

1 now you won't be able to sit and listen to testimony.
2 So you will have to be outside while they are
3 testifying. Your lawyer invoked the Rule, not the
4 State.

5 All right.

6 *(Witness sworn.)*

7 THE COURT: Thank you. Please take a
8 seat.

9 You may proceed.

10 MR. BURDETTE: Thank you, Judge.

11 **J. DURAN,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. BURDETTE:**

15 Q. Good morning, Officer Duran.

16 A. Morning, sir.

17 Q. Do you have a copy of your report with you?

18 A. It's actually in the back.

19 Q. Okay. Do you feel like you might need it to
20 refresh your memory?

21 A. Yes, please.

22 Q. We'll get that. It's in the witness room?

23 A. Yeah. Officer Carreon has got it back there.

24 Q. Okay. Well, I would like to direct your
25 attention to April 12th, 2011. You have an independent

1 recollection of that night?

2 A. Yes, sir, I do.

3 Q. You were on patrol that night?

4 A. I was.

5 Q. What particular part of town?

6 A. East End, Houston's East End.

7 Q. If we are looking at a map, what area does that
8 encompass?

9 A. It encompasses 45 and Telephone up to 45 and
10 College.

11 Q. Okay. So as a patrol officer, you respond to
12 calls for service and take reports and serve warrants
13 and everything; is that right?

14 A. Yes, sir.

15 Q. What were you doing that particular night?

16 A. That particular night, I was conducting
17 surveillance for a suspect that I filed a warrant on,
18 assault with a deadly weapon.

19 Q. So someone totally unrelated to this case?

20 A. Yes, sir.

21 Q. So while you're conducting that surveillance,
22 what's your focus on at that time?

23 A. Well, I was conducting surveillance. I was
24 paying attention to the target location. So I was
25 hearing the radio, but I wasn't paying too much

1 attention to it.

2 Q. At some point did you hear a call drop
3 regarding an aggravated robbery in the 3000 block of
4 Broadway?

5 A. Yes, sir. I heard the officer put out a BOLO,
6 be on the lookout, for a suspect wanted for robbery.

7 Q. Did you pay much attention to it at that time,
8 given what you were doing?

9 A. Not too much attention, but I picked up parts
10 and bits of it.

11 Q. Were you ever able to serve that warrant?

12 A. No, I didn't. We didn't serve it.

13 Q. Okay. So did you finally give up?

14 A. For that guy? Yeah. For that guy.

15 Q. Then you go back on routine patrol?

16 A. Yes, sir.

17 Q. So part of that routine patrol is to run plates
18 and stop vehicles on traffic?

19 A. Yes, sir. I probably run about a hundred or
20 more license plates a day, looking for stolen vehicles
21 or vehicles that might be wanted in other crimes.

22 Q. Okay. At some point did you run plates for a
23 Chevy -- well, on a Chevy?

24 A. Yes, sir.

25 Q. And why did you run those plates?

1 A. Just another car that I ran that's just
2 routine.

3 Q. Okay. So nothing necessarily out of the
4 ordinary with regards to the vehicle itself. You just
5 run the plates?

6 A. Yes, sir.

7 Q. Okay.

8 A. A random license plate check.

9 Q. When you run a license plate check, what is it
10 you're checking?

11 A. Registration, to see if registration is
12 up-to-date. Also see if it has insurance, who the owner
13 of the vehicle might be, see if it is stolen. We might
14 get a wanted hit or suspect's vehicle hit.

15 Q. Okay. So did you run a vehicle, 2005 Chevy,
16 license plate BH3-B239?

17 A. Yes, sir.

18 Q. What came back?

19 A. It came back with an expired registration.

20 Q. Okay. Registration is something you have to
21 renew through the Texas DPS, right?

22 A. Yes, sir.

23 Q. As soon as you realized that that vehicle had
24 expired registration, what do you do?

25 A. I activated my emergency lights signaling for

1 the driver to pull over.

