

1 (Open court, defendant and jury present)

2 THE COURT: All right. Be seated.

3 Ms. Cooper, you may continue.

4 **DON EGDORF,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 **CONT'D BY MS. COOPER:**

8 Q. Officer Egdorf, when you conducted the field  
9 sobriety test on the defendant out at the scene, was he  
10 stumbling all over the road?

11 A. No, he wasn't.

12 Q. Was -- how was his speech?

13 A. Very rapid, a little bit disorganized. He kept  
14 repeating things, kind of changing his story as we went  
15 through things.

16 Q. Did he have slurred speech like someone would  
17 anticipate a drunk driver would have?

18 A. No, not really.

19 Q. What did you base your opinion that he was  
20 intoxicated on?

21 A. Well, really, it's from our initial contact  
22 until the end of that last field sobriety test. It's  
23 not just one piece. It's the entire, you know, time  
24 that we spent together. So, it's the interview, it's  
25 the conversation that we had out there, the inconsistent

1 statements, the story keeps changing, and then when we  
2 get into the field sobriety tests, it's six clues on the  
3 HGN, it's one clue on the one-leg stand, it's 46 seconds  
4 on the Rhomberg test, and four clues on the  
5 walk-and-turn test. That's why I placed him under  
6 arrest.

7 Q. What did you place him under arrest for?

8 A. DWI at that point.

9 Q. Why just DWI at that point?

10 A. Well, at this point we're still trying to  
11 figure out exactly what happened with the crash. So, we  
12 don't know is the crash his fault, is it the other  
13 driver's fault, is it a combination of both of them.  
14 So, from that point, it's just a DWI investigation.  
15 When we get more information on the crash and are able  
16 to talk to those other officers out there, we can make a  
17 better determination about the entire scene and the  
18 entire focus on what happened.

19 Q. After you placed him under arrest for DWI, what  
20 do you do next?

21 A. The next thing I did was read a form called a  
22 DIC-24 or statutory warning. And, basically, it  
23 explains to him what happens if he refuses to provide a  
24 specimen.

25 MS. COOPER: May I approach the witness,

1 Your Honor?

2 THE COURT: Yes.

3 Q. (By Ms. Cooper) Officer, I want to show you  
4 State's Exhibit No. 72. Do you recognize State's  
5 Exhibit No. 72 (indicating)?

6 A. Yes, I do.

7 Q. What is that?

8 A. That's the DIC-24 that I read to the defendant.

9 Q. And whose signature is on the bottom of that  
10 page?

11 A. Mine is.

12 Q. Is the defendant's signature on that page?

13 A. No, it's not.

14 Q. Is there a place for the defendant's signature  
15 on that page?

16 A. There is.

17 Q. Why is his signature not there?

18 A. When I printed these forms out, I had already  
19 booked him into the jail, so he didn't have an  
20 opportunity to sign at that point.

21 Q. Did you have this form in your hand at the  
22 scene when you read it to him?

23 A. Yes, I did.

24 Q. Did he -- could he have signed it at that  
25 point?

1           A.    No.  The one that we actually have at the  
2 scene, I give him a copy of -- or, actually, I hold in  
3 front of him is laminated and it's just the one that I  
4 keep in my police car so I have one that I can pull out  
5 and read.

6           Q.    So, he had one available for him to read there  
7 at the scene?

8           A.    Yes.

9                       MS. COOPER:  Your Honor, at this time, I'm  
10 tendering to opposing counsel State's Exhibit No. 72 for  
11 any objections she may have and ask that it be admitted  
12 into evidence.

13                               **(State's Exhibit No. 72 Offered)**

14                       MS. BECK:  No objection, Your Honor.

15                       THE COURT:  State's 72 is admitted.

16                               **(State's Exhibit No. 72 Admitted)**

17           Q.    (By Ms. Cooper) Do you read State's 72 to the  
18 defendant on the video?

19           A.    Yes, I do.

20           Q.    When we watch this video, is it something --  
21 does he look like what a regular average person would  
22 look like when they think of someone that's drunk or  
23 wasted?

24           A.    Well -- and I think we got into a little bit of  
25 this yesterday -- we're not necessarily looking at what

1 the average person looks for or what we expect  
2 somebody --

3 MS. BECK: Objection, Your Honor.  
4 Nonresponsive.

5 THE COURT: Sustained.

6 Q. (By Ms. Cooper) Does he look like what a  
7 normal, average person would think of when they think  
8 someone is drunk or wasted or falling down?

9 A. Probably not.

10 Q. And why is that?

11 A. I think he's got a tolerance to whatever --

12 MS. BECK: Objection, Your Honor.  
13 Speculation.

14 THE COURT: Overruled. You may finish your  
15 answer.

16 A. I think he has a tolerance to whatever drug or  
17 medication he had in his body. And that's why you see  
18 some indicators of intoxication, but there's some that  
19 you're not going to see.

20 Q. (By Ms. Cooper) And still you formed the  
21 opinion that he was legally intoxicated?

22 A. Yes, I did.

23 MS. COOPER: Your Honor, at this time, may  
24 I publish State's Exhibit No. 71?

25 THE COURT: Yes.

1 (State's Exhibit No. 71 published)

2 Q. (By Ms. Cooper) What's going on right now?

3 A. I'm just trying to move my patrol car a little  
4 bit to get to a spot where there's not going to be any  
5 distractions to be able to do the field sobriety tests.

6 Q. Can you orient the jury of where we are on  
7 I-45?

8 A. Yeah. This is the Gulf Freeway. The Bay Area  
9 Boulevard exit is the one that you see right here.  
10 Baybrook Mall is just going to be over to the right-hand  
11 side and down just a little bit.

12 Q. Where is the crash scene?

13 A. It's actually back behind where my patrol car  
14 is. So, actually north of my police car.

15 Q. From where you're standing at this point, were  
16 you able to see the cars and the crash scene?

17 A. Yes.

18 Q. What's going on right here?

19 A. Trying to find out his version of what happened  
20 with the crash or his version of events out there that  
21 day.

22 Q. And it's a little bit hard to hear in the sound  
23 system. Can you tell the members of the jury what he  
24 just said to you?

25 A. Well, he's talking about issues with his

1 vehicle or issues he's had in the past with his vehicle.  
2 He's had the transmission worked on. I don't know if I  
3 can make the same noises he made talking about the  
4 engine revving up, but something about the engine revved  
5 up on its own. And then he started talking about the  
6 floor mats a little bit or something that came from  
7 Toyota about the floor mats.

8 Q. Did he say what came from Toyota?

9 A. I believe it's a recall notice that he's  
10 talking about with the floor mats.

11 Q. Did he say he got the recall notice?

12 A. Yes.

13 (State's Exhibit No. 71 published)

14 Q. Officer Egendorf, what did he just do when he  
15 pulled his shirt up?

16 A. He said something about a nipple ring.

17 (State's Exhibit No. 71 published)

18 Q. What did he tell -- did you ask him about the  
19 floor mats?

20 A. Well, he said that they look good, so he didn't  
21 want to take them out, even though there was a recall  
22 notice or some type of letter. And what he just said  
23 right here is that the floor mats aren't even in the  
24 vehicle.

25 Q. So, he said he had taken them out of the

1 vehicle?

2 A. Just said that they weren't in there.

3 Q. All right. Did you have a chance to go look at  
4 the truck?

5 A. Yes, I did.

6 Q. And did you see whether or not there were floor  
7 mats in the truck?

8 A. There was a floor mat on the driver's side.

9 (State's Exhibit No. 71 published)

10 Q. What did he say about his tires?

11 A. That they're off-brand tires, cheap tires.

12 Q. Did he say anything else about them right then?

13 A. Just that they're off-brand, cheap tires.

14 (State's Exhibit No. 71 published)

15 Q. What's he talking about at this point?

16 A. What he said was there were vehicles in front  
17 of him -- I think brake-checking is the term that he  
18 used, where basically somebody is hitting their brakes  
19 in front of you. Typically, you see that because  
20 somebody comes up on you too fast and they're trying to  
21 tell you, hey, slow down because I'm here.

22 So, he's complaining about the vehicles in  
23 front of him that aren't driving the way he wants them  
24 to.

25 (State's Exhibit No. 71 published)

1 Q. What's he telling you about now?

2 A. He's talking about the medication that he took  
3 that morning.

4 Q. What did he say? What kind?

5 A. Topiramate.

6 Q. Did he say what time he took it?

7 A. At this point, he hasn't said what time. He  
8 said he took it a little bit ago.

9 (State's Exhibit No. 71 published)

10 Q. All right. What did he just tell you there?

11 A. That he took his pills and that he ate a meal  
12 and he waited at Whataburger for about three hours.

13 Q. Did he tell you how long his pills last?

14 A. About two hours.

15 Q. Are you familiar with the drug Topamax?

16 A. I've -- I've done some work with it in the past  
17 as far as being a DRE, but I certainly can't get into  
18 the pharmacology of it and exactly how long the  
19 medication is going to last in a body.

20 (State's Exhibit No. 71 published)

21 Q. What did he just say about his pills?

22 A. That there's a warning label on it that says do  
23 not drive.

24 (State's Exhibit No. 71 published)

25 Q. What are you doing right here, Officer?

1 A. Doing the HGN test.

2 Q. While you were talking to the defendant, is  
3 the -- has the medical examiner's office arrived on  
4 scene?

5 A. No, they haven't.

6 Q. So, can you still -- are the cars still in the  
7 condition that they were in when the crash happened?

8 A. They haven't moved.

9 Q. And were you able to see -- did you know that  
10 there was a body hanging out of one of the cars?

11 A. Yes, I did.

12 (State's Exhibit No. 71 published)

13 Q. Does the fact that the sun is out have any  
14 impact at all on the HGN?

15 A. No, it won't.

16 (State's Exhibit No. 71 published)

17 Q. What is this test that you're about to  
18 complete?

19 A. This is the Rhomberg balance test.

20 Q. Is this the one where they estimate 30 seconds?

21 A. That's right.

22 (State's Exhibit No. 71 published)

23 Q. Are you timing him on your watch?

24 A. Yes, I had a digital watch on.

25 (State's Exhibit No. 71 published)

1 Q. And how many seconds was it?

2 A. Forty-six.

3 (State's Exhibit No. 71 published)

4 Q. What did that indicate to you?

5 A. That his reactions were going to be slow, his  
6 internal clock was slow.

7 (State's Exhibit No. 71 published)

8 Q. What test is this?

9 A. This is the one-leg stand.

10 (State's Exhibit No. 71 published)

11 Q. Now, Officer Egdorf, he held his foot up the  
12 whole time?

13 A. Yes.

14 Q. What did you observe that indicated a clue to  
15 you on the one-leg stand?

16 A. That he swayed. He started to lose his balance  
17 at the point where he stopped counting. I reminded him  
18 to count out loud. He looks up like he's looking down  
19 at a distance. I reminded him to look down at his foot  
20 and that's when you see him kind of sway over to the  
21 side.

22 Q. Was it windy out there?

23 A. It was a little bit windy.

24 Q. Enough wind to cause him to sway?

25 A. No, I don't think so.

1 (State's Exhibit No. 71 published)

2 Q. Did you notice any clues during that portion of  
3 the test, the first portion?

4 A. Yeah. He actually turns the wrong direction  
5 and spins around. So, he's not turning like I  
6 instructed. And he missed heel-to-toe twice.

7 (State's Exhibit No. 71 published)

8 Q. Now, Officer Egdorf, if you look at your hand,  
9 you keep doing a motion with your hand as he's walking.  
10 What is that?

11 A. Well, normally when I'm doing the test, I have  
12 a flashlight in my hand. I use a flashlight so when I  
13 watch the video later or an attorney watches the video  
14 later, there's things that you can't see that he's doing  
15 that won't come out on video, like missing heel-to-toe,  
16 because of the direction he's walking. So, I'll use a  
17 flashlight or I'll use my hand to signal that when I do  
18 that, he's missing heel-to-toe.

19 Q. So, every time you signal with your hand, that  
20 means he's missing heel-to-toe?

21 A. Yes.

22 (State's Exhibit No. 71 published)

23 Q. What is he asking you?

24 A. He wants to give something to his girlfriend,  
25 his phone or his wallet.

1 (State's Exhibit No. 71 published)

2 Q. What form are you reading?

3 A. This is the DIC-24 or statutory warning.

4 Q. Okay. And that's State's Exhibit No. 72 that's  
5 already been admitted?

6 A. Yes.

7 (State's Exhibit No. 71 published)

8 Q. Are there consequences if someone refuses to  
9 submit a specimen of their breath or blood?

10 A. Yes. Their driver's license can be taken away  
11 for up to 180 days.

12 Q. And is that one of the things that he's made  
13 aware of on this form?

14 A. Yes.

15 Q. Now, there's -- on State's Exhibit No. 72,  
16 there is a -- two boxes. One is to request a specimen  
17 of breath and one is to request a specimen of blood.

18 A. Right.

19 Q. Why are there two different options?

20 A. Well, the officer has the option of what kind  
21 of specimen to ask for. There are some cases where  
22 if -- when I go through those field sobriety tests and  
23 it's a -- I hate to use typical, but if it's a -- just a  
24 regular DWI stop, traffic stop, for whatever violation,  
25 do field sobriety tests, make an arrest, typically we'll

1 do a breath test on you. It's the easiest specimen to  
2 get, it's the least evasive to get, but it doesn't tell  
3 us everything.

4                   So, on some cases, especially cases  
5 where -- like this one where there is a crash, where at  
6 this point I know one person has been killed, we want to  
7 get a blood specimen because there can be other things  
8 in the body that a breath test won't tell us.

9           Q.    At this point, did you inspect -- did you  
10 suspect alcohol in this case?

11           A.    No, not at all.

12           Q.    But a breath test, does that -- what does that  
13 test for?

14           A.    Just alcohol.

15           Q.    Okay. So, no drugs or prescription drugs or  
16 anything like that?

17           A.    Just alcohol.

18           Q.    So, what did you ask for in this case?

19           A.    I asked for a blood specimen.

20                               (State's Exhibit No. 71 published)

21           Q.    So, what's going on right now?

22           A.    He's telling me he wants to take a breath test.  
23 And I'm trying to explain to him that it's my choice  
24 what kind of specimen to ask for, it's not his choice of  
25 what kind to provide.

1 Q. And you're not asking for a breath?

2 A. No, I didn't want a breath test. It wasn't  
3 going to tell me anything.

4 (State's Exhibit No. 71 published)

5 Q. What was just said?

6 A. He was asking about his truck and that it's  
7 pretty much totalled.

8 (State's Exhibit No. 71 published)

9 Q. Where did you just take him?

10 A. I'm going to put him in the back seat of the  
11 police car.

12 Q. Why?

13 A. Well, from this point he hasn't really made a  
14 decision yet about whether or not he wants to provide a  
15 specimen. If he doesn't make a decision, I have to make  
16 that decision for him.

