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**DON EGDORF,**

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MS. COOPER:**

Q. Officer, can you please introduce yourself to the members of the jury?

A. Yeah. My name is Don Egdorf. I'm a Houston police officer.

Q. How long have you been a Houston police officer?

A. In November it will be 12 years.

Q. And where are you currently assigned?

A. I'm assigned to the Traffic Enforcement Division. Excuse me. And I'm assigned here at the D.A.'s office with the Vehicular Crimes Section.

Q. You work with Ms. Bard and I on a regular basis; is that right?

A. Every day.

Q. Can you tell the members of the jury about what your job assignment is, your duties?

A. I guess kind of in a nutshell what it comes down to is part of my responsibilities -- or the bulk of it is investigating fatality traffic crashes. That's anywhere from the alcohol or drug-impaired case. It could be a case where it's just speed, somebody running

1 a red light, but to investigate, determine the cause,  
2 and whether or not it's appropriate to file charges.

3 Q. If you can, tell the members of the jury  
4 about -- well, let me ask you this. Did you go through  
5 the police academy?

6 A. Yes, I did.

7 Q. What is the police academy?

8 A. Six months of basically learning how to be a  
9 police officer. It's learning the law, learning the  
10 rules of the department, how to drive a police car, how  
11 to operate the computer systems, how to shoot. Anything  
12 you would expect an officer to do, most of that we learn  
13 at the academy.

14 Q. And prior to becoming a Houston police officer,  
15 were you an officer anywhere else?

16 A. No, I wasn't.

17 Q. Were you employed anywhere?

18 A. Yes.

19 Q. Where?

20 A. Just before joining the police department, I  
21 was actually a professional ice hockey referee. I spent  
22 about five years doing that. The International League,  
23 the East Coast League. I did some college hockey.  
24 Prior to that, I worked for Federal Express. And I was  
25 in the Air Force with the presidential honor guard in

1 Washington.

2 Q. What's the presidential honor guard?

3 A. We -- well, with the conventions here lately,  
4 you see quite a bit of it, but those are the units of  
5 the military that do the ceremonies at the White House,  
6 the capital, the pentagon, funerals at Arlington  
7 National Cemetery. Anything that's going to be kind of  
8 high-profile with the president, vice-president, and the  
9 people like that.

10 Q. How long were you in the Air Force?

11 A. Six years.

12 Q. Did you go through boot camp and military  
13 training for that?

14 A. Yes, I did.

15 Q. I want to get back to your law enforcement  
16 training. You started being an officer back 12 years  
17 ago. You said you went through the police academy.  
18 What additional training do you have as a police  
19 officer?

20 A. Well, there's a lot. We have to do at least 40  
21 hours of in-service training each year. So, I've done  
22 that each year that I've been on. And then depending on  
23 what direction you end up going once you become a patrol  
24 officer, it will dictate what type of training you end  
25 up doing. And I've, I guess, kind of wandered a few

1 different directions, but the bulk of it has really been  
2 DWI enforcement.

3 Q. Tell the members of the jury about your  
4 training and education as it relates to DWI  
5 investigations.

6 A. The first class I ended up going through was a  
7 24-hour standardized field sobriety testing class. And  
8 that's the class that teaches us how to do field  
9 sobriety tests. So, the -- you know, waving a magic  
10 light in front of somebody or having somebody take nine  
11 steps on a line or stand with one leg off the ground, we  
12 learn how to do those tests, how to interpret those  
13 tests, and be able to tell what they mean.

14 The next class after that one was a 60-hour  
15 basic drug identification training. It's kind of  
16 like -- it's an introduction to the drug recognition  
17 expert program. So, you start to identify people that  
18 are impaired on something other than alcohol;  
19 prescription medication, illicit drugs, anything that  
20 you can put into your body. It's just a basic  
21 introduction or overview.

22 After that, I did a 40-hour intoxilyzer  
23 operator course. That's the class that teaches how to  
24 operate the breath test instruments that we use on DWI  
25 cases.

1 I then went through a 152-hour drug  
2 recognition expert course. That's where you learn how  
3 to do a 12-step evaluation on how to identify a  
4 drug-impaired driver and how to make a determination  
5 about what category of drugs that person is on. Can't  
6 say exactly what the drug is, but I can name the  
7 category.

8 After that, I went through two different  
9 instructor schools. One is a basic police instructor  
10 and then a DRE instructor school. So, I actually teach  
11 all of these classes to other officers.

12 Q. And a DRE instructor school is what? What is  
13 DRE?

14 A. Drug recognition expert. And the instructor  
15 school is so I can teach other officers how to be DREs.

16 Q. So, not only are you a drug recognition expert  
17 yourself, but you also teach other officers how to be a  
18 drug recognition expert?

19 A. Yes, I do.

20 Q. Are there -- with these -- to be certified to  
21 conduct standardized field sobriety tests and be a drug  
22 recognition expert, do you have to re-certify or take  
23 additional classes each year, every couple of years?

24 A. For the standardized field sobriety testing  
25 part of it, there's an update you can go to, but you're

1 not required to be re-certified for that portion of it.  
2 As a DRE, I have to re-certify every two years. And as  
3 an instructor I have to re-certify every two years.

4 Q. Have you re-certified every two years?

5 A. Yes, I have. And I'm actually due to go either  
6 next Monday or the Monday after, kind of depending on  
7 how we end up here.

8 Q. What is the re-certification process?

9 A. It's an eight-hour class that we go through.  
10 The first thing that you do is a standardized field  
11 sobriety testing proficiency exam. So, even with me  
12 being an instructor, I have to do a proficiency. So, I  
13 have to stand in front of another DRE instructor, go  
14 through all the field sobriety tests, and he checks off  
15 whether or not I do those tests correctly.

16 The next thing we do after that is a DRE  
17 proficiency. So, we go through the entire 12-step DRE  
18 exam with that instructor. And, again, checking off to  
19 make sure I've done everything correctly.

20 After that, it's a few hours of updates,  
21 legal changes, any kind of changes with the law or  
22 protocols in the program. And then we take a written  
23 test at the end of the day.

24 Q. How many, if you know, officers with HPD are  
25 actually drug recognition expert instructors?

1           A.    There's two of us with HPD.

2           Q.    How many HPD officers are there?

3           A.    Somewhere around 5400.

4           Q.    I want to talk to you about, if you can tell  
5 the jury about, standardized field sobriety tests and  
6 what they are.

7           A.    Standardized field sobriety tests are divided  
8 attention tests.  And what the tests are designed for is  
9 as an officer to be able to make a decision about  
10 whether or not it's safe for someone to operate a motor  
11 vehicle.  The thing with the tests -- and as you watch  
12 them and you see an officer perform them, everybody kind  
13 of wonders, well, how does this relate to driving.  You  
14 don't stand on one foot when you drive a car.  You don't  
15 stand with your heel and toe touching on a line and take  
16 steps back and forth when you drive a car.

17                       The idea behind it is to divide somebody's  
18 attention.  And we're trying to determine if that person  
19 has lost the normal use of their mental and/or physical  
20 faculties.  So, we give a set of instructions, we  
21 demonstrate the test for the person, and then we have  
22 them do that test.  And what we're looking for is:  Can  
23 they follow the instructions, can they remember the  
24 instructions, and can they actually perform the test as  
25 it was instructed for them.