2 Q. Did the vehicle pull over?

3 A. Yes, sir.

4 Q. Didn't run from you or anything?

5 A. No. He pulled over immediately.

6 Q. What do you do after stopping the vehicle for
7 expired registration?

8 A. After I stopped the vehicle, I approached the
9 driver of the vehicle to retrieve a driver's license and
10 insurance.

11 Q. Okay. And as you approached, do you do that?

12 A. Yes, sir.

13 Q. How many people are in the vehicle?

14 A. Just one.

15 Q. The driver?

16 A. Yes, sir.

17 Q. Did you see the sticker on the windshield?

18 A. I did.

19 Q. Did you confirm that it was, in fact, expired?

20 A. Yes, sir.

21 Q. Did the driver produce license and insurance?

22 A. He did produce his driver's license. I don't
23 think he found insurance. He was looking for it.

24 Q. Okay. Did he tell you whether or not it was
25 his car?

1 A. He said it was his girlfriend's car.

2 Q. That's not uncommon. Other people drive other
3 people's cars?

4 A. Yes, sir.

5 Q. How was the driver of that vehicle acting from
6 the time you made contact with him?

7 A. The driver of the vehicle seemed really
8 squirmy. He was moving around a lot and just kind of
9 nervous. Made me a little nervous as well.

10 Q. Based on that, on how he was acting, what did
11 you do?

12 A. At that point I asked him if he had any weapons
13 in the vehicle. And he stated, No. I asked for consent
14 to search. He gave me verbal consent.

15 Q. Okay. You say he gave you verbal consent. He
16 said, Yes, you can search?

17 A. Yes, sir.

18 Q. Did he also give you consent to search the
19 vehicle?

20 A. Yes, sir.

21 Q. Did you have him step out of the vehicle?

22 A. No. At that point, given his size and the
23 nature of our job being dangerous, I took him into
24 custody while he was inside the vehicle.

25 Q. Okay. So how was that done?

1 A. That's done for suspects that are much larger.

2 Q. No. How is it done?

3 A. It's -- you basically tell them to put their
4 hands up in the car, have them turn their body and you
5 place them in handcuffs while they are sitting down
6 inside the vehicle.

7 Q. Okay. So did you do that?

8 A. Yes, sir. That prevents any type of physical
9 confrontation from occurring.

10 Q. Okay. So he is detained at that point?

11 A. Yes, sir.

12 Q. Do you do that for officer safety?

13 A. Yes, sir, I do.

14 Q. You didn't have to fight with him or anything
15 at that time?

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

17 Q. He was cooperative?

18 A. Yes, sir.

19 Q. Okay. So you put handcuffs on him. Then you
20 have him step out of the vehicle?

21 A. Yes, sir.

22 Q. Where do you place him?

23 A. I placed him in the backseat of my patrol car
24 to make sure he wouldn't try to run on foot.

25 Q. Okay. Was he still nervous at that point?

1 A. He was still nervous. His voice started
2 cracking a little bit.

3 Q. Did you pat him down?

4 A. I did, sir.

5 Q. Did you find any weapons?

6 A. I didn't.

7 Q. Did you search him at that point or did you
8 search the vehicle?

9 A. We always search people first so they can't
10 bring any weapons or contraband into our patrol vehicle.

11 Q. Okay. Did you search his pockets?

12 A. I did.

13 Q. What did you find?

14 A. Found a Visa credit card.

15 Q. Do you recall the person's name on the credit
16 card?

17 A. Jose Castillo.

18 Q. What else did you find in the defendant's
19 pocket?

20 A. I believe that was it from what I recall that
21 day.

22 Q. Okay. Nothing else really stuck out?

23 A. No, sir.

24 (*Cell phone ringing.*)

25 (*Pausing.*)

1 Q. So when you find the credit card, you pull it
2 out. Do you read the name on it?

3 A. Yes, sir.

4 Q. You said it said Jose Castillo.

5 A. Yes, sir.

6 Q. Did that seem odd to you?

7 A. A little odd.

8 Q. Why is that?

9 A. I think it seems odd when you have anybody's
10 credit card that's not in your name. This one seemed
11 particularly odd because the driver of the vehicle was
12 African-American and the name on the credit card was an
13 Hispanic surname.