17 (State's Exhibit No. 71 published)

18 Q. What is he wanting?

19 A. Well, he's saying that he'll consent to the  
20 specimen if I let him give his girlfriend a kiss and  
21 then he wants the wallet, keys, and phone to go with her  
22 as well.

23 (State's Exhibit No. 71 published)

24 Q. What did he just say?

25 A. He was referring to the officer whose car he

1 was in, said he was being kind of a dick about the  
2 phone, keys, and wallet.

3 (State's Exhibit No. 71 published)

4 Q. Now, where is the defendant at this time?

5 A. He's in the back seat of my police car.

6 Q. What are you -- after you put the defendant in  
7 the back seat of your police car, what do you do next?

8 A. I went to his vehicle, after talking to some of  
9 the other officers out there. There's two prosecutors  
10 out on the scene as well. Went to his truck. I wanted  
11 to see if the floor mats were in there like he talked  
12 about, and they were. I was looking for the medication  
13 that he talked about being in his truck and I needed to  
14 get his keys, cell phone, and wallet out of the other  
15 officer's vehicle.

16 Q. What is the purpose of you talking to the other  
17 officers on scene?

18 A. Well, once I make a determination about whether  
19 or not I think somebody is intoxicated, the other part  
20 that goes with an investigation like this is to know  
21 what happened with the crash or what the details of the  
22 crash were. So, I have his version of what happened  
23 with the crash and needed to find out from the other  
24 officers that are investigating. I haven't talked to  
25 any witnesses out there. I haven't talked to anybody

1 else that might have been involved in the crash. So,  
2 that's what the other officers are doing, is gathering  
3 that information.

4 Q. Why is it important to determine the cause of  
5 the crash?

6 A. Well, it's very important. It's going to tell  
7 you for one thing whether or not you're even looking at  
8 potentially filing any kind of criminal charge. The  
9 person that causes a crash like this, you have to  
10 determine why they caused it or how it was caused. In  
11 this case, I believed it was Mr. Petty's intoxication  
12 that caused him to drive the way that he was, and in  
13 turn that caused the crash. And that's how you get to  
14 an intoxication manslaughter case. The intoxication has  
15 to cause the actions that make that crash happen and  
16 ultimately cause that death.

17 Q. Did you -- the other officers out on scene --  
18 don't go into what they told you, but after speaking to  
19 them, did you have an opinion as to whether or not the  
20 intoxication of the defendant caused the crash?

21 A. Yes. I believe it played a big part in the  
22 crash.

23 Q. Now, after talking to the officers at the  
24 scene, you said that you went to the defendant's truck.  
25 Is that right?

1 A. Yes.

2 Q. I'm showing you State's Exhibit No. 58. Is  
3 this the vehicle -- which vehicle is this (indicating)?

4 A. That's the defendant's vehicle.

5 Q. Did you look inside of the defendant's vehicle?

6 A. Yes, I did.

7 Q. State's Exhibit No. 65, what did you observe  
8 when you looked inside of the defendant's vehicle?

9 A. There were a few things that I was looking for.  
10 One, to confirm that the airbag actually deployed, which  
11 it did. You can see it sticking out of the steering  
12 wheel. I wanted to see if there was a floor mat in the  
13 driver's side of the vehicle, which there is. And the  
14 other thing I was looking for was the medication that he  
15 talked about being in there.

16 Q. Now, the airbag that deployed, is that going to  
17 cause any of the observations that you observed on the  
18 defendant?

19 A. Aside from the marks on his forearm, no.

20 Q. Does it cause HGN?

21 A. No.

22 Q. And State's Exhibit No. 67, what are we looking  
23 at here (indicating)?

24 A. That's just a closer version of the floor mat.

25 Q. Was that consistent with what the defendant

1 told you?

2 A. No.

3 Q. Were you able to locate the pill bottle inside  
4 of the defendant's truck?

5 A. Yes. They were in the center console, as you  
6 can actually see, right next to the Whataburger cup in  
7 the picture there.

8 Q. When -- how many pill bottles were there?

9 A. There were three.

10 Q. And what -- did you observe what the  
11 prescriptions were for those pills?

12 A. One was Topiramate. One was Dulcolax -- I  
13 think is how you pronounce that. It's a stool softener.  
14 And the other one, if I can pronounce it right,  
15 Ondansetron. That's an antinausea medication.

16 Q. Were you able to tell how -- the prescription  
17 dosage for each pill?

18 A. Not for the Dulcolax. I don't have that one.  
19 For the Topiramate, it was 100-milligram tablets. And  
20 the Ondansetron was 8-milligram tablets.

21 Q. Now, on the Topamax, is that -- is there  
22 sometimes two different names for the same pill?

23 A. Multiple names for the same medication.

24 Q. So, Topiramate, Topamax, is that all the same  
25 thing?

1 A. Yes, it is.

2 Q. All right. So you said it was a 100-milligram  
3 pill?

4 A. Correct.

5 Q. How many pills were in that bottle?

6 A. There were 24.

7 Q. How many pills was the prescription for?

8 A. Thirty.

9 Q. So, 30 pills. How do you know there were 24  
10 pills in the bottle?

11 A. I counted them.

12 Q. Did you -- did it say on the bottle when that  
13 prescription was filled?

14 A. It was filled the day before.

15 Q. So, what date was that?

16 A. The 25th.

17 Q. So, filled --

18 A. July 25th.

19 Q. -- July 25th for 30 pills. And the very next  
20 morning, there's 24 pills left?

21 A. Right.

22 Q. So, how many pills are missing from the bottle?

23 A. Six.

24 Q. Did it say how many pills that he was supposed  
25 to take a day?

1           A.    I believe it was three times a day.  And that's  
2 what he told me, as well, multiple times.

3           Q.    So, like one pill three times a day?

4           A.    Correct.

5           Q.    What did you -- whenever you -- did you collect  
6 the pill bottles?

7           A.    I collected those as well as the wallet, keys,  
8 and cell phone, and from that point we left the scene.

9           Q.    Where did you go?

10          A.    To Clear Lake Regional Hospital.

11          Q.    Why did you go there?

12          A.    To have his blood drawn.

13                    MS. COOPER:  May I approach the witness,  
14 Your Honor?

15                    THE COURT:  Yes.

16          Q.    (By Ms. Cooper) I'm showing you State's Exhibit  
17 No. 73.  Do you recognize State's Exhibit No. 73  
18 (indicating)?

19          A.    Yes, I do.

20          Q.    What is that?

21          A.    That's the THP-51 or statutory authorization  
22 for a mandatory blood specimen.

23          Q.    Is there some cases where even if someone  
24 refuses to provide a blood specimen, that you can take  
25 it?

1           A.    Yes, there is.

2           Q.    Explain to the jury what situations those are.

3           A.    Well, there's a few.  Any felony DWI case.  So,  
4 somebody who has had two prior DWI convictions, the  
5 third time you get arrested, it's a felony offense.  So,  
6 we can do a mandatory blood specimen after someone  
7 refuses.  If you are arrested for DWI and have a child  
8 passenger in a vehicle, so somebody 14 or under.  If you  
9 have prior convictions for intoxication assault,  
10 intoxication manslaughter.  If there is a crash that  
11 that driver is at fault in or causes and causes serious  
12 bodily injury or death, we can take a mandatory  
13 specimen.  Or if there's a crash with minor injuries,  
14 but somebody gets transported to a hospital for medical  
15 treatment.

16          Q.    Did the defendant ever give you an answer  
17 whether or not he was going to consent to let you take  
18 his blood?

19          A.    The last thing that came up was where he said:  
20 If I let him give his girlfriend a kiss, he would do the  
21 specimen.  And I took that as a refusal.  It's not a,  
22 you know, if I do this for you, you'll do this for me.  
23 It's a "yes" or "no."  There's no give and take to it.

24          Q.    So, did this situation fall under one of the  
25 mandatory blood draw situations?

1           A.    Yes, it did.

2           Q.    Which one?

3           A.    A person was killed as a result of this crash.

4           Q.    So, at the point that you made the decision to  
5 take a mandatory blood draw, had you already come to the  
6 conclusion that the defendant's intoxication was the  
7 cause of this crash?

8           A.    Yes, I did.

9           Q.    All right.  And that was after you spoke to the  
10 officers and left the scene?

11          A.    Well, it's before I actually left the scene.  
12 After I read the DIC-24 to him requesting that specimen,  
13 I took that as a refusal from him, talked to the other  
14 officers, found out the facts of the crash, and then  
15 determined from that point that he is the at-fault  
16 driver in this crash.

17          Q.    What hospital did you take him to?

18          A.    It was Clear Lake Regional.

19          Q.    When you get to Clear Lake Regional, what do  
20 you do?

21          A.    I had to find somebody who would draw blood for  
22 me.

23          Q.    Did you do that?

24          A.    Yes, I did.

25          Q.    Who drew the blood in this case?

1           A.    It was it a lab tech named Patel.

2           Q.    Whenever you take someone in to draw blood, is  
3 there a certain way that it's done in every case?

4           A.    Yes.

5           Q.    Can you explain that process to the jury?

6           A.    The first thing we have to do is find a nurse  
7 or a lab tech that's going to draw the blood for us. We  
8 explain to them why we're there. We actually have to  
9 give them this form and explain to them why we're there.  
10 So, we're here for a mandatory blood draw. Or they'll  
11 refer to it as a legal blood draw most of the time.  
12 They'll actually sign this form, print their name on it,  
13 I'll hand them two blood vials, and they'll actually  
14 draw the blood for me.

15          Q.    Do you provide the blood vials?

16          A.    Yes.

17          Q.    Why?

18          A.    Just so we can make sure that they're gray-top  
19 tubes. The gray-top tubes have a white powder inside of  
20 them. It's an anticoagulant and preservative. So, it  
21 will keep that blood. What the hospitals usually use  
22 are tubes with nothing in them. So, they never have to  
23 mix them, they don't have to invert them. They test  
24 them right away. And the tubes that we use have that  
25 preservative in there because two years later we might

1 end up in court and something else might need to be done  
2 with that blood.

3 Q. So, did you -- where did you get the blood  
4 vials that were used in this case?

5 A. From our crime lab.

6 Q. Did you check the blood vials and make sure  
7 that they were still sealed?

8 A. Yes, I did.

9 Q. Is there an expiration date on the blood vials?

10 A. Yes, there is.

11 Q. And did you check the expiration date?

12 A. Yes.

13 Q. Were they expired?

14 A. No, they weren't.

15 Q. What's the purpose of the expiration date on  
16 the blood vials?

17 A. Just to -- the expiration date basically  
18 guarantees the vacuum on the tube. The powder inside  
19 never expires, the tube itself never expires, but it's  
20 vacuum-sealed. So, when that technician puts a needle  
21 in somebody's arm and plugs that needle into the tube to  
22 vacuum in the tube, it's what sucks the blood out of the  
23 body. So, if it's out of date, the vacuum may be no  
24 good, so when you plug that tube in, you get no blood.

25 Q. And when you looked at the tubes, did they have

1 the powder in them like they were supposed to?

2 A. Yes, they did.

3 Q. What did you do with the tubes?

4 A. Handed them to the lab tech and she drew blood  
5 for me.

6 Q. I want to show -- when she drew the blood, did  
7 she -- how did she clean the arm site?

8 A. With a non-alcoholic prep.

9 Q. What is the purpose of that?

10 A. Smoke and mirrors, I guess. Isopropyl alcohol  
11 is used to clean a site before a shot or injection or  
12 something like that. It's a completely different type  
13 of alcohol and shows up differently in tests, but if you  
14 use an alcohol swab to draw it, one of the arguments  
15 that -- no offense, Ms. Beck -- that defense attorneys  
16 try to make in court is that it's the alcohol from the  
17 swab that got into the tube and that's what makes us  
18 think he's intoxicated. It's not the ethanol alcohol  
19 that's in blood. In this case, it wouldn't have  
20 mattered because we're not looking for alcohol.

21 Q. I want to show you -- all right. So, was the  
22 blood drawn?

23 A. Yes, it was.

24 Q. Was the blood put in two different tubes?

25 A. Yes.

1 Q. What did you do -- or what happened to the  
2 blood vials right after the blood was drawn?

3 A. Well, what happens right away is the -- the  
4 person that draws the blood will actually put their  
5 initials on and put their name on the vials. And you do  
6 that right near the expiration date. I'm going to pull  
7 this label back a little bit (indicating).

8 So, her name is right here on the tube. My  
9 initials and the time go right above the expiration  
10 date. That's just for chain of custody. So, two years  
11 later we can show somebody these tubes and say: Yes, I  
12 had my hands on these tubes.

13 Q. And are these the same tubes that were used  
14 that -- when the defendant's blood was drawn?

15 A. Yes, they are.

16 Q. How do you know that?

17 A. Because I've got my initials on here. I've got  
18 the time that the blood was drawn. And there's actually  
19 another label underneath this one from the medical  
20 examiner's office that has all the case information on  
21 it.

22 Q. After the blood is drawn, is there anything  
23 special that's done with the tubes?

24 A. I invert the tubes ten times. And that's just  
25 to make sure that that powder that's inside the tube

1 mixes with the blood. And when it gets a good mix in  
2 there, that blood will stay liquid, it won't coagulate  
3 later on.

4 Q. When -- how do you know -- what do you do with  
5 the blood vials once you leave the hospital?

6 A. I actually put them in a bag, which -- I put  
7 them into a zip-lock bag like this one just so it's  
8 sealed up. And then I fill out an evidence envelope,  
9 which is this envelope that's got my handwriting on it,  
10 my signature, my initials, and the date on the back.  
11 So, it gets sealed up on this, along with lab submission  
12 form. This goes into a refrigerator until it can go to  
13 our crime lab.

14 Q. So, State's Exhibit No. 74, that's what you're  
15 referring to, and its contents. Are these the same  
16 blood vials that were used when the defendant's blood  
17 was drawn (indicating)?

18 A. Yes, they are.

19 Q. And they go into the lab?

20 A. They go to our crime lab, yes.

21 Q. And how do they get to court?

22 A. I went and picked them up from the medical  
23 examiner's office.

24 MS. COOPER: Your Honor, at this time, I'm  
25 tendering to opposing counsel State's Exhibits 73 and 74

1 for any objections she may have and ask that they be  
2 admitted into evidence.

3 **(State's Exhibit No. 73 and 74 Offered)**

4 MS. BECK: No objections to State's Exhibit  
5 73, as well as 74 and its contents, Your Honor.

6 THE COURT: All right. State's 73 and 74  
7 are admitted. 74, including its contents.

8 **(State's Exhibit No. 73 and 74 Admitted)**

9 Q. (By Ms. Cooper) What happened to the  
10 defendant's phone?

11 A. I actually kept his phone and I had a search  
12 warrant drafted and signed by a judge and then it went  
13 to our digital forensics lab to be downloaded.

14 MS. COOPER: May I approach the Judge --  
15 approach the witness one more time, Judge?

16 THE COURT: Yes.

17 Q. (By Ms. Cooper) I want to show you State's  
18 Exhibit Nos. 113 and 114. Do you recognize these  
19 (indicating)?

