found a zipper pouch with some gummy bears
7 that had been cut up, individually packaged, from my
8 training and experience, it looked like for street-level
9 sale. And those were found -- we submitted those for
10 testing and those were found to have psilocyn, I
11 suppose, which is a derivative of psilocybin, which is
12 in mushrooms. It's a psychotropic drug. Xanax and
13 marijuana as well were in the vehicle.

14 Q. Going back to your patrol car, does your patrol
15 car have a dash cam?

16 A. No, ma'am.

17 Q. And were you able to get any kind of
18 surveillance footage or photos from street cameras?

19 A. No, ma'am.

20 Q. Is that something that's available to officers
21 for criminal cases like this?

22 A. The street cams -- there weren't any street
23 cameras that I'm aware of. As far as the gas station,
24 no, ma'am.

25 Q. What did you do with the drugs that you found

1 in the defendant's vehicle?

2 A. We went through a process at that point of
3 assigning a unit at that point to assume custody to tag
4 the recovered evidence. "Tagging" means we place it in
5 a secured area in case there's a need for it for court.

6 Q. Do you recall who the unit was?

7 A. I believe it was Officers Tarrell and Gemmill.

8 Q. Do you recognize the defendant, Lawrence
9 Glover, in the courtroom today?

10 A. Yes.

11 Q. Can you identify him by an article of clothing?

12 A. By an article of clothing?

13 Q. Yes, or just say what he's wearing.

14 A. Yes. The defendant is wearing a dress coat and
15 a tie and a white T-shirt, white long-sleeved shirt.

16 MS. ASSAAD: May the record reflect that
17 the witness has identified the defendant?

18 THE COURT: Which of the two gentlemen,
19 please?

20 A. Oh. Excuse me. The individual sitting to the
21 right of the attorney.

22 THE COURT: The record will reflect the
23 witness has identified the defendant.

24 Q. (By Ms. Assaad) Was the vehicle that you and
25 your partner were driving, was that a marked patrol car,

1 meaning it wasn't an undercover unit?

2 A. Yes, it was a marked vehicle.

3 Q. And were you wearing a uniform that day?

4 A. Yes.

5 Q. Was Officer Valdez as well?

6 A. Yes, ma'am.

7 MS. ASSAAD: Pass the witness.

8 THE COURT: Mr. Godinich, you may proceed.

9 MR. GODINICH: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. GODINICH:**

12 Q. Officer Duncan, a few questions this morning.

13 Who was it that drafted up the offense
14 report, was it you or Officer Valdez?

15 A. I would have, sir.

16 Q. Okay. So you've had an opportunity to review
17 that offense report before your testifying this morning?

18 A. Yes, sir.

19 Q. Okay. And you've also had an opportunity to
20 review that offense report with this prosecutor here,
21 have you not?

22 A. Yes, sir, that's correct.

23 Q. When was that? When was the last time?

24 A. This morning.

25 Q. Okay. And had you had any other opportunity to

1 meet with this prosecutor before testifying today?

2 A. That's correct.

3 Q. That was a question.

4 A. Oh, yes, sir. Yes, sir, I have.

5 Q. Okay. How many times have you met with her
6 before testifying today?

7 A. Once.

8 Q. Was that just this morning or some additional
9 time?

10 A. It was, I believe, last week.

11 Q. Okay. So you've met with her twice all total?

12 A. Yes, sir, that's correct.

13 Q. Okay. Now, I think you told us that -- so let
14 me just back up a little bit.

15 So you prepared this offense report,
16 correct?

17 A. Yes, sir, I did.

18 Q. And did Officer Valdez prepare any type of
19 supplement to this offense report?

20 A. Yes, he did.

21 Q. Okay. So is that also included in the -- I
22 have a copy in front of me -- 13 pages that are included
23 in this offense report?

24 A. That's correct. There's a supplement page to
25 that, sir.

1 Q. Okay. Fourteen pages.

2 All right. Now, I, too, have had an
3 opportunity to look at the offense report. When -- the
4 offense report doesn't reference whether or not --

5 MS. ASSAAD: Objection. Improper
6 impeachment.

7 MR. GODINICH: Let me back up just a
8 minute.

9 Q. (By Mr. Godinich) Do you recall whether or not
10 the windows were either up or down, the windows in
11 Mr. Glover's vehicle?

12 A. No, I don't recall that.

13 Q. Okay. Do you think that would have been
14 important if you had been trying to stop the vehicle to
15 try and remember and record whether or not the windows
16 had been up or down?

17 A. Sure, that could have been.

18 Q. Okay. And you've also indicated in your
19 testimony that you are aware, though, that there was no
20 tinting on the windows.

21 A. That's correct, sir.

22 Q. So would that kind of indicate to you that the
23 windows were probably up on the vehicle if you noticed
24 there was no tinting on the windows?