14 Q. And that part of town that you're in, is it
15 predominantly one ethnicity?

16 A. Yes. It's predominantly Mexican,
17 Mexican-American.

18 Q. Okay. Hispanic part?

19 A. Hispanic, yes, sir.

20 Q. Did you ask him about the credit card?

21 A. I did, sir.

22 Q. What did he say?

23 A. When I asked him whose credit card is this, he
24 said, That's my Mexican homie's credit card. I forgot
25 to give it back to him.

1 Q. So he acknowledged that the owner of the card
2 was, in fact, Hispanic?

3 A. Yes, sir.

4 MR. TANNER: Excuse me. Can I interrupt
5 for a second, Judge?

6 THE COURT: You may.

7 MR. TANNER: Just for the record, at this
8 point, was he in custody or not?

9 THE WITNESS: He had been detained.

10 MR. TANNER: Okay. Thank you.

11 Q. (BY MR. BURDETTE) Had you placed him under
12 arrest for the traffic violation?

13 A. No, sir. He wasn't under arrest. He was being
14 detained.

15 Q. He said, It was my Mexican homie's card. Was
16 that an odd answer?

17 A. It was.

18 Q. So what did you do? Did you just give it back
19 or did you do anything with the card?

20 A. No. I went back to my patrol car and asked
21 dispatch to run the credit card. I give her the credit
22 card number, the expiration date and the name on the
23 credit card to see if it was stolen.

24 Q. Did it come back stolen?

25 A. No. After a few minutes, she said that it was

1 clear.

2 Q. Now, give us some background information
3 perspective. How long does it generally take for a
4 stolen item to be entered into the HPD system where a
5 dispatcher would recognize it as being stolen?

6 A. Usually an article like that, a credit card, it
7 usually takes over eight hours. We have up to eight
8 hours to finish a police report. Once a police report
9 is done, an investigator for that particular division
10 has to enter it.

11 Q. Okay. Now, say, for example, if a person
12 didn't know their credit card number by heart, could
13 that delay it even longer?

14 A. Yes, sir.

15 Q. So from the time the information is given, it
16 could take up to eight hours for that information to go
17 into the system?

18 A. If you have the proper information, yes, sir.

19 Q. But at that point, based on what you knew, the
20 card did not come back as stolen?

21 A. Yes, sir.

22 Q. So you had no reason to tag it at that time,
23 did you?

24 A. No.

25 Q. Did you give it back to the defendant?

1 A. I did. I told him to return it to his friend.

2 Q. Okay. Did you continue to search the vehicle?

3 A. I did. I had my consent for search of the
4 vehicle looking for any weapons or contraband.

5 Q. Did you find any other weapons or contraband?

6 A. No, sir.

7 Q. Do you remember seeing a sweatshirt, a black
8 hoodie, in the vehicle at that time?

9 A. Yes, sir, I did.

10 Q. I'm going to show you what's been marked as
11 State's Exhibit 12. Do you recall seeing this hoodie in
12 the vehicle at that time?

13 A. I do, sir.

14 Q. Okay. Where was it located?

15 A. That was in the backseat of the vehicle. It
16 was on top of another pile of clothes and rubble and
17 paper.

18 Q. But right on top there, just resting on top of
19 everything?

20 A. Yes. That was the first article on top of
21 everything else.

22 Q. But based on the knowledge you had at the time
23 you stopped him on traffic, did you know that was a
24 suspicious item?

