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REPORTER'S RECORD

VOLUME 4 OF 7 VOLUMES

TRIAL COURT CAUSE NO. 1394200

COURT OF APPEALS NO. 01-14-00901-CR

TRAVIS LAMB)	IN THE DISTRICT COURT
)	
Appellant)	
)	
)	
VS.)	HARRIS COUNTY, TEXAS
)	
)	
THE STATE OF TEXAS)	
)	
Appellee)	351ST JUDICIAL DISTRICT

GUILT-INNOCENCE PROCEEDINGS

On the 27th day of October, 2014, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Mark Kent Ellis, Judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by computer-aided transcription/stenograph shorthand.

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VOLUME 4
(GUILT-INNOCENCE PROCEEDINGS)

OCTOBER 27, 2014

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1 (Open court, defendant and jury present.)

2 THE COURT: All right. Ladies and
3 gentlemen of the jury, I need you to raise your right
4 hands and give your attention to the clerk.

5 (Jurors sworn.)

6 THE COURT: Be seated.

7 All right. Welcome back, ladies and
8 gentlemen. I hope you recovered from voir dire.

9 All right. I'm going to tell you what's
10 going to happen and the order in which it's going to
11 happen. But before I do that, next time you come in the
12 room, you can sit down. Everyone else is standing in
13 your honor as the judges of the facts of the case, just
14 as they stand in my honor as the judge of the law. So
15 you can have a seat.

16 This is not kindergarten. There's no
17 assigned seating. You can sit anywhere you want to, and
18 you don't have to sit in any specific order. Now, if
19 you like to sit in a certain place, that's fine, too,
20 but you're not required to sit in the same place every
21 time.

22 What's about to happen is I'm going to ask
23 the State to formally read the indictment both to you
24 and to the defendant. After they -- the indictment is
25 read, then I'll ask the defendant to enter a plea.

1 After he enters his plea, then the State will have the
2 opportunity, should they so desire, to make an opening
3 statement. If they make an opening statement, then the
4 defense can make an opening statement immediately
5 thereafter, or they can defer to the beginning of their
6 case.

7 After opening statements, if there are any,
8 then the evidence will commence. The witnesses will
9 come in and testify. They'll be examined and
10 cross-examined. Virtually all the witnesses will be
11 sworn in outside your presence. It's just a way of
12 saving time, basically. So if you don't see them sworn
13 in in front of you, that means they've already been
14 sworn in.

15 Basically we will go until lunchtime,
16 roughly, and then continue the trial after lunch. Now,
17 if there is any point during the process that you need
18 to take a break, just raise your hand and we will
19 certainly accommodate you, but we will take breaks, to
20 help Gayle more than anyone else. So if she needs a
21 break, we will take a break, but if you need one, just
22 raise your hand.

23 Basically, you need to understand that
24 anything the lawyers say and anything that I say, of
25 course, are not evidence. The evidence comes from the

1 witness stand. You judge the credibility of the people
2 who testify. Any objects that are in admitted into
3 evidence, you, of course, get to look at. During the
4 trial, they will probably be shown to you without you
5 actually manipulating them. When you go back to
6 deliberate, you'll get the evidence and you'll get to
7 look at it firsthand.

8 Now, it's likely that some of the evidence
9 will be contained in clear plastic baggies that are
10 sealed by the crime labs. They are sealed for your
11 protection and our protection as well. So please do not
12 open any of the bags that are sealed. You'll have an
13 opportunity to look at it any way you want to look at
14 it, but don't open the bags. There is a good reason
15 that they're sealed. So make sure that doesn't happen.

16 We will put on evidence until we finish
17 evidence and then I'll give you the charge and we'll
18 give you the case for your deliberations. So basically,
19 that's it.

20 Ms. Assaad, will you please read the
21 indictment?

22 Mr. Lamb, will you please stand up.

23 (Defendant complies.)

