

1 THE COURT: May this witness be excused?

2 MS. BUESS: Yes, Judge.

3 THE COURT: You maybe excused.

4 THE WITNESS: Thank you, Judge.

5 MS. BUESS: The State calls Officer Ferzenni.

6 THE BAILIFF: Your Honor, this witness has
7 previously been sworn.

8 THE COURT: Thank you. Good morning, sir.

9 THE WITNESS: Good morning, Your Honor.

10 THE COURT: Ms. Buess, you may proceed.

11 MS. BUESS: Thank you, Judge.

12 **OFFICER CRAIG FERZENNI,**

13 after having been first duly sworn testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MS. BUESS:**

16 Q. Officer, can you please introduce yourself to the
17 jury.

18 A. Yes. I'm officer Craig Ferzenni.

19 Q. Who do you -- what do you do for a living?

20 A. I'm a police officer.

21 Q. Who are you a police officer for?

22 A. The Houston Police Department.

23 Q. Could you tell the jury a little bit about some of
24 the things you had to do to become employed as a police
25 officer by HPD.

1 A. Okay. Well, first is the interview process for you to
2 get into the academy. There's 6 months in the academy. And
3 then you have 6 months on-the-job training with a field
4 training officer. So, it's a year altogether.

5 Q. What type of things do you learn in the police
6 academy?

7 A. You learn just basic, you know, firearm training,
8 driving training, learn the penal code, Code of Criminal
9 Procedure, how to conduct traffic stops, just what you do on
10 a day-to-day basis as a police officer.

11 Q. While you're being supervised by a field training
12 officer, what types of things are you learning out on the
13 street?

14 A. Just how to apply things in the academy in a real life
15 setting, pulling people over, the best way to position your
16 car, report writing, actually going to the scene and on
17 collecting information and generating a report, just
18 on-the-job training.

19 Q. Officer, is there any training that licenses police
20 officers in the State of Texas?

21 A. Yes. You have to have a TCLEOSE license in order to
22 become a peace officer in the State of Texas.

23 Q. What does TCLEOSE stand for, if you know?

24 A. I'm not sure, but I could look on my I.D.

25 Q. Do you know whether or not they have licensed you?

1 A. Yes.

2 Q. Did you take the test that TCLEOSE offered?

3 A. Yes.

4 Q. This is the important question. Did you pass that
5 test?

6 A. Yes, ma'am.

7 Q. Now after passing that initial test, is there
8 anything else that you have to do to maintain that TCLEOSE
9 license?

10 A. You have to take -- every two years, you have to meet
11 the required continuing education hours every year.
12 In-service training and just different classes the State
13 requires.

14 Q. What topics are those classes usually on?

15 A. Just basic -- sometimes they're on human traffic
16 being. Sometimes we takes firearms, more firearm training,
17 citizens. It's just stuff that the State requires that the
18 State feels we need to be up to speed on.

19 Q. Have you ever taken any specialized training in
20 identifying gang members?

21 A. Not in a formal setting, but we have posters in our
22 roll call, different markers are gang members, what to look
23 for, what colors they are wearing, the areas of town they
24 hang out in. So, it's just kind of on-the-job training as
25 well. You get to look and learn about the gangs and how to

1 identify them.

2 Q. So, Officer, when you we're talking about classroom
3 hours, the 6-month at the academy and the TCLEOSE hours you
4 have to have every two years, how many hours of training how
5 many hours do you think you've had in the area of law
6 enforcement?

7 A. Probably over 1,500 altogether.

8 Q. Now, you said that a lot of what you learn from is
9 street experience?

10 A. Yes, ma'am.

11 Q. Can you explain to the jury how street experience
12 helps you learn how to identify different members of
13 different gangs.

14 A. That's the best way to learn about it. You could sit
15 in a classroom where they could show you pictures and show
16 you all day long, but if you actually physically see
17 somebody, see the tattoos, how they talk to you, how they
18 interaction, you can get a better feel of how to identify a
19 gang member.

20 Q. Have you encountered a gang member out on the streets
21 of Houston?

22 A. Yes, ma'am.

23 Q. Have you done that on few or many occasions?

24 A. Many occasions.

25 MR. WHITE: Objection, Your Honor, I don't

1 believe the this witness has been qualified as an expert. I
2 believe we should have the Daubert outside the presence of
3 the jury. She's going outside the Daubert.

4 THE COURT: Excuse the jury, please.

5 THE BAILIFF: All rise for the jury.

6 (Jury exits the courtroom.)

7 **DAUBERT HEARING**

8 THE COURT: You may have proceed, Ms. Buess.

9 MS. BUESS: Thank you, Judge.

10 **DIRECT EXAMINATION**

11 **BY MS. BUESS:**

12 Q. Officer, how are you able to identify gang members
13 that you encounter in the field?

14 A. The main way -- sometime is self-admittance is the may
15 way. You ask them, and they say, "Yeah, I'm this gang
16 member. Also, if they don't do that, you can see tattoos,
17 the color of clothes they're wearing, if they have bandana
18 with certain colors. That's common with gang members.

19 Q. Officer, what's your actual assignment with the gang
20 division?

21 A. I'm with the Gang Division Crime Reduction Unit.

22 Q. And what does that mean?

23 A. It's just, you know, an assignment that we have. We
24 work primarily nightshift and our duties are to just go out
25 in high crime areas. And if there's a lot of robberies in a

1 certain area, we go out there and try to get guns off of the
2 street and identify and document gang members.

3 Q. And, Officer, your assignment versus a regular patrol
4 officer, who's going to encounter more gang members?

5 A. And me and the gang division.

6 Q. And as part of that gang division, are you actually
7 given additional training by supervisors on identifying gang
8 members?

9 A. Yeah. We're receive a quarterly training. As far as
10 identifying gang members, like I said, just mainly on the
11 street you -- you get to know. You're taking it ever so
12 often. So, you're going to have to see it on the street and
13 find out.

14 Q. Officer, based on your training and experience, do
15 you feel comfortable identifying people you encounter on the
16 streets you identify as gang members?

17 A. Yes, ma'am.

18 Q. And how do you do that?

19 A. Basically, you go ask them is the main thing. And if
20 they say no, you can counteract that with their tattoos, with
21 the color of clothes they're wearing, and the area of town
22 they're in, and sometimes they'll be with another documented
23 gang member. So, you kind of link them together.

24 Q. Have you ever used the HPD Gang Tracker?

25 A. Yes.

1 Q. Has that been a good indication for you based on your
2 training and experience whether or not someone is a gang
3 member?

4 A. Yes, ma'am.

5 Q. Now, Officer, with your all of your training and
6 experience, are you familiar with the 52 Hoovers-Crips gang?

7 A. Yes, ma'am, I'm familiar with them.

8 Q. Are you familiar with the tattoos they have?

9 A. Yes, ma'am.

10 Q. Are you fine a familiar with the signs they use?

11 A. Yes, ma'am.

12 Q. Are you familiar with the colors that they typically
13 flock?

14 A. Yes, ma'am.

15 Q. Would you feel comfortable looking at someone's
16 colors, their tattoos and signs and symbols that they have to
17 determine whether or not someone is a member of the 52
18 Hoovers-Crips?

19 A. Yes, ma'am.

20 MS. BUESS: Your Honor, I believe that this
21 witness has testified that based on his training and
22 experience, he is qualified as an expert in identifying not
23 only gang members, but specifically members of this gang.

24 THE COURT: I'll allow Mr. White to do some Voir
25 Dire on that and then I'll make a finding.

1 MR. WHITE: Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 **BY MR. WHITE:**

4 Q. Now, Officer, how long did you say you were employed
5 with HPD?

6 A. I have been employed five years with HPD.

7 Q. And during that five years, have you been employed in
8 that gang reduction unit the entire time?

9 A. No, sir, I got there about three years.

10 Q. And during your three year's of experience, how many
11 encounter have you had with the 52 Hoovers-Crips?

12 A. There's no way to count. We go to actual places where
13 gang members are just all over the place, different events,
14 like the different car shows. They're gang members all over
15 the place. I can't give an accurate description of how many.