25 A. No, sir.

1 Q. So how long do you think you have the defendant
2 detained while you search the vehicle?

3 A. I'm guessing about four minutes.

4 Q. Okay. Pretty quick?

5 A. Yes, sir.

6 Q. Do you end up releasing him?

7 A. I do.

8 Q. When you take the handcuffs off, you let him
9 get back in the car?

10 A. Yes, sir.

11 Q. Where does he go from there?

12 A. From there, he started to pull into a Shell --
13 little Shell station, which belongs to the Sellers
14 Brothers grocery store.

15 Q. From the area where you stopped him to the area
16 where he pulled in, how far are we talking?

17 A. Fifteen feet.

18 Q. Okay. So you can still see him?

19 A. Yes.

20 Q. You get back in your vehicle. What do you do
21 when you get back in your vehicle?

22 A. At that point I go back to my vehicle to do the
23 profiling, racial profiling, which is what we do after
24 we conduct a traffic stop.

25 Q. That's something you do just for internal

1 reports so you can see who is being stopped and where?

2 A. Yes, sir.

3 Q. Okay. But it didn't have anything to do with
4 the reason you stopped him?

5 A. No, sir.

6 Q. At that point when you are entering it, are you
7 still getting messages on your screen?

8 A. Yes, sir.

9 Q. Okay. Are you looking at BOLOs?

10 A. Yes. I'm looking at BOLOS being sent over the
11 computer screen and listening to them over the radio.

12 Q. At some point do you see a BOLO from that
13 aggravated robbery that Officer Carreon had been
14 dispatched to?

15 A. Yes, sir.

16 Q. What do you do when you see that?

17 A. At that point it mentioned a black male driving
18 the silver Chevy, four-door Chevy vehicle, robbed an
19 Hispanic male, may have some of the articles. At that
20 point all the details started to stick into my head and
21 they all kind of came together. I started to believe
22 maybe this suspect I had on traffic was the suspect who
23 committed that robbery.

24 Q. So do you call Officer Carreon?

25 A. Yes, sir. I called Officer Carreon. He was

1 the primary officer on that investigation. He had more
2 in-depth details. So I called him and asked him, What
3 was your complainant's name?

4 Q. What did he tell you?

5 A. He told me the complainant's name was Jose
6 Castillo.

7 Q. So what does that mean to you?

8 A. At that point my gut started churning. I said,
9 Okay. Well, I got your suspect. I just let him go.

10 At that point Officer Carreon warned me to
11 ask for backup and get some more units out there.

12 Q. Did you feel like you had time for that?

13 A. No, sir. At that point he was outside the car.
14 He could have jumped in and taken off and led us on a
15 chase.

16 So, instead, I pulled in behind him at the
17 Shell station and I removed by flashlight and I left it
18 in my car. And I asked him if I left my flashlight in
19 his vehicle because I don't have it on me. And I asked
20 him for permission to go retrieve it.

21 He said, Go ahead, grab your flashlight.

22 So I told him, Let me put you in handcuffs
23 while I grab my flashlight just so you won't try to run
24 or anything.

25 Q. Was he cooperative still?

1 A. Yes, sir, he was.

2 Q. Was he still nervous?

3 A. He was a little nervous. He felt a little more
4 comfortable, I could tell. He was laughing.

5 Q. But you had just let him go, right?

6 A. Yes, sir. At that point I put him in
7 handcuffs. That's when I said, You got to go back to
8 the backseat.

9 Q. Okay. Then after he is placed in handcuffs,
10 you have him detained at that point?

11 A. Yes, sir.

12 Q. Did you call Officer Carreon and Wyssbrod to
13 the scene?

14 A. They were already on their way. They were
15 making their way back.

16 Q. Okay. Because you had told them that you
17 already had a?

18 A. Possible suspect, yes, sir.

19 Q. How long did it take for Carreon and Wyssbrod
20 to arrive there at the Sellers Brothers?

21 A. Approximately eight minutes, eight to ten
22 minutes.

23 Q. Okay. When they get there, do you show the
24 defendant to them?

25 A. I do.

1 Q. Okay. Did they indicate that they believed he
2 was a good suspect?

3 A. They stated that he matched the description.

4 Q. Okay. So what happens next? Is the
5 complainant called?

6 A. Yes, sir. I believe Officer Carreon called the
7 complainant who was robbed and asked him to make our
8 scene so that he can identify him.