24 MS. ASSAAD: In the name and by authority
25 of the State of Texas: The newly -- sorry. The duly

1 organized Grand Jury of Harris County, Texas, presents
2 in the District Court of Harris County, Texas, that in
3 Harris County, Texas, Travis Lamb, hereafter styled the
4 defendant, heretofore on or about July 10, 2013, did
5 then and there unlawfully, intentionally and knowingly
6 possess a controlled substance, namely cocaine, weighing
7 more than 1 gram and less than 4 grams by aggregate
8 weight, including any adulterants and dilutants.
9 Against the peace and dignity of the State.

10 THE COURT: How do you plead, Mr. Lamb,
11 guilty or not guilty?

12 THE DEFENDANT: Not guilty.

13 THE COURT: You may be seated.

14 Ms. Assaad, do you wish to make an opening
15 statement?

16 MS. ASSAAD: Yes, Your Honor.

17 THE COURT: All right. Go ahead.

18 **STATE'S OPENING STATEMENT**

19 MS. ASSAAD: Good morning.

20 You will hear in the short evidence of this
21 case that on July 10th of 2013, Officer Perez was riding
22 with his partner, Officer Gallegos. They're employed
23 with the Houston Police Department, HPD. They observed
24 a vehicle that failed to signal a turn, and they
25 initiated a traffic stop or pulled the vehicle over.

1 When they interacted with the driver, they
2 found out that the driver was this defendant and that he
3 did not have a valid driver's license. Therefore, he
4 was placed under arrest for those two traffic
5 infractions.

6 Upon arrest, the vehicle is inventoried
7 before it is towed pursuant to HPD's policy, which you
8 will hear about. When the vehicle is towed, because it
9 cannot be released to a passenger, for example -- in
10 this case, the passenger did not have a valid driver's
11 license, which is why the vehicle was towed. You'll
12 hear about the inventory search; that Officer Gallegos,
13 during that search, found a white crystal substance in
14 the driver's side door, which is where the defendant was
15 sitting. And that substance -- you'll hear from the
16 analyst, the chemist, Angelica Noyola, who will tell you
17 that that substance contains cocaine and it is between 1
18 and 4 grams coming in at 1.77 grams. Thank you.

19 THE COURT: Mr. Larson, do you wish to make
20 an opening statement at this time?

21 MR. LARSON: Yes, Your Honor.

22 THE COURT: All right. Go ahead.

23 MR. LARSON: May it please the Court?

24 THE COURT: All right.

25 **DEFENSE OPENING STATEMENT**

1 MR. LARSON: Good morning, ladies and
2 gentlemen.

3 Houston, we have a problem. The evidence
4 in this case is going to show that the substance
5 recovered from that door panel, while in the possession
6 of the Houston Police Department, changed weight and
7 changed type.

8 We agree with some of what the State says,
9 but when Mr. Lamb was originally charged, he was charged
10 with possession of methamphetamine. The weight of the
11 substance submitted to the Houston police lab was
12 1.91 grams. When the Houston police lab tests it --
13 first they weigh it. I'm sorry. They weigh it. It's
14 1.77 grams. They test it on a gas chromatograph, which
15 is kind of the blue star test. And the first test --
16 the first time they test it, it comes up negative.
17 That's not good enough for them, so they test it again
18 and it comes out to be cocaine. So they switch the
19 charge from methamphetamine to cocaine. Houston, we
20 have a problem.

21 We talked about institutional bias in voir
22 dire where, in a rush to judgment, all information is
23 funneled because of confirmative bias. Someone makes a
24 decision and then they disregard any evidence that
25 doesn't point to that. Here we have weight changing,

1 substance changing. Well, from the laws of physics,
2 that doesn't happen. There is a problem. And because
3 of that problem, there is reasonable doubt.

4 And at the close of evidence, we're going
5 to ask you for the reasonable verdict, for the verdict
6 that you've taken the oath to uphold, and that is not
7 guilty.