16 Q. How many gang members of the gang have you personally
17 identified yourself?

18 A. Identify as just look at them and say they're a 5 Duce
19 or --

20 Q. Just put them in the Gang Tracker?

21 A. Gang Tracker, probably two or three.

22 Q. So, you've placed two or three members in the Gang
23 Tracker in the last three years, you say?

24 A. Yes, sir. A lot of times they're in the Gang Tracker.
25 You just have to update it with the most recent contact I've

1 had with them.

2 Q. Now, these methods in which you go about identifying
3 members of gangs, have they been tested as far as their
4 reliability?

5 A. I'm not sure if there's any tests that have happened.

6 Q. Are there any type of policies or procedures or any
7 type of manual with HPD that would help you identifying these
8 gang members?

9 A. We have different, like I said, the different type
10 gang and their common tattoos and their common colors, kind
11 of like a -- just to help you out.

12 Q. So, you have like a small guideline that you use?

13 A. Yes, sir.

14 Q. Now, being that you have a small guideline, would you
15 think that would consider you being an expert as far as
16 identifying people who are members of gangs?

17 A. I wouldn't say I'm an expert, but I'm familiar with
18 the gangs enough to identify them and reference them as a
19 gang member.

20 MR. WHITE: Okay. I have no further questions
21 for this witness, Your Honor.

22 THE COURT: Anything else?

23 MR. WHITE: No, Your Honor.

24 THE COURT: Anything else for this witness?

25 MS. BUESS: No, Judge.

1 MR. WHITE: I would ask, Your Honor, if you
2 don't mind, as far as his own testimony, he said he's not an
3 expert on identifying gang members or gang characteristics.

4 MS. BUESS: Your Honor, we're not of qualifying
5 this witness as a scientific expert based on any type of
6 science or Daubert requirement. He's simply going to be a
7 sample soft witness, as far as the identification based on
8 his training and his experience.

9 THE COURT: The objection is overruled. I'm
10 going to allow the witness to testify with regard to very
11 specific and narrow questioning as to whether somebody can be
12 identified as a gang member specific criteria known by the
13 witness through his training and experience and investigating
14 these kinds of cases and the background of his testimony to
15 be reliable and that it is relevant specifically to this
16 case. I also make the same finding as to the previous
17 witness just so the record under Daubert and the other cases
18 that it is relevant and reliable in terms of whether that
19 testimony can be helpful to the jury and the 700-series of
20 the Rules of Criminal Evidence. Okay?

21 MR. WHITE: Thank you, Your Honor.

22 THE COURT: Okay. I'll give off running
23 objection.

24 MS. BUESS: Judge, before we ask the jury to
25 step inside, I do have a weapon.

1 THE COURT: Please clear that weapon, Deputy.

2 THE BAILIFF: All rise for the jury.

3 (Jury enters the courtroom.)

4 THE COURT: The objection is overruled. You may
5 proceed.

6 **DIRECT EXAMINATION**

7 **OF**

8 **OFFICER CRAIG FERZENNI, CONTINUED**

9 Q. (BY MS. BUESS) Officer, how far are you trained to
10 identify gang members?

11 A. We have like a set of guidelines in our office that
12 give us an idea of the tattoos that they have, the common
13 colors they wear and common areas they hang out in.

14 Q. Are you familiar with the 52 Hoovers-Crips?

15 A. Yes, ma'am.

16 Q. How are the 52 Hoovers-Crips?

17 A. They're a gang that's prominent in Houston. They're
18 identified with a tattoo, the "5," "2."

19 MR. WHITE: Objection, Your Honor, relevance.

20 THE COURT: Overruled.

21 A. They commonly have a tattoo with a "5," "2"
22 representing their -- their set and usually where blue.

23 Q. (BY MS. BUESS) Do they have any other colors they
24 are often associated with them?

25 A. Sometimes blue and orange. But, I mean, mainly you

1 see mostly blue.

2 Q. Now, officer, what is your current assignment with
3 HPD?

4 A. The Gang Division Crime Reduction Unit.

5 Q. And what is that assignment with HPD like? What are
6 you doing on a daily basis?

7 A. We primary work the nightshift. We go to high crime
8 areas where there have been a lot of robberies, a lot of drug
9 activity, a lot of gang violence, you know, to get gangs off
10 the streets, get guns off the street and identify gang
11 members.

12 Q. And, Officer, someone in your spot with the Crime
13 Reduction Unit Gang Division versus a patrol officer, who's
14 going to encounter gang members?

15 A. We will because we actually go to the area where they
16 hang out and go to the specific areas.

17 Q. Is that why you have additional training as compared
18 to patrol officer?

19 A. Yes, ma'am.

20 Q. Now, when you go to these high crime areas, what are
21 you doing?

22 A. Well, basically, we're trying to identify if there's a
23 vehicle description to some of the robberies. We find the
24 vehicle. We pull people over on traffic stops to make sure
25 they're not carrying anything else in their car, drugs or

1 weapons in their car.

2 Q. Do you wear a uniform when you go into these areas?

3 A. Yes, ma'am, wear a uniform and marked patrol car.

4 Q. When you're going around, you said you make traffic
5 stops?

6 A. Yes, ma'am.

7 Q. Why are you making traffic stops, if you're worried
8 about robberies and gang wars?

9 A. Because they have to get to the robbery somehow. I
10 mean, they travel around in their cars or, you know, they rob
11 people and get away in somebody's car. So, that's the best
12 way to find them. You know, somebody has to get somewhere in
13 their car. So, that's the best way to get people and
14 identify them and come into contact with them is in their
15 car.

16 Q. And, Officer, are you familiar with the term,
17 "pretext stop"?

18 A. Yes, ma'am.

19 Q. Can you explain that term to the jury, please.

20 A. A pretext stop is kind of like if you see a car and
21 like, "I'm going to pull that car over" and you're just kind
22 of following them to see what they do. You want to pull it
23 over if you're trying to find something to pull it over for.
24 It's not just a random traffic stop. You're targeting that
25 vehicle.

1 Q. When you're planning a pretext stop, do you have to
2 wait for some type of a traffic violation?

3 A. Yes, ma'am.

4 Q. Now, when you stop someone for that violation, is
5 your goal to write a ticket or prosecute the violation that
6 you observe, or are you just trying to make contact with that
7 person?

8 A. Just to make contact, what they're doing in the area,
9 if they live there, where they're headed to, where they're
10 coming from, just make contact with the driver.

11 Q. And, Officer, do you, as part of the Crime Reduction
12 Unit, make pretext stops?

13 A. No, ma'am. We already see the violation and that's
14 what brings our attention to the car.

15 Q. And when you a make that stop, for example, traffic,
16 do you always write tickets?

17 A. No, ma'am.

18 Q. Why not?

19 A. Because the goal of our unit is to make arrests and to
20 document gang members. We're not really, you know, into
21 writing tickets.

22 Q. All right. Officer, let's talk specifically about
23 April 8th, 2012.

24 A. Okay.

25 Q. Were you working that day?

1 A. Yes, ma'am.

2 Q. What shift were you working?

3 A. Nightshift from 8:00 p.m. to 6:00 a.m.

4 Q. Were you working with anyone?

5 A. Yes, ma'am.

6 Q. Who were you working with?

7 A. Officer Revus.

8 Q. And is that partner?

9 A. Yes, ma'am.

10 Q. Why when you're working this Crime Reduction Unit are
11 y'all partnered up?

12 A. Usually, we're partnered up because the danger of our
13 job. We're going to a high crime area, like I said before.
14 So, we're actually -- it's a little more dangerous than
15 somebody's car got broken into. We're targeting a certain
16 area, people have guns. We have two people. He can keep
17 eyes on something. I can keep eyes on something. So, four
18 eyes are better than two than me just in the car by myself.