1 Q. Who created the standardized field sobriety  
2 tests?

3 A. This was doctors and scientists that started  
4 with this years ago. The initial studies were done in  
5 the late '70s, early '80s, by the Southern California  
6 Research Institute. Marcelline Burns was a doctor that  
7 was pretty involved in it. There's been a handful of  
8 different studies that have been done over the years and  
9 show that these field sobriety tests do work. And if  
10 done properly and if you go by the protocols, that you  
11 will identify an impaired driver.

12 Q. Does each law enforcement agency have their own  
13 set of field sobriety tests?

14 A. Years ago, it was like that. And that's really  
15 why all those studies were done. Back when my father  
16 was a police officer, one of the field sobriety tests  
17 they do is pull coins out of a pocket and throw them on  
18 the ground and tell them to pick them up in a certain  
19 order. That was a field sobriety test. Well, it's kind  
20 of unrealistic to do that.

21 So, as they went on, there's no way to  
22 validate a test like that, there's no way to say that if  
23 you pick up the penny first instead of the quarter, it  
24 means you're intoxicated. So, the protocols were set  
25 for all these different tests. And that's what we have



1 to follow. And if you follow those protocols, you'll  
2 make the correct decision.

3 Q. So, every law enforcement agency across our  
4 entire country, do they do standardized field sobriety  
5 tests the same way?

6 A. Yes.

7 Q. And is that the standardized part of it?

8 A. Yeah. If I don't do the test the same way as  
9 another officer, it's not standardized anymore. And if  
10 you're not standardized, the tests won't be reliable.

11 Q. And as far as drug recognition analysis or drug  
12 recognition expert, is that something separate from the  
13 standardized field sobriety tests?

14 A. No. Actually, the DRE program is built around  
15 those standardized field sobriety tests. So, the same  
16 test that I would do to try to determine if somebody is  
17 impaired on alcohol are a lot of the same tests I'm  
18 going to use to determine if it's going to be someone  
19 under the influence of drugs. The DRE process is a  
20 little bit different. There's some things added in and  
21 we take pulse, blood pressure, body temperature, do eye  
22 examinations in different lighting conditions. And  
23 those are things you don't normally do on a DWI  
24 investigation.

25 Q. Why is it important to -- if an officer

1 suspects drug impairment, why is it important to have a  
2 DRE look at that suspect versus just someone that's  
3 trained to conduct regular standardized field sobriety  
4 tests?

5 A. It's a different level. And it's, I think,  
6 like that with anything in a police department or really  
7 any type of job. There's -- even for attorneys.  
8 There's -- just because you graduate from law school  
9 doesn't mean that you should be sitting in a courtroom  
10 trying a case. There's additional things you have to go  
11 through to get to that level. And then, additionally,  
12 you have attorneys being on either side that can try  
13 misdemeanor cases, but aren't necessarily ready for a  
14 felony case to certain levels.

15 So, the amount of training that somebody  
16 here has only gets you to one spot. You go through  
17 additional training, you learn more. And as you learn  
18 more, you're able to make the other decisions.

19 Q. The standardized field sobriety tests, are  
20 those tests that are designed to fail?

21 A. No. They're simply designed to determine  
22 whether or not somebody is impaired or not.

23 Q. Can anyone perform the standardized field  
24 sobriety tests?

25 A. Should be able to, yes.

1           Q.    Do you have to be an athlete to be able to  
2 perform them?

3           A.    No.

4           Q.    If you can talk with the jury about -- well,  
5 whenever you go through -- you went through the classes  
6 and the schooling to become certified to conduct these  
7 tests, is it just sitting in a classroom listening to  
8 instruction?

9           A.    No.  And that's a big part of it because you  
10 have to learn some of the background to the tests.  But  
11 more importantly, and the things instructors are more  
12 concerned about, is if the students can actually perform  
13 the tests.  So, after we go through all the lectures and  
14 everything else, it's all hands-on.  So, the cadets or  
15 officers, whoever we're teaching, actually have to get  
16 up and perform these tests.  And then in addition to  
17 that, on the third day of the class, we actually bring  
18 people in and dose them up to a certain alcohol level  
19 and have the students do tests on those people that are  
20 basically drunk and have to determine whether or not  
21 they would arrest that person or not, whether or not  
22 they think they would be over or under what the legal  
23 limit is.

24           Q.    What about as a drug recognition expert, are  
25 you -- do you do the same thing?

1           A.    Sort of.  One of the things that we can't do is  
2 give somebody illicit drugs so we can have an officer  
3 determine whether or not that person is impaired.  So,  
4 we have to do it a little bit different.  In DRE  
5 training, we'll do the alcohol workshops like we do with  
6 the standardized field sobriety testing.  And part of  
7 that is so the officers can get used to actually going  
8 through the evaluation.  So, if you have somebody that,  
9 for example, is a .12, they go through all the field  
10 sobriety tests with them.  They check their pulse, their  
11 blood pressure, their body temperature, do all the eye  
12 exams, go through everything like a regular DRE, but  
13 they're, obviously, not going to make a call that  
14 somebody is on certain types of drugs.

15                       So, what we do, once they finish the  
16 classroom portion, we'll actually have them sit down at  
17 either the city jail or just back behind this building  
18 at the county jail and as prisoners being brought in on  
19 a nightly basis, we'll have officers looking at people  
20 when they come in.  So, instructors will go pull  
21 somebody out, somebody arrested for a dope case, for  
22 example, that says:  Hey, I took this and this and this,  
23 we'll actually take a urine specimen from them to test  
24 it and then we'll have those officers conduct the  
25 evaluations on those people and see if they make the

1 correct decisions about what category drug they were on.

2 Q. How many DWI stops would you say that you've  
3 conducted during the course of your career?

4 A. I've probably made a couple thousand DWI  
5 arrests.

6 Q. Every time someone is stopped and evaluated  
7 for -- to determine whether or not they're intoxicated,  
8 is there an arrest made?

9 A. No.

10 Q. Why?

11 A. Because they're not all impaired. They're not  
12 all intoxicated. And part of that is going through  
13 those field sobriety tests. And you kind of have to  
14 take everything into account; the reason for the stop,  
15 or whatever the violation is, whatever happens with your  
16 initial contact, and then what happens with the field  
17 sobriety tests. And all that develops probable cause so  
18 you either have enough to make an arrest or you don't.

19 Q. Have you let people go before?

20 A. Many people.

21 Q. What about fatality cases, about how many  
22 fatality cases would you say that you've investigated,  
23 been a part of?

24 A. A few hundred.

25 Q. Just because someone is involved in a fatality

1 crash, does that mean they're getting arrested?

2 A. No, absolutely not.

3 Q. Are they treated and evaluated for intoxication  
4 the same way someone is that's not involved in a crash?

5 A. Up to a certain point it would be no different  
6 at all.

7 Q. And if they're evaluated and they're not  
8 intoxicated, are they charged?

9 A. Not necessarily. Now, if we're talking about  
10 an intoxication case, if -- once you get through that  
11 DWI portion of it and you determine that there's no  
12 intoxication, they're not going to be arrested for a DWI  
13 based offense. It doesn't mean there couldn't be  
14 another charge, but many of them we don't end up  
15 charging at all.

16 Q. Now, whenever you do field sobriety tests on  
17 someone, is it their decision whether or not they want  
18 to participate?

19 A. Well, yeah. I can't force somebody to walk on  
20 a line or stand on one foot. So, it certainly helps  
21 when they cooperate.