8 THE COURT: Go ahead, Ms. Assaad. Call
9 your first witness.

10 MS. ASSAAD: State calls Officer Perez.

11 THE COURT: All right. Go ahead.

12 MS. ASSAAD: Thank you, Your Honor.

13 **OFFICER RICARDO PEREZ,**

14 having been called as a witness and being first duly
15 sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 **BY MS. ASSAAD:**

18 Q. Officer, please state your name for the record.

19 A. Ricardo Perez.

20 Q. And are you a police officer?

21 A. Yes, I am.

22 Q. Does that mean you're a certified police
23 officer in the state of Texas?

24 A. Yes.

25 Q. Who are you employed with?

1 A. With the Houston Police Department.

2 Q. How long have you been employed with HPD?

3 A. Over seven years now.

4 Q. What is your current assignment?

5 A. I'm assigned to the Gang Task Force out of
6 Southeast Station.

7 Q. How long have you been assigned to that, to the
8 Gang Task Force?

9 A. About four years now.

10 Q. Did you receive training when you first became
11 a police officer?

12 A. Yes. We do six months in the police academy
13 and then six months riding with a trainer on the
14 streets.

15 Q. Does that training include the enforcement of
16 the laws of the State of Texas?

17 A. Yes.

18 Q. Does that include the enforcement of traffic
19 laws?

20 A. Yes.

21 Q. Directing your attention to July 10th of 2013,
22 were you on duty that night?

23 A. Yes, I was.

24 Q. And did you come into interaction with the
25 defendant in this case, Travis Lamb?

1 A. Yes, I did.

2 Q. How did your interaction with him begin?

3 A. We saw a vehicle. It was on a street called
4 Hartsville, we saw him turn without using his signal, so
5 we initiated a traffic stop.

6 MS. ASSAAD: May I approach the witness?

7 THE COURT: Yes.

8 Q. (By Ms. Assaad) I'm showing you what's been
9 previously marked State's Exhibit No. 1. Can you
10 identify what that is (indicating)?

11 A. That would be the location of the stop.

12 Q. And what are the streets that you're referring
13 to?

14 A. The street that we originally saw him on was
15 Hartsville. And then where he turned onto, Donegal Way.

16 Q. Is that an accurate map of the streets of
17 Harris County?

18 A. Yes.

19 Q. What does the blue dot reflect?

20 A. That's the location of the traffic stop.

21 Q. I'm showing you what's been previously marked
22 State's Exhibit No. 2. Is that a zoomed-out view of
23 this location (indicating)?

24 A. Yes.

25 Q. Is this location in Harris County, Texas?

1 A. Yes, it is.

2 MS. ASSAAD: I offer State's 1 and 2 into
3 evidence and tender them to opposing counsel for
4 objection.

5 **(State's Exhibit Nos. 1 and 2 Offered)**

6 MR. LARSON: No objection.

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

8 **(State's Exhibit Nos. 1 and 2 Admitted)**

9 MS. ASSAAD: Thank you, Your Honor.

10 Q. (By Ms. Assaad) When you saw a vehicle making a
11 turn, you personally observed that there was no turn
12 signal used?