19 Q. Have you worked with Officer Revus before?

20 A. Yes, ma'am.

21 Q. Have you worked with him on few or many occasion?

22 A. For the past five years every time I go to work.

23 Q. So, is it fair to say you know Officer Revus pretty
24 well?

25 A. Yes, ma'am.

1 Q. You have a good working relationship?

2 A. Yes, ma'am.

3 Q. Now, what area were you working in on April 8th of
4 2012?

5 A. We were working in the southeast area of town.

6 Q. Are you familiar with that area?

7 A. Yes, ma'am.

8 Q. Are you familiar with all the Houston area in
9 general?

10 A. In general, yes, ma'am.

11 MS. BUESS: May I approach the witness?

12 THE COURT: Yes.

13 Q. (BY MS. BUESS) I'm going to show you what's been
14 marked as State's Exhibit No. 8 and State's Exhibit No. 9.

15 Do these appear to be maps of the Houston area?

16 A. Yes, ma'am.

17 Q. Based on your experience, do these fairly and
18 accurately depict Houston area?

19 A. Yes, ma'am. Southeast -- this is the southeast area
20 we were at that night.

21 Q. And State's Exhibit No. 8, does that also depict a
22 larger area of Houston?

23 A. Yes, ma'am.

24 MS. BUESS: Your Honor, at this time I would
25 offer into evidence State's Exhibit Nos. 8 and 9 and tender

1 to opposing counsel for any objection.

2 MR. WHITE: No objection to the exhibits, Your
3 Honor.

4 THE COURT: Admitted. Maybe published to the
5 jury.

6 Q. (BY MS. BUESS) And, Officer, looking at State's
7 Exhibit No. 8, which is up on the big screen here, do you see
8 where we are currently located on this map?

9 A. Somewhere in the downtown area. Yes, ma'am.

10 Q. If you actually touch the screen, it will put a
11 little dot on there. If you tap it, it will put an arrow?

12 A. Okay.

13 Q. Do you think you can indicate where we are?

14 A. Somewhere down there, downtown.

15 Q. Now, Officer, that red "A" on Exhibit A, what part of
16 town is that in?

17 A. That's the southeast area where we were assigned to
18 that night.

19 Q. Now, is that in Harris County, Texas?

20 A. Yes, ma'am.

21 Q. Now, Officer, looking at State's Exhibit No. 9, is
22 this actually a zoomed in view of that same area?

23 A. Yes, ma'am. That's an actual street, Martin Luther
24 King, Jr. Boulevard.

25 Q. Now, while you were patrolling that area, did you

1 come into contact with the Defendant?

2 A. Yes, ma'am.

3 Q. And just so we're all clear with him, when we talk
4 about the Defendant, do you see the individual that we're
5 referring to here today?

6 A. Yes, ma'am.

7 Q. Can you point him out and tell us an article of
8 clothing that he's wearing?

9 A. Yes, ma'am. He's wearing like a beige shirt in the
10 other table over here.

11 MS. BUESS: Your Honor, may the record reflect
12 the witness has identified the Defendant?

13 THE COURT: Yes.

14 Q. (BY MS. BUESS) Now, Officer, when you first observed
15 the Defendant, what was he doing?

16 A. He was in his vehicle traveling northbound on MLK
17 Boulevard.

18 MS. BUESS: May I approach the witness?

19 THE COURT: Yes.

20 Q. (BY MS. BUESS) Officer, I'm going to show you what's
21 been marked as State's Exhibit No. 10.

22 A. Okay.

23 Q. Are you familiar with that area of Maratin Luther
24 King Boulevard?

25 A. Yes, ma'am.

1 Q. Does this fairly and accurately depict the area that
2 you've been discussing?

3 A. Yes, ma'am.

4 MS. BUESS: Your Honor, at this time, I tender
5 State's Exhibit No. 10 to opposing counsel and for any
6 objections.

7 MR. WHITE: No objection to Exhibit No. 10, Your
8 Honor.

9 THE COURT: Admitted maybe published.

10 Q. (BY MS. BUESS) And, Officer, I apologize. Our budget
11 on poster board is running out.

12 A. That's understandable.

13 Q. And when you first encountered the Defendant, are you
14 aware what intersection that was in or what part of Martin
15 Luther King it was on?

16 A. Yes, ma'am. It was -- this is bad view, but this view
17 right here, that's where I first saw him at.

18 Q. Okay. You're going to have to help me out. This
19 direction here is north, correct?

20 A. This is north.

21 Q. This direction is south.

22 A. These are the north lanes. These are the south.

23 Q. So, I need to go this direction or this direction?

24 A. This is where I first saw him at where you have on the
25 screen right now. This is where I first observed him. And

1 at the intersection, those little lines you have up here,
2 right here.

3 Q. These little lines up here?

4 A. That's where we -- whereabouts we're first starting to
5 pull him over.

6 Q. Okay. Well, when you first observed the Defendant --
7 well, let's back up. How many lanes do we have that are
8 going north bound on Martin Luther King Boulevard at this
9 part?

10 A. We have three lanes.

11 Q. When you first observed the Defendant, which lane was
12 he in?

13 A. He in the middle lane -- the two outer lanes.

14 Q. And you said that you were going to pull him over.
15 What were you going to pull him over?

16 A. First we observed him cross over into the right lane
17 without using a signal. So, that kind of draws our
18 attention. So we kind of pay attention once we see that to
19 see if he does it again or, you know, to see what's going on
20 with the vehicle, why he's swerving. And then he did it a
21 second time, and that's when we decided to pull him over.

22 Q. Now, Officer, based on your training and experience
23 when someone operate a vehicle are they supposed stay in a
24 marked lane?

25 A. Yes.

1 Q. Why is that?

2 A. Just the safety for everybody around them and safety
3 for other drivers on the street. And when you make that
4 change, it let's others drivers know you're going to make that
5 change.

6 Q. And is that a traffic violation to make that change
7 without a signal?

8 A. Yes, ma'am.

9 Q. And, Officer, is it fair to say when he was changing
10 out of another lane he was changing into another lane?

11 A. No. He got back into his lane.

12 Q. When he got back into his lane, did you immediately
13 pull him over?

14 A. No, ma'am.

15 Q. Why not?

16 A. Just because sometimes someone may be answering a
17 phone call or text message and they make a traffic violation.
18 We just kind of said, "Hey, he straightened up" and let him
19 go about his business.

20 Q. Now, Officer, on that exhibit, can you point to where
21 you first saw the Defendant move out of his lane?

22 A. It was right here. That little dot there.

23 Q. Sir, could you make a little bigger dot there?

24 A. (Witness complies.)

25 Q. There we go.

1 A. There we go.

2 Q. So, that's the first occasion when you saw him move
3 over into the right-hand lane?

4 A. Yes, ma'am.

5 Q. After he moved into the right-hand lane, what
6 happened next?

7 A. He got back into the center lane. And that's, like I
8 said, drew our attention to him. And he we watched him while
9 he was traveling northbound a little bit.

10 Q. Now, Officer, you said you worked with your partner,
11 officer Revus, frequently, correct?

12 A. Yes, ma'am.

13 Q. When y'all start seeing a potential violation, what
14 are y'all's separate roles as far as what you're
15 concentrating on at that time?

16 A. Once we decide we're going to pull someone over, I
17 focus on the people inside. See if there's one, two, three,
18 four people, see if there's any movement, see if they're
19 moving towards the console. Just kind of focus on the
20 occupants so we know what we're going to do when we move up
21 to the car.

22 Q. Why would you observe what people are doing inside of
23 the car?

24 A. That's the most dangerous part of our job is when you
25 make a traffic stop because you're walking into the unknown.

1 You don't know if the person has a gun, if they're trying to
2 hide a gun, if they're trying to hide something, if they just
3 did a robbery down the street and they're trying to get away.
4 The more information we have when we approach the vehicle,
5 the safer it is for everybody.