22 Q. And sometimes they cooperate and sometimes they  
23 don't?

24 A. Right.

25 Q. And is that the same thing during a drug

1 recognition evaluation?

2 A. Yes. If they don't want to participate, I  
3 certainly can't force them to do that.

4 Q. And with your training and experience as a drug  
5 recognition expert, are you -- can you see signs of drug  
6 impairment even if you don't get to complete an entire  
7 drug recognition evaluation?

8 A. Yes.

9 Q. Can you -- is it -- if you can talk to the jury  
10 a little bit about prescription drugs and when someone  
11 is impaired on prescription drugs, how you treat them  
12 differently, if at all, than someone you may suspect is  
13 on alcohol.

14 A. Well, I think as far as a scene investigation  
15 goes, it won't be any different at all. What we're  
16 trying to determine out at the scene of a crash is do I  
17 feel -- with going through the test, with going through  
18 the investigation, the interview, is it my opinion that  
19 that person is intoxicated. And it doesn't matter at  
20 that point what they're intoxicated on. It could be  
21 alcohol, it could be gasoline, it doesn't matter what it  
22 is, but the determination comes down to is this person  
23 intoxicated.

24 Once you make that decision, you say, yes,  
25 this person is intoxicated, that's where it starts to

1 change a little bit if it's going to be a prescription  
2 drug or illicit drug case, something along that line,  
3 because if you know it's not alcohol causing impairment,  
4 you have to make a determination about what is causing  
5 that impairment. That's what the drug recognition or  
6 the drug evaluation itself is for.

7 Q. Is it -- someone that's not a trained drug  
8 recognition expert, is it sometimes difficult to see  
9 impairment on someone that's legally intoxicated on  
10 prescription drugs?

11 A. I think it becomes very difficult because  
12 when -- when you talk about intoxicated drivers or you  
13 talk about a DWI type case, the first thing everybody  
14 wants to hear is that the guy smells like a brewery, he  
15 smelled like he had been drinking, or he's got something  
16 spilled all over himself. And police officers that  
17 don't have additional training as far as drug  
18 recognition, but there's lot of officers that don't even  
19 have DWI training. It wasn't mandated you take that in  
20 the academy until 2005. So, prior to that, there's a  
21 lot of the older guys in the department that never had  
22 any type of DWI training. So, if it doesn't smell like  
23 a drunk, they're going to say: You know what, there's  
24 no intoxication here. And in that sense, officers are  
25 no different than anybody else out there that's going to



1 look at somebody.

2 Q. So, a civilian that's not an officer, could  
3 they see someone that's actually impaired on drugs or a  
4 prescription drug and not realize it?

5 A. Absolutely.

6 Q. I want to talk to you specifically about this  
7 case.

8 A. Uh-huh.

9 Q. Back on July 26th of 2010, how was it that you  
10 got involved in this particular case?

11 A. I got a phone call from an officer that I work  
12 with saying that she had heard there was a fatality  
13 crash on the Gulf Freeway and that she thought she heard  
14 somebody request a DRE.

15 Q. And around what time was it that you arrived on  
16 scene?

17 A. Around 1:00 o'clock, just after 1:00 o'clock.

18 Q. Did you know what time the crash had occurred?

19 A. Initially, no, but when I was on the way, I  
20 started getting the messages on my computer in my patrol  
21 car that came from dispatch.

22 Q. All right. And what time, approximately, was  
23 the crash?

24 A. It was around 12:30.

25 Q. When you arrived on scene, can you describe

1 what you saw to the members of the jury?

2 A. As I pulled onto the scene, obviously, the  
3 freeway was shut down in that area, just down near  
4 Baybrook Mall. And as I pull up, there's a black pickup  
5 that's in the number one lane or the inside lane of the  
6 freeway facing southbound or towards Galveston. There  
7 was a gold pickup that was actually in the grass over  
8 off the side of the road that looked like it had rolled  
9 over at least once or twice, had a sheet over the  
10 pickup. And I pulled up through and started talking to  
11 some of the officers out there to find out why they  
12 thought they needed me.

13 Q. About -- let me show you State's Exhibit No. 9.  
14 Looking at State's Exhibit No. 9, is this what the scene  
15 looked like when you arrived (indicating)?

16 A. Yes.

17 Q. About how many officers, police officers, were  
18 out there at that scene?

19 A. I don't know, maybe 10, 12 officers, give or  
20 take. It was approaching shift change, so I know there  
21 were some officers that were leaving and other officers  
22 coming in as well.

23 Q. When crashes like this happen, can you tell the  
24 members of the jury about the different responders, like  
25 the first responders versus, you know, VCD officers, and

1 the order in which people show up?

2 A. Yeah. What you end up with is the regular  
3 patrol officers are always the first ones that end up  
4 making the scene out there. Those are the guys that  
5 work that area, they work that beat. So, when these  
6 calls end up coming across the radio or across the  
7 computer, they're the first ones that get dispatched out  
8 there.

9 What they'll do is kind of figure out what  
10 they've got or what's happened. In this case, it was  
11 obvious that this was a fatality crash. So, they let  
12 dispatch know that they're going to need accident units  
13 to come out. At some point, somebody requested a DRE  
14 unit to come out. So, the patrol guys are your first  
15 responders.

16 Your next response is going to be the  
17 accident units. Those are the guys responsible for  
18 investigating the crash itself, figuring out what  
19 happened, the dynamics of the collision, how the  
20 vehicles made contact, which vehicle is going to be at  
21 fault in that crash. And that's their responsibility to  
22 do. Mapping the scene, photographing the scene.

23 And then, I guess, the third tier, I guess,  
24 would be somebody like me that gets called out for a  
25 specific reason, to look at a driver and make a decision

1 about intoxication.

2 Q. So, is it uncommon at all that an accident  
3 investigator such as Officer Tippy, who testified  
4 earlier, would show up an hour-and-a-half after the  
5 crash?

6 A. No, it's not unusual at all.

7 Q. And for you to show up 30 minutes after the  
8 crash, is that unusual?

9 A. No, not at all.

10 Q. When you arrived, were you aware that there had  
11 been a fatality?

12 A. Yes.

13 Q. And one of the victims was still on scene; is  
14 that correct?

15 A. Yes, he was.

16 Q. Is that common for the bodies -- deceased  
17 bodies to stay on scene?

18 A. Yes, it is.

19 Q. Why?

20 A. If somebody is pronounced dead out at the scene  
21 by the paramedics or the firemen that are out there,  
22 they have to actually leave that body there and wait for  
23 the medical examiner's office to come out and pick that  
24 body up.

25 Q. Now, were you also aware of another victim that

1 had been transported to the hospital?

2 A. Yes. And when I first got out there, I didn't  
3 know what his status was. I knew he had been seriously  
4 injured, but I didn't know how bad.

5 Q. So, you get out on the scene. Was the scene  
6 secure at that time?

7 A. Yes, it was.

8 Q. Was the freeway shut down?

9 A. Yes.

10 Q. How long does an investigation like this  
11 usually take?

12 A. Hours. And that's just for the initial  
13 on-scene investigation that day, but there's still a lot  
14 of work that goes into it. So, I don't think you can  
15 really even just say hours. It's more like days and  
16 weeks to really have everything put together.

17 Q. Do you know how long the freeway was shut down  
18 for this crash on July 26th of 2010?

19 A. I'm not sure exactly how many hours. I wasn't  
20 at the scene for a long time. I came out, did part of  
21 my investigation, and then we left shortly after that.