13 A. Correct.

14 Q. What did you do after that?

15 A. We got behind the vehicle and initiated a
16 traffic stop.

17 Q. Do you recall about what time the traffic stop
18 was initiated?

19 A. About 10:05.

20 Q. P.M.?

21 A. Yes.

22 Q. And what do you typically do when you pull
23 someone over?

24 A. We pull them over, and I ask for their driver's
25 license and proof of financial responsibility.

1 Q. Did you do that in this case?

2 A. Yes, I did.

3 Q. Did the defendant -- well, let me back up.

4 Do you see the driver of the vehicle in
5 court today?

6 A. Yes, I do.

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

8 A. The male with a purple shirt.

9 MS. ASSAAD: Your Honor, may the record
10 reflect the witness has identified the defendant?

11 THE COURT: Yes.

12 Q. (By Ms. Assaad) Was this defendant the driver
13 of the vehicle that night?

14 A. Yes.

15 Q. So did the driver of the vehicle have a valid
16 driver's license?

17 A. He did not.

18 Q. Is that an arrestable offense in Texas?

19 A. Yes, it is.

20 Q. Is failing to signal a turn an arrestable
21 offense in Texas?

22 A. Yes, it is.

23 Q. What did you do?

24 A. I placed him under arrest.

25 Q. Why didn't you just give him two tickets?

1 A. That's at our discretion.

2 Q. Is there any video or audio of this stop?

3 A. No.

4 Q. Why is that?

5 A. Because our patrol car does not have a dash
6 cam.

7 Q. What happened after you arrested the driver?

8 A. After we arrested the driver, placed him in the
9 backseat, secured him. There was a female passenger
10 inside the vehicle. We asked if she had a driver's
11 license. She did not. It was suspended, so we could
12 not release the vehicle to her.

13 Q. Are you familiar with HPD's policies and
14 procedures regarding a prisoner's vehicle, when it can
15 be released to someone on scene and when it must be
16 towed?

17 A. Yes, I am familiar.

18 Q. And what were those policies and procedures?

19 A. If there's somebody on scene with a valid
20 driver's license and if the driver consents, we can
21 release the vehicle to that person.

22 Q. Otherwise?

23 A. Otherwise it has to be towed.

24 Q. And in this instance, the passenger did not
25 have a valid driver's license?

1 A. That's correct.

2 Q. What is HPD's policy and procedure regarding
3 inventory of a vehicle before it is towed?

4 A. We fill out an inventory slip that has any --
5 you know, anything of value, we'll write down on the
6 slip. That way, later on if there's any question, if
7 something's missing, we have record of it.

8 Q. And was an inventory search conducted in this
9 case?

10 A. Yes, it was.

11 Q. Was that conducted by you or by your partner,
12 Officer Gallegos?

13 A. My partner, Officer Gallegos.

14 Q. After Officer Gallegos conducted the inventory
15 search, did you come into contact with a substance that
16 was found in the vehicle?

17 A. Yes.

18 Q. What did that substance look like?

19 A. It was a white crystal powder, crystallized
20 powder.

21 Q. Based on your experience as a police officer on
22 the Gang Task Force, what did that substance look like
23 to you?

24 A. To me, I believed it to be meth.

25 Q. And did you or your partner conduct what's

1 called a field test?

2 A. Yes, my partner conducted the field test.

3 Q. What were the results of those -- of that field
4 test?

5 A. We got a positive result for meth.

6 Q. And what does that mean to you?

7 A. It means -- to me it means with what I have
8 available, that it determines that it is, in fact, meth.

9 Q. And did you also field-test it for cocaine?

10 A. I did not.

11 Q. Did your partner field test it for cocaine?

12 A. Not that I know of.

13 Q. Once you get a positive that a substance is a
14 controlled substance, do you then have enough probable
15 cause for arrest?

16 A. Correct. Yes, ma'am.

17 Q. Where was the defendant when you and your
18 partner were discussing this field test?

19 A. He was in the backseat of the patrol car.

20 Q. And had you Mirandized him?

21 A. No, ma'am.

22 Q. Why is that?

23 A. Because we weren't questioning him.

24 Q. So did you question him in this case?

25 A. No.

1 Q. Was the window of the patrol car open or
2 closed?

3 A. It was closed.

4 Q. It was closed?

5 A. I'm sorry. It was open. We rolled it down
6 because it's summertime and it's hot. So we tried to
7 give him some air.

8 Q. Did you hear the defendant make any statement?

9 A. Yes.

10 Q. What statement did he make?

11 A. He said, "It's not meth, it's bath salts."

12 Q. And what are bath salts?

13 A. Bath salts is like a synthetic drug that they
14 make and they sell. They were selling it for a while in
15 a lot of gas stations, but that was quickly made illegal
16 after people were having psychotic episodes using that.