6 Q. And, Officer, when you first encountered the
7 Defendant, what time of day was it?

8 A. It was in the nighttime. It was 11:00 o'clock at
9 night.

10 Q. And are you familiar with the area that you stopped
11 him in?

12 A. Yes, ma'am.

13 Q. Are there any bars located in that area?

14 A. There are a few small bars, not any major big bars.

15 Q. Have you ever made any stops for driving while
16 intoxicated?

17 A. Yes, ma'am.

18 Q. Have you ever made any arrests for driving while
19 intoxicated before?

20 A. Yes, ma'am.

21 Q. And have you ever made any stops in this area?

22 A. Yes, ma'am.

23 Q. Is there anything you're looking for?

24 A. Yes, ma'am.

25 Q. Why is that?

1 A. Because when you're driving alcohol, you lose your
2 ability to keep a straight line and you'll sometimes drift
3 from lane to lane and you won't able to drive inside of your
4 lane.

5 Q. Officer, before you actually stopped the Defendant,
6 do you have any way of knowing what's causing him to be
7 unable stay in his lane?

8 A. No, ma'am.

9 Q. So, do you know whether or not it may be alcohol
10 that's causing him to drift out of his lane?

11 A. I won't know until I talk to him.

12 Q. Would you know if he's texting on his phone that's
13 making him drift out of his lane?

14 A. I wouldn't know.

15 Q. Would you know if he was having an argument with his
16 passenger made him drift out of his lane?

17 A. I wouldn't know.

18 Q. And, Officer, are you paying attention to the other
19 traffic that's going around you at this point?

20 A. At this point, I'm focusing on the driver and the
21 passengers in the vehicle. That's why my partner can focus
22 on everything around us as well.

23 Q. Is that the situation that y'all have come up with
24 from numerous traffic stops that y'all have worked before?

25 A. Yes, ma'am. It's in the best interest of the while

1 I'm stopping a vehicle, he can pay attention to the traffic
2 around us.

3 Q. After you saw the initial swerve into the right-hand
4 lane, what happened next?

5 A. It kind of brought our attention to it. We kind of
6 followed him as he was traveling northbound and then he did
7 it again right before the intersection here (indicating) at
8 the very top of the screen right in here.

9 Q. What did he do again?

10 A. He was serving to the right lane and got back into his
11 lane without using a signal.

12 Q. And at that point, what did y'all decide to do?

13 A. At that point, we decided, "Hey, we're going to pull
14 this guy over and see what's going on."

15 Q. So, what happened next?

16 A. After we went through the intersection, we pulled him
17 over just outside the shot of the screen right here.

18 Q. Would it help if you I pull this down a little bit
19 further.

20 A. There you go.

21 Q. Do you see on this map, State's Exhibit No. 10, where
22 the Defendant actually stopped his vehicle?

23 A. Yes, ma'am.

24 Q. Can you indicate that for us, please.

25 A. He actually pulled into the median here (indicating.)

1 Q. And while you were focused in on the car, could you
2 tell how many people were in that vehicle?

3 A. At the point, I could tell there were about -- the
4 scene was kind of dark, but I knew there was a driver and I
5 saw that there was a passenger in the vehicle as well.

6 Q. Could you tell what they were doing inside the
7 vehicle?

8 A. I could see a little bit of movement. But again, like
9 I said you don't know if they're reach for anything else
10 until you come up and talk to them.

11 Q. When you approach a traffic stop, how do you and your
12 partner typically approach them?

13 A. I approach the driver's side and Office Revus will
14 approach the passenger's side.

15 Q. Why do y'all approach two different sides?

16 A. Because normally HPD is a one-man unit on patrol. So,
17 people are expecting somebody to come on the driver's side.
18 Coming on the passenger's side gives us a chance -- they're
19 not expecting it. They're not paying attention to me. So,
20 it gives me kind of a chance to look inside the vehicle to
21 see if there are any kind of weapons or anything they're
22 trying to hide, narcotics in the vehicle. So, it's kind of
23 extra safety for us.

24 Q. And, Officer, were you clearly able to see the
25 vehicle that the Defendant was driving that night?

1 A. Yes, ma'am.

2 Q. Do you actually make a record of your stops or your
3 arrests?

4 A. Yes, ma'am, we write a report on them.

5 Q. And can you explain to the jury what a police report
6 is?

7 A. Well, a police report is a report we generate after --
8 anytime we arrest somebody or feel something is worth
9 investigating, we'll a report. And it kind of just refreshes
10 our memory whenever we need to testify. Just basic elements
11 of the crime, what time it was, you know, what we found and
12 why we arrested an individual.

13 Q. Were you trained in the police academy in what to
14 write in the your police report?

15 A. Yes, ma'am.

16 Q. Were you trained to write every detail of every stop
17 down every time?

18 A. No. That would be impossible. We have reports the
19 size of a dictionary.

20 Q. So, what information do you typically write down when
21 you write a police report?

22 A. I write the main things, the location we were, what
23 unit we were riding, my partner's information, the time of
24 the stop, where it was at, how we came into contact, why we
25 pulled the vehicle over. We have to call the DA's office,

1 who we talked to, if they want to accept charges we have to
2 write who we wanted to take to jail, document all the
3 property, all evidence.

4 Q. Do you review that report to fresh your recollection?

5 A. Yes, ma'am.

6 Q. Did you do that in this case?

7 A. Yes, ma'am.

8 Q. And as far as in your report, do you write
9 information about vehicles?

10 A. Yes, ma'am. We write down the license plate number
11 and what description, what type of vehicle it was.

12 Q. And looking up at the screen, State's Exhibit No. 1,
13 do you recognize the vehicle in this photograph?

14 A. Yes, ma'am. That's the vehicle the Defendant was
15 driving that night.

16 Q. And how do you know for sure that's the same vehicle?

17 A. I just remember the big rims and the spotlight on
18 there and the blue paint.

19 Q. Are you familiar with this model of vehicle?

20 A. It's the same one that we drive, the Crown Victoria.

21 Q. And anything else about blue paint stand out to you?

22 A. That's just one of the colors that is affiliated with

23 --

24 MR. WHITE: Objection, Your Honor, speculation.

25 THE COURT: Overruled.

1 A. That's just one of the colors that we're familiar with
2 the 52 Hoovers-Crips.

3 Q. (BY MS. BUESS) And, Officer, in your training and
4 experience, is that a custom paint job or a standard paint
5 job?

6 MR. WHITE: Objection, speculation. He's not an
7 expert in car paint.

8 THE COURT: Overruled.

9 A. It's a custom, shiny, sparkly.

10 Q. (BY MS. BUESS) And, Officer, looking at State's
11 Exhibit No. 2 does that show the license plate of that same
12 vehicle?

13 A. Yes, ma'am.

14 Q. Do you have a copy of your report in front of you?

15 A. No, ma'am.

16 Q. Would you like to have a copy of your police report
17 to fresh your recollection?

18 A. Yes, ma'am.

19 THE COURT: Members of the jury, the police
20 report in this case is not evidence. It maybe used by both
21 lawyers, either side, to examine the witness on both direct
22 examination and cross-examination. But you will not get a
23 copy of this report when you go back to the jury room when
24 you deliberate your case.

25 Q. (BY MS. BUESS) Officer, at any point did you write

1 down the license plate of the vehicle that you stopped the
2 Defendant in?

3 A. Yes, ma'am.

4 Q. And if you look at the second page of the report do
5 you see the license plate of the vehicle you stopped on April
6 8th, 2012?

7 A. Yes, ma'am.

8 Q. Officer, after the Defendant stopped and you
9 approached the vehicle, what happened next?

10 A. As I'm speaking to the driver, asking for the typical
11 driver's license and insurance, my officer a partner says
12 above the car, "Hey, get him out."

13 Q. And do y'all have a prearranged code?

14 A. If he says get somebody out since we've been partners
15 for five years, I know he wants to separate the driver from
16 the passenger. So, it's either narcotics or a gun or
17 something that he's seen that tells me to get him out.