22 Q. And you go out there for a specific purpose to  
23 do what?

24 A. To look at one of the drivers involved in this  
25 crash.

1 Q. When you get on scene, do you make contact with  
2 the driver -- with one of the drivers?

3 A. Yes, I do.

4 Q. Which driver is that?

5 A. Michael Petty.

6 Q. Do you recognize Michael Petty in the courtroom  
7 today?

8 A. Yes, I do.

9 Q. Can you identify him by an article of clothing  
10 that he's wearing?

11 A. He's at the defendant's table with a blue shirt  
12 and it looks like a blue striped tie.

13 MS. COOPER: Your Honor, may the record  
14 reflect the witness has identified the defendant?

15 THE COURT: Yes.

16 Q. (By Ms. Cooper) Did he look a little bit  
17 different back two years ago when this crash happened?

18 A. Yeah, a little bit.

19 Q. I'm going to show you State's Exhibit No. 112.  
20 Is this a photo that was actually taken of him that day  
21 (indicating)?

22 A. Yes, it is.

23 Q. And so, is this the way that he looked back on  
24 July 26th of 2010?

25 A. Yes, it is.

1 Q. Now, you go out there and you make contact with  
2 Michael Petty. Where was he when you first made contact  
3 with him?

4 A. He was actually sitting in Officer Michon's  
5 patrol car.

6 Q. How was he in the patrol car, back or --

7 A. He was in the back seat.

8 Q. Why is it that -- was he under arrest at this  
9 time?

10 A. No, he wasn't.

11 Q. Why would someone be in the back of a patrol  
12 car if they're not under arrest?

13 A. Well, there's a couple of reasons. As part of  
14 the investigation, one of the things that you want to do  
15 is separate all of your witnesses. You want to make  
16 sure that your drivers that are involved can't walk away  
17 from the scene, if they choose to. Mainly, because you  
18 have to get all the facts about this case. And as part  
19 of that, you have to be able to talk to everybody  
20 involved in a crash and then all the witnesses that  
21 actually saw the crash. So, as a regular thing that we  
22 do, we'll have that person sit in a police car. There's  
23 times when somebody is going to be handcuffed and put in  
24 that car and it's just part of the process that we have  
25 to go through. And some of it has to do with our

1 policies within the police department.

2 Q. And why would someone be handcuffed in the back  
3 of a patrol car if they're not under arrest?

4 A. Some of that is just department policy. I  
5 don't know how Mr. Petty acted before I got out there,  
6 but when you put somebody in the back of your police  
7 car, you have to assume that you're going to transport  
8 that person or possibly move them. And our department  
9 policies say if we put somebody back there, they're  
10 going to be handcuffed.

11 Q. So, was Michael Petty handcuffed when you first  
12 made contact with him?

13 A. Yes, he was.

14 Q. Had he been evaluated at that point for  
15 intoxication at all?

16 A. No.

17 Q. So, were you going to -- was your point to  
18 conduct an investigation to determine whether or not he  
19 was intoxicated?

20 A. That was the main reason I was out there.

21 Q. And as part of an investigation to determine  
22 that, what do you do?

23 A. The first thing I want to do is interview him  
24 and just talk to him; find out his version of the events  
25 out there, find out basically what he believes happened,



1 or what he thought happened. And then from that point,  
2 just kind of move on. And if I'm at a point where I  
3 feel like we need to move on past that, then we just go  
4 to the next step after.

5 Q. When you first make contact with him, do you  
6 notice anything about his demeanor or his appearance  
7 that captures your attention?

8 A. He was extremely talkative. Talked very fast.  
9 Seemed like he had something he really wanted to talk  
10 about or to get out, which is a little bit unusual.

11 Q. Is that significant at all in an investigation  
12 for intoxication?

13 A. Well, in and of itself, no. But I think  
14 when -- when you talk about intoxication or trying to  
15 determine if somebody is an intoxicated driver, you  
16 can't take just one piece and say: You know, this is  
17 it, this is what really sells me on this. It's the  
18 entire process. So, it stops with the initial contact  
19 and starting that interview and going all the way  
20 through to the end. And that's when you make your  
21 decision. So, every little piece ends up counting as  
22 you go through the process.

23 Q. So, he's talkative. Do you actually talk to  
24 him?

25 A. Yeah. We actually had a conversation for a few

1 minutes before we got into doing any kind of testing.

2 Q. When you started talking to him, was he  
3 handcuffed?

4 A. I pulled him out of the car and I took the  
5 handcuffs off of him and then we actually walked over in  
6 front of my patrol car and we talked over there.

7 Q. And why did you do that?

8 A. Because I have a video camera in that car.

9 Q. Why did you take the handcuffs off?

10 A. Well, he's out of the car. There's no reason  
11 for him to be handcuffed. And at that point, there's --  
12 he's not under arrest, he's not being charged with  
13 anything. We don't have any reason at that point to  
14 believe he's going to be charged with something. We  
15 just want to find out what happened.

16 Q. And the point of you talking to him, at this  
17 point are you just getting -- gathering information  
18 about the crash?

19 A. Well, there's two parts to it. One is to get  
20 information about the crash. And the other part is to  
21 determine if we need to go the next step and that's  
22 getting him to do field sobriety tests. There's many  
23 cases that I end up going out to and after that initial  
24 talk with the driver and going through that interview,  
25 there are no field sobriety tests that get done.

1 Q. And why not?

2 A. Because there's no need to continue with it.  
3 From talking to that person -- every step along the way  
4 you have to decide, do I go onto the next step here.  
5 And the interview is the first part of it. And from  
6 talking to that person, from the questions that I asked  
7 or the responses that he gives, whether or not  
8 everything makes sense with what's being said, whether  
9 or not there's inconsistent answers, it tells me do I go  
10 to the next step for the field sobriety tests.

11 Q. Whenever you talked to Michael Petty, was he  
12 Mirandized?

13 A. No, he wasn't.

14 Q. Why not?

15 A. Because he wasn't under arrest.

16 Q. Are you still conducting an investigation at  
17 this point?

18 A. Yes.

19 Q. And the questions that you asked him, are they  
20 just standard questions that you ask everyone in a DWI  
21 investigation as you're trying to form an opinion of  
22 intoxication?

23 A. Yeah. And it's not even just a DWI  
24 investigation. It's any crash investigation that we do.  
25 I want to find out where he was coming from, find out

1 where he was going, has he had anything to drink, or  
2 taken any kind of medication, and, really, just even  
3 what happened with the crash. Just tell me your version  
4 of what happened out here.

5 Q. And as you talk to him, did he talk to you?

6 A. Quite a bit.

7 Q. Did he still continue to be talkative?

8 A. Yes.

9 Q. Did he talk to you about where he was coming  
10 from?

11 A. Yes, he did.

12 Q. After -- did he talk to you about where he was  
13 going?

14 A. Not so much about where he was going. It was  
15 more kind of centered around where he was coming from.

16 Q. Did you also talk to him about whether or not  
17 he had taken any kind of -- ingested any alcohol or  
18 drugs or medication?

19 A. Yes, I did.

20 Q. Did he tell you whether or not he had?

21 A. He told me he had not had any alcohol, but that  
22 he was taking medication.

23 Q. The conversation that you had with Mr. Petty,  
24 was this prior to conducting the standardized field  
25 sobriety tests?