17 Q. Is that also an illegal substance?

18 A. Yes, it is.

19 Q. Are you familiar with the street value of
20 1 gram of cocaine?

21 A. Not too well.

22 Q. Are you familiar with the amount of 1 gram of
23 cocaine, what that would look like?

24 A. Yes.

25 Q. What would that look like?

1 A. It would be a small bag (indicating).

2 Q. And is there powder cocaine and rock cocaine?

3 A. There's powder cocaine, and rock cocaine would
4 be crack cocaine.

5 MS. ASSAAD: May I approach the witness?

6 THE COURT: Yes, ma'am.

7 Q. (By Ms. Assaad) I'm showing you what's been
8 previously marked State's Exhibit No. 3. Do you
9 recognize that (indicating)?

10 A. Yes.

11 Q. Who is in that photograph?

12 A. It's a photograph of the defendant.

13 Q. And is that an accurate photo of what the
14 defendant looked like when he was arrested on July 10th,
15 2013?

16 A. Yes.

17 MS. ASSAAD: State offers State's 3 into
18 evidence and tenders to opposing counsel for objection.

19 **(State's Exhibit No. 3 Offered)**

20 MR. LARSON: No objection, Your Honor.

21 THE COURT: State's 10, correct?

22 MS. ASSAAD: State's 3.

23 THE COURT: State's 3 is admitted.

24 **(State's Exhibit No. 3 Admitted)**

25 MS. ASSAAD: Thank you, Your Honor.

1 May I publish the exhibits?

2 THE COURT: Yes.

3 Q. (By Ms. Assaad) Officer, will you please point
4 out what street the defendant was traveling on before he
5 made the turn without a signal?

6 A. He was on Hartsville, which is right where the
7 blue dot is. It's going left to right.

8 Q. And this is on State's Exhibit No. 1. What
9 street did he turn on?

10 A. Made a southbound turn, which would be a
11 left-handed turn onto Donegal Way.

12 Q. I'm showing you now State's Exhibit No. 2.
13 What are those -- can you see those main highways
14 (indicating)?

15 A. Yes.

16 Q. What are the highways that we're talking about?

17 A. 288, Beltway, and 610 and 45.

18 Q. Those are the highways that surround the area
19 of the traffic stop?

20 A. Yes. Major highways, yes.

21 Q. And this is State's 3. Is this an accurate
22 photo of the defendant that night (indicating)?

23 A. Yes.

24 MS. ASSAAD: Pass the witness.

25 THE COURT: Mr. Larson?

CROSS-EXAMINATION

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BY MR. LARSON:

Q. Officer Perez, you said you went through six months at the academy and six months of training, field training?

A. Yes.

Q. And does that include how to do field tests?

A. Yes.

Q. Does it include how to collect evidence?

A. Yes.

Q. What kind of training do you get in how to collect evidence?

A. We're told to try to maintain the -- as best as possible the evidence that we recover.

Q. Maintain as best as possible?

A. Yeah, without -- without damaging or anything like that, just...

Q. And how long is that training at the academy?

A. I don't remember.

Q. You don't remember?

A. It was a class that was -- a class that we took while we were in there.

Q. Right. But you don't remember?

A. No. It might have been a couple of days.

Q. As far as field training, did you cover that

1 out in the field?

2 A. Yeah. Whenever we encountered some main
3 arrests for narcotics, yes. We're taught: You're on
4 the street, this is how you do it.

5 Q. Right. Sure.

6 What kind of training do you get, though,
7 doing that out in the field?

8 A. When we interact with it. They teach us how
9 it's done.

10 Q. Who teaches you how it's done?

11 A. The instructor.

12 Q. Who's the instructor?

13 A. I had three different ones for each shift, and
14 they are called field training officers, and they teach
15 us everything.

16 Q. Okay. Now, as far as -- how do you conduct a
17 field test?

18 A. Well, it depends on the substance. For
19 example, cocaine, we have -- they give us testers. It's
20 a little vial with a liquid inside. What you do is you
21 take a piece of the contraband, the narcotic, and put it
22 in there, and it will change colors for a positive
23 result.