18 Q. And where was your car positioned?

19 A. He was outside the passenger's side window of the car.

20 Q. And where were you standing?

21 A. In the driver's side window.

22 Q. Could you see any narcotics or guns or weapons?

23 A. No, ma'am.

24 Q. So, after your partner told you to get him out, what
25 did you do?

1 A. I got him out of the car. I kind of patted him down,
2 made sure he didn't have anything else on him and put him in
3 the backseat of our car just to see what he saw, find out
4 what was going on.

5 Q. And you said -- who-all was in the vehicle?

6 A. It was the driver -- let me see. I believe it was his
7 brother. Yes, Jyrus Washington.

8 Q. And when you walked up to the car, who was in the
9 driver's seat?

10 A. Jeremy Washington, the Defendant.

11 Q. Who was in the passenger's seat?

12 A. Jyrus Washington.

13 Q. Is that his brother?

14 A. I believe so.

15 Q. When you walked up to the Defendant, what was his
16 wearing?

17 A. He was just wearing no shirt, is what I remember, and
18 just either pants on shorts.

19 Q. And what was the significance of the Defendant not
20 wearing any shirt?

21 A. I was able to see a tattoo on his stomach, a "5," "2"
22 tattoo.

23 Q. And, Officer, I'm going to show you some more
24 photographs here. I'm going show you State's Exhibit No. 5.
25 Does State's Exhibit No. 5 appear to show the Defendant's

1 chest?

2 A. Yes, ma'am.

3 Q. Do those tattoos appear to be the same tattoos that
4 you observed of April 2012?

5 A. Yes, ma'am.

6 Q. And you said you saw a "5" "2"?

7 A. Yes, ma'am. It's kind of hard to see, but it's there
8 in the middle of his chest.

9 Q. Would it help you if I brought it forward?

10 A. Yes, ma'am, it's right there.

11 Q. And you can kind of trace over that for us because
12 it's a little bit difficult to see.

13 A. (Witness complies.)

14 Q. And that's the "5" "2" that you saw on his chest?

15 A. Yes, ma'am.

16 Q. And did you see any other indicators?

17 A. Yeah, on the upper shoulder here, the dice symbolizing
18 the "5" and "2" -- oops.

19 Q. That's okay.

20 A. -- right in the that area. May I --

21 Q. Yes, you may.

22 A. Okay. The dice the 5 and the 2.

23 Q. And, Officer, what is the significance of the "5" and
24 "2"?

25 A. That's just the name of the gang, the "5" -- you know,

1 the "5" duce and the -- it's the 52 Hoovers-Crips.

2 Q. And you testified, I believe, that you were familiar
3 this gang, correct?

4 A. Yes, ma'am.

5 Q. What about these tattoos based on your training and
6 experience link in with this gang?

7 A. Just that's the name of it. I mean, what other reason
8 would you have a "5" "2" drawn on your stomach?

9 MR. WHITE: Objection, Your Honor, speculation
10 and relevance.

11 THE COURT: Overruled.

12 A. I mean, I don't know of a good reason why he would
13 have a "5" "2" other than to be connected with a gang.

14 MR. WHITE: Objection, again, Your Honor,
15 speculation. He doesn't know why he has a tattoo on him.

16 THE COURT: Same ruling.

17 Q. (BY MS. BUESS) You can finish your answer.

18 A. Yes. I don't know why you would have a "5" "2" other
19 than it was to signify a gang.

20 Q. And, Officer, was there anything about the color of
21 the vehicle that he was in or the color of clothing that he
22 had on that indicated a possible gang membership?

23 A. Yeah. Blue car, the blue bandana in the car. So,
24 just blue all around.

25 Q. You said there was a bandana in the car?

1 A. Yes, ma'am.

2 Q. Where was that located?

3 A. I'm not sure where that was located. I just know it
4 was in the vehicle.

5 Q. Did you locate anything else that concerned you in
6 the vehicle?

7 A. No, ma'am, I did not.

8 Q. Did your partner locate anything else in the vehicle?

9 A. Yes, ma'am.

10 Q. What was in the vehicle?

11 A. There was a gun.

12 Q. Are you familiar with guns?

13 A. Yes, ma'am.

14 Q. And did you -- were you able to tell where your
15 partner had retrieved the gun form the car?

16 A. Yes, ma'am. He told me afterwards where it was at.

17 Q. And did you have an opportunity to see the interior
18 of the Defendant's car?

19 A. Yes, ma'am.

20 MS. BUESS: May I approach the witness?

21 THE COURT: Yes, ma'am.

22 Q. (MS. BUESS) Officer, I'm going to show you State's
23 Exhibit No. 12.

24 A. Okay.

25 Q. Are these photographs of the Defendant's car?

1 A. No, ma'am.

2 Q. Are these photographs that are similar to the
3 Defendant's car?

4 A. Yes, ma'am.

5 Q. Do these photographs seem to depict the interior of
6 the Defendant's car, the same type of the Defendant's
7 vehicle?

8 A. Yes, ma'am.

9 Q. Do they fairly and accurately reflect Defendant's
10 vehicle as you observed it in April?

11 A. Yes, ma'am.

12 MS. BUESS: Your Honor, at this time, I offer
13 into evidence, State's Exhibit No. 11 and 12 and tender to
14 opposing counsel for any objections.

15 MR. WHITE: No objections to the exhibits.

16 THE COURT: Admitted and maybe published, both.

17 Q. (BY MS. BUESS) Officer, let's start with State's
18 Exhibit No. 11. Let's go in numerical order here. What are
19 we looking at in State's Exhibit No. 11?

20 A. That's kind of my view that I had when I was looking
21 notice vehicle that night, outside the driver's side window.

22 Q. Was your partner able to tell you where he had seen
23 the gun?

24 A. Yes, ma'am.

25 Q. Where did he say he had seen it?

1 A. It was right there in between the driver's seat and
2 that little area right there kind of wedged in the area -- in
3 that area.

4 Q. And where you were standing, were you able to see
5 that gun?

6 A. No, ma'am.

7 Q. Looking at State's Exhibit No. 12, what are we
8 looking here?

9 A. It's kind of -- looking at this interior of the
10 vehicle, the driver's seat.

11 Q. And in addition to where the gun was located, where
12 did your partner tell you where the gun was located?

13 A. Yes, ma'am.

14 Q. Was it located near the driver's seat or the
15 passenger's seat?

16 A. The passenger's seat.

17 Q. Did you ever ask the Defendant about the gun located
18 in this vehicle?

19 A. Yes, ma'am.

20 Q. What did he tell you about that gun?

21 A. He said he was a commissioned security guard and he
22 uses it for work.

23 Q. He told it was his gun?

24 A. Yes, ma'am.

25 Q. Was he surprised you had found the gun?

1 A. No, ma'am.

2 Q. Did he tell you that he had put the gun there?

3 A. Yes, ma'am.

4 Q. Did he tell you when he had put the gun there?

5 A. No, ma'am.

6 Q. What did you do after you located the gun in the
7 Defendant's vehicle?

8 A. We took the bullets out. It was fully loaded and we
9 make sure there's no bullets in it. And after we take him to
10 jail, we'll take him to the Houston Police Department.

11 Q. And what is your purpose of tagging the gun and the
12 bullets into evidence?

13 A. To bring to court when we come to trial and to have
14 proof the gun was in the car.

15 MS. BUESS: Your Honor, at this time, I would
16 ask the bailiff to clear State's Exhibit 13.

17 THE COURT: Has that been done or did you --

18 THE BAILIFF: Yes, Your Honor, the gun has been
19 cleared.

20 MS. BUESS: May I approach the witness?

21 THE COURT: Yes.

22 Q. (MS. BUESS) Officer, I'm going to show you what's
23 been marked as State's Exhibits 13, 14 and 15.

24 Are you familiar with these items?

25 A. Yes, ma'am.

1 Q. How are you familiar with them?

2 A. This was the gun and the magazine and bullets we ran
3 that night when we processed the Defendant.

4 Q. How do you know these are the same items that you
5 recovered that night?

6 A. When I tag them into the property room, I seal it up
7 and it has my initial all across the tape so I know that put
8 it in there that night.