20 A. Yes. It's a copy of the search warrant and  
21 it's the defendant's phone.

22 Q. And is this an exact duplicate of the search  
23 warrant that was drafted and signed in this case?

24 A. Yes, it appears to be.

25 Q. And what was the reason that you tagged the

1 defendant's phone and got a search warrant to download  
2 the contents?

3       A.    It's something that's fairly common that we do  
4 in driving cases.  We want to find out if it's -- if  
5 it's possible that he was on the phone at the time of  
6 the crash, find out what somebody was doing before the  
7 crash, and then even find out what their actions are  
8 after the crash.  Some of that might be trying to see if  
9 they tried to call 911 for help, find out what was going  
10 on before.

11                   In this case, you have somebody that's  
12 hanging out at Whataburger trying to let his medication  
13 wear off.  Well, what's really going on?  And the cell  
14 phones can help us find out some of that information.

15                   MS. COOPER:  Your Honor, at this time, I'm  
16 tendering to opposing counsel State's Exhibits 113 and  
17 114 for any objections she may have and ask that they be  
18 admitted.

19                   **(State's Exhibit No. 113 and 114 Offered)**

20                   THE COURT:  Ms. Cooper, which one is which?

21                   MS. COOPER:  I'm sorry, Your Honor.  113 is  
22 the search warrant and 114 is the phone.

23                   THE COURT:  All right.  Thank you.

24                   MS. BECK:  I have no objections to State's  
25 Exhibits 113 and 114, Your Honor.

1                   THE COURT: State's 113 and 114 are  
2 admitted.

3                   **(State's Exhibit No. 113 and 114 Admitted)**

4           Q.    (By Ms. Cooper) What did you do -- did you keep  
5 the pill bottles?

6           A.    No, I didn't.

7           Q.    And what did you do with the pill bottles?

8           A.    I wanted to tag those in as evidence. When I  
9 tried to tag them into our Narcotics Division, I was  
10 told that they had to go with the defendant because  
11 they're his property.

12          Q.    Okay. With the defendant to the jail?

13          A.    Yes.

14          Q.    Now, when you left the hospital, where did you  
15 go next?

16          A.    We went to 61 Reisner, which is the central  
17 police station downtown.

18          Q.    Why do you do that?

19          A.    Well, a couple of reasons. And like I had  
20 said, the defendant, at the end of that video there, I  
21 wanted to do a drug influence evaluation with him  
22 because I didn't believe he was impaired by alcohol.  
23 And the place for us to go do that is the central  
24 intoxication.

25          Q.    Did you explain to him that you wanted to do a

1 drug influence evaluation on him?

2 A. Yes, I did.

3 Q. Why did you explain that to him?

4 A. I think it's important to let the person that  
5 you're dealing with know what's going on. And to a  
6 point, I still hadn't told him exactly what happened  
7 with the crash yet or what the result of it was with two  
8 people being killed. But as we go through each step, I  
9 think it's only fair to tell him that this is where we  
10 are now, this is what's coming next, this is what I want  
11 to do. If I'm open with him, typically I don't have  
12 any --

13 MS. BECK: Excuse me. I'm going to object,  
14 Your Honor. This has become a narrative.

15 THE COURT: Sustained. Question and  
16 answer, please.

17 Q. (By Ms. Cooper) Was it evident out there at the  
18 crash scene that at least one person was dead?

19 A. Yes.

20 Q. But did he have any knowledge of that, did it  
21 appear?

22 MS. BECK: Objection. Speculation.

23 THE COURT: Sustained.

24 Q. (By Ms. Cooper) Did you know whether or not the  
25 defendant had -- had knowledge that someone was dead?

1 A. He never mentioned knowing anything about it.

2 Q. Now, when you get down to the police station,  
3 you had already told the jury that you've already formed  
4 the opinion that he's intoxicated, but are you -- you're  
5 still going to do further examination on him; is that  
6 right?

7 A. Yes.

8 Q. Now, this further examination, is this -- were  
9 you able to complete a full drug evaluation on him?

10 A. No, I wasn't.

11 Q. Why not?

12 A. He chose not to participate and do that  
13 evaluation.

14 Q. Were you able to conduct a couple more tests on  
15 him down at the station?

16 A. I did HGN two more times in our video room  
17 downtown.

18 Q. Why?

19 A. The first time I did it because I wanted to see  
20 if it was still there and make sure I was going to see  
21 the same thing there that I saw probably about two hours  
22 before out at the scene. The second time I did it, I  
23 actually used a camera to record it.

24 Q. Explain to the jury what camera you used to  
25 record it.

1           A.    A couple years ago we were given a piece of  
2 equipment called a HawkEye from Montgomery County D.A.'s  
3 Office.  And, basically, what that is, it's a laptop  
4 computer that's attached to a camera.  And that camera  
5 is held up on the face.  And there's actually two  
6 cameras on it, but they point directly at the eyes.

7                        So, when you do this HGN test, the cameras  
8 are right here (indicating) and pick up all those  
9 movements in the eyes.  So, we're actually -- instead of  
10 me just coming and saying:  I really saw this, it was  
11 there, I have a recording of it that we can show so  
12 everybody can see that it really was there.

13           Q.    Did you bring the HawkEye equipment with you  
14 here to court?

15           A.    Yes, I did.

16           Q.    Will that help you explain to the jury how it  
17 works?

18           A.    I think it will.

19                        MS. COOPER:  Your Honor, may I have Officer  
20 Egdorf demonstrate the HawkEye just for demonstrative  
21 purposes?

22                        THE COURT:  Okay.

23           A.    There's a few different parts to this.  The  
24 obvious one here is the laptop computer.  Inside the  
25 box -- I don't know if the cord is going to let me go

1 this far -- there is a card reader that's right here  
2 (indicating).

3 MS. BECK: May I relocate myself, Your  
4 Honor, please?

5 THE COURT: Yes, ma'am.

6 A. And in this card reader, what we'll do is  
7 actually take a person's I.D. card or driver's license  
8 and put it inside so when it records the panel onto the  
9 computer, it also has a picture of the I.D. that's in  
10 there to tell you who it is. And then the camera itself  
11 is this piece (indicating).

12 So, these are the two different cameras I  
13 was talking about. And what this does, it actually goes  
14 up on the face like this with the two cameras pointing  
15 at the eyes so -- with room to view right here  
16 (indicating). So, as you're doing that HGN test, these  
17 two cameras are picking up everything that the eyes are  
18 doing. So, it makes it real easy to explain the HGN,  
19 but you can actually use this and show what it looks  
20 like.

21 And the hood that goes with this is  
22 something that we actually use during that drug  
23 evaluation, because part of the dark-room exams are  
24 seeing what the pupils do in different lighting  
25 conditions. So, you can put the hood on to simulate a

1 dark room and see what the pupils look like in the dark.

2 Q. (By Ms. Cooper) Now, whenever you put the hawk  
3 eyes on him and did that interview with him and talked  
4 to him about the -- participating in the drug  
5 recognition evaluation, was that all recorded?

6 A. Yes, it was.

7 Q. I want to show you State's Exhibit No. 80. Do  
8 you recognize State's Exhibit No. 80 (indicating)?

9 A. Yes. That's the video that I made in the room  
10 actually recording both of our actions in there.

11 Q. Does it fairly and accurately depict the events  
12 as they took place?

13 A. Yes, it does.

14 Q. Have you had an opportunity to watch State's  
15 Exhibit No. 80?

16 A. Yes, I have.

17 Q. Has it been altered or deleted in any way?

18 A. No.

19 Q. State's Exhibit No. 79, what's State's Exhibit  
20 No. 79 (indicating)?

21 A. That's the actual HawkEye video that was made  
22 with that piece of equipment.

23 Q. And the HawkEye video made with the piece of  
24 equipment in State's Exhibit 79, how many hours after  
25 the crash is this?

1           A.    This is -- the crash was at about 12:30.  This  
2 is probably between 4:00 and 4:30.

3           Q.    Did the defendant still have HGN?

4           A.    Yes, he did.

5           Q.    And can you see that on State's Exhibit No. 79?

6           A.    Yes, you can.

7                    MS. COOPER:  Your Honor, at this time  
8 tendering to opposing counsel State's Exhibit No. 79,  
9 the HawkEye video, and State's Exhibit No. 80, the video  
10 of him doing the HawkEye video.

11                   **(State's Exhibit No. 79 and 80 Offered)**

12                   MS. BECK:  I have no objection to 79 and  
13 80, Your Honor.

14                   THE COURT:  State's 79 and 80 are admitted.

15                   **(State's Exhibit No. 79 and 80 Admitted)**

16                   MS. COOPER:  Thank you, Your Honor.

17                   May I publish Exhibit No. 80, Your Honor?

18                   THE COURT:  Yes.

19           Q.    (By Ms. Beck) If you can, tell the members of  
20 the jury what's going on in the room prior to conducting  
21 the HawkEye video?

22           A.    Part of it is just getting everything set up in  
23 there, bringing that box in, getting it plugged in,  
24 making sure everything is working correctly on it, and  
25 then actually starting the video in the room itself so

1 it will record everything that we're doing in there.

2 (State's Exhibit No. 80 published)

3 Q. Officer Egdorf, what are you doing with the  
4 circle?

5 A. It's looking for lack of convergence. We  
6 already checked for equal tracking before doing HGN, but  
7 one of the things we do as part of the eye exams on a  
8 DRE is we check for lack of convergence. And,  
9 basically, what that is we make two big circles around  
10 the face. After the second one, we'll bring that light  
11 in towards the bridge of the nose. And as the light  
12 comes in towards the bridge of the nose, both eyes  
13 should come in together. And that's one of the things  
14 we look for. CNS depressions will cause someone to have  
15 a lack of convergence.

16 Q. Did both of the defendant's eyes come in  
17 together?

18 A. No, they didn't.

19 Q. What did that indicate to you?

20 A. It's an indicator that there's potentially a  
21 CNS depressant in his system, which is consistent with  
22 everything else I had seen up to that point.

23 (State's Exhibit No. 80 published)

24 Q. What is the defendant doing right then?

25 A. Asking about the straps on that chair.

1 Q. What about his demeanor? Did you notice  
2 anything about his demeanor?

3 A. He's very relaxed and yawning quite a bit as  
4 we're sitting in there.

5 (State's Exhibit No. 80 published)

6 Q. What are you doing right now?

7 A. Actually turning the other microphone on.  
8 That's what that is hanging down from the ceiling.

9 Q. But what are you showing him?

10 A. I'm showing him the video that we just made.

11 (State's Exhibit No. 80 published)

12 Q. After that was he asked to perform the drug  
13 recognition evaluation?

14 A. Yes.

15 Q. What did he say?

16 A. He chose not to.

17 MS. COOPER: Your Honor, may I publish  
18 State's Exhibit No. 79?

19 THE COURT: All right.

20 (State's Exhibit No. 79 published)

21 Q. (By Ms. Cooper) If you look up at the top,  
22 there's a date and a time. Is that the correct date and  
23 time?

24 A. No, it's not. Once that box gets unplugged, it  
25 will actually reset the date and time. So, every time

1 you go into it and plug it back in, you need to go back  
2 in and reset it.

3 Q. At the bottom left corner, what is depicted up  
4 there?

5 A. That's Michael Petty driver's license.

6 Q. And then in the top, tell the members of the  
7 jury kind of what we're looking at.

8 A. Well, what we're looking at right here is this  
9 is just as that camera goes up on his face. So, the  
10 pictures on there are going to move just a little bit as  
11 I adjust those cameras to center it. On the left eye,  
12 you actually have all these little hash marks. That's  
13 something that we use in DRE so we can actually measure  
14 the pupil size.

15 Q. Can you tell the members of the jury about the  
16 difference in the focus in the cameras?

17 A. Well, they're two different cameras. So, each  
18 one is going to focus independently. One of them is  
19 very clear focused. The other one is out of focus a  
20 little bit. We actually had to have somebody do some  
21 work on it to fix it.

22 Q. Which one is the one very clear focused?

23 A. The left eye.

24 Q. And that's the one with the hash marks?

25 A. Yes.

1 (State's Exhibit No. 79 published)

2 Q. Tell the members of the jury what we're seeing.

3 A. The first thing we're seeing here is checking  
4 for equal tracking.

5 Q. Do the eyes track equally?

6 A. Yes, they do.

7 Q. What are we looking at now?

8 A. Lack of smooth pursuit.

9 Q. And if you can explain, because it's hard to  
10 see what we're looking at.

11 A. If you look at just the -- the inside of the  
12 colored part of the eye right there, that's where you --  
13 it's easiest to see the jerking at if you're looking at  
14 the eye. So, as that left eye goes out to the side,  
15 we're not looking at both eyes together now. You can  
16 actually look at each eye independently. So, when I go  
17 out to check the left eye, I'm looking at just the left  
18 eye. So, I'm concentrating on that. You see the  
19 jerking as the eye goes out to the side. As you start  
20 to go back the other direction, you focus on the  
21 opposite eye (indicating).

22 Q. So, typically when your eyes move side to side,  
23 is there any jerking at all?

24 A. There shouldn't be.

25 Q. Okay. So, it's like marbles rolling smoothly?

1 A. Right.

2 Q. Can you see the jerking there?

3 A. I think my line is in the way, but...

4 Q. If you want to take it off.

5 A. There it is.

6 Q. Are you able to see the jerking?

7 A. Yes, very clearly.

8 Q. It kind of looks like a little twitch?

9 A. Well, it's a jerk or a twitch. People describe  
10 it differently, but it's actually a jerking in the eye,  
11 is what it's supposed to be.

12 (State's Exhibit No. 79 published)

13 Q. What are we looking at here?

14 A. This is going to be looking for the lack of  
15 convergence.

16 Q. What do you -- can you explain to the members  
17 of the jury what you see?

18 A. Yeah. As the stimulus comes in towards the  
19 nose, you see the left eye starting to go into the  
20 center. And the right eye moves just a little bit, but  
21 doesn't go all the way in. Neither eye actually goes  
22 all the way in.

23 Q. How is that significant to determining whether  
24 or not someone is intoxicated?

25 A. Well, there's different drugs or medications

1 that when they go into the body will cause different  
2 effects with the eyes. And we talked about some of that  
3 yesterday with certain drug categories will cause HGN  
4 and there's some that won't. There's some drug  
5 categories that will cause that lack of convergence and  
6 other categories that won't.

7                   So, when you see six clues HGN and then you  
8 see the lack of convergence to go with it, it's another  
9 indicator of intoxication and it reinforces about what  
10 drug category it's going to be.

11           Q.    Were you -- was the defendant's cell phone able  
12 to be downloaded after you got the search warrant?

13           A.    Yes, it was.

14           Q.    And did you look through the contents of his  
15 phone?

16           A.    Yes, I did.

17           Q.    What all was downloaded from his phone?

18           A.    Text messages, incoming and outgoing calls,  
19 incoming and outgoing texts, photographs. I think that  
20 was just about all that was on there.