9 Q. Did he do that?

10 A. He did.

11 Q. All right. How long do you think it took for
12 the complainant to get out there?

13 A. Maybe three or four minutes. It's not too far.

14 Q. Pretty quick?

15 A. Yeah. It's on the same street.

16 Q. Do you know the approximate time of the
17 robbery?

18 A. The approximate time of the robbery was around,
19 I want to say, 2100 hours, around there. Let me look.

20 2147 hours.

21 Q. Okay. 9:47?

22 A. Yes, sir. 9:47.

23 Q. Okay. So from the time of the robbery to the
24 time the complainant got to Sellers Brothers, how much
25 time do you think had elapsed?

1 A. By that time, maybe 40 minutes.

2 Q. Somewhere around there?

3 A. Forty, 45.

4 Q. Maybe outside of an hour?

5 A. Yes, sir.

6 Q. When the complainant gets there, where is the
7 defendant? Is he in your vehicle still?

8 A. Yes. He's still in the backseat of my patrol
9 car.

10 Q. Did you have any part in showing the defendant
11 to the complainant or was that Officer Carreon?

12 A. That was Officer Carreon.

13 Q. Were you present for that?

14 A. I was present, yes.

15 Q. Did you ever speak to the complainant?

16 A. No, sir.

17 Q. So did you in any way ever suggest to the
18 complainant that he needed to identify the defendant
19 there at the scene?

20 A. No, sir. I never questioned him or talked to
21 him.

22 Q. Were you close enough to the complainant when
23 he -- well, did you ever see the complainant make a
24 positive ID of the defendant?

25 A. Yes, sir, I did.

1 Q. Were you close enough to see or to hear what he
2 was saying when he identified the defendant?

3 A. Yes, sir. He said, Yeah, that's him.

4 Q. Okay. Did he seem positive when he identified
5 the defendant?

6 A. Yes, sir. It was an immediate identification.

7 Q. Okay. Did he make any additional comments
8 after he identified him about what he was wearing?

9 A. I believe he said, That's him, but he was
10 wearing different clothing. And he mentioned a sweater
11 with white stitching.

12 Q. Was that the same sweater that I had shown you
13 earlier?

14 A. Yes, sir, same one.

15 Q. Was that sweatshirt then shown to the
16 complainant?

17 A. Yes, sir.

18 Q. Did he say that that was the sweatshirt the
19 defendant was wearing?

20 A. He positively ID'd the sweater.

21 Q. Do you believe -- well, did you observe the
22 complainant being hesitant at all with his ID there at
23 the scene?

24 A. No, sir. Maybe a little nervous, obviously.

25 Q. Nervous?

1 A. Confronting a person that put a gun to your
2 head.

3 Q. Was he still confident in his ID?

4 A. Yes, sir, he was confident.

5 Q. Do you have any reason to believe that anyone
6 suggested or influenced his identification of the
7 defendant?

8 A. Not at all, sir.

9 Q. Do you see the defendant here in the courtroom
10 today?

11 A. I do, sir.

12 Q. Would you point to him and identify him by an
13 article of clothing he's wearing?

14 A. Yes. He's sitting down right there with his
15 hands crossed, wearing an orange jumpsuit.

16 MR. BURDETTE: Judge, may the record
17 reflect the witness has identified the defendant?

18 THE COURT: It will.

19 Q. (BY MR. BURDETTE) Officer Duran, you had seen
20 the credit card in the defendant's pockets when you
21 first searched him, right?

22 A. Yes, sir.

23 Q. When the complainant got to the scene, did you
24 tell the complainant before he identified the defendant
25 that he was in possession of his credit card?