24 Q. Okay. What kind of drugs do you run into while
25 you're out on patrol?

1 A. Various ones. I mean, heroin, cocaine, crack,
2 marijuana, ecstasy, all kinds of drugs.

3 Q. How often do you run into those?

4 A. Daily basis.

5 Q. Is it fair to say that on a daily basis, you
6 run into and have to process cocaine?

7 A. Yeah.

8 Q. Methamphetamine?

9 A. Correct. I mean, some more than others, but
10 yes.

11 Q. Okay. You say some more than others. What do
12 you mean by that?

13 A. I might see more crack cocaine than I would,
14 say, heroin in that area.

15 Q. As far as the collection of evidence, what was
16 your training in that?

17 A. We -- if it's not already in a sealed package,
18 we go and put it in a plastic bag that we have.

19 Q. Okay. And why is it that you do that?

20 A. To maintain the -- to maintain evidence.

21 Q. Now, as part of any case, do you write reports?

22 A. Yes.

23 Q. Okay. Did you write a report in this case?

24 A. Yes, I did.

25 Q. Did you write that report at the time that this

1 case occurred or did you write it recently?

2 A. No. We write it that night before the end of
3 our shift.

4 Q. Why do you do it then?

5 A. Because that's -- well, that's mandatory.

6 Q. Okay. Is it because it's fresh in your mind
7 then?

8 A. Correct, yes.

9 Q. You go through training in how to write
10 reports, too, right?

11 A. Yes.

12 Q. Okay. And what does that training include?

13 A. To put all the details of the offense and
14 anything that we did out on that scene into a report.

15 Q. So you're supposed to put the details in the
16 report?

17 A. Yes.

18 Q. Now, in this case did you check the
19 registration of this vehicle?

20 A. We run the license plate of the vehicle, yes,
21 and we got a response in our computer.

22 Q. And when you find drugs in the vehicle, you
23 would agree that it's probably important to know whose
24 vehicle it is?

25 A. Well, he's in control of the vehicle, so I

1 wouldn't agree with that.

2 Q. So you can find drugs in a vehicle and you
3 don't care whose vehicle it is?

4 A. I mean, if it's in the trunk somewhere where --
5 close proximity, not so much, no, sir. It was readily
6 available to him right there where we found it, so...

7 Q. Well, what if the owner of the truck was right
8 next to him?

9 A. The owner of the truck wasn't there.

10 Q. I'm sorry?

11 A. The owner -- honestly, I don't recall who the
12 owner of the vehicle is, but he was the only one there,
13 so...

14 Q. Well, wasn't there a passenger?

15 A. There was a passenger, but, I mean, in that
16 area. The driver's side door was next to him.

17 Q. Okay. So you charged him because he was closer
18 to it, but you don't know whose vehicle it was. Would
19 that be correct?

20 A. I don't know at this time. At the time when we
21 ran the plate, it would say who the owner is, but I
22 don't have that right now. I don't have that with me to
23 tell you.

24 Q. Sir, that wasn't my question. But my question
25 was: You charged him because he was closest to it;

1 isn't that correct?

2 A. Well, he was the -- yeah, he was closest to it.

3 Q. Okay. And there was somebody else in the
4 vehicle?

5 A. In the passenger's seat.

6 Q. Right.

7 And this is a truck. So the passenger seat
8 is a front seat passenger?

9 A. Front seat passenger.

10 Q. But you don't recall who that person was?

11 A. I do not.

12 Q. And you didn't think that was important to note
13 in your report?

14 A. In retrospect, yeah.

15 Q. Yeah. Yeah. Wouldn't it have been important
16 to maybe note the owner of the vehicle, also?

17 A. Well, that could be found out later on, so...

18 Q. But you didn't do it here, did you?

19 A. I did not, no.

20 Q. Now, we all watch police shows, and one of the
21 basic things, common sense, is when somebody is taken
22 into custody, it's their right to have the Miranda
23 warnings given, the right to remain silent, the right to
24 an attorney. Now, you said you took Mr. Lamb into
25 custody that evening for the traffic offense.