25 A. Well, it was difficult for me to get, I

1 suppose, an angular look at the windows to see. I was
2 more focused on what the occupants were doing at that
3 point.

4 Q. Well, no, I understand that. I'm not arguing
5 with you.

6 A. Yes, sir.

7 Q. But I guess that kind of segues into my next
8 question because you said several times that the two
9 people in the vehicle had made eye contact with you. So
10 they had -- and you were following in another vehicle
11 behind this vehicle. I would have thought if they had
12 been trying to make eye contact with you, you would have
13 noticed if the windows were up or down.

14 A. Sure.

15 Q. Okay. And you can't recall that today, can
16 you?

17 A. That's correct.

18 Q. Now, you've also told us, I think, that -- in
19 your testimony that at some point, the driver of the
20 vehicle, my client, Mr. Glover -- and I think you
21 said -- correct me if I'm mistaken -- that he had looked
22 in the rearview mirror, correct?

23 A. Yes, sir.

24 Q. Okay. Now, I don't see that in the offense
25 report.

1 A. Sure.

2 Q. Can you tell me where in the offense report you
3 recall that?

4 A. It's not in there, sir. I felt like it was --
5 I see what you're saying, but the defendant did make eye
6 contact with me in the vehicle and I did put that in
7 there.

8 Q. Okay. But you did not put in there that he
9 made eye contact looking in the rearview mirror?

10 A. That's correct, sir.

11 Q. Okay. So is that something that you recall
12 today months later, or is that just something that may
13 or may not have happened?

14 A. It's something that I recall.

15 Q. Okay. But it's not in the offense report?

16 A. That's correct, sir.

17 Q. Now, if I understand your testimony correctly,
18 it was just you and Officer Valdez that was following my
19 client and the passenger this entire time until at least
20 the Shell station, correct?

21 A. Yes, sir, that's correct.

22 Q. Okay. At what point did you call backup?

23 A. Sure. We began notifying units, as I had
24 stated earlier, as the defendant entered the eastbound
25 lanes of the service road, South Loop, when he cut

1 through the Valero gas station.

2 Q. Okay. And it's how far from Valero to the
3 Shell station?

4 A. Approximately half a mile, sir.

5 Q. Okay. So -- but it is your testimony that law
6 enforcement backup did not show up until y'all -- my
7 client had stopped at the Shell station, correct?

8 A. Yes, sir, that's correct.

9 Q. And correct me again if I'm mistaken, but it is
10 your testimony that my client, who was driving the
11 vehicle, maintained a consistent level of miles per
12 hour, correct?

13 A. Yes, sir, that's correct. He did accelerate,
14 as I stated, as he passed through the Valero gas station
15 there.

16 Q. And he accelerated to what?

17 A. Approximately 35 to 40 miles per hour. So
18 40 miles per hour.

19 Q. Okay. So between 35 to 40 miles per hour. Did
20 he maintain a higher speed limit once he went past the
21 Valero?

22 A. No, sir. It was essentially that same rate of
23 speed, essentially, but there were people in that Valero
24 gas station.

25 Q. I understand.

1 A. That's a pretty high speed to go through a
2 public --

3 Q. My question, though, was whether or not he
4 maintained a consistent level of speed, and I think
5 you're saying yes.

6 A. Yes, sir. I did answer that question. Yes,
7 sir, he did.

8 Q. Just so that I'm clear on something here, there
9 were no weapons found in this vehicle or on my client,
10 correct?

11 A. That's correct.

12 Q. Or on the passenger, correct?

13 A. Yes, sir, that's correct.

14 Q. And you told us -- I'm kind of -- I don't mean
15 to be skipping around here, but let's talk a little bit
16 about the Shell station. When he pulled into the Shell
17 station, I don't see any reference in your report as to
18 whether or not he used any kind of a turn signal or he
19 was in the wrong lane or anything like that. Did that
20 happen, was he in the wrong lane?

21 A. When you say the "wrong lane," what --

22 Q. Was he in an inappropriate lane when he turned
23 into the Shell station?

24 A. No, sir. He turned from the correct lane.

25 Q. Okay.

1 A. But I did designate -- I did make note of his
2 turn from the Loop onto Main from a nondesignated lane.

3 Q. Did he -- when he was turning into the Shell
4 station -- if you could focus on the Shell station for
5 just a moment.

6 A. Certainly.

7 Q. Did he use his turn signal or do you recall?

8 A. I don't recall, sir.

9 Q. And I guess reviewing your offense report would
10 not help you?

11 A. No, sir.

12 Q. And when he pulled into that Shell station, was
13 it any kind of a -- and I'm trying to get a picture here
14 of the turn into the Shell station. Was it any kind of
15 a speeding up and screeching to a halt or any kind of a
16 contact with any other vehicle or anything other -- any
17 other permanent object in that Shell station?