1 A. No, sir.

2 Q. Did that happen after?

3 A. Yes, sir.

4 Q. Why do you do it in that order? Why do you
5 have them identify the suspect first?

6 A. We do it like that so they don't have to
7 believe that the person who had it on them was guilty.

8 Q. You want them to be able to recognize the
9 person as opposed to the circumstances?

10 A. Yes, that's right. Correct.

11 MR. BURDETTE: I'll pass the witness.

12 THE COURT: Mr. Tanner.

13 MR. TANNER: Thank you, Judge.

14 **CROSS-EXAMINATION**

15 **BY MR. TANNER:**

16 Q. Officer Duran --

17 THE COURT: Excuse me for a minute.

18 Deputy, would you tell them, the jury
19 panel, that they can buzz us if they're all there.
20 Would you tell them we're already involved in the trial
21 and doing things without them, just that?

22 THE BAILIFF: I need to wait until --

23 THE COURT: I understand. When she comes
24 back. I appreciate it.

25 You may continue.

1 MR. TANNER: Thank you, Judge.

2 Q. (BY MR. TANNER) Officer Duran, you said that
3 once you detained him, that once you detained him the
4 first time that he made a statement to you that his
5 Mexican homie gave him the credit card, correct?

6 A. Yeah, that his Mexican homie forgot it and he
7 was holding onto it for him.

8 MR. TANNER: Judge, I'm asking the Court
9 at this time in the form of a Motion in Limine that the
10 State not to go into the defendant's comment in front of
11 the jury and that the defendant was in custody. There
12 was an oral statement made to the police officer. We're
13 asking in the form of a Motion in Limine that the State
14 be instructed not to go into that with this witness and
15 that witness not tell the jurors what his comment was
16 when he was detained.

17 MR. BURDETTE: Judge, it sounds like it's
18 actually a Motion to Suppress the statement. The
19 officers made it clear that he was merely detained.
20 It's not a custodial interrogation. Officer had no
21 indication that this defendant had committed this crime
22 and was seeking any sort of testimonial statement from
23 the defendant at that time. The law is clear.
24 Statements made while someone is detained are
25 admissible. They don't have to require --

1 THE COURT: Mirandize.

2 MR. BURDETTE: Well, they don't have to be
3 Mirandized and it doesn't have to meet the requirements
4 of 38.22. So this is merely a statement made while the
5 defendant was detained. It's therefore admissible.

6 THE COURT: I think it might be a res
7 gestae type statement and I think it might be admissible
8 as well. But I'm not going to grant that now. We can
9 revisit that when the time comes.

10 MR. TANNER: Okay. So we just ask we
11 approach the bench as to that. We are going to inform
12 the Court we are going to object to that. We would like
13 to do it now --

14 THE COURT: I understand.

15 MR. TANNER: -- so we don't have to do it
16 then. I'd ask the Court for a ruling now.

17 THE COURT: If you're asking for a ruling
18 now, I'm going to deny ruling on a Motion in Limine
19 suppressing that statement.

20 MR. TANNER: Okay. But at the time when
21 the State's putting their case in chief on, I am going
22 to make the same objection. I just want the Court to be
23 aware my objection is what I have said now.

24 THE COURT: Okay. I'm going to have the
25 same ruling at that time.

1 MR. TANNER: All right. Thank you.

2 Q. (BY MR. TANNER) Officer Duran, did you make
3 out an offense report that evening of what you did?

4 A. No, sir, I did not.

5 Q. Never made any offense report?

6 A. No, sir.

7 Q. Do you have any notes from that night that you
8 recall, any particular notes?

9 A. No, sir.

10 Q. Do you recall you talked to other officers on
11 the radio, correct, that night prior to arresting this
12 defendant?