21           Q.    And without going into any specific text  
22 messages or anything like that, were you able to make a  
23 determination of whether or not he was on the phone at  
24 the time of the crash?

25           A.    I don't believe that he was.

1           Q.    Were you able to make a determination of  
2 whether or not he was using his phone prior to the  
3 crash?

4           A.    Prior to the crash, but I don't believe it had  
5 any involvement with actually causing the crash itself.

6           Q.    So, at this point have you formed any  
7 additional opinions than what you had originally formed  
8 that the defendant was intoxicated?

9           A.    I wouldn't say an additional opinion. I had  
10 more information. I had more information about the  
11 crash itself. I learned that a second person had died  
12 as a result of the crash. And then with going through  
13 and doing HGN again and recording that, going into the  
14 lack of convergence, it kind of strengthened my opinion  
15 that he was under the influence of a CNS depressant at  
16 the time this crash happened.

17          Q.    And what's a CNS depressant?

18          A.    It's a drug. Alcohol is a depressant. Topamax  
19 is a depressant. So, it's my opinion that that drug in  
20 his body caused him to be intoxicated and that his  
21 intoxication caused this crash to happen.

22          Q.    Is it important to make a decision of whether  
23 or not this is actually a misdemeanor or an intoxication  
24 manslaughter?

25          A.    Absolutely.

1 Q. Why?

2 A. Well, they're completely different levels of an  
3 offense. They end up in different courts.

4 Q. What do you mean by that?

5 A. Which part?

6 Q. What do you mean different levels of offense?

7 A. DWI, if it's a first offense, is a Class B  
8 misdemeanor. Intoxication manslaughter is a second  
9 degree felony. So, you go from potentially six months  
10 in county jail to a maximum of 20 years in prison. So,  
11 it's very important to know what the facts of this case  
12 are and it's important to know what caused this crash  
13 and what leads it to happen and it's important to file  
14 the appropriate charge.

15 Q. After -- after your time spent with the  
16 defendant, were you able to make -- form an opinion as  
17 to whether or not he had lost the normal use of his  
18 mental faculties?

19 A. Yes.

20 Q. What was that opinion?

21 A. I believe that he had.

22 Q. And can you explain that to the jury?

23 A. Well, everything is -- it goes from start to  
24 finish. I know I keep repeating that over and over.

25 MS. BECK: Objection, Your Honor. I think

1 this has been asked and answered.

2 THE COURT: Sustained.

3 Q. (By Ms. Cooper) Specifically, what mental  
4 faculties did you feel that the defendant had lost?

5 A. Well, I think you hear in the video with his  
6 repetitive speech, his story changing, he's not able to  
7 follow all the instructions that I gave him. He keeps  
8 interrupting as I'm trying to give instructions. This  
9 is something pretty important. And as a person  
10 that's --

11 MS. BECK: Objection. Nonresponsive at  
12 this point, Your Honor.

13 THE COURT: Overruled. You may finish your  
14 answer, sir.

15 A. As a person that's being given field sobriety  
16 tests, you want to make sure that you're getting  
17 everything from an officer that they're telling you,  
18 instead of interrupting or injecting or trying to get  
19 things going in there instead or being distracting.

20 Q. (By Ms. Cooper) Did you form an opinion as to  
21 whether or not the defendant had lost the normal use of  
22 his physical faculties?

23 A. Yes, I did.

24 Q. And what physical faculties did you feel he had  
25 lost the normal use of?

1           A.    Just in general, he lost the use of his  
2 physical faculties.  We see that with the HGN tests,  
3 with the muscle control in his eyes.  You see it on the  
4 physical test, the divided-attention test, with the  
5 clues that you see on the one-leg stand test, the  
6 Romberg balance test, the four clues that we see on the  
7 walk-and-turn test.

8           Q.    Did you do any other testing on the defendant  
9 on July 26th of 2010?

10          A.    No, I didn't.

11          Q.    And the blood was submitted to the lab; is that  
12 right?

13          A.    Yes, it is.

14          Q.    Did you get the results back from the blood?

15          A.    I did.

16          Q.    Without going into what those results were,  
17 were they consistent with your determination and your  
18 opinion?

19          A.    Yes, it was.

20          Q.    Ultimately, what was the defendant charged with  
21 in this case?

22          A.    Two counts of intoxication manslaughter.

23                   MS. COOPER:  I pass the witness, Your  
24 Honor.

25                   THE COURT:  Ladies and gentlemen, I think

1 it will be better to go ahead and do lunch at this  
2 moment because cross-examination may take some time.  
3 And so, let's do lunch. And then after that, we'll  
4 continue with the cross-examination, but please retire  
5 to the jury room.

6 (Lunch recess)

7 (Open court, defendant and jury present)

8 THE COURT: All right. Please be seated.  
9 Ms. Beck, you may cross-examine the  
10 witness.

11 MS. BECK: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 **BY MS. BECK:**

14 Q. Officer Egdorf, good afternoon.

15 A. Good afternoon.

16 Q. We first heard from you on yesterday and you  
17 stated that you've been with HPD for about 12 years; is  
18 that correct?

19 A. Yeah, it will be 12 years in November.

20 Q. Okay. And, originally, you would have started  
21 out as a patrol officer, correct?

22 A. Right.

23 Q. All right. And when did you get into DRE or  
24 vehicular crimes?

25 A. I guess I first got involved in DWI enforcement

1 just off of probation when I was out at Westside.

2 Within a year of being out there is when I did my SFST  
3 training.

4 Q. Okay.

5 A. And became a member of the Westside DWI task  
6 force.

7 Q. Okay.

8 A. And I transferred to the Traffic Division in  
9 2007. I did all of my DRE training in 2006.

10 Q. All right. Well, let me ask you this. Back on  
11 July 26th of 2010, were you with the D.A.'s office at  
12 that point or working out of the D.A.'s office at that  
13 point?

14 A. I was a liaison here. I actually officed at  
15 HPD at that point.

16 Q. Uh-huh.

17 A. HPD and the D.A.'s office, kind of moved me  
18 back and forth over the last four years.

19 Q. Okay.

20 A. But my assignment has primarily been with the  
21 D.A.'s office.

22 Q. All right. So, you were working closely with  
23 the district attorneys at that time, correct?

24 A. Yes, I was.

25 Q. And being a liaison, had developed a close

1 relationship with the people that worked in the  
2 Vehicular Crimes Division of the D.A.'s office, correct?

3 A. Yeah, I'd say that.

4 Q. Okay.

5 (Pause)

6 THE COURT: Go ahead.

7 Q. (By Ms. Beck) And on yesterday, you informed  
8 the jury of your training and experience, the classes  
9 that you've taken, right?

10 A. Yes.

11 Q. And also informed us that not only do you go  
12 through extensive training, but you teach other  
13 officers, correct?

14 A. Yes. Yes, I do.

15 Q. I think, if I'm not mistaken, you said that  
16 you're like one out of two people that actually do  
17 instruction for HPD, correct?

18 A. That's correct.

19 Q. All right. So, really, you're the head honcho  
20 guy, right? I mean...

21 A. I don't know if I'd go quite that far, but  
22 there's two of us that teach. The other instructor is  
23 senior to me. He's been doing this much longer than I  
24 have.

25 Q. Okay. And so, people that choose to go into

1 this particular area of vehicular crimes are going to  
2 defer to you and this other -- one other person, pretty  
3 much, with regard to expert opinions, ultimate  
4 conclusions about things, correct?

5 A. I think that's probably safe to say.

6 Q. Okay. And you've testified few or many times  
7 on these kind of cases?

8 A. Many times.

9 Q. And, primarily, you're working for the  
10 prosecution -- I mean working with the prosecution in  
11 these kinds of cases, correct?

12 A. I don't know if I'd say working with them. My  
13 job as a police officer is to collect evidence and  
14 present a case to the prosecutors, one like this where  
15 I'm actively involved in the investigation. I think the  
16 cases where I don't go out to the scene and I'm not  
17 involved the way I was with this one --

18 MS. BECK: Excuse me. I'm going to object  
19 to nonresponsive at this time, Your Honor.

20 THE COURT: Overruled. You can finish your  
21 answer.

22 A. On those types of cases, it's probably more  
23 like I'm working with the prosecution to help them  
24 collect what they need after the fact.

25 Q. (By Ms. Beck) Okay. But a large percentage of

1 the time you're called by the State of Texas to testify  
2 in these cases, correct?

3 A. Yes, I am.

4 Q. Never called by the defense, correct?

5 A. I have been called by the defense before.

6 Q. Few or many times?

7 A. A few times.

8 Q. How many?

9 A. Less than ten.

10 Q. Okay. So, less than ten, but hundreds of times  
11 by the State, correct?

12 A. Yes.

13 Q. Okay. And, although, you have this extensive  
14 training and this experience with these types of cases,  
15 you'd agree with me that you're not perfect, correct?

16 A. Oh, of course not.

17 Q. Okay. Sometimes, despite all that you've gone  
18 through, you can get things wrong, correct?

19 A. Sure I can.

20 Q. And in this particular case, there was no one  
21 else out there that performed field sobriety tests on  
22 Mr. Petty, was there?

23 A. That's correct.

24 Q. You were the ultimate person that made  
25 determination as to intoxication, correct?

1           A.    Yes, I am.

2           Q.    All right.  Even though there were -- most  
3 officers do have some type of training with regard to --  
4 to -- patrol officers, patrol level officers get some  
5 training with regard to standardized field sobriety  
6 tests and the HGN, correct?

7           A.    They do now.  In January of 2005, TCLEOSE, who  
8 licenses me as a peace officer, mandated that every  
9 cadet going through an academy must have that  
10 standardized field sobriety training.  Prior to 2005, it  
11 was an elective course to go through.

12          Q.    So, we're talking about 2010, correct?

13          A.    Correct.

14          Q.    So, most all of the officers are going to get  
15 that training, correct?

16          A.    The newer officers will.  Now, it's not  
17 mandated that the older officers go through that 24-hour  
18 class, just the new officers coming in.  And something  
19 to think about with this case, this is a day-shift case  
20 crash.  So, it's 12:30 in the afternoon.  With very few  
21 exceptions, the officers working day shift are older  
22 officers.

23          Q.    Okay.  All right.  But we have no one that can  
24 come in and corroborate the findings that you've  
25 testified about today and yesterday with regard to

1 intoxication of Mr. Petty, correct?

2 A. Nobody that did anything at the scene, no.

3 Q. Okay. Nobody did a peer-review or did any type  
4 of review of what you observed that's available to come  
5 and talk -- testify to this jury, correct?

6 A. Not that I'm aware of, no.

7 Q. Yesterday you told us that you got a -- got a  
8 call to come to the crash site out on I-45 South. Where  
9 were you when you were either -- were you called on the  
10 phone? Did you hear the dispatch call?

11 A. It was a call on the phone. It was another  
12 officer that was out on the street who said that she had  
13 heard a fatality crash had dropped and they needed a  
14 DRE.

15 Q. And where were you physically?

16 A. Downtown.

17 Q. Okay. So, you were in downtown Houston. Was  
18 that over on Travis? Was that at the district  
19 attorney's office?

20 A. At Riesner.

21 Q. At Riesner.

22 Okay. And did you travel out there by  
23 yourself?

24 A. Yes.

25 Q. And the route that you took would have been 45?

1           A.    I got on the Pierce Elevated right by the  
2 police station and took 45 all the way down.

3           Q.    Okay.  And do you recall approximately what  
4 time it was that you got the call?

5           A.    Just after 12:30.

6           Q.    And so, you got there in 30 minutes, correct?

7           A.    Give or take a little bit.

8           Q.    Despite the fact that this is a major fatality  
9 crash, correct?

10          A.    Right.

11          Q.    Were you in a patrol car?

12          A.    Yes, I was.

13          Q.    And there's traffic, correct?

14          A.    Yes.

15          Q.    I mean, they had blocked off 45, correct?

16          A.    Yes, they did.

17          Q.    Okay.  And if Officer Tippy testified that it  
18 took him, you know, well over -- I mean, an extensive  
19 amount of time, some kind of way you get there in only  
20 30 minutes; is that correct?

21          A.    Yes.

22          Q.    While you're en route and you're in a patrol  
23 car, you have the availability of police radio, correct?

24          A.    Yes, I do.

25          Q.    And so, you're able to hear any discussions

1 that may be going out or information that may be going  
2 out regarding this fatality accident that you're going  
3 to, correct?

4 A. Yes.

5 Q. And did you hear conversations or information?

6 A. Just things like requesting accident units or  
7 the VCD units to come to the scene.

8 Q. Okay. And are you -- are you on the telephone  
9 with any other officers on your way out there?

10 A. I don't believe so, no.

11 Q. Okay. When you get out there, I mean, you  
12 don't go right up to Mr. Petty and start talking to him,  
13 do you?

14 A. No. I want to see what the scene looks like  
15 first.

16 Q. All right. So, you see what the scene looks  
17 like. And there are other officers out there, correct?

18 A. Yeah, quite a few.

19 Q. There are other -- actually, at least two  
20 agencies we know of, Webster Police Department and HPD,  
21 out there, correct?

22 A. I don't remember seeing anybody from Webster,  
23 but I knew that a Webster -- at least one or two Webster  
24 officers had been out there.

25 Q. Okay. So, that's at least two agencies,

1 correct?

2 A. Right.

3 Q. And approximately how many officers would you  
4 guesstimate were out there handling the scene?

5 A. Probably 10 to 12, I would guess.

6 Q. Ten to twelve officers.

7 Are the -- yesterday you talked about the  
8 first responders.

9 A. Uh-huh.

10 Q. And you talked about the order in which usually  
11 people get there, correct?

12 A. Right.

13 Q. So, obviously, the first responders are there.  
14 What other officers have made it already?

15 A. Some of the VCD units or Accident Division  
16 units were out there.

17 Q. Okay. And so, when you go out there, you kind  
18 of like want to get an assessment of, you know, what's  
19 this car, which one is supposedly the driver, that kind  
20 of thing, correct?

21 A. Yes.

22 Q. I mean, you're not just walking into it blind,  
23 walk up to Mr. Petty, oh, he's the suspected driver who  
24 caused the crash and start doing the things that we see  
25 on video, correct?

1           A.    No.  It goes through a couple minutes, finding  
2 out which vehicle belongs to which person, seeing if  
3 there's any obvious crash evidence out there, like the  
4 tire marks that are all over the roadway, things like  
5 that, but I didn't do vehicle inspections or anything  
6 like that at that point.

7           Q.    All right.  And you'd agree with me that prior  
8 to you getting there, it's not unusual that other  
9 officers probably had spoken with or interviewed, if you  
10 will, Mr. Petty as well, correct?

11          A.    It's possible, but nobody told me that they  
12 had.

13          Q.    Okay.  So, when you speak to other officers,  
14 you're not telling this jury that you had no idea about  
15 the fact that he supposedly was coming from some -- from  
16 a Whataburger or a restaurant like that, are you?