9 Q. And when you first found this gun, was it all in the
10 same state with the bullets, magazine and the gun separate?

11 A. No, ma'am. It was all together in one piece.

12 Q. Who took it apart?

13 A. Either me or my partner did it that night just to make
14 it safe. I'm not sure.

15 Q. How about orange Zip tie that we see here?

16 A. I put that on in the property room just so it doesn't
17 have a chance of going off in the property room.

18 Q. Other than the addition of the Zip ties and putting
19 these separate bags, has anything been done to alter them?

20 A. No, ma'am.

21 MS. BUESS: Your Honor, at this time, I offer
22 State's Exhibit Nos. 13, 14 and 15 into evidence and offer to
23 opposing counsel for any objection.

24 MS. WHITE: No objection to Exhibits 13, 14, 15.

25 THE COURT: At this time, we're going to take

1 our lunch break and we'll resume this trial in about an hour
2 and fifteen minutes. Thank you.

3 THE BAILIFF: All rise for the jury.

4 (Lunch recess.)

5 THE COURT: Are we ready for the Jury?

6 MR. WHITE: We are, Your Honor.

7 THE COURT: All right.

8 THE BAILIFF: All rise for the Jury.

9 (Jury enters courtroom.)

10 THE COURT: Thank you-all. Please be seated.

11 You're still under oath. You may continue.

12 MS. BUESS: Judge, may I approach the witness?

13 THE COURT: You may.

14 **DIRECT EXAMINATION OF OFFICER FERZENNI, CONTINUED,**

15 **BY MS. BUESS:**

16 Q. Officer, based on your training and experience, what
17 is State's Exhibit No. 13?

18 A. It's a semi-automatic pistol?

19 Q. Is it a handgun?

20 A. Yes, ma'am, it's a handgun.

21 MS. BUESS: Pass the witness.

22 THE COURT: You may inquire, Mr. White.

23 MR. WHITE: Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 **BY MR. WHITE:**

1 Q. Now, Officer Ferzenni -- is that how you pronounce
2 it?

3 A. Yes, sir.

4 Q. -- you said on or about April 8th, you remember
5 encountering Mr. Washington; is that correct?

6 A. Yes.

7 Q. Now, when you stopped Mr. Washington, what did you
8 initially tell him you were stopping him for?

9 A. Usually, I approach and ask for his driver's license
10 and insurance. I don't let them know the reason for the
11 violation.

12 Q. So, normally you just stop someone, you don't inform
13 them what you're stopping them for?

14 A. Once they ask me, I do tell them. I try to get
15 they're I.D. so I find out who they are and find out who I'm
16 dealing with. Make sure they have a driver's license.

17 Q. And when you saw Mr. Washington operating his
18 vehicle, you said he was headed northbound on MLK, correct?

19 A. Yes, sir.

20 Q. Which lane was he in?

21 A. He was in the center lane.

22 Q. And which lane was your vehicle in?

23 A. Sir, I don't recall. But once we saw him swerve, we
24 got in the center lane. I don't recall when we first
25 observed him.

1 Q. In fact, was your vehicle not in the far right
2 outside lane?

3 A. I'm not sure.

4 Q. Had you made other stops that night?

5 A. Yes, sir.

6 Q. And you saw Mr. Washington's vehicle while you had
7 another vehicle stopped, correct?

8 A. I'm not sure.

9 Q. You don't remember at what point you saw his vehicle
10 pass by?

11 A. When I saw the vehicle, it swerved in the other lane.
12 I'm not sure if we had somebody on traffic or not.

13 Q. On an average night, how many stops do you think you
14 would make in that area?

15 A. We're citywide. So, we don't go to that area every
16 night. But on an given night, it could be anywhere from five
17 to 15 stops a night depending on the night.

18 Q. And of those five to 15 stops, how many do you think
19 would be what you call pretext stops?

20 A. Zero.

21 Q. You just stated earlier that Mr. Washington's stop
22 was a pretext stop, correct?

23 A. No. She asked me what a pretext stop was. And I
24 informed the jury what a pretext stop was and that this was
25 not one of those stops.

1 Q. Okay. About how long of a period did you follow Mr.
2 Washington?

3 A. Did I follow him?

4 Q. When he was on MLK, how long did you follow him?

5 A. Like a time period or distance or --

6 Q. Distance?

7 A. Probably about maybe a hundred, 200 yards.

8 Q. So, in 200 yards, you saw him drift twice, you said,
9 into the other lane?

10 A. Yes, sir.

11 Q. How far into the other lane did he drift?

12 A. He just then croppped over, like his tire was in the
13 other lane, and then he got back over.

14 Q. Is that unusual on that street to cross over like
15 that into another lane?

16 A. It's unusual if they're -- if you're trying to signal
17 for the lane you're turning in, yeah, it's kind of unusual.
18 But that's what I was talking about. We usually follow him
19 out there a little bit to make sure it doesn't happen again.

20 Q. Now, the street itself, MLK, is this street in poor
21 condition or fair condition?

22 A. I would say it's fair condition. There may be some
23 potholes and different factors.

24 Q. Now, being that there are potholes and there may be
25 some road conditions that may not be the best, could that

1 cause someone to crossover or veer over into a lane slightly?

2 A. If they did, when I reviewed their statement, I would
3 think that they were trying to get over to avoid something.

4 Q. Now, if a person hits a pothole and their car veers
5 over into a lane, are they intending to get into that lane?

6 A. No. I said in attempt to avoid a pothole, if they hit
7 a pothole. And there's no pothole they were signaling to get
8 over.

9 Q. Now, how far between your vehicle and Mr.
10 Washington's vehicle -- were there any cars between your
11 vehicles when you were following him?

12 A. No, sir, we were able to see their plates. So, we had
13 a chance to run their plates before we pulled them over.

14 Q. And when you run the plate exactly what were you
15 running it for?

16 A. Just to see the vehicle registration, make sure it's
17 up to date, to see if the person lives in the area, to get
18 the general information about the vehicle before we stop it,
19 make sure there's no warrants on the plate.

20 So, sometimes when people have a ticket and they
21 don't go to court and they have a warrant, sometimes they
22 come up when we run the plate. I just get a lot of
23 information from that.

24 Q. Now, this swerve or veer into another lane, when did
25 that happen? When did you first notice that?

1 A. Can you clarify the question.

2 Q. After you were behind him, when did you notice that?

3 A. We were just driving down the street. That's when he
4 got our attention when he served over. But it's not like we
5 were following him and then saw him switch over. That's what
6 drew our attention to him.

7 Q. Did he immediately get back into his lane?

8 A. Yeah. When he crossed over, he kind of jerked back
9 into his lane.

10 Q. Now, did any other cars have to take evasive action
11 to avoid being hit by Mr. Washington's vehicle?

12 A. As I stated before, I wasn't paying attention to the
13 inside of the vehicle. I didn't see any vehicle around him.
14 I was trying to look in the car and see how many people were
15 in the car. But I didn't see any vehicles around him. No,
16 sir.

17 Q. But you saw his vehicle swerve into another lane when
18 you were paying attention to how many people were inside the
19 car?

20 A. Yes, sir. When I saw him swerve in the other lane,
21 that's when I started paying attention to him.

22 Q. Why you were allegedly watching him swerve into this
23 other lane, you didn't notice if there were other vehicles or
24 not?

25 A. No, sir.

1 Q. Now, when you're in the police academy, one of the
2 things they teach you so to document everything; is that
3 correct?

4 A. They teach us to document as most -- as much as you
5 can.

6 Q. They want you to document as much as you can, why?

7 A. Just so you recall it comes to court later on to have
8 a good accurate description of the event.

9 Q. Now, on that night when you allegedly say Mr.
10 Washington swerved into another lane, you said you could not
11 tell whether or not there were any other vehicles around you?