1           A.    Yes.

2           Q.    And was this conversation all recorded on your  
3 in-camera video {sic}?

4           A.    Yes, it was.

5           Q.    Was that recording -- is it operated by a  
6 competent operator?

7           A.    Well, I did it, so I sure hope so.    Yes.

8           Q.    Are you -- have you watched the video before?

9           A.    Yes, many times.

10          Q.    And State's Exhibit No. 71 --

11                    MS. COOPER:   Your Honor, may I approach the  
12 witness?

13                    THE COURT:    Yes.

14          Q.    (By Ms. Cooper) State's Exhibit No. 71, have  
15 you watched this from beginning to end (indicating)?

16          A.    Yes, I have.

17          Q.    Is it a complete and accurate copy of the  
18 events that happened on -- at the scene on July 26th of  
19 2010?

20          A.    Yes, it is.

21          Q.    Does it include your initial investigation when  
22 you're talking to the defendant and also the field  
23 sobriety tests that were conducted at the scene?

24          A.    Yes.

25          Q.    And has it been altered or changed in any way?

1           A.    No.

2                       MS. COOPER:  Your Honor, at this time,  
3 after tendering to opposing counsel, State offers  
4 State's Exhibit No. 71 into evidence.

5                               **(State's Exhibit No. 71 Offered)**

6                       MS. BECK:  No objection, Your Honor.

7                       THE COURT:  State's 71 is admitted.

8                               **(State's Exhibit No. 71 Admitted)**

9           Q.    (By Ms. Cooper) Before we play State's Exhibit  
10 No. 71, I want to talk and have you explain to the jury  
11 the field sobriety tests that are conducted at the  
12 scene.

13           A.    Okay.

14           Q.    If you can tell the members of the jury what  
15 the different field sobriety tests -- the names of the  
16 field sobriety tests that were conducted at the scene?

17           A.    Well, the first test is the -- it's called the  
18 horizontal gaze nystagmus.  And because we're police  
19 officers, we like to abbreviate everything, so we call  
20 it HGN.  And that's the test that most people have seen  
21 at some point where it looks like we're holding a pen or  
22 a light of some kind.  I actually use a little light  
23 that -- I guess my batteries are going out on it.  But  
24 hold it up and you actually move this light back and  
25 forth in front of somebody's face.  And as their eyes

1 follow that light from side to side, you're looking to  
2 see if the eyes jerk as they move back and forth. And  
3 that's the nystagmus that we're looking for.

4 Q. What is nystagmus?

5 A. Nystagmus is an involuntary jerking of the  
6 eyes.

7 Q. What causes nystagmus?

8 A. Well, it's something that we all have all the  
9 time, but for the purposes of our investigations, there  
10 has to be something put into the body to enhance it, to  
11 make it visible to the naked eye. When you go to the  
12 eye doctor, they may be able to pick it up with the  
13 scopes and everything else that they use. For our  
14 purposes, some kind of drug or chemical has to be put  
15 into the body for me to be able to see that nystagmus.

16 Q. When you see nystagmus in someone, what does  
17 that mean to you as a drug recognition expert?

18 A. Well, it tells me that there's something in  
19 that person's body that's going to cause it. Alcohol is  
20 usually the obvious one that we're looking at in DWI  
21 type cases, but if there's no alcohol involved, it is  
22 going to fall into one of the three different drug  
23 categories. It's going to be CNS depressants, which  
24 alcohol is a part of, inhalants, which will be paint,  
25 gasoline, or something else that somebody is going to

1 huff, or a drug category called dissociative anesthetic,  
2 which PCP is in that drug category.

3 Q. What other drugs are included as CNS  
4 depressants?

5 A. Oh, there's thousands of them. You have things  
6 like Xanax, Ambien, Topamax or Topiramate. There's a  
7 crazy number of them that are included with that. It's  
8 a lot of stuff that people take every day.

9 Q. And when someone has nystagmus, how does that  
10 affect their vision?

11 A. It has a big impact on what their vision is.  
12 You have to remember, we're talking about a person  
13 sitting inside a motor vehicle. So, as we're looking  
14 for that nystagmus, it's what the eyes are doing as they  
15 move to the side. So, as you're driving down the road,  
16 you have to look to the side, you have to check your  
17 mirrors, you have to do everything else. So, if your  
18 eyes aren't going to operate properly or you're going to  
19 have jerking as you look to the side, it makes it harder  
20 to get out there and see what you're supposed to see.

21 MS. COOPER: May I approach the witness,  
22 Your Honor?

23 THE COURT: Yes.

24 Q. (By Ms. Cooper) I want to show you State's  
25 Exhibits Nos. 75, 76, 77, and 78. Do you recognize



1 those (indicating)?

2 A. Yes.

3 Q. And are those PowerPoint slides that you  
4 actually put together to help aid your testimony in  
5 explaining nystagmus and horizontal gaze nystagmus?

6 A. Yes, it is.

7 MS. COOPER: Your Honor, at this time,  
8 tendering to opposing counsel State's 75, 76, 77, and  
9 78, for -- and ask that they be admitted into evidence.

10 **(State's Exhibit No. 75 through 78 Offered)**

11 MS. BECK: No objection, Your Honor.

12 THE COURT: State's 75 through 78 are  
13 admitted.

14 **(State's Exhibit No. 75 through 78**  
15 **Admitted)**

16 Q. (By Ms. Cooper) If you can tell the members of  
17 the jury what is it that we're looking at here in  
18 State's Exhibit 75 (indicating)?

19 A. This is just a slide that's just got a generic  
20 convertible vehicle in it and the top taken off to kind  
21 of aid what we're looking at. We're looking from the  
22 driver's perspective. So, it would be the seat on the  
23 left-hand side. As we go through, when we're talking  
24 about the HGN, it's going to show the different angles  
25 of things that we're looking at.

1 Q. Are there different phases of the HGN test?

2 A. Yes.

3 Q. How many different phases are there?

4 A. Well, you've got your instruction phase and  
5 that's where we're checking to see if we can even do the  
6 test. And we're checking to make sure they have equal  
7 pupil size and that the eyes will actually track  
8 together. So, we move that stimulus back and forth,  
9 make sure both eyes follow it together.

10 Q. If someone has a head injury, does that affect  
11 the horizontal gaze nystagmus test?

12 A. No, not necessarily. And to qualify for me to  
13 do this test with somebody, pupils have to be equal,  
14 eyes have to tract together. So, if it's a severe  
15 enough head injury that it's going to cause problems  
16 with the HGN, you're going to see it well before you  
17 ever start the test.

18 Q. All right. And that's if they have unequal  
19 pupil sizes or the eyes don't move together?

20 A. Correct.

21 Q. And if that were the case, would you even  
22 attempt to complete the test?

23 A. No. The test results wouldn't be valid no  
24 matter what. So, if either of those two things are not  
25 what they should be, you don't continue, you stop at

1 that point, at least for the HGN test.

2 Q. Did you look at Mr. Petty's eyes and determine  
3 whether or not his pupils were the same size?

4 A. Yes, I did. They appeared to be equal.

5 Q. And were his eyes tracking equally?

6 A. Yes, they did.

7 Q. So, did he appear to be a candidate to complete  
8 the HGN test on?

9 A. Yes, he did.

10 Q. Now, what's the second phase -- or after the  
11 instruction phase, what's the first phase of the  
12 horizontal gaze nystagmus test?