17          A.    Not until I actually talked to him.

18          Q.    Okay.  And what specific evidence would you --  
19 did you learn from other officers out there?

20          A.    Are you talking about before or after?

21          Q.    Before you talked to Mr. Petty.

22          A.    Just that he was the driver of the black  
23 pickup, that there was one complainant inside the other  
24 pickup still, another person had been transported to a  
25 hospital with serious injuries, and that for some reason

1 somebody believed that he might be intoxicated, but  
2 nobody could really tell me why.

3 Q. All right. So, somebody has already put  
4 that -- that in your ear, in your initial assessment  
5 that it's suspected that he's intoxicated, correct?

6 A. Well, and just the initial call that I got  
7 with -- saying we need a DRE to come out here tells me  
8 that.

9 Q. Okay. And so, you're kind of the -- you're the  
10 go-to guy to make the ultimate decision as to whether he  
11 is intoxicated or not, correct?

12 A. Yes, I am.

13 Q. Okay. So, when you get out there, did you talk  
14 to any eyewitnesses before you approached Mr. Petty?

15 A. No, I didn't.

16 Q. Do you recall in your initial assessment  
17 knowing about any type of recovered evidence; for  
18 instance, a substance that was later tagged and found to  
19 be just Gatorade?

20 A. I found out about that after.

21 Q. Or Powerade. I'm sorry.

22 A. That was after I found out about that.

23 Q. Okay. And at some point you do learn that a  
24 pill bottle is recovered, correct?

25 A. Yes.

1 Q. Okay. And was that before or after you did  
2 your interview with him?

3 A. After.

4 Q. We saw on -- we saw on one of the pictures --

5 MS. BECK: May I approach the witness, Your  
6 Honor?

7 THE COURT: Yes.

8 Q. (By Ms. Beck) With regard to State's Exhibit  
9 No. 65, this is a picture of Mr. Petty's vehicle with  
10 the door opened, correct (indicating)?

11 A. Yes, it is.

12 Q. Do you recall if when you approached the  
13 vehicle later, as you testified with Ms. Cooper, whether  
14 or not the door was already opened like this?

15 A. When I walked over to it, the door was opened.

16 Q. Okay. So, somebody, whether it had been  
17 Mr. Petty or another officer, had already opened the  
18 door to this vehicle, correct?

19 A. Yes.

20 Q. All right. So, we have you speaking to  
21 somebody -- speaking to other officers out there, we  
22 have an initial assessment of the scene. It's obvious  
23 that Mr. Petty's truck and the condition that it is, is  
24 the one that impacted the deceased's vehicle, correct?

25 A. Yes, it is.

1 Q. All right. Doesn't take rocket science to  
2 figure that out, correct?

3 A. No, not at all.

4 Q. All right. And, clearly, you see him in the  
5 back of somebody's patrol car and you know that there  
6 are two victims. Was the passenger, Mr. Alfonso, still  
7 there at that time or had he been transported?

8 A. No. He had been transported when I got there.

9 Q. Okay. So, you've at least got Mr. Portillo  
10 still out there, the driver of the vehicle, correct?

11 A. Right.

12 Q. All right. So, this is a pretty serious scene.  
13 You've got two fatalities, right?

14 A. At the time I knew about one, but ultimately  
15 two.

16 Q. Horrific accident scene. I mean, we saw  
17 pictures yesterday detailing, you know, scattered parts  
18 and yaw marks, and, you know, you -- you'd agree with me  
19 that it was a pretty kind of horrific -- for lack of a  
20 better word -- crime -- accident scene, correct?

21 A. That's probably the best way to describe it.

22 Q. Okay. And at that time, when you say you had  
23 learned that somebody suspected him of being  
24 intoxicated, did you know specifically on what? With  
25 regard to when somebody said: I think he's intoxicated,

1 did you have information that it was possibly on  
2 medication as opposed to alcohol?

3 A. Not necessarily, but the fact that somebody  
4 didn't ask for a DWI unit, they specifically said that  
5 they needed a DRE.

6 Q. Okay.

7 A. So, that -- I hate to say typically, but when  
8 calls come across the radio or a telephone call, it's --  
9 if I need a DWI unit, I'm saying that because I think  
10 somebody is intoxicated from alcohol. If I say I need a  
11 DRE, it's going to be something other than alcohol.

12 Q. Okay. All right. Yesterday you talked with  
13 Ms. Cooper about people being allowed to leave if you  
14 find them to not be intoxicated, correct?

15 A. Yes.

16 Q. All right. And the media was out there that  
17 day, correct?

18 A. I don't remember if I saw them, but I'm sure at  
19 some point they were with the freeway closure.

20 Q. Okay. So, this was a major news story here in  
21 Harris County, correct?

22 A. Yes, it was.

23 Q. All right. And it's fair to say that with two  
24 dead bodies, if you will, a horrific crash site,  
25 something to the point that the freeway is absolutely

1 shut down for hours and the media being there, you'd  
2 agree with me that no one was going to be leaving that  
3 scene, correct? As far as --

4 A. What do --

5 Q. -- as far as the suspected driver and the  
6 possibility that he was intoxicated, correct?

7 A. No, I wouldn't agree with that.

8 Q. Okay. So, you've got all the scrutiny, you've  
9 been called out, you're the top DRE person, and you  
10 don't really mean to tell me that somebody wasn't going  
11 to go to jail for either driving while intoxicated,  
12 negligent homicide, or intoxication manslaughter,  
13 correct?

14 A. That's absolutely possible.

15 Q. All right. So, you're telling me that if you  
16 had determined, after your examination, that there was  
17 no level of intoxication, you would have, you know,  
18 given him the keys and let him drive off if his car  
19 was -- could drive, be driven, or let him go with his  
20 girlfriend, as we know she was out there, you would have  
21 let him do that?

22 A. It's certainly possible, yes.

23 Q. Let's talk about your initial interview with  
24 him. Yesterday you described to Ms. Cooper that he was  
25 extremely talkative.

1 A. Yes.

2 Q. And we had the opportunity today to look at the  
3 videotape of him, but you also said on yesterday that in  
4 and of itself that's not significant of intoxication,  
5 correct?

6 A. That's true.

7 Q. When somebody is talkative, it can be just  
8 because that they're nervous, correct?

9 A. Oh, sure it can.

10 Q. It's an accident, he could have wanted you to  
11 just kind of get his story and let you know what was  
12 going on from his perspective, correct?

13 A. Absolutely.

14 Q. Okay. And when you actually come up to him  
15 initially, he's cooperative, correct?

16 A. He was cooperative pretty much the entire time  
17 I was with him.

18 Q. Not belligerent, correct?

19 A. Not at all.

20 Q. Okay. And possibly being nervous, and,  
21 therefore, being talkative, we've already talked about  
22 the fact that you later confirmed that the airbag had  
23 been deployed as a result of his impact with the  
24 complainant's vehicle, correct?

25 A. Yes, it did.

1 Q. All right. And so, an airbag being deployed at  
2 the force that we know this crash occurred, that's a  
3 pretty unsettling event, correct?

4 A. It certainly can be, yes.

5 Q. I mean, that's not something that most people  
6 encounter on a regular basis, correct?

7 A. I would hope not.

8 Q. Okay. It can cause you to be disoriented,  
9 correct?

10 A. I don't know about that.

11 Q. Okay. Well, I mean, if it's coming out full  
12 force in your face, you're not -- I mean, you'd agree  
13 with me that that's not going to just leave you  
14 unaffected at all, correct?

15 A. I think you'd be disoriented as the airbag is  
16 inflated in front of you, but by the time that bag comes  
17 down and you take your seatbelt off and get out of the  
18 vehicle, you end up getting yourself back oriented  
19 fairly quickly.

20 Q. Okay. But this is something that you've  
21 already admitted came out with such a force that you  
22 actually saw visible injuries to him, correct?

23 A. Right. The chemical that's in the airbag can  
24 actually cause burns on your arms.

25 Q. All right. And you don't know -- I mean, you

1 had never met Mr. Petty before, so you don't know how  
2 affected he would have been by something like an airbag  
3 coming out, correct?

4 A. That's true.

5 Q. Everybody is not going to react the same way to  
6 have an airbag explode in your face, correct?

7 A. That's true.

8 Q. All right. Your initial interview is conducted  
9 out there at the scene, right?

10 A. Yes.

11 Q. And how long -- I mean, I know we saw the  
12 video. How long do you recall it being?

13 A. Just the interview part or the entire --

14 Q. No. Just the interview part.

15 A. Maybe 10 minutes.

16 Q. Okay.

17 A. Give or take.

18 Q. Do you actually get him out of the patrol car  
19 when -- before you begin your initial interview with  
20 him?

21 A. What do you mean?

22 Q. In other words, he's in somebody's patrol car,  
23 right?

24 A. Right, he's in Officer Michon's car.

25 Q. Okay. So, when you go over to Officer Michon's

1 car, he's actually able to get out of the car on his  
2 own, correct?

3 A. I didn't have to pull him out or anything like  
4 that.

5 Q. Okay. You didn't have to physically assist him  
6 in getting out of the vehicle, correct?

7 A. I don't believe I did, no.

8 Q. All right. He didn't fall down when he got  
9 out, correct?

10 A. No, he didn't.

11 Q. Was able to walk around to where we actually --  
12 we can hear you-all walking around before we actually  
13 see you, correct?

14 A. Yes.

15 Q. Didn't stumble or anything of that nature,  
16 correct?

17 A. No, he didn't.

18 Q. All right. And we saw the -- we saw the  
19 videotape --

20 MS. BECK: May I approach the podium, Your  
21 Honor?

22 THE COURT: Yes.

23 Q. (By Ms. Beck) We see the videotape where he's  
24 actually standing -- where he's actually standing out  
25 here talking to you. And this is the initial video

1 portion -- interview portion of your discussion with  
2 him, correct?

3 A. Yes, it is.

4 Q. This is when you're first getting out, you're  
5 asking him questions, right?

6 A. Yes.

7 Q. You are trying to figure out where he's coming  
8 from, correct?

9 A. Yes, I am.

10 Q. And this is where he's trying to tell you what  
11 happened, correct?

12 A. Right.

13 Q. Describes how he actually went -- made impact  
14 with the car after seeing two cars brake-check one  
15 another, correct?

16 A. Right.

17 Q. You'd agree with me as he's going on right  
18 there, he's standing pretty much rock solid, correct? I  
19 mean, he's moving his arms, but he's not falling over or  
20 swaying or anything of that nature, correct?

21 A. No, he's not.

22 Q. And you have him out there doing that for about  
23 10 minutes, correct?

24 A. Give or take a little bit, yeah.

25 Q. You-all are standing, you know, within a foot

1 of each other, having a discussion, and he's steady,  
2 correct?

3 A. He's fairly steady, yeah.

4 Q. And based upon your training and experience,  
5 swaying is one of the things that you look for as a sign  
6 of intoxication, correct?

7 A. It can be, yes.

8 Q. Okay. Some of the questions that you're asking  
9 him at this point are -- or, actually, even before you  
10 ask him, he admits to being on medication, doesn't he?

11 A. Yes, he does.

12 Q. Okay. He's not trying to hide the fact, is he?

13 A. No.

14 Q. He actually tells you what medication it is,  
15 correct?

16 A. Yes, he does.

17 Q. Now, you stated that in being a drug  
18 recognition expert, what you're trying to determine is  
19 the presence of some type of substance, but you are not  
20 able to determine exactly what substance it is, correct?

21 A. That's correct.

22 Q. So, basically, he gives you information, kind  
23 of making your job a little bit easier, right?

24 A. Sort of.

25 Q. Okay. Especially once you confirm and find the

1 pill bottles and in ultimately reviewing the lab tests  
2 that was done on his blood, correct?

3 A. Well, yeah. By that point, yes, but as far as  
4 being out here at the scene, you can't just take  
5 somebody's word for it if they say: This is what I  
6 took, because people tend not to tell the truth all the  
7 time.

8 Q. Okay. But, again, it wasn't like you didn't  
9 have any information whatsoever, correct?

10 A. Correct.

11 Q. You had his admission and you had that  
12 medication that was recovered from his car, correct?

13 A. Yes.

14 Q. Now, the conversation is still going on,  
15 correct?

16 A. Yes, it is.

17 Q. He's being responsive, correct?

18 A. He is.

19 Q. Some of the questions that you're asking him  
20 are requiring him to use his mental faculties, correct?

21 A. Yes, they are.

22 Q. Most of them are requiring him to use his  
23 mental faculties, correct?

24 A. They are.

25 Q. And with regard to his physical faculties, he's

1 using those as well, correct?

2 A. Well, he's standing up and using his arms when  
3 he talks.

4 Q. All right. And being demonstrative, trying to,  
5 you know, tell you -- trying to give you the best  
6 picture he could about what was happening, right?

7 A. Yes, he was.

8 Q. All right. And all of those are signs,  
9 basically -- I mean, you're talking about signs of  
10 intoxication, but these things that we're describing  
11 right now and what the jury is observing are actually  
12 signs, I mean, of sobriety as well, correct?

13 A. I don't -- I don't know that you're -- we're  
14 looking at this part as a sign of sobriety or a sign of  
15 intoxication. There's things that he does that would  
16 tell me this guy might be intoxicated. There's a lot of  
17 things that he does correct.

18 Q. Right.

19 A. There's a lot of things during the field  
20 sobriety tests that he does correct.

21 Q. All right. And we're going to get to that.  
22 We're going to talk about the things that he did  
23 correct, but so far in your testimony to the State, what  
24 you highlighted were the things that he did wrong or the  
25 things to you supposedly indicated intoxication,

1 correct?

2 A. Yes.

3 Q. All right. You talked about yesterday how  
4 based upon what you find out determines whether or not  
5 you go onto the next step. Do you remember that  
6 testimony?

7 A. Yes.

8 Q. Okay. And can you restate that because I don't  
9 want to misstate what you said with regard to that.

10 A. As far as the interview part of it?

11 Q. Uh-huh. Yes.

12 A. Going through the interview and talking with  
13 the defendant, hearing the answers to his questions,  
14 hearing the way that he responds, makes -- I have to  
15 make a decision at that point do I continue and go on to  
16 do field sobriety tests.

17 Q. Okay. So, despite him responding to your  
18 questions -- correct?

19 A. Yes.

20 Q. -- despite him exhibiting use of his mental  
21 faculties -- correct?

22 A. He did exhibit use of mental faculties.

23 Q. -- and despite him using -- exhibiting use of  
24 his physical faculties, it was your determination that  
25 we needed to go onto the next step, correct?

1           A.    Yes.    Because I don't believe it was the normal  
2 use of those mental and physical faculties.

3           Q.    Okay.  Well, let me ask you this.  Normal use.  
4 Had you ever met Mr. Petty before?

5           A.    No.

6           Q.    Okay.  Had never had a conversation with him  
7 before --

8           A.    No.

9           Q.    -- correct?

10                           And, basically, what we're still watching  
11 here was the extent of what you had known of Mr. Petty,  
12 correct?