12 A. Yes, sir.

13 Q. And why were you not paying attention to other
14 traffic?

15 A. Because that's what my partner was paying attention to
16 was other traffic and I was focused on the vehicle.

17 Q. So, who saw him actually swerve? Did you see him
18 swerve or did your partner see him swerve?

19 A. Yes, sir. We both saw him swerve. But then once we
20 first see that, that's when I started paying attention to the
21 driver and try and look inside the vehicle.

22 Q. And you said on average, you do at least five to 15
23 traffic stops a night?

24 A. Yes, sir. Well, we do other special assignments and
25 help either agencies and sometimes we're tied up and we don't

1 do any traffic stops because we're tied up. But sometimes we
2 do five to 15 a night.

3 Q. And this gang -- what was the name of the unit you
4 work for again?

5 A. The Crime Reduction Unit, it's part of the Gang
6 Division.

7 Q. And how long have you been employed in that unit?

8 A. Three years.

9 Q. And what's the purpose or, I guess, the rationale for
10 the unit?

11 A. Just to have a proactive unit, to just target
12 hotspots, high crime areas in the city of Houston, and try to
13 reduce the crime in that area.

14 Q. So, it's not uncommon for you to make numerous
15 pretextual stops every night, correct?

16 A. I will wouldn't say pretextual. We make traffic stops
17 every night.

18 Q. A lot of times when you're making these stops, you're
19 looking for certain people or certain vehicles that fit a
20 profile; is that correct?

21 A. No. If we have a description of a vehicle that's been
22 involved in a robbery or been involved in home invasions,
23 yeah, we're looking for that vehicle. But we don't go out
24 looking for, you know, a certain -- "This is the type of
25 vehicle we're going to pull over tonight."

1 Q. Now, you stated earlier that Mr. Washington's vehicle
2 stood out to you. And why was that?

3 A. I didn't say it stood out. I said, well, once we saw
4 it switch lanes, that's when we started looking at it. I
5 didn't say it stood out at all among the other cars.

6 Q. I may not be using your exact words. I apologize?

7 A. Okay.

8 Q. You said there was something, I guess, peculiar about
9 his vehicle, correct?

10 A. No. Once he stopped his vehicle, we noticed it was
11 bright blue, candy paint, the color.

12 Q. And how could you tell it was candy paint or not at
13 night?

14 A. Once we stopped him, I mean, we're right in front of
15 the vehicle. We were standing next to it. I mean --

16 Q. Now, just because a person drives a blue vehicle,
17 does that mean they're a member of a gang?

18 A. No, sir, not at all.

19 Q. In fact, there are many people who are not members of
20 a gang that have blue colored cars?

21 A. Oh, yes, sir.

22 Q. And do you recall what kind of -- what color of
23 shorts or what color of pants he had on that night?

24 A. No. I just remember there were shorts. We had to
25 find him a shirt in order to get him downtown.

1 Q. I understand. So, you don't recall what color the
2 pants were, correct?

3 A. No, sir.

4 Q. Now, you stated also that you found a bandanna in the
5 car; is that correct?

6 A. Yeah, I think it was a blue bandana.

7 Q. And where did you find that at?

8 A. I'm not sure where we found it at. I just remember
9 that it was in there.

10 Q. And did you take a look at your police report to see
11 if you documented it as an article of his clothing?

12 A. No, sir, we didn't.

13 Q. And why would you not document it?

14 A. I mean, the reason, I -- if we leave it in the car,
15 it's not part of his clothing. It's just part of the
16 vehicle. I mean --

17 Q. So, you thought Mr. Washington was a gang member,
18 correct?

19 A. Yes, sir.

20 Q. You don't think it would be important to document
21 that you found a bandanna in his gang colors, if you were to
22 find one?

23 A. No. We had the "5" "2" tattoo on the stomach and the
24 "5" "2" dice on his shoulder. That's enough to identify him
25 as a gang member.

1 MR. WHITE: Objection, Your Honor,
2 nonresponsive.

3 THE COURT: Sustained. Just answer the question
4 only. The other side will be able to ask you follow-up
5 later. Okay?

6 A. Can you ask the question again.

7 Q. (BY MR. WHITE) Do you think it would be important to
8 document a gang bandanna representing his gang colors if you
9 were to find one in the vehicle?

10 A. Yes, sir.

11 Q. So, why did you not document it?

12 A. I'm not sure why I didn't document it that, but I do
13 recall it was in there.

14 Q. Now, in regards to the tattoos --

15 A. Yes, sir.

16 Q. -- you said you've been working in this unit for the
17 past three years, correct?

18 A. Yes, sir.

19 Q. And you've had interactions with other members who
20 are members of other gangs, correct?

21 A. Yes, sir.

22 Q. Does a tattoo in itself signify a membership into a
23 gang?

24 A. I would say certain tattoos are exclusive to a certain
25 gang, yes, sir.

1 Q. Does a person having a tattoo on their body
2 automatically make them a member or an associate of that
3 gang?

4 A. What kind of tattoo? Any tattoo or a specific tattoo?

5 Q. "5" "2" -- let's say, I have a "5" "2" on my arm
6 right now, does that mean I'm a member of the 52
7 Hoovers-Crips?

8 A. I would document you if had a tattoo on your shoulder
9 and you were representing it, yes, sir. If, you know, you
10 had another reason for the "5" "2," I would ask you about it.

11 Q. Did you ask Mr. Washington that night why he had a
12 "5" "2" on him?

13 A. We looked up in the Gang Tracker as well, and we saw
14 that he was already documented in the Gang Tracker with HPD
15 as a member of that gang.

16 Q. So, you never asked him why he had the tattoo on him,
17 correct?

18 A. I don't recall if we asked him or not, sir.

19 Q. In fact, when you stopped Mr. Washington and you
20 approached his vehicle, you and Officer Revus had your guns
21 drawn already, didn't you?

22 A. No. I can't remember if we had our guns drawn or not.

23 Q. That would be pretty significant if you had your guns
24 drawn, right?

25 A. We never had our guns pointed at anybody. But if I

1 think they're reaching for something, I'm going to have it,
2 like, down by my side. But I never have it, like, pointed at
3 anybody coming up to stop. No, sir.

4 Q. Did it appear that Mr. Washington or his passenger
5 were reaching for something that night?

6 A. No, sir.

7 Q. What was his attitude that night when you approached
8 his vehicle? Was he cooperative with you?

9 A. Yes, sir.

10 Q. Was he combative?

11 A. No, sir.

12 Q. In fact, he told you that he had the gun the car,
13 didn't he?

14 A. Yes, sir.

15 Q. And he told you where the gun was, didn't he?

16 A. No, sir, he did not.

17 Q. He never told you where the gun was?

18 A. No. Once I asked him to step out, that's when my
19 partner told me about the gun. He didn't tell me there was a
20 gun or where the gun was at.

21 Q. And he also told you what he used the gun for, didn't
22 he?

23 A. Yes, sir.

24 Q. And what did he tell you he used the gun for?

25 A. For work.

1 Q. And did you find that peculiar that he used a gun for
2 the type of work that he did?

3 A. No. I thought it peculiar because of the gang tattoos
4 that I saw with him.

5 Q. Did you find it peculiar because he would have that
6 kind of job? Or did you find it peculiar that he had that
7 kind of gun for the work he did?

8 A. No. The work he did being a gang member, being a
9 documented gang member.

10 Q. Now, when you checked, I guess, in the Gang
11 Tracker --

12 A. Yes, sir.

13 Q. -- did it indicate whether or not Mr. Washington was
14 an active member or former member of a gang, supposedly?

15 A. They have him filed in there as a documented gang
16 member.

17 Q. So, you're not sure if it said he was active or he
18 was former?

19 A. No, sir.

20 Q. Would it have made a difference to you that night if
21 -- even though it was -- if it said "former" or "active"?

22 A. No, sir.

23 Q. Now, when you approached Mr. Washington's vehicle,
24 did you notice if the windows were cracked or were they
25 raised?