13 A. The first actual validated clues you look for  
14 is called lack of smooth pursuit. And probably the best  
15 way to describe lack of smooth pursuit is a day like  
16 today where it feels like it's above 150 degrees outside  
17 and you accidentally hit the windshield wipers on your  
18 car. So, the wipers -- the rubber is dry and possibly  
19 hard, then you've got that dry windshield. So, as those  
20 wipers go across the windshield, they don't move  
21 smoothly, they're bouncing back and forth as they go  
22 across that windshield. If it was raining out and wet,  
23 the wipers are going to move smoothly back and forth  
24 across the windshield. That's what you'll see on  
25 somebody that's not intoxicated.

1 Q. So, someone that is not intoxicated that  
2 doesn't have a CNS depressant or anything in their  
3 system, your eyes are going to move like just smooth?

4 A. Right. They're going to be smooth as they go  
5 from side to side. There won't be any jerking at all.

6 Q. Okay. And someone that is intoxicated will do  
7 what?

8 A. You'll see jerking. So, as the eye is going  
9 side by side, you're actually going to see them jerk as  
10 they go back and forth.

11 Q. Somebody who has lack of smooth pursuit, how  
12 does that affect them when they're driving?

13 A. Well, lack of smooth pursuit being the first  
14 clue that we look for. So, what do you do when you  
15 drive your car? You have to be aware of your  
16 surroundings, for one thing, but how do you know what's  
17 out there? Well, you're moving your eyes side to side  
18 to look at your mirrors. So, the first arrow that we  
19 put up here --

20 Q. Just for the record, this is State's Exhibit  
21 76.

22 A. The first arrow that goes up here to that side  
23 mirror is to kind of demonstrate what it's like. So, as  
24 you move your eye out to the side and you've got that  
25 jerking in your eye, you're not able to look out that

1 mirror like you should be able to.

2 Q. Can that impact someone while they're driving?

3 A. Absolutely.

4 Q. If you can't look out that mirror without your  
5 eyes jerking, what kind of impact will that have on  
6 someone?

7 A. It could be devastating if you can't tell  
8 there's a car coming up next to you and you switch  
9 lanes.

10 Q. Now, did you check Mr. Petty's eyes for lack of  
11 smooth pursuit?

12 A. Yes, I did.

13 Q. And did you determine whether or not he had a  
14 lack of smooth pursuit?

15 A. Yes, he did, in both eyes.

16 Q. What is the next phase of the horizontal gaze  
17 nystagmus test?

18 A. The next clue that we look for is called  
19 distinct and sustained nystagmus at maximum deviation.  
20 It's just kind of a fancy way to say that we're going to  
21 take that stimulus out, you're going to hold it for at  
22 least four seconds, and you're going to take it so the  
23 eye is all the way to the corner so you don't see any  
24 white here in the corner of the eye. You hold that out  
25 for at least four seconds. And you're looking to see if

1 that nystagmus or the jerking is sustained for that  
2 entire four seconds.

3 Q. And if it's not, what does that indicate to  
4 you?

5 A. Well, if it's not there for at least four  
6 seconds, then it's not going to be one of the clues on  
7 this test. If the jerking stops at three seconds, it's  
8 not a clue. If the jerking stops at two seconds, it's  
9 not a clue. It has to be at least four seconds.

10 Q. If it is at least four seconds, what does that  
11 indicate to you?

12 A. It's an additional indicator for this test that  
13 is going to tell us whether or not somebody is  
14 intoxicated.

15 Q. Now, whenever someone has distinct and  
16 sustained nystagmus at maximum deviation, how does it  
17 impact their ability to drive?

18 A. Again, it's going to be like we talked about  
19 with lack of smooth pursuit. And the slide you have up  
20 now, again, from the driver's perspective looking out  
21 that far side mirror is going to be what it's like as  
22 you're -- as you're driving down a road, you're going to  
23 look out that mirror, the eyes aren't going to work  
24 going out that far side like they should, they're not  
25 going to be able to focus.

1 Q. And that's State's Exhibit No. 77.

2 Did you determine whether or not Michael  
3 Petty had distinct and sustained nystagmus at maximum  
4 deviation?

5 A. Yes, he did in both eyes.

6 Q. Now, is there a clue system or a way that this  
7 test is graded?

8 A. Yes. There's three specific clues that we look  
9 for. Lack of smooth pursuit being the first one,  
10 distinct and sustained nystagmus at maximum deviation is  
11 the second one. And then onset of nystagmus prior to  
12 45 degrees is the third one. Since we have two eyes  
13 we're looking at, we have a total of six clues.

14 Q. And so, if you see -- how many clues indicate  
15 intoxication to you?

16 A. Four clues or more.

17 Q. And if you see all six clues, does that  
18 indicate intoxication?

19 A. Yes, it does.

20 Q. So, you can have two clues on lack of smooth  
21 pursuit?

22 A. Right.

23 Q. And did Michael Petty have both of those two  
24 clues?

25 A. Yes, he did.

1 Q. And the next two clues is distinct and  
2 sustained nystagmus at maximum deviation. Did Michael  
3 Petty have those two clues?

4 A. Yes, he did.

5 Q. And what's the last phase of the horizontal  
6 gaze nystagmus test?

7 A. It's called --

8 Q. I'm showing you State's Exhibit 78  
9 (indicating).

10 A. Onset of nystagmus prior to 45 degrees.

11 Q. Can you explain that to the jury?

12 A. Yeah. What we're looking for on this clue is  
13 we're going to move that stimulus real slow from the  
14 center, which is the nose, to about a 45-degree angle.  
15 And we're looking to see if that jerking starts before  
16 we hit that 45-degree point.

17 Q. Whenever you observe onset of nystagmus prior  
18 to 45 degrees, what does that indicate to you?

19 A. Again, it's one of the clues on this test and  
20 it's an indicator of intoxication.

21 Q. And how does -- when someone has that, how does  
22 that affect their ability to see or to drive?

23 A. And, again, with the slide you have here, the  
24 arrow actually goes up to that rearview mirror to show  
25 the angle we're looking at or going to in this test.



1 Everything with this test, vision is probably the most  
2 important sense that you can have as you're driving, to  
3 be aware of everything going on around you. So, if your  
4 vision is affected and the muscles that control your  
5 eyes are being affected, which is what causes that  
6 jerking, you're going to have a hard time driving that  
7 vehicle like you're supposed to.

8 Q. How does the horizontal gaze nystagmus affect  
9 someone's peripheral vision?

10 A. Well, it can have a huge affect on it. And  
11 what ends up happening is as those muscles are affected,  
12 the stronger that jerking is or the more intoxicated  
13 somebody is, the clues are more pronounced. And they  
14 build on each other. So, you can have somebody that has  
15 lack of smooth pursuit, but you don't see any of the  
16 other clues. And as you become more intoxicated -- or  
17 in alcohol cases -- it's usually the easiest way to  
18 explain it. The more drinks you start to put into your  
19 body, the more those clues really stick out. Then you  
20 go on to your next clue where you see the nystagmus at  
21 maximum deviation and then you see it prior to  
22 45 degrees. So, the more of an intoxicant you put into  
23 your body, the stronger those clues are going to end up  
24 being.

25 Q. Did you check whether or not Michael Petty had

1 an onset of nystagmus prior to 45 degrees?

2 A. Yes, I did.

3 Q. What did you determine?

4 A. That he did have an onset prior to 45 in both  
5 eyes.

6 Q. Was that another two clues for you?

7 A. Yes.

8 Q. So, you said the maximum number of clues that  
9 someone can have on the horizontal gaze nystagmus test  
10 is six clues. How many clues did Michael Petty exhibit?