13           A.    That's true.

14           Q.    All right.  So, in other words, you're taking  
15 into consideration at this point during the interview  
16 the fact that he's talking kind of -- I think you said  
17 he's repeating himself, you don't know if that's how he  
18 normally talks, correct?

19           A.    I don't know that.

20           Q.    Okay.  With regard to him being eager to try to  
21 get things out, you don't know if that's how he is in  
22 normal conversation, correct?

23           A.    Right.

24           Q.    Yet, you made the determination, based upon the  
25 limited things that you had observed, to go on to the

1 next step, correct?

2 A. Yes. Based upon my training and experience and  
3 what I've done in the past.

4 Q. Okay. Now, we saw in the video -- we're going  
5 to see it in the video at some point that there's  
6 another officer that comes up and is standing as you get  
7 Mr. Petty into the field sobriety tests, he's standing  
8 right there. What officer was that?

9 A. His name is Ho or Ho, I think it's pronounced.  
10 He's one of the VCD crash investigators.

11 Q. Okay. All right. So, he wasn't there to  
12 observe you or corroborate anything that you were doing.  
13 And this is the officer that we see right here, correct  
14 (indicating)?

15 A. Right.

16 Q. All right. So, at this point, you've decided  
17 to go onto the next step, correct?

18 A. Yes, I did.

19 Q. All right. And at this point, you're about to  
20 start the HGN test, correct?

21 A. Yes, I am.

22 Q. All right. And you'd agree with me that you go  
23 on to do some other field sobriety tests, but probably a  
24 majority of the testimony that you've given with regards  
25 to intoxication has to do with the HGN test and those

1 six clues that you found, correct?

2 A. Yeah, I would agree with that.

3 Q. All right. And so, when Mr. Petty is standing  
4 right here, still not really swaying, is he?

5 A. No, he's not.

6 Q. Trying to be cooperative and follow your  
7 instructions, correct?

8 A. Yes.

9 Q. And in order to do that, follow instructions,  
10 you've got to have use of your mental faculties,  
11 correct?

12 A. Yes, you do.

13 Q. Normally use -- well, use of your mental  
14 faculties because you don't know normally how he is,  
15 correct?

16 A. Correct.

17 Q. You didn't know his educational level, correct?

18 A. Had no idea.

19 Q. All right. And he even talks to you, tells you  
20 when the sun is in his -- is in his face, correct?

21 A. Yes.

22 Q. Still his attitude is cooperative, correct?

23 A. Yes.

24 Q. All right. And at this point is this the onset  
25 of 45 degrees that we're looking at (indicating)?

1           A.    Yes, it is.

2           Q.    Let me ask you this.  You didn't have any  
3 instrumentation out there to determine exactly where  
4 45 degrees was, correct?

5           A.    No, I didn't.

6           Q.    All right.  And so, that's -- as part of your  
7 training and experience, that's relevant, correct?

8           A.    It is.

9           Q.    All right.  And with regard to nystagmus, is  
10 it, in fact, true that a nystagmus is a normal  
11 occurrence in most people, correct?

12          A.    In everybody.

13          Q.    Okay.  You stated that earlier this morning to  
14 Ms. Cooper, correct?

15          A.    Yes.

16          Q.    All right.  So, the fact that there was a  
17 nystagmus is not anything unusual, correct?

18          A.    Well, in this case it is, though.

19          Q.    Okay.  But with most people -- and I know --  
20 you know, I know that you're ultimately going to say  
21 that there was a presence that exaggerated that  
22 nystagmus, but I'm talking about first base.  There is  
23 nothing unusual about you seeing a nystagmus in a  
24 person, correct?

25          A.    There is.

1 Q. And what is that?

2 A. Well, because a sober person or somebody that  
3 doesn't have something to act as an intoxicant in their  
4 body, when you look in their eyes, you can't see that  
5 nystagmus.

6 Q. Okay. So, there's something that's naturally  
7 there, but you can't see it?

8 A. That's true.

9 Q. Well, let me ask you this. Based on your  
10 training and experience, it's true that you can't  
11 quantify the amount of that substance that's present,  
12 correct?

13 A. That's true.

14 Q. And with regard to alcohol, we know that the  
15 level has to be a .08 and the law says, or if there is  
16 still loss of normal use, there can be intoxication, but  
17 the legal limit quantified level is a .08, correct?

18 A. That's true.

19 Q. There is no such thing or number or level with  
20 regard to prescription medication, correct?

21 A. There's no level for anything other than  
22 alcohol.

23 Q. Okay. Now, let me ask you this. There's some  
24 other substances that actually exaggerate a nystagmus,  
25 correct?

1           A.    Well, other depressants or dissociative  
2 anesthetics or inhalants.

3           Q.    All right.  Well, isn't it true that things  
4 like over -- certain over-the-counter drugs can  
5 exaggerate nystagmus?

6           A.    If it falls into one of those drug categories,  
7 yes, it can.  Something like Benadryl that's  
8 over-the-counter will cause nystagmus if you take enough  
9 of it.

10          Q.    Antihistamines and aspirin?

11          A.    Aspirin will not.

12          Q.    Okay.  Coffee, Coke, Nicotine?

13          A.    No.  Those are stimulants.  They won't cause  
14 HGN.

15          Q.    All right.  What about fatigue, cold, and flu,  
16 isn't it true those will affect nystagmus?

17          A.    Well, it depends on what's in them.

18          Q.    Okay.  And, again, you're looking for an  
19 exaggerated nystagmus, correct?

20          A.    Something that's going to be obvious to the  
21 naked eye.

22          Q.    The fact that, again, you had the information  
23 from Mr. Petty that we saw during the interview portion  
24 that he was on Topamax, kind of assisted you.  I mean,  
25 it made your job a little bit easier with regard to that

1 nystagmus in trying to determine whether or not it was  
2 exaggerated, correct?

3 A. Not necessarily because I had to look up  
4 Topamax to see what it was.

5 Q. You had never -- I mean --

6 A. I hadn't dealt with Topamax up until this case.

7 Q. You're the top guy, the instructor of the  
8 instructors, and you had never dealt with Topamax  
9 before?

10 A. I can only deal with the drugs that people are  
11 taking and that I see. I had never dealt with it before  
12 this case.

13 Q. Topamax is a fairly common drug that's used for  
14 other things, correct?

15 A. It can be used for multiple things.

16 Q. Right. Such as not only migraines, but  
17 seizures, correct?

18 A. Yes.

19 Q. Some people even use it for the prevention  
20 of -- to help you stop smoking. You're aware of that as  
21 well?

22 A. I didn't know that.

23 Q. Okay. But numerous uses, correct?

24 A. Most medications are like that, they're used  
25 for different things.

1 Q. Okay. Let's just kind of talk about that for a  
2 second. When we say "most medications," you testified  
3 that at some point you did actually recover that pill  
4 bottle, correct?

5 A. Yes.

6 Q. And you're not able to produce that and what  
7 labels would have been on that medication bottle because  
8 that was returned to the -- to Mr. Petty, correct?

9 A. I wasn't allowed to keep them.

10 Q. All right. Did you photograph the bottles?

11 A. No, I didn't.

12 Q. Okay. And had you taken a photograph, it would  
13 have shown pertinent information about the labeling, the  
14 warnings that were actually placed on that bottle,  
15 correct?

16 A. It could have, yes.

17 Q. Okay. What we're looking at at this point in  
18 the video is you've determined that there's six clues  
19 out of six clues, correct?

20 A. Right.

21 Q. And you're deciding that you're going to go on  
22 one step further and do the field -- standardized field  
23 sobriety tests, correct?

24 A. Right, complete the entire battery of tests.

25 Q. Okay. So, right here, isn't it true that with

1 the six clues for six clues, you've already determined  
2 that he's intoxicated, correct?

3 A. I've observed signs of intoxication and I've  
4 observed clues that tell me about intoxication, but  
5 normally I can't bring HGN into court or I can't show it  
6 to a prosecutor or show it to a jury. And that's the  
7 reason we need to continue and do other tests, because I  
8 have to be able to back up what I'm telling people and  
9 that's --

10 Q. But you -- I'm sorry. I didn't mean to cut you  
11 off.

12 You already knew that he was going to be  
13 arrested for intoxication at this time, driving while  
14 intoxicated at least, correct?

15 A. Not necessarily.

16 Q. Okay. At the time when you begin the  
17 standardized field sobriety tests and you have him  
18 standing in this direction, you admitted to Ms. Cooper  
19 that the coroner hadn't gotten there at this time,  
20 correct?

21 A. True.

22 Q. Mr. Portillo, one of the decedents, is still  
23 out there, correct?

24 A. He is.

25 Q. And Mr. Petty is facing that, correct?

1 A. Facing back in that general direction.

2 Q. Okay. And so, how many feet would you say you  
3 are removed from probably the most -- you know, other  
4 parts of the crash site?

5 A. If I was to guesstimate, I'd probably say about  
6 75 yards.

7 Q. Okay. Do you recall seeing that there was  
8 actually a sheet or something that had been draped over  
9 the driver's side of the complainant's vehicle, you  
10 know, just to try to, you know, cover up the scene at  
11 some point?

12 A. Yes, there was.

13 Q. And so, while Mr. Petty is trying to pay  
14 attention to you and your instructions, those other  
15 things are visible to him as well, correct?

16 A. If it was, he never made any kind of mention of  
17 it.

18 Q. Okay. But he's facing that direction, correct?

19 A. Facing that general direction, yes.

20 Q. All right. And it's a clear day, correct?

21 A. Yes, it is.

22 Q. Sunshine. You know, about this time, it's  
23 what, about 1:30 in the afternoon?

24 A. I put my time of arrest as 1:30.

25 Q. Okay. This is the first one that you do. Is

1 this the first one, the time estimate?

2 A. This is actually the second test I'm giving the  
3 instructions for.

4 Q. I think I let the video go, but let's just talk  
5 about the time estimate, which is a little bit farther  
6 back. I'll try to see if I can get it back.

7 That is the Romberg test, correct?

8 A. Yes, it is.

9 Q. Okay. And the Romberg test is basically where  
10 you have him stand, you give him instructions, correct?

11 A. Yes.

12 Q. And Mr. Petty demonstrated that he was  
13 listening to those instructions and trying to comprehend  
14 them, right?

15 A. He did.

16 Q. Was trying to follow them, correct?

17 A. Yes.

18 Q. And, basically, did attempt to do the test in  
19 the way that you had instructed him to do it, correct?

20 A. He did attempt it, yes.

21 Q. All right. And that would show a use of your  
22 mental faculties, correct?

23 A. It shows a use, yes.

24 Q. Okay. This is still the HGN, right?

25 A. Yes.

1 Q. Correct?

2 And we see here that traffic is -- traffic  
3 is going -- I guess headed northbound and we see it's  
4 quite congested out there, correct?

5 A. Yes, it is.

6 Q. Okay. This would be the Rhomberg test,  
7 correct?

8 A. Yes, it is.

9 Q. Let me see if I can back it up just a little  
10 bit.

11 At this point he's standing pretty steady,  
12 correct?

13 A. Yes.

14 Q. You instruct him to do -- to put his arms at  
15 his side, correct?

16 A. Yes.

17 Q. Those are things that he's doing right at this  
18 point, correct?

19 A. He is.

20 Q. All right. And then you instruct him -- you're  
21 giving him instructions about how to, you know, hold his  
22 head back, close his eyes, and count, estimate 30  
23 seconds, correct?

24 A. Yes, I am.

25 Q. Now, when Ms. Cooper showed you the video this

1 morning, she actually stopped it in the middle of this  
2 test and your conclusion was that it was approximately,  
3 what, 46 --

4 A. Forty-six seconds.

5 Q. -- seconds, correct?

6 A. Yes, ma'am.

7 Q. You don't tell them how to count, do you?

8 A. No.

9 Q. It's up to them as to whether or not they count  
10 one, two, three, four, five, six, correct --

11 A. Well --

12 Q. -- as opposed to 1,001, 1,001? I mean, it's up  
13 to the individual that you're testing, correct?

14 A. Right. And I don't tell them to count at all.  
15 I tell them to estimate what he thinks is 30 seconds.

16 Q. But mental faculties is going to tell you, I  
17 mean --

18 A. That's exactly what we're looking for, is what  
19 his mental faculties are telling us. So, whether or not  
20 he can be within that normal range of 25 to 35 seconds.

21 Q. Okay. And so, the jury not having the benefit  
22 this morning of seeing it going all the way through,  
23 this video can allow them to look and see and kind of  
24 count in their own way and see where it ended up being,  
25 correct?

1           A.    Yeah.  And there's actually a little timer down  
2 there at the bottom that you can look at.

3           Q.    Okay.  And so, despite you saying that it was  
4 46, I mean, that's not extremely off, correct?

5           A.    Yes, it is.

6           Q.    Well, it wasn't a minute off, was it?

7           A.    I would have stopped it if it had gone that  
8 far.

9           Q.    Okay.  You say an acceptable range is within  
10 35, right?

11          A.    Twenty-five to thirty-five seconds.  So, within  
12 five seconds either way.

13          Q.    Right.  Okay.  And this was, according to you,  
14 46?

15          A.    Yes.

16          Q.    Ten seconds off, correct?

17          A.    Sixteen seconds off.

18          Q.    Well, let's say if it's acceptable at 35 and  
19 it's 46, that's 11, correct?

20          A.    Well, what we're looking for is to see how far  
21 off his estimation of 30 seconds is.  So, I'm not going  
22 to say that we're giving the extra five seconds because  
23 that's not what I'm looking for.  I'm looking to see  
24 what his estimation of 30 seconds is.  He's 16 seconds  
25 away from that.

1 Q. Okay. But my question is -- if I can get you  
2 to answer my question -- you just told this jury that an  
3 acceptable range is five seconds off as well, correct?

4 A. Yes.

5 Q. Okay. And yours is that he was at 46, correct?

6 A. Yes.

7 Q. All right. The next test that I think we -- I  
8 let it go, but the next test would have been the one-leg  
9 stand test, correct?

10 A. Yes.

11 Q. Let's talk about what he did right. That test  
12 is the one where he actually stands. I might have  
13 backed it up a little bit too far. The one-leg stand  
14 test is where he's going to stand as you did with  
15 Ms. Cooper yesterday. Make her stand -- made him stand  
16 with his hands at his side, correct?

17 A. Yes.

18 Q. He did that, correct?

19 A. He did.

20 Q. He wasn't swaying or falling over at that point  
21 during the instruction phase, was he?

22 A. No, he wasn't.

23 Q. All right. Listened to your instructions,  
24 correct?

25 A. He did.

1 Q. Using his mental and physical faculties at this  
2 time, correct?

3 A. Yes.

4 Q. All right. And I think we're about to come to  
5 the end of the Rhomberg test. And when you give these  
6 instructions -- I mean, yesterday when you did them, you  
7 were pretty rapid, correct?

8 A. I tend to talk a little fast.

9 Q. All right. Is that the same way -- you pretty  
10 much give those instructions the same way all the time?

11 A. I'm probably a little faster here in court than  
12 what I normally am. And you can hear it on the video  
13 how the instructions are as well.