18 A. There was no contact. If you're referring to
19 like a vehicle accident as far as whether he sped up or
20 what his, you know, actions were in the vehicle entering
21 that gas station, I don't recall, sir.

22 Q. And when he actually pulled into that Shell
23 station and, you said, stopped, he actually turned off
24 his engine, didn't he?

25 A. I don't recall.

1 Q. Well, okay. Let's back up just a little bit
2 here.

3 When we -- or when you and your fellow
4 officers prepare these offense reports, you're
5 actually -- you go to school to learn how to do this,
6 correct?

7 A. Yes, sir, that's correct.

8 Q. You and your fellow officers are taught how to
9 prepare an offense report because these are important?

10 A. Absolutely they are.

11 Q. Because you and I know that the information
12 that's contained in these reports, a number of people
13 may review them, correct?

14 A. Absolutely, sir.

15 Q. The lawyers review them, the State of Texas
16 reviews them, you review them, correct?

17 A. That's correct, sir.

18 Q. And it's really important that -- for everybody
19 that, again, important information be contained in this
20 report, correct?

21 A. Absolutely, sir.

22 Q. Okay. Because it may be awhile before a case
23 goes to trial or before it's resolved, correct?

24 A. Absolutely, sir. That's why I put the
25 important information in there.

1 Q. But you don't have in here whether or not he
2 turned off his car as opposed to coming to a sudden stop
3 or anything like that and then just either --

4 A. Sure.

5 Q. -- opening up the door --

6 A. Absolutely. It was -- as I stated earlier in
7 my testimony, as I was going through the process,
8 Officer Valdez was -- a felony traffic stop, that's
9 something we're trained to do, is have the driver remove
10 the keys from the ignition and place them on the
11 vehicle. However, the defendant didn't comply with our
12 commands.

13 Q. Okay. Did he come to a complete stop and turn
14 off the vehicle?

15 A. Whether he turned the vehicle off, I don't
16 recall. He did come to a complete stop, that's correct.

17 Q. But you think that if he had not turned the
18 vehicle off, that would have been in the report?

19 A. Had he not --

20 MS. ASSAAD: Objection to relevance.

21 THE COURT: What's the relevance, Counsel?

22 MR. GODINICH: I'm trying to determine,
23 Your Honor, what's important and what's not. This
24 officer --

25 MS. ASSAAD: That's not the question that

1 was asked, Your Honor.

2 THE COURT: Objection is overruled.

3 Q. (By Mr. Godinich) So again, the question is:
4 If he had not turned off his vehicle when he came to a
5 complete stop, do you think that would have made it
6 inside your report?

7 A. I didn't make note of that. I acknowledged
8 that I did not make note of him -- of whether or not he
9 turned the vehicle off or not. The vehicle did come to
10 a complete stop, sir.

11 Q. Okay. How -- and you may have told us this
12 already. How much time elapsed between the time that
13 the vehicle came to a complete stop and you or Officer
14 Valdez approaching the driver's side of the vehicle?

15 A. I'd say approximately 30 to 45 seconds.

16 Q. And who made that approach, you or Valdez?

17 A. Due to the nature of the events that transpired
18 up to that point --

19 Q. I don't care.

20 A. Yes.

21 Q. Which one, you or Valdez?

22 A. Certainly. My partner and I.

23 Q. Both of y'all approached?

24 A. Yes, sir, we did.

25 Q. Okay. And -- I'm skipping around just a little

1 bit here. Later on there was an inventory search of the
2 car, correct?

3 A. Yes, sir.

4 Q. And you testified -- is that the first time you
5 smelled PCP?

6 A. Yes, sir, that's correct.

7 Q. Okay. So why is it -- are you sure about that?

8 A. I'm not 100 percent sure. I'd have to refer to
9 the report again and see if I did make note of that
10 when we were escorting the defendant back to the
11 vehicle.

12 Q. Why don't you go ahead and review your offense
13 report again as to the first time that you smelled the
14 odor of PCP.

15 A. Sure.

16 Q. Do you have a copy with you?

17 A. No, sir, not in the courtroom.

18 MR. GODINICH: Can the State please provide
19 a copy to this officer?

20 (Document tendered to witness.)

21 THE WITNESS: Thank you.

22 A. Yes, I do see that in the report.

23 Q. (By Mr. Godinich) Okay. Now, where was --
24 during the time of this inventory search, where was the
25 pouch located? Since you've got the report, please

1 refresh your memory if you need to.

2 A. Sure.

3 Q. Just let me know when you're finished.

4 A. Sure.

5 The pouch, as the offense report reflects,
6 was discovered near the emergency brake wedged between
7 the center console and the passenger seat.