11 A. Six.

12 Q. Now, do you -- are you finished with your  
13 testing after you conduct the horizontal gaze nystagmus  
14 test?

15 A. No. That's just the first one of the  
16 standardized tests that we're going to do out there.

17 Q. Is the horizontal gaze nystagmus test -- how  
18 does it compare to results you find on other  
19 standardized field sobriety tests?

20 A. Well, they're each a little bit different.  
21 They're -- you use each test to come to the right  
22 decision. So, with the HGN test, when I do that and I  
23 see six clues on somebody, I know I need to do more  
24 tests. I can't just stop there. It tells me that  
25 there's physical impairment, because it's the muscle

1 control of the eyes, but I need to see if there's more  
2 obvious physical impairment as well. That's what the  
3 other divided attention tests are going to do.

4 Q. Is the HGN test a divided attention test?

5 A. Not necessarily. The other divided attention  
6 tests that we use, there's a specific set of  
7 instructions that the person has to follow and perform a  
8 test. The HGN test itself, all he has to do is follow  
9 that light as I move it back and forth.

10 Q. Can you tell the members of the jury what  
11 tolerance is?

12 A. Tolerance, probably the best way to describe it  
13 is, let's say, for example, after we leave court today,  
14 you and I decide we're going to stop at the bar down the  
15 street. You go out every night and you have a six-pack  
16 of beer when you get ready for court the next day. I  
17 never drink. It sounds good at least that way. Right?

18 So, we both have a beer. And then you say:  
19 All right, I'm ready for my next one, I'm ready for my  
20 next one. Well, I decide I'm going to be a big guy and  
21 keep up with you. We're both going to be intoxicated,  
22 we're both going to be to the same level of intoxication  
23 as far as putting a number on it, but I'm going to  
24 appear a lot more intoxicated because I don't drink.  
25 You're used to having that six-pack every night, I never

1 have it. So, I'm going to look like a falling-down  
2 drunk, where you're going to function pretty normally  
3 until we get to the point where we are going to do  
4 things like the HGN tests or some of the other field  
5 tests and some of that impairment will start to show.

6 Q. So, on the divided attention tests, the other  
7 field sobriety tests that you do, can someone who has a  
8 higher tolerance perform better on that test than  
9 someone that does not?

10 A. Absolutely. Somebody that uses alcohol and/or  
11 drugs, medications, anything else, will have a better  
12 physical tolerance and perform those tests better than  
13 somebody that never takes that alcohol or never takes  
14 those medications.

15 Q. Now, what about the horizontal gaze nystagmus  
16 test, is that something that tolerance affects?

17 A. No. And that's one of the great things about  
18 that test, is no matter how much you're used to drinking  
19 or taking a medication or taking a drug, HGN is the one  
20 thing that you can't control. It's an involuntary  
21 action that the body does. So, whereas, if I'm going to  
22 do the walk-and-turn test and walk a line, I might be  
23 really good at covering up whatever drug or alcohol I've  
24 taken for that, but the HGN test, you cannot hide it.  
25 It's nothing that you can control.

1           Q.    Do you know how -- I mean, is it muscles in the  
2 eye or how is it that you can't control the jerking of  
3 the eyes?

4           A.    Well, it's involuntary muscle actions.  So,  
5 when that intoxicant gets into the body, it affects the  
6 central nervous system, which is why we call it a  
7 central nervous system depressant, and then it starts to  
8 affect your muscles.  And intoxicants, no matter what  
9 kind of intoxicant it is, is going to start with the  
10 finest muscles first and then work its way onto the  
11 bigger muscle groups.  The eyes are some of the finest  
12 muscles in the body.  So, that's where it ends up  
13 hitting first.

14          Q.    So, if someone looks pretty good on the  
15 walk-and-turn and the one-leg stand, but they still have  
16 six clues on the HGN test, is -- does that still  
17 indicate intoxication to you?

18          A.    Yes, it does.

19          Q.    And why?

20          A.    Because of what we know about tolerance and  
21 what we just talked about, but the HGN test in and of  
22 itself can be used to determine intoxication.  We don't  
23 want to base it on one test.  We don't want our arrest  
24 decision or no-arrest decision to be made necessarily  
25 just off of one test.  We want an entire battery to back

1 up the decision that we make.

2           But the HGN test by itself, four more clues  
3 indicate intoxication. So, if I do that and I have six  
4 clues and I get zero clues on my other two tests, I'm  
5 still going to make an arrest in that case.

6           Q. So, even if someone can walk a straight line  
7 and stand on one leg, if they have six clues on HGN, is  
8 their vision still impaired?

9           A. Yes, it is.

10          Q. Are they -- as their eyes are still jerking,  
11 are they still going to be at a point where they should  
12 not be operating a motor vehicle?

13          A. Absolutely.

14          Q. Now, did you conduct any other tests on Michael  
15 Petty?

16          A. Yes, I did.

17          Q. What's the next test that you conducted on him  
18 after you conducted the horizontal gaze nystagmus test?

19          A. The next test I did is called the Rhomberg  
20 balance test. The Rhomberg test is an estimation of  
21 time. So, I'll have somebody stand feet together, hands  
22 straight down by their side, tilt head back, and then  
23 estimate what they think is 30 seconds. They'll do that  
24 with their eyes closed and silently. I ask them when  
25 they think 30 seconds is over to open their eyes and

1 tell me stop.

2 Q. Why is the Romberg test important as it  
3 relates to driving?

4 A. Well, there's a couple things with it. One of  
5 them is where we're looking at balance. So, is somebody  
6 able to tilt their head back, close their eyes, and keep  
7 balance. Now, realistically, you can't expect somebody  
8 to stand there and look like a flagpole and is not going  
9 to move. There's going to be some movement and there's  
10 going to be some sway. The biggest thing is really the  
11 estimation of time. And we're looking to see how close  
12 they get to that 30-second point. And you can't expect  
13 them to be dead-on 30 seconds. So, 25 to 35 seconds is  
14 considered a normal range on this test.

15 Q. Now, if someone has estimated 30 seconds to be  
16 more than 25 to 35 seconds, what does that indicate to  
17 you?

18 A. Well, it tells me that their internal clock is  
19 slower than what it should be, that their estimation is  
20 going to be slower. And you can equate that to driving  
21 by, say, a red light case, for example, where you're  
22 approaching a red light. You think you've got all kinds  
23 of time before you have to stop. Well, by the time you  
24 put your foot on that brake because your reactions are  
25 slowed, you've already gone through the intersection

1 before stopping. Or in a case like this one where  
2 you're going in and out of traffic, you're going to come  
3 up on vehicles quicker than you think you will just  
4 because your reactions are going to be delayed.

5 Q. All right. So, estimation of time and slowed  
6 re -- and slowed reaction time -- I'm sorry. When you  
7 conduct the Romberg test, is that to determine what  
8 their estimation of time is?

9 A. Yes, it is.

10 Q. Along with their reaction time?

11 A. Yes.

12 Q. Did you conduct the Romberg test on Michael  
13 Petty?

14 A. I did.

15 Q. And what did you find?

16 A. His estimation of 30 seconds was about 46  
17 seconds.

18 Q. So, what does that tell you?

19 A. It tells me that -- it's an indicator of  
20 intoxication. And there's not a score, necessarily,  
21 like the HGN test with this one. It's simply that  
22 estimation of time, but it tells me that his internal  
23 clock is very slow.