14 Q. All right. And you have no idea -- I mean, a  
15 lot of times when you're out there doing the test,  
16 people, this is their first time hearing those  
17 instructions, correct?

18 A. It's kind of hard for me to say.

19 Q. All right. But you know, in fact, that there  
20 are situations where it is a person's first time?

21 A. Yes.

22 Q. All right. Now, you're standing -- if you look  
23 at the video right now, Mr. Petty is standing  
24 rock-solid, I mean, not any movement, correct?

25 A. Very little movement.

1 Q. Looking at you and attempts to do the test,  
2 correct?

3 A. Yes.

4 Q. Now, you prepare a little chart where you mark  
5 off or indicate to refresh your memory -- you have it  
6 right there in front of you, correct?

7 A. Yeah. A copy of my offense report.

8 Q. All right. To check off and refresh your  
9 memory about what the defendant does incorrectly,  
10 correct?

11 A. Yes.

12 Q. One of the things that you mark off is that he  
13 uses his arms, correct?

14 A. I did.

15 Q. He didn't -- he's not -- I mean, right now his  
16 arms remain at his side, correct?

17 A. They do.

18 Q. All right. But yet, you checked that off as  
19 something that he did wrong, correct?

20 A. I did.

21 Q. All right. And the other thing that you talk  
22 about on the one-leg stand is the swaying --

23 A. Yes.

24 Q. -- correct?

25 And you'd admit with me that that was a

1 slight sway, correct?

2 A. No. It was pretty obvious when he did it.

3 Q. Okay. Are you talking about when he's trying  
4 to maintain his balance and he goes over like that  
5 (indicating)?

6 A. Yes.

7 Q. Okay. Let's talk about the things that he did  
8 right on the one-leg stand. He didn't hop, did he?

9 A. No, he didn't.

10 Q. Didn't drop his foot, did he?

11 A. No, he didn't.

12 Q. And, actually, when you have an option to check  
13 that he couldn't do the test, he actually did the test,  
14 correct?

15 A. He did finish the test, yes.

16 Q. Counted out loud?

17 A. He stopped counting out loud, which I had to  
18 remind him to continue counting.

19 Q. Okay. And once you did that, he began to use  
20 his mental and physical faculties again, correct?

21 A. Well, I think he was using them the whole time.  
22 The question is: Was it the normal use?

23 Q. Okay. With regard to the number of clues, you  
24 saw him to only have two clues on that particular test?

25 A. Yeah. I think I testified -- I don't know if

1 it was yesterday or today --

2 Q. Yesterday you said one.

3 A. And I think that's what you and I talked about  
4 last year when we sat down as well.

5 Q. Okay. But, actually, you have it marked off as  
6 two, correct?

7 A. Right. Because I can't change the offense  
8 report once it's done.

9 Q. Okay. So, he actually did better than what you  
10 put in your report, correct?

11 A. Yes.

12 Q. All right. And now we're looking at the  
13 walk-and-turn test, correct?

14 A. Yes.

15 Q. That's the last standardized field --  
16 standardized field sobriety test that you did, correct?

17 A. Yes.

18 Q. I'm going to back it up a little bit. And if  
19 we talk about the number of instructions relative to the  
20 Rhomberg and the one-leg stand, I mean, this one has a  
21 bunch of stuff you're supposed to be doing, correct?

22 A. It does.

23 Q. And these are instructions that you rattled off  
24 yesterday in front of -- with Ms. Cooper, correct?

25 A. I did.

1 Q. And probably most people, if they're going to  
2 have a hard time with one of these tests, this is going  
3 to be the one that they have a hard time with, correct?

4 A. Not necessarily.

5 Q. You've got them standing in a position, in an  
6 initial position, correct?

7 A. Yes. We call it the instruction position.

8 Q. Okay. And I'm just going to let this run at  
9 the risk of going over.

10 Yesterday, when you say the instruction  
11 position, you had Ms. Cooper standing up yesterday, and,  
12 basically, that's where you have somebody stand. I'm in  
13 heels, so I'm going to wobble, but you have somebody  
14 standing with their heel to toe while they're listening  
15 to what you're doing, correct?

16 A. Yes.

17 Q. It's going to get there. You're about to start  
18 that test right now.

19 You have him walk on the line. He's --  
20 you're telling him, you know, to go this way and turn  
21 around. And he cooperated with that, correct?

22 A. Yes, he did.

23 Q. Understanding your instructions at this point,  
24 correct?

25 A. I guess initially he didn't because I asked him

1 to put his left foot on the line and he put his right  
2 foot.

3 Q. Okay.

4 A. So, we corrected that.

5 Q. All right. Is that something you took off for?

6 A. No, I didn't.

7 Q. All right. So, at this point he's standing  
8 solid, arms at his side, correct?

9 A. Yes.

10 Q. He did another thing right in that -- well,  
11 except for moving his arms to try to see where you're  
12 going, his arms are right at his sides, correct?

13 A. They are.

14 Q. Okay. You've done this heel-to-toe part  
15 thousands of times, right?

16 A. Yes.

17 Q. You do a lot of DWI stops here in Harris  
18 County, correct?

19 A. Quite a few.

20 Q. One of the things that you're telling him to do  
21 is to make a turn, correct?

22 A. Yes.

23 Q. That's something that you evaluate when you're  
24 looking for clues, correct --

25 A. Yes, it is.

1 Q. -- is a turn?

2 You can mark off for an improper turn,  
3 correct?

4 A. Yes.

5 Q. Yet, you don't demonstrate out here, when  
6 you're giving him the instructions, how to do that turn,  
7 do you?

8 A. Yes.

9 Q. Okay. Well, let me just kind of back up.  
10 We're going to see you march off and then come back  
11 around, correct?

12 A. Yes.

13 Q. You don't do a full nine turns -- I mean, nine  
14 steps, correct? Is that the turn that he's supposed to  
15 do?

16 A. Yes, it is.

17 Q. Okay. All right. So, he's listening, he's  
18 asking questions, correct?

19 A. Yes.

20 Q. And he even tells you: Let me back up a little  
21 bit because I don't think this line is going to allow me  
22 to go nine steps. Correct?

23 A. Yes.

24 Q. In order to make that guesstimate and that  
25 distance, you're going to have to be using your mental

1 faculties at this point, correct?

2 A. I think there's a couple different ways to  
3 interpret it.

4 Q. And that's one of the ways, correct?

5 A. That's one way.

6 Q. He's trying to comply, trying to do what you  
7 say do, correct?

8 A. Yes.

9 Q. And we see here he didn't do the turn exactly  
10 as you did. Did he count the right number of steps?

11 A. He did.

12 Q. Okay. Did he start too soon?

13 A. No.

14 Q. And, basically, in determining whether he can  
15 do the test or not do the test, you determined that he  
16 could do the test?

17 A. Well, there's certain criteria that you have to  
18 meet to check off can't do test.

19 Q. And you didn't check that off, right?

20 A. No, I didn't.

21 Q. All right. At this point you're telling him:  
22 You're under arrest for suspicion of DWI. Correct?

23 A. Yes, I am.

24 Q. At this point, he doesn't become belligerent?

25 A. No.

1 Q. Asking you questions?

2 A. He's still talking.

3 Q. Okay. But concerned about what's going to  
4 happen to him next, correct?

5 A. Well, concerned about his vehicle and getting  
6 stuff to his girlfriend.

7 Q. Okay. But he was also concerned about being  
8 arrested. I think at some point, doesn't he ask you  
9 with regard to you telling him I'm being -- you're being  
10 arrested for driving while intoxicated, where am I  
11 going, or anything of that nature?

12 A. A little bit of that, yeah.

13 Q. Okay. Still engaging you, thinking,  
14 anticipating, using his mental faculties, correct?

15 A. Yes.

16 Q. So, you'd agree with me, Officer Egdorf, that  
17 for all of the things that you've told this jury that  
18 Mr. Petty did wrong that you used to assess whether or  
19 not he was intoxicated, there are numerous things out  
20 there that he did correct that were not signs of  
21 intoxication, correct?

22 A. Sure there were.

23 Q. All right. And, basically, again, you're the  
24 top guy out there and what you determine is basically  
25 going to have a large impact as to where this case --

1 how this case proceeds, right?

2 A. Yes, it will.

3 Q. You tell the -- you told this jury that you  
4 don't make -- you don't make the determination as to  
5 whether or not a person -- whether or not he was going  
6 to be charged with anything, but at this point you were  
7 just making the arrest, correct?

8 A. I'm making the arrest. Ultimately, it's not my  
9 decision whether or not I'm allowed to file charges.

10 Q. Okay. But you work with the D.A.s closely,  
11 correct?

12 A. Yes, I do.

13 Q. D.A.s that take these kind of charges, correct?

14 A. Yes.

15 Q. Who ultimately took this charge?

16 A. Catherine Evans.

17 Q. Catherine Evans was the head of the division  
18 that you work as a liaison in, correct?

19 A. Yes.

20 Q. She's going to defer to what you say -- even  
21 though you say: I ultimately don't have the decision,  
22 she's going to defer and rely upon your expertise in  
23 determining whether or not charges are filed, correct?

24 A. I don't know that "defer" is the right word. I  
25 think she has faith in my judgment and decisions that I

1 make.

2 Q. All right. You-all work together on a close  
3 basis, on a daily basis, correct?

4 A. Yes.

5 Q. All right. So, despite -- when you say: Well,  
6 she merely has faith in what I say, I mean, despite that  
7 being your claim, you bringing in the evidence that you  
8 submitted to her about, well, I saw him having six  
9 clues, I saw him do this on the other standard field  
10 sobriety test, I mean, it's highly unlikely that she's  
11 going to turn around and contradict you and say, you  
12 know: No, I don't believe that. Correct?

13 A. I can't really speak for her, but there have  
14 been cases that we haven't filed on right away because  
15 we needed more information.

16 Q. Okay. But that's fewer than the normal amount  
17 of times, correct?

18 A. I think it would be kind of hard to put a  
19 number on it. There's some cases that we just don't  
20 have enough out at the scene, we don't have enough after  
21 the initial scene investigation, and it takes a lot more  
22 work to make that charging decision.

23 Q. All right. At some point, you go on to discuss  
24 with Mr. Petty the DIC-24 form, correct?

25 A. Yes. Just after this part of the video right

1 here.

2 Q. Okay. And at that point you put -- you  
3 actually put the form in front of him and allow him to  
4 read along with it, correct?

5 A. Yes.

6 MS. BECK: May I approach the witness, Your  
7 Honor?

8 THE COURT: Yes.

9 Q. (By Ms. Beck) This is State's Exhibit No. 72,  
10 correct?

11 A. Yes.

12 Q. Pretty lengthy, correct?

13 A. It is.

14 Q. All right. Takes a couple of minutes for you  
15 to read the whole thing, correct?

16 A. Yeah.

17 Q. And do you read it in its entirety?

18 A. Yes.

19 Q. On the video, we can see Mr. Petty trying to  
20 follow along, correct?

21 A. He does.

22 Q. Asks you some questions about -- ultimately,  
23 after you get through reading, asks you some questions  
24 about: Okay. So, clarify for me. If I do this or if I  
25 don't do this, what's going to happen with my license,

1 correct?

2 A. Yes.

3 Q. And that also goes to using your mental  
4 faculties, correct?

5 A. Yes.

6 Q. Physical faculties to speak, correct?

7 A. Yes.

8 Q. At this point, you've got him handcuffed. So,  
9 not much else he can do as far as -- well, he's standing  
10 up and that's his physical faculties, correct?

11 A. He is standing up, yes.

12 Q. All right. And hadn't gotten there yet, but  
13 he's also asking you questions about, you know, can I  
14 give my personal property to my girlfriend?

15 A. Right.

16 Q. I think this is the part where you're showing  
17 him the video and he's definitely trying -- and these  
18 are -- these aren't easy instructions. I mean, this is  
19 technical stuff about if you refuse, then this is going  
20 to happen, correct?

21 A. Right. It's legal.

22 Q. Okay. It's legal. And you're going to have a  
23 certain level -- have to have a certain level of  
24 intelligence to comprehend and come back and ask you  
25 questions about it, correct?

1           A.    That's kind of hard for me to say.  Now you're  
2 wanting me to judge somebody's intelligence level and I  
3 can't do that.

4           Q.    Well, I'm going to ask you to judge what he  
5 did.  He actually listened and came back and asked you  
6 follow-up questions about it.

7           A.    Yeah, he appeared to understand what I was  
8 talking about.

9           Q.    Okay.  You've told this jury that at some point  
10 he said:  I'll submit to blood, you know, if I'm able to  
11 kiss my girlfriend.  He knows he's going to jail,  
12 correct?  You've told him that you're under arrest?

13          A.    I've told him he's under arrest.

14          Q.    All right.  And you've told him that at some  
15 point that I'll be taking you to a hospital to draw  
16 blood, correct?

17          A.    Yes.

18          Q.    All right.  Now, you-all have this whole  
19 discussion about him requesting a breath test, but it  
20 not being useful to you because you didn't suspect that  
21 there was alcohol, correct?

22          A.    Correct.

23          Q.    All right.  And so, he asks on the video about  
24 giving a blood test, correct?  I'm sorry.  You tell him  
25 that you want -- that you're asking for a blood test,

1 correct?

2 A. Yes.

3 Q. But you have no knowledge as to why he wants a  
4 breath test as opposed to a blood test, correct?

5 A. I have my opinions about it.

6 Q. You probably have your opinions, I'm sure, but  
7 you don't know for sure, correct?

8 A. No, I don't.

9 Q. In other words, you don't know if Mr. Petty was  
10 incredibly afraid of needles, correct?

11 A. Well, he had just shown me the IV marks in his  
12 arms from being in the hospital, so...

13 Q. Doesn't mean he doesn't do it, but you have no  
14 idea as to what it took or the amount of fear that he  
15 has when blood is taken from him or needles are put in  
16 his arms, correct?

17 A. He didn't express anything like that.

18 Q. Okay. But my question is: You don't know  
19 that -- whether or not he expressed it to you, you did  
20 not know if that was the reason why he didn't want to  
21 give blood as opposed to breath, correct?

22 A. No, I had no idea.

23 Q. All right. But you knew -- you do know, as  
24 you've testified, once you take those vials over there  
25 and Ms. Patel, the phlebotomist that drew the blood,

1 that was going to entail needles, correct?

2 A. Yes.

3 Q. That's pretty common sense when you're asking  
4 somebody to give blood, correct?

5 A. That's just about the only way to get it out.

6 Q. Only way you can do it.

7 You took it as a refusal, basically,  
8 because he didn't give you an answer in the amount of  
9 time that you wanted him to give an answer, correct?

10 A. Well, the answer he was giving he's trying to  
11 barter with me and I can't do that.

12 Q. Well, you knew you were going to get that blood  
13 anyway, correct?

14 A. Yes.

15 Q. I mean, you told Ms. Cooper that there are  
16 certain ways that the laws of the State of Texas allow  
17 you to get that blood, correct?