13 A. About this case?

14 Q. Right.

15 A. On the radio, no, sir.

16 Q. On MDP?

17 A. No, sir.

18 Q. You didn't talk to any other officers?

19 A. I called Officer Carreon on the telephone.

20 Q. Called him on the telephone?

21 A. Yes.

22 Q. When you searched the car that this defendant
23 was in, you didn't find the gun, correct?

24 A. No, sir.

25 Q. You didn't find any drugs, correct?

1 A. No, sir.

2 Q. He consented to your search and everything,
3 right?

4 A. Yes, sir.

5 Q. Didn't find a wallet or anything, correct?

6 A. No, sir.

7 Q. But you did find the credit card?

8 A. Yes, sir.

9 Q. When you found the credit card, is that when
10 you spoke with Officer Carreon that you had found this
11 credit card with the name of the complainant?

12 A. No. I spoke to Officer Carreon after I had
13 released the defendant. I found the credit card, had it
14 checked and released it back to him.

15 Q. Right. So you talked to Officer Carreon, told
16 him about how you arrested this guy or stopped him on
17 the traffic violation or registration, correct?

18 A. When I called him, I said, What was your
19 complainant's name?

20 And he said, It's Jose Castillo.

21 Q. Okay.

22 A. I said, Okay. I just had a guy with a credit
23 card. I just let him go.

24 Q. So based on the fact he had the credit card is
25 why you stopped him the second time, correct?

1 A. Yes, sir.

2 Q. So in your mind, the fact he had the credit
3 card was enough to detain him or to arrest him?

4 A. At that point I had reasonable suspicion to
5 detain him again.

6 Q. To arrest him actually, correct?

7 A. Detain him.

8 Q. But he was handcuffed, correct?

9 A. He was handcuffed for officer safety reasons,
10 yes, sir.

11 Q. And at that point Officer Carreon, you were
12 speaking with him on the phone about you having the
13 credit card?

14 A. Yes, sir.

15 Q. Did you ever talk to the complainant on the
16 phone?

17 A. No, sir. I have never talked to the
18 complainant.

19 Q. Are you aware if Officer Carreon, to your
20 knowledge, told the complainant that you found the guy
21 with the credit card?

22 A. No, sir.

23 Q. Did you -- when you initially pulled this
24 defendant over for not having a registration --

25 A. Expired registration.

1 Q. -- for having expired registration not dated
2 properly, did you write him a ticket for that?

3 A. No, sir.

4 Q. So you pulled him over, but actually you didn't
5 write him a ticket?

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

7 Q. And then after that, you filled out a form as
8 to racial profiling, correct?

9 A. Correct.

10 Q. Is it true that prior to pulling him over, you
11 saw him near a possible narcotics location?

12 A. No, sir.

13 Q. Did you ever tell Officer Carreon when you
14 spoke to him or his partner that you saw the suspect
15 pull over at a house located at -- excuse me.

16 MR. TANNER: Can I see the offense report,
17 Officer Carreon's offense report?

18 MR. BURDETTE: It's that same one.

19 MR. TANNER: You all blacked out the
20 address.

21 MR. BURDETTE: Oh, I see.

22 THE COURT: You may approach.

23 MR. TANNER: Thank you, Judge.

24 Q. (BY MR. TANNER) Do you recall telling Officer
25 Carreon that you saw the suspect at a house at the 1200

1 block of Fennel and was talking to an unknown black
2 male?

3 A. No, sir. That report was written by Officer
4 Wyssbrod, so it might have gotten some mistakes or some
5 confusion. But, no, sir.

6 Q. So you never said that to Officer --

7 THE COURT: If you ask every question
8 twice, are you expecting to get a different answer?

9 MR. TANNER: Sometimes, Judge.

10 THE COURT: I'm sorry. He just said, no,
11 he didn't.

12 MR. TANNER: Well, I'm curious as to why
13 it was entered into the report like this.

14 THE COURT: Is there a question to the
15 officer?

16 MR. TANNER: Excuse me, Judge.

17 *(Pausing.)*

18 THE COURT: Okay. You may continue.

19 Q. *(BY MR. TANNER)* Do you recall when the
20 complainant made the identification of the defendant,
21 did he say he was pretty sure? Do you recall him saying
22 that?