1 A. Uh-huh.

2 Q. That it was your discretion not to give him a
3 ticket; is that correct?

4 A. That's correct, yes, sir.

5 Q. So you take him into custody. And did you cuff
6 him?

7 A. Yes.

8 Q. So you put handcuffs on him. And you put him
9 in the back of the police car?

10 A. Yes.

11 Q. So he's clearly in custody?

12 A. He was under arrest, yes.

13 Q. And yet, you don't give him Miranda warnings?

14 A. He was not being questioned, so we're not
15 required to give a Miranda warning.

16 Q. And you mentioned talking to the prosecutor
17 about bath salts.

18 A. That is correct.

19 Q. They're sold at gas stations?

20 A. They were at the time, not anymore.

21 Q. And sold at smoke shops?

22 A. That is correct.

23 Q. Readily available to the public?

24 A. That is correct.

25 Q. And while there have been incidents where

1 they've caused health problems for people --

2 A. That is correct.

3 Q. -- someone sees them for sale at a gas station
4 would think this is a legal substance. Wouldn't you
5 agree to that?

6 A. There is -- at the time that he was arrested,
7 they were made illegal at the time, on that date.

8 Q. But don't they try to get around it by
9 saying -- putting things like "not for human
10 consumption" on it, but still selling it?

11 A. If that's what some manufacturers -- I can't
12 tell you. I've never purchased bath salts.

13 Q. I'm not saying -- but from your time on the
14 street, you know that they're still trying to get around
15 it?

16 A. Yeah, they try to get around it to sell stuff.
17 Yes.

18 Q. And they set it to the public?

19 A. Yes.

20 Q. And they sell it through gas stations and
21 things like that?

22 A. Yes.

23 MR. LARSON: Pass the witness, Your Honor.

24 THE COURT: Ms. Assaad?

25 MS. ASSAAD: No further questions.

1 THE COURT: You may step down.

2 Call your next witness.

3 MS. ASSAAD: Officer Gallegos, please.

4 THE BAILIFF: Officer who?

5 MS. ASSAAD: Gallegos.

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

8 THE COURT: Okay. All right. Go ahead.

9 **OFFICER FELIPE GALLEGOS,**

10 having been called as a witness and being first duly
11 sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MS. ASSAAD:**

14 Q. Officer, please state your name for the record.

15 A. Felipe Gallegos.

16 Q. And are you a police officer?

17 A. Yes, I am.

18 Q. Does that mean you're a certified peace officer
19 in the state of Texas?

20 A. Yes, I am.

21 Q. What agency are you employed with?

22 A. Houston Police Department.

23 Q. Is that what we call HPD?

24 A. Yes.

25 Q. How long have you been employed with HPD?

1 A. Approximately five-and-a-half years.

2 Q. Did you undergo training when you became a
3 certified peace officer?

4 A. Yes, ma'am, I did.

5 Q. What did that training include?

6 A. I went through a six-and-a-half month police
7 academy where we learned the Penal Code, PCP, and
8 physical training, shooting, driving, things of that
9 sort.

10 Q. And you completed that training?

11 A. Correct.

12 Q. What is your current assignment?

13 A. I'm assigned to the Southeast Gang Task Force
14 and I'm also on the SWAT team.

15 Q. What are each of those assignments? What are
16 your duties with those assignments?

17 A. The Gang Task Force, we are a proactive unit.
18 We target hotspot areas, like high-narcotics areas,
19 high-prostitution areas, high-crime areas, basically,
20 and we assist any other divisions with serving warrants.