8 Q. Okay. So it was -- am I correct in restating
9 that the pouch was not found on the driver's side of the
10 car but on the passenger side of the car?

11 A. Correct, sir. It was within arm's reach of the
12 defendant, that's correct.

13 Q. Oh, I understand that, but --

14 A. But, yes, sir, you're --

15 THE REPORTER: Wait. One at a time,
16 please.

17 THE WITNESS: I'm sorry. Sorry about that.

18 MR. GODINICH: Sorry.

19 Q. (By Mr. Godinich) My question was -- and you
20 can go ahead and add anything you'd like, but my
21 question was: Where was the pouch located? I think you
22 said on the passenger side of the vehicle.

23 A. Yes, sir, I did say that.

24 Q. Now, did you see at any time, Officer, from the
25 time you saw this vehicle from the very beginning to the

1 time that you stopped the vehicle, did you see any kind
2 of gestures, furtive movements by either the passenger
3 or the driver of this vehicle?

4 A. Yes, sir. I stated earlier in my testimony the
5 defendant, as we were giving verbal commands during the
6 felony stop, was reaching furtively around the interior
7 of the vehicle.

8 Q. No. My question was -- sorry if I didn't make
9 it clear.

10 A. Okay.

11 Q. From the time you first saw the vehicle until
12 the stop, did you see anyone make any kind of
13 movements -- other than looking around, I think you
14 stated -- anything other than that in the vehicle?

15 A. Sure. No, sir.

16 Q. Okay. Now, I understand at some point you said
17 that after the stop, you saw the defendant make some
18 movements, correct?

19 A. Yes, sir, in the midst of the traffic stop.

20 Q. In the midst of the traffic stop.

21 Now, that's at the Shell station?

22 A. Yes, sir, that's correct.

23 Q. After the car was stopped?

24 A. Correct.

25 Q. But for the mile or so, there were no -- there

1 were no movements other than you claiming that they
2 turned around and looked at you?

3 A. That's correct.

4 Q. And I think you also testified that he reached
5 around his waistband, correct?

6 A. Yes, sir, that's correct.

7 Q. And -- but you've also testified that there was
8 no -- there were no weapons or anything -- anything
9 physical that could cause harm, was there, on his
10 waistband or on his person?

11 A. No, sir. That I recall, no.

12 MR. GODINICH: May I have just a moment,
13 Your Honor?

14 THE COURT: You may.

15 (Pause.)

16 MR. GODINICH: Pass the witness, Your
17 Honor.

18 THE COURT: Before you proceed, we're going
19 to take our midmorning break at this time, ladies and
20 gentlemen. I'm going to take a short recess to allow
21 you an opportunity, if you choose, to go to the second
22 floor and get a snack or coffee. If we've got any
23 smokers on the panel, now would be the time for you to
24 go outside of the building and smoke, if you would like
25 to do that.

1 So I'm going to release you to the bailiff,
2 and we will resume in about 20 minutes or so.

3 THE BAILIFF: All rise.

4 THE COURT: Thank you, Officer. You can
5 step down.

6 (Brief recess.)

7 (Open court, defendant and jury present.)

8 THE COURT: Thank you. Please be seated.
9 Ms. Assaad, you may proceed.

10 MS. ASSAAD: No further questions.

11 THE COURT: Okay. May this witness be
12 excused?

13 MR. GODINICH: Yes. Thank you.

14 THE COURT: Officer, you may step down and
15 you're excused.

16 Call your next witness.

17 MS. ASSAAD: Sergeant Eric Valdez.

18 THE COURT: While we're waiting for the
19 next witness, just some additional instructions. I
20 think I saw at least one juror taking notes. Judges are
21 different in their policy about that. I actually do
22 allow note-taking. However, the notes have to be for
23 your use only. Because we do have an official court
24 reporter taking down everything that's being said in the
25 courtroom, there really can only be one official record,

1 but if it helps you to sort of stay focused and
2 listen -- some people -- I, for one, listen better
3 sometimes if I'm writing. You're certainly welcome to
4 do that. However, when you-all begin your
5 deliberations, I will ask the bailiff to collect the
6 notes. Okay?

7 THE BAILIFF: This witness has been sworn,
8 Your Honor.

9 THE COURT: Thank you.
10 Okay. You may proceed.

11 MS. ASSAAD: Thank you, Your Honor.

12 **SERGEANT ERIC VALDEZ,**
13 having been called as a witness and being first duly
14 sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MS. ASSAAD:**

17 Q. Sergeant, will you please state your name for
18 the record?

19 A. Eric Valdez.

20 Q. And are you a certified peace officer in the
21 state of Texas?

22 A. Yes, I am.

23 Q. Where are you employed?

24 A. Houston Police Department.

25 Q. How long have you been a certified peace