23 A. No, sir. He said, That's him.

24 Q. So the real reason, Officer, you pulled him
25 over was that you suspected he had drugs in the car?

1 A. No, sir.

2 Q. So you're saying in your testimony you pulled
3 him over for the registration but did not write him a
4 ticket for it?

5 A. Yes, sir. Writing tickets is at our
6 discretion. I usually won't write it if someone is
7 cooperative.

8 Q. After the identification was made by the
9 complaining witness in this case, did you say anything
10 to him, like, You're -- that's correct, he's the guy
11 that had your credit card?

12 A. Never spoke to the complainant, sir.

13 Q. You had no conversation with him?

14 A. To this day, I've never spoken to the
15 complainant.

16 Q. Okay. Thank you.

17 MR. TANNER: Nothing further.

18 THE COURT: Mr. Burdette?

19 MR. BURDETTE: Yes, Judge, I do have
20 redirect.

21 **REDIRECT EXAMINATION**

22 **BY MR. BURDETTE:**

23 Q. I would like to turn your attention to page
24 2.005 of the report.

25 A. Yes, sir.

1 Q. At the very bottom here, the last sentence that
2 starts with: Officer Duran noted.

3 Would you read that on to the next page?

4 A. On 2.005?

5 Q. That's right. Well, I'm assuming our reports
6 are the same.

7 MR. BURDETTE: May I approach, Judge?

8 THE COURT: You may.

9 Q. (BY MR. BURDETTE) Right here.

10 A. Oh, yes, sir.

11 Q. If you could read that. It says: Officer
12 Duran noted.

13 A. It says: Officer Duran noted --

14 Q. Just read it to yourself. I want to clear
15 something up.

16 A. (Witness complies.)

17 Q. Did you ever actually observe the defendant at
18 this home there on Fennel?

19 A. No, sir.

20 Q. You said, Noted. How did you note that he had
21 been seen there at Fennel? Where did you get that
22 information?

23 A. From the wrecker driver that was there to tow
24 the vehicle away.

25 Q. Okay. The wrecker driver showed up to the

1 Sellers Brothers?

2 A. After we have a vehicle that's going to be
3 towed, we'll ask for a wrecker driver over the radio.

4 Q. So a wrecker driver shows up?

5 A. Yes, sir.

6 Q. This wrecker driver that you spoke with
7 indicated that he had seen the defendant and the
8 defendant's vehicle earlier?

9 A. Yes, sir, earlier. He said, I saw that guy
10 earlier.

11 Q. Did he tell you where?

12 A. He never told me specifically but he told me
13 the 1200 block of Fennel.

14 Q. Are you familiar with the 1200 block of Fennel?

15 A. Yes, sir.

16 Q. It says in your report that it's a possible
17 narcotics location. What do you know about the 1200
18 block of Fennel?

19 A. It's a very high narcotics area. It's known
20 for narcotics trafficking, hand-to-hand sales. There's
21 a lot of locations you can buy any type of narcotic you
22 want.

23 Q. So based on what the wrecker driver told you,
24 you told either Officer Wyssbrod or Officer Carreon that
25 information?

1 A. Yes, sir.

2 Q. That why it's in this report?

3 A. Yes, sir.

4 Q. You did not enter a supplement under this
5 offense report number; is that right?

6 A. No, sir, I did not.

7 Q. But you did generate an offense report that
8 covers some of the facts in this case; is that right?

9 A. Yes, sir. It all ties in.

10 Q. That actually involves some other women
11 information that you got from the phone found in the
12 defendant's vehicle; is that right?

13 A. Yes, sir.

14 Q. So you did write some information down?

15 A. I did.

16 Q. And do you have an independent recollection of
17 this offense as well?

18 A. I do, sir.

19 Q. Are you able to use Officer Carreon or
20 Wyssbrod's report to refresh your memory?

21 A. Yes, I am.

22 Q. Okay.

23 MR. BURDETTE: I'll pass the witness.

24 THE COURT: Mr. Tanner?

25 MR. TANNER: No questions.