18 A. Yes.

19 Q. And one of those is when there's a crash and  
20 there's a fatality, the law says you can take that  
21 blood, correct?

22 A. Well, there's more to it than that.

23 Q. Okay. What else is there to that particular --  
24 I'm not talking about the other ways you can get it.

25 A. No. Specifically what you're talking about --

1 Q. Right.

2 A. -- it has to be the cause of the crash, that  
3 driver. It has to be arrested for DWI or an  
4 intoxication offense. It has to refuse to provide a  
5 specimen first. So, I can't take a mandatory blood  
6 specimen unless he refuses to give that specimen first.  
7 If he says: Yes, I'll give you a blood specimen, I  
8 can't take a mandatory specimen. It's a consent  
9 specimen.

10 Q. Okay. Well, let me ask you this. You had  
11 knocked out two of the three of those yourself because  
12 you had determined that he was intoxicated, correct?

13 A. Yes.

14 Q. You had determined that he hadn't given you a  
15 specific answer, although he never said: No, I won't  
16 give you a specimen. Correct?

17 A. Correct.

18 Q. And you had determined at that point, even  
19 though you didn't have the reliability of the  
20 reconstructionist's opinion and report, that he was the  
21 cause of the accident, correct?

22 A. Well, after I put him in the police car when I  
23 go talk to the other officers is when I find out the  
24 other facts of the crash.

25 Q. Okay.

1           A.    So, at this point all we have is a refusal that  
2 he said he'll give the blood if I let him do something  
3 else.

4           Q.    All right.  Never said:  No, I won't.  Correct?  
5 He's just trying to -- in the circumstances that he is  
6 in where he's about to go to jail, he just wants to give  
7 somebody his keys, his phone, and one other item, I  
8 think it was, or give her a kiss.  Correct?

9           A.    Keys, phone, and wallet, and a kiss.

10          Q.    Keys, phone, and wallet, correct?

11          A.    Yes.

12          Q.    All right.  But in any -- despite this extended  
13 discussion about -- about whether or not you're going to  
14 do it, based upon your knowledge and experience you were  
15 going to get that blood, correct?

16          A.    After getting the facts from the other  
17 officers, right after that, yes, I knew we were getting  
18 blood no matter what.

19          Q.    Okay.  So, you take him.  And once he gets  
20 there with Ms. Patel, he doesn't become combative, does  
21 he?

22          A.    Not at all.

23          Q.    Remains -- I think you said throughout all of  
24 this he's cooperative, correct?

25          A.    Yes, he was.

1 Q. All right. Is he -- does he make any  
2 conversation while he's there having his blood drawn?

3 A. I don't think so.

4 Q. Okay. And you drive him to Clear Lake Regional  
5 Hospital, correct?

6 A. Yes.

7 Q. At no point does he pass out in the back of  
8 your vehicle, does he?

9 A. No, no, he does not.

10 Q. Do you recall if you talked to him while you're  
11 en route to the hospital?

12 A. I think he was still talking quite a bit. It's  
13 very hard to hear somebody in the back seat of the  
14 police car, mainly because the hard drive for the  
15 digital camera is right here next to where I sit and  
16 it's pretty noisy and then there's a metal cage with  
17 plastic on there. So, it's hard to hear, it's hard to  
18 have a conversation.

19 Q. Okay. But he's alert, correct?

20 A. He was.

21 Q. And it's not unusual -- how long a drive was it  
22 from the crash site to the Clear Lake Regional Hospital?

23 A. Just a few minutes. We were pretty close.

24 Q. Less than five minutes?

25 A. Maybe 10 at the outside.

1 Q. Ten at the outside. Okay.

2 How long would you say you-all were there  
3 in order for the blood draw process to take -- to occur?

4 A. The blood was drawn, I think, at 2:23. We were  
5 probably at the hospital about 25, 30 minutes total.

6 Q. Okay. Let me back up to the scene and talk  
7 about -- you told Ms. Cooper that you actually went over  
8 to look at Mr. Petty's truck to see two things  
9 specifically. One was the location of that floor mat,  
10 correct?

11 A. Yes.

12 Q. The other was to see if there was medication or  
13 a bottle of medication as Mr. Petty had already  
14 volunteered to you that there would be, correct?

15 A. Yes.

16 Q. Do you recall if you actually located it or had  
17 some other officer locate it?

18 A. I did.

19 Q. Okay. And where did you locate it?

20 A. In the center console.

21 Q. And was the top on it? Was it -- you know,  
22 most medications nowadays have the safety top or the --  
23 where you -- so the kids can't undo it, where you have  
24 to either press down and undo it. Do you recall if the  
25 top was on it or not?

1           A.    The top was on it and I think they were the  
2 child-proof ones.

3           Q.    Okay.  And your testimony that this was  
4 Topiramate or Topamax -- we know they're  
5 interchangeable -- 100-milligram pills, correct?

6           A.    Yes.

7           Q.    And you verified that there -- that the  
8 prescription had been filled on June -- July the 25th,  
9 the day before, correct?

10          A.    Yes.

11          Q.    No idea what time that prescription had been  
12 filled, correct?

13          A.    No, no idea.

14          Q.    All right.  And you say it instructed him to  
15 take three pills a day, correct?

16          A.    Yes.

17          Q.    Now, that center console, you've already  
18 admitted that the door to the vehicle was open, correct?

19          A.    Yes, it was.

20          Q.    You can't tell this jury how many police  
21 officers or anybody else out there had been inside that  
22 car, gone through it to see what may have been there,  
23 correct?

24          A.    I have no idea.

25          Q.    All right.  But it's possible that other

1 officers had actually been inside of the vehicle before  
2 you had been in there, correct?

3 A. Well, it's possible, yes.

4 Q. And somebody had called for a DRE, as you  
5 pointed out, which indicates that there was a suspicion  
6 that drugs had been taken, correct?

7 A. That would be my guess that's why I was called,  
8 yes.

9 Q. All right. Although, it showed the date -- I  
10 may have just asked you this. I'm sorry. I lost my  
11 train of thought, but did I ask you whether or not it  
12 indicated what time it had been fulfilled?

13 A. You did ask me that and it didn't.

14 Q. Okay. So, the 25th of July, it could have been  
15 filled in the morning on the 25th of July, as well as,  
16 you know, almost to midnight on July 25th, correct?

17 A. It could have been any time.

18 Q. All right. But you can't tell the jury what  
19 time it was fulfilled, correct?

20 A. No, I can't.

21 Q. All right. After spending about 30 minutes at  
22 Clear Lake Hospital, you-all proceed down to Reisner?

23 A. Yes.

24 Q. What time would you say you arrived there?

25 A. It took quite a while to get down there because

1 it rained a good ways getting down to Reisner. So,  
2 probably -- probably 3:30, 3:45 by the time we got down  
3 there.

4 Q. Okay. And at that point, is -- why Reisner  
5 Street?

6 A. Well, that's where our DWI processing area is.  
7 That's where we would book somebody into the jail, if  
8 we're going to book them in. That's where we go to  
9 complete our investigations on DWI cases.

10 Q. Okay. So, there's -- there are other officers  
11 at the DWI processing center that are going to have  
12 similar training, maybe not the experience, but similar  
13 training as to what you have, correct?

14 A. Not normally in the afternoon, no. Most of the  
15 DWI officers are working at night.

16 Q. But you weren't the only DWI officer down  
17 there, were you?

18 A. Yes.

19 Q. That day you were the only one?

20 A. Yes.

21 Q. And you know that how?

22 A. Because there's only an on-call intoxilyzer  
23 operator during the day. So, you have to call somebody  
24 to come in, open that area up for someone to take a  
25 breath test.

1 Q. Okay. And so, when you get down there, what  
2 time would the shift change have been?

3 A. There's shift changes at 1:00, 2:00, 3:00, and  
4 4:00 o'clock.

5 Q. Okay. You got down there closer to what time?

6 A. Between 3:30 and 4:00, somewhere around there.

7 Q. All right. Nobody is present with you as far  
8 as other police officers when you do the HawkEye test;  
9 is that correct?

10 A. That's correct.

11 Q. All right. And you demonstrated how you  
12 basically do the HGN, I think you said two more times.  
13 Is that correct?

14 A. I did it twice in the DRE room.

15 Q. Okay. And at that time, you're looking for  
16 the -- for the same three levels that you did out there  
17 at the scene, correct?

18 A. Right, the exact same clues.

19 Q. Okay. Again, you didn't use an instrument.  
20 When we're doing the onset -- I mean, the 45 degrees,  
21 you didn't use an instrument to verify that it was an  
22 exact 45 degrees, correct?

23 A. No, I don't need one.

24 Q. Okay. Actually, I mean, that's a critical clue  
25 because you can get two clues out of the six with regard

1 to that, correct?

2 A. Yes, you can.

3 Q. And you -- again, you saw two of those six  
4 clues?

5 A. Prior to 45 degrees, yes.

6 Q. All right. During the time that you're doing  
7 the HawkEye, Mr. Petty is asking intelligent questions,  
8 trying to understand what you're doing, correct?

9 A. He is.

10 Q. You're stating that you're just trying to be  
11 nice and you want him to know what's going on, correct?

12 A. Yes.

13 Q. At some point, you admit that you tell him that  
14 there's been fatalities and it's possible -- it's  
15 probably going to be an intoxication manslaughter case,  
16 correct?

17 A. I think at that point we had finished  
18 everything in the DRE room. So, we had already made  
19 those videos that we watched, taken him out of that  
20 room, and into a holding area. And that's when I talked  
21 to Ms. Evans and the decision was made that he would be  
22 charged with intoxication manslaughter.

23 Q. Isn't it, in fact, true that you knew it was  
24 going to be intoxication manslaughter based on the fact  
25 that Mr. Portillo -- at the scene, when you're doing all

1 of these tests, knew you already had one fatality,  
2 correct?

3 A. Doesn't mean it's going to be an intox  
4 manslaughter charge. It could have been as low as a DWI  
5 charge.

6 Q. And isn't it, in fact, true that you told  
7 Mr. Petty about Mr. Alfonso passing just before you  
8 started all of the field sobriety tests out there at the  
9 scene?

10 A. No, because I didn't even know about that until  
11 afterward.

12 Q. You talked about the fact that there was a  
13 decision made by Ms. Evans to do intoxication  
14 manslaughter as opposed to DWI, correct?

15 A. Yes.

16 Q. At that point, are the results of the  
17 reconstruction -- of the reconstruction available to  
18 you-all?

19 A. No.

20 Q. Okay. And you expressed to the jury --  
21 described to the jury that DWI, what you say you  
22 originally arrested him for, is a misdemeanor?

23 A. Correct.

24 Q. Intoxication manslaughter is a second degree  
25 felony punishable by 2 to 20 years, correct?

1           A.    Yes.

2           Q.    And when you've got two dead bodies, you've got  
3 the media, you've got family members that are going to  
4 be concerned, isn't it, in fact, a fair statement that  
5 you're going to try to get the felony, even when, in  
6 some situations, there may only be evidence of a  
7 misdemeanor?

8           A.    No, absolutely not.

9           Q.    You shoot for the higher charge as opposed to  
10 going for the lower charge, correct?

11          A.    No.

12          Q.    On a misdemeanor, you know that the bonds are  
13 going to be lower than they would on a felony offense,  
14 possibly risking a person getting out and being able to  
15 make it, correct?

16                   MS. COOPER:  I'm going to object, Your  
17 Honor, to relevance.

18                   THE COURT:  Sustained.

19          Q.    (By Ms. Beck) You talk about the fact that at  
20 the DRE room Mr. Petty is, again, talking and being  
21 repetitive, correct?

22          A.    Yes.

23          Q.    And when he's being repetitive, it's not just  
24 rambling or just talking off the top of his head, he's  
25 trying to tell you what happened, correct?

1           A.    He's trying to give me his story.

2           Q.    Okay.  And that's -- I mean, that's not  
3 uncommon.  He's aware of the gravity of the situation,  
4 correct?

5           A.    You know, at that point, I don't know if he was  
6 at that point.

7           Q.    Well, with regard to the fact that there are  
8 fatalities, right?

9           A.    I don't know if he knew that, though.  I never  
10 mentioned it to him until after we finished all that  
11 when I told him what he was going to be charged with.

12          Q.    And he continues to have a conversation with  
13 you, right?

14          A.    He does.

15          Q.    All right.  And we see that on the video.  Even  
16 after you finished all of the recordings and all of the  
17 testings that you're doing, he's asking you and looking  
18 over your shoulder trying to determine whether -- you  
19 know, what is it you're looking at, what are we looking  
20 at, what are we seeing.  Correct?

21          A.    Yes.

22          Q.    He's asking you about what it could be  
23 interpreted as, correct?

24          A.    Yes.

25          Q.    He's asking you how did I do, correct?

1 A. Yes.

2 Q. Did I pass or did I fail, correct?

3 A. Yes.

4 Q. And you lead him to believe that there's really  
5 no pass-or-fail situation or limits in this kind of  
6 situation when that really isn't true, correct?

7 A. It is true. It's not a pass-fail test.

8 Q. Well, you sat up here and you've described what  
9 clues you saw and what determinations you made as with  
10 regard to intoxication and what charges are ultimately  
11 going to be referred to the district attorney's office,  
12 and had he passed he wouldn't have been sitting there  
13 with you, correct?

14 A. Well, the problem with that whole thing is  
15 there's not a set number of clues that say: If you have  
16 this many clues, you pass the test; if you have this  
17 many clues, you fail the test. You either see the clues  
18 or you don't. And that's why it's not pass-fail.

19 Q. But you did see enough clues where you made a  
20 determination that he was going to be arrested and  
21 ultimately referred for charges to the district  
22 attorney's office?

23 A. Yes, I did.

24 Q. And that was solely based upon what you  
25 represented to the district attorney's office?

1           A.    What I saw, what I recorded with different  
2 video cameras, and my opinion, yes.

3                   MS. BECK:   I pass the witness, Your Honor.

4                   THE COURT:   Ms. Cooper.

5                   MS. COOPER:   Just very briefly, Your Honor.

6                                   **REDIRECT EXAMINATION**

7 **BY MS. COOPER:**

8           Q.    Officer Egdorf, is it important for you to know  
9 what the defendant's normal is when you're conducting an  
10 intoxication investigation?

11          A.    Not necessarily.  You have to kind of go off  
12 general things.  I haven't met Mr. Petty before.  I  
13 don't know how he normally talks.  I don't know how he  
14 acts.  I don't know what he does.  So, you have to kind  
15 of take a broad picture of what normal is for society  
16 and what you would expect to see.

17          Q.    Is that the legal standard for the law, the  
18 normal reasonable person standard?

19          A.    Yes.

20                   MS. COOPER:   I pass the witness.

21                   MS. BECK:   I have nothing further, Your  
22 Honor.

23                   THE COURT:   You may step down, sir.

24                   MS. BECK:   Can he just be placed on hold  
25 for recall -- possible recall, Your Honor?