1 A. You asked if they were cracked or raised?

2 Q. Uh-huh.

3 A. I know I would have him roll the window down when I
4 approached so I could talk to him. But I don't recall what
5 position the window was in when we approached.

6 Q. Now, the area in which you stopped him at, did you
7 stop him on MLK or did you stop him on another street?

8 A. We pulled him over on MLK.

9 Q. On MLK itself?

10 A. Yes, sir.

11 Q. And would you say the lighting there is good lighting
12 or poor lighting?

13 A. There's good lighting on the street. So, I would say
14 it's good lighting.

15 Q. Now, in your experience dealing with alleged gang
16 members on a routine basis, are most of them cooperative when
17 you stop them?

18 A. Some of them are. Some of them aren't.

19 Q. For the most part, are they cooperative?

20 A. Yes. Most people are cooperative when I deal with
21 them. Yes, sir.

22 Q. So, gang members aren't usually combative when
23 they're stopped by police?

24 A. Not -- just on a traffic stop, they're not going to be
25 uncooperative.

1 Q. Now, I remembered you saying when you identified Mr.
2 Washington's vehicle that you remember it clearly because of
3 the rims on the vehicle, correct?

4 A. No, sir, I did not say that.

5 Q. You don't recall stating that you remember the big
6 rims?

7 A. No, sir.

8 Q. You said, "I remember that then we saw the vehicle"?

9 A. I don't remember saying anything about the rims.

10 MR. WHITE: Your Honor, can we read back one of
11 the questions I believe the State asked in regards to how did
12 he know that was the vehicle and his response?

13 THE COURT: Please approach the bench.

14 MR. WHITE: Yes, Your Honor. I apologize.

15 MS. BUESS: Yes, Your Honor.

16 THE COURT: The local rule and the custom here
17 is that when Counsel addresses the Court that Counsel stands.

18 MR. WHITE: I apologize, Your Honor.

19 THE COURT: What do you need read back?

20 MR. WHITE: Just the one question I asked him:
21 How she -- she asked him: How did he know that was the
22 vehicle that Mr. Washington was driving that night?

23 THE COURT: So, you want her question read back?

24 MR. WHITE: His response.

25 THE COURT: To her question --

1 MR. WHITE: Yes, Your Honor.

2 THE COURT: -- before we take lunch?

3 MR. WHITE: Yes, Your Honor.

4 THE COURT: She's got to go find it now. Did
5 you ask her during the lunch break to find that question?

6 MR. WHITE: No, Your Honor, I did not.

7 THE COURT: No.

8 MR. WHITE: Okay. Thank you, Your Honor.

9 MS. BUESS: And, Judge, just to be clear, I
10 think Counsel is confusing this officer's testimony with
11 Officer Sullivan's testimony from this morning.

12 MR. WHITE: He said he recognized the vehicle
13 because of the custom paint job and the big rims.

14 THE COURT: Please proceed.

15 MR. WHITE: Yes, Your Honor.

16 Q. (BY MR. WHITE) Now, how did you identify or notice
17 the tattoos on Mr. Washington's body at night?

18 A. Well, when he had no shirt on and when I'm talking to
19 him, we're face to face.

20 Q. Uh-huh. And you could make out his tattoos at night?

21 A. Sir, we have a flashlight. We can shine the light and
22 see it clearly what's on the tattoos.

23 Q. So, you shined a light on him once you saw he had no
24 shirt on, correct?

25 A. No. I have my flashlight on every traffic stop to

1 look in the vehicle. So, it's just a common thing we have
2 out our flashlight.

3 Q. Would it be fair to say that you had already ran Mr.
4 Washington's plate before you stopped him?

5 A. Yes, sir.

6 Q. And you'd already noticed that Mr. Washington's
7 vehicle was listed in the Gang Tracker, correct?

8 A. When we run the plate, there's a vague description and
9 if there's a ticket attached to it. It doesn't actually go
10 through the Gang Tracker. You have to go into the Gang
11 Tracker and do a search for the vehicle.

12 Q. Now, the photographs that the State showed you
13 earlier of Mr. Washington in his vehicle, are those vehicles
14 not posted in Gang Tracker?

15 A. Those --

16 Q. Do you know which exhibits you're talking about, the
17 ones of his vehicle?

18 A. Those are in the Gang Tracker system itself, yes, sir.

19 Q. So, it wouldn't be hard if you were to enter that
20 license plate into the Gang Tracker for that vehicle to come
21 up; is that not correct?

22 A. We're not going to WEESHG WOER not GOOG it on a. No,
23 sir. When we're behind a vehicle, we're not going to open up
24 the Gang Tracker as AE aware either with the A. To run /*
25 with when we run the MRALT. We're not going to put it in the

1 Gang Tracker. There's no time to do that.

2 Q. Now, you just stated that you work for a Gang
3 Division Crime Reduction Unit, right?

4 A. Yes, sir.

5 Q. So, you're looking for gang members, right?

6 A. We're looking for gang members in high crime areas.
7 Yes, sir.

8 Q. So, it would be fair to say if you're looking for
9 gang members in high crime areas and you're making a stop,
10 you're going to run this person's plate in the Gang Tracker,
11 correct?

12 A. No, sir. That's not -- that's not possible on a
13 traffic stop before I pull him over.

14 Q. So, at what point did you look him up in the Gang
15 Tracker?

16 A. Once I saw the "5" "2" on his stomach, and he was in
17 my backseat. While my partner retrieved the gun, that's when
18 I decided to put him into the Gang Tracker to see, you know,
19 if the "5" "2" was documented.

20 Q. Now, you said the weapon that you found, you said it
21 was loaded, correct?

22 A. Yes, sir.

23 Q. How do you know it was loaded?

24 A. Because the magazine was in it. When the magazine is
25 in it, you can drop the magazine and see that the bullets are

1 in it.

2 Q. Did you check to see if the magazine was in it?

3 A. Officer Revus recovered the gun. Yes, sir. He
4 checked to see if it was loaded.

5 Q. Now, if Officer Revus recovered the gun and checked
6 to see if it was loaded, who emptied the gun?

7 A. I believe it was him -- it was one of us who emptied
8 the gun and took it down to the property room.

9 Q. So, you're not sure as to who emptied the gun, but
10 you're sure the gun was loaded?

11 A. Yes, sir.

12 Q. Could it be possible that the gun was already
13 unloaded?

14 A. No, sir.

15 Q. And y'all don't know that you emptied the gun?

16 A. No, sir.

17 Q. Why wouldn't that be possible?

18 A. Because the gun was loaded when we -- when the officer
19 had found it. He let me know it was loaded. I'm not sure if
20 he emptied it. I'm not sure if it was me or him.

21 Q. So, you're assuming that the gun was loaded, correct?

22 A. No, sir. He told me it was loaded. Officer Revus
23 did.

24 Q. So, the gun emptied itself?

25 A. No, sir. One of us emptied the gun.

1 MR. WHITE: No further questions for this
2 witness, Your Honor.

3 THE COURT: Redirect?

4 MS. BUESS: Nothing further for this witness.
5 May he be excused?

6 THE COURT: Yes. May he be excused, Mr. White?

7 MR. WHITE: Yes, that's fine.

8 THE COURT: You maybe excused. Call your next
9 witness.

10 MS. BUESS: The State calls Officer Revus.

11 THE BAILIFF: This witness has previously been
12 sworn in.

13 THE COURT: Thank you.

14 MS. BUESS: May I proceed?

15 THE COURT: You may.

16 **OFFICER ROBERT REVUS,**

17 after having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MS. BUESS:**

20 Q. Officer, will you please introduce yourself to the
21 jury.

22 A. My name is Robert Revus, and I'm employed with the
23 Houston Police Department.

24 Q. How long been with the Houston Police Department?

25 A. Coming up six years now.