24 Q. So, with six clues on the horizontal gaze  
25 nystagmus test and knowing that his estimation of time



1 and reaction time is slowed, did you -- were you  
2 finished with your field sobriety tests at that point?

3 A. No. There's actually two more tests I did  
4 after that.

5 Q. And did you complete the next test?

6 A. Yes, I did. That was the one-leg stand.

7 Q. What is the one-leg stand?

8 A. That's where you have somebody stand on one  
9 leg, basically. They're going to raise their foot about  
10 6 inches off the ground, keep their hands straight down  
11 by their sides, look at the foot, and then count out  
12 loud, and you count: 1,001, 1,002, 1,003. I time that  
13 test for 30 seconds. So, I tell them when to start this  
14 one and I tell them when to stop.

15 Q. Do you give the same instructions to every  
16 person that you conduct this test on?

17 A. Yes. And I demonstrate the test as well.

18 Q. Do you -- can you demonstrate the test for the  
19 jury just as you do out on scene?

20 A. Yes.

21 MS. COOPER: Your Honor, may I have the  
22 witness step down?

23 THE COURT: Okay.

24 A. Do you want to come and stand over here?

25 Q. (By Ms. Cooper) Sure.

1           A.    Okay.  Go ahead and stand over here.  Put your  
2 feet together so your heels and toes touch and keep your  
3 hands straight down by your side.  In just a second, I'm  
4 going to have you raise one foot off the ground about 6  
5 inches.  It's going to be about that far (indicating).  
6 Either foot you choose, whatever is more comfortable for  
7 you.

8                               When I say begin, you're going to raise  
9 your foot up, keep both legs straight, point your toes  
10 out like they're pointing now, and keep both hands  
11 straight down by your side.  Look down at your foot and  
12 count out loud so I can hear you:  1,001, 1,002, 1,003.  
13 And just continue counting like that until I ask you to  
14 stop.

15                              All right.  This is going to last for 30  
16 seconds.  I will tell you when to start and I will tell  
17 you when to stop.  Do you understand?

18           Q.    Yes.

19           A.    And that's the entire instructions.

20           Q.    All right.  Whenever you gave the instructions  
21 to Michael Petty, did he appear to understand the  
22 instructions?

23           A.    Yes, he did.

24           Q.    And did he complete the one-leg stand?

25           A.    Yes.

1 Q. Whenever you're doing the one-leg stand, are  
2 there certain things that you're looking for?

3 A. Yes. There's four validated clues that we look  
4 for on the test.

5 Q. What are the four validated clues?

6 A. Do they sway as they're standing there, do they  
7 use their arms for balance, do they hop, and do they  
8 drop their foot.

9 Q. Did you observe any clues on Michael Petty on  
10 the one-leg stand?

11 A. Yes, I did. He swayed. Additionally, it's not  
12 a validated clue, but at one point he stopped looking at  
13 his foot and starts looking ahead.

14 Q. Starts looking ahead.

15 Okay. Did he -- was he able to stand on  
16 one foot throughout the duration of the test?

17 A. Yes. He never put his foot down.

18 Q. So, how many clues -- you said there's four  
19 clues that are possible in the one-leg stand?

20 A. Right.

21 Q. How many clues did Michael Petty have?

22 A. One clue.

23 Q. Did you conduct any other tests on Michael  
24 Petty?

25 A. The next step was the walk-and-turn test.

1 Q. And what is the walk-and-turn test?

2 A. The walk-and-turn test is the one that I'm sure  
3 everybody has seen, where you walk heel-to-toe on a  
4 straight line, you take nine heel-to-toe steps, you turn  
5 around, and then take nine more heel-to-toe steps.

6 Q. And if you can demonstrate the walk-and-turn  
7 test for the jury as well.

8 MS. COOPER: Your Honor, may I have the  
9 witness step down?

10 THE COURT: Yes.

11 A. Stand right over here for me. And we don't  
12 have a line here. We don't always have one, so just  
13 pretend there's a line in front of you.

14 Put your left foot on the line, take your  
15 right foot, put it in front of your left foot so your  
16 heel and toe touch. And then just keep your arms  
17 straight down by your sides. Stay in that position. Do  
18 not move until I tell you to. Do you understand?

19 Q. (By Ms. Cooper) Yes.

20 A. All right. In just a second, I'm going to have  
21 you take nine heel-to-toe steps on that line. You're  
22 going to turn around, like I'm going to show you how to  
23 do, and then you take nine more heel-to-toe steps. And  
24 then I demonstrate it.

25 One, two, three, all the way to nine

1 (indicating). When you get to your ninth step, keep  
2 your foot on the line, turn around taking small steps  
3 with your other foot, and then continue walking. One,  
4 two, three, all the way to nine (indicating).

5 Now, once you start, I want you to look  
6 down at your feet the whole time. Count each step out  
7 loud so I can hear you. Keep your hands straight down  
8 at your sides. Once you start, don't stop until you  
9 finish the exercise. Do you understand?

10 Q. Yes.

11 A. Okay. That's it.

12 Q. Why do you have to step heel-to-toe, touching  
13 heel-to-toe?

14 A. There's a couple of reasons. One of them, and  
15 probably most importantly, is that's the way that the  
16 test was designed, that's the way that the test is  
17 validated. Part of it is just to see if they can follow  
18 the instructions.

19 Q. And did Michael Petty complete the  
20 walk-and-turn test?

21 A. Yes, he did.

22 Q. What are the different things that you're  
23 looking for on the walk-and-turn test?

24 A. There's actually eight different clues that we  
25 look for on this test. There are two in the instruction

1 phase. And that's whether or not they keep their  
2 balance. So, as they're standing there, are they able  
3 to stand in a position we tell them to stay in. And the  
4 next one is do they start too soon. Excuse me. The  
5 next one is steps off the line. So, do they take all  
6 the steps on the line, do they use their arms for  
7 balance, do they turn properly, do they take the correct  
8 number of steps, and do they miss heel-to-toe.

9 Q. Now, did you observe any clues on Michael  
10 Petty?

11 A. Yes, I did.

12 Q. And how many clues did you observe on Michael  
13 Petty?

14 A. I marked down four clues.

15 Q. What clues were those?

16 A. It was uses arms for balance, stops walking,  
17 misses heel-to-toe, and makes an improper turn.

18 Q. Now, with -- you had six clues on the HGN test;  
19 is that right?

20 A. Yes.

21 Q. And then the Romberg test, he estimated 46  
22 seconds for 30?

23 A. Right.

24 Q. And then only one clue on the one-leg stand; is  
25 that right?

1           A.    Right.

2           Q.    And then four clues on the walk-and-turn?

3           A.    Right.

4           Q.    When you conducted all of these field sobriety  
5 tests, were you finished?

6           A.    As far as any kind of field sobriety tests,  
7 yes.  So, up to the point -- I was up to the point where  
8 I had to make an arrest or no-arrest decision.

9           Q.    Did you have enough at that point to form an  
10 opinion as to whether or not the defendant was  
11 intoxicated?

12          A.    I think I did, yes.

13          Q.    And what was that opinion?

14          A.    That he was intoxicated.

15                    THE COURT:  All right.  That's it for  
16 today.  We'll continue the testimony tomorrow at 10:00  
17 o'clock.

18                    Please retire to the jury room.  We'll see  
19 you tomorrow at 10:00.

20                    (Proceedings recessed)

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