21 Q. And what about your other assignment?

22 A. I'm on the SWAT team, so I'm on call every
23 other month for any kind of SWAT situations.

24 Q. As part of your training, were you trained in
25 the enforcement of the laws of the State of Texas?

1 A. Yes.

2 Q. And did you -- does that include traffic laws?

3 A. Yes, it does.

4 Q. Directing your attention to July 10th of 2013,
5 were you on duty that night?

6 A. Yes, ma'am.

7 Q. And did you come into contact with the
8 defendant in this case, Travis Lamb?

9 A. Yes, I did.

10 Q. How did that contact begin? What drew your
11 attention to him?

12 A. It was on a traffic stop for a moving
13 violation.

14 Q. What was that violation?

15 A. Failed to signal a turn.

16 Q. Did you personally see that failing to signal a
17 turn?

18 A. Yes, ma'am.

19 Q. And who were you riding with?

20 A. Riding with my partner, Officer Perez.

21 Q. He was driving?

22 A. Yes, ma'am.

23 Q. Once your unit pulled over the defendant for
24 the traffic infraction, what happened?

25 A. My partner approached the driver's side and

1 made contact with Mr. Lamb. And myself, I approached
2 the passenger side and made contact with a female
3 passenger.

4 Q. Do you recall the female passenger's name?

5 A. I don't recall her name.

6 Q. Do you recall whether she had a valid driver's
7 license?

8 A. She did not have a valid driver's license.

9 Q. And what did you observe Officer Perez then do
10 with the defendant?

11 A. From the passenger's side window, I observed
12 him ask the driver to step out and he placed him in
13 custody.

14 Q. And is failing to signal a turn an arrestable
15 offense in Texas?

16 A. Yes, it is.

17 Q. Is failing to have a valid driver's license an
18 arrestable offense in Texas?

19 A. Yes.

20 Q. And once a driver of a vehicle is under arrest,
21 what is HPD's policy and procedure about what to do with
22 that vehicle?

23 A. At that moment if the driver of the vehicle
24 would wish to release the vehicle to somebody with a
25 valid driver's license, we give them a chance to do

1 that.

2 Q. In this case, the female that you're referring
3 to did not have a valid driver's license?

4 A. Correct, she did not have a valid driver's
5 license.

6 Q. So if you cannot release the vehicle to someone
7 on the scene, what has to be done?

8 A. We have the vehicle towed.

9 Q. Before towing a vehicle, what is HPD's policy
10 and procedure about an inventory search?

11 A. We do an inventory of the vehicle basically to
12 document any property that's of big value so in case it
13 comes up missing after we release custody to the tow
14 company, it's been documented. Or also to search for
15 anything illegal that may have been left in the vehicle.

16 Q. So you're familiar with HPD's policy?

17 A. Yes, ma'am.

18 Q. Did you follow that policy and procedure when
19 you conducted the inventory search of the defendant's
20 vehicle?

21 A. Yes, I did.

22 Q. What did you find in your search of the
23 defendant's vehicle?

24 A. In the driver door panel, there was a small
25 plastic baggie containing a white powdery substance with

1 a crystal form to it.

2 Q. Did you have to move anything out of the way to
3 see that baggie?

4 A. No, ma'am.

5 Q. When you opened the door, what did you see?

6 A. In the door panel, it was just sitting there in
7 plain view.

8 Q. Did you see it immediately?

9 A. Yes.

10 Q. Were there a lot of other objects in the door
11 panel that could have obstructed your view?

12 A. I don't recall, but I saw it immediately.

13 Q. So you recall that you definitely saw it
14 immediately?

15 A. Correct.

16 Q. And so it was apparent that there was a baggie
17 with a white crystal substance in it?

18 A. Correct.

19 Q. Did you search the rest of the vehicle to
20 conclude your inventory search?

21 A. Yes, I did.

22 Q. And after the search was concluded, did you
23 then make a decision about what field test to use for
24 this substance?

25 A. Yes. Throughout my inventory, I kept care,

1 custody, and control of the substance. Then I met with
2 my partner and we determined what we believed the
3 substance was and which test that we would use.

4 Q. So you removed the substance from the vehicle
5 yourself?

6 A. Correct.

7 Q. And it remained in your possession?

8 A. Yes.

9 Q. Based on your experience, what did the
10 substance look like to you?

11 A. Due to its crystal formation, we believed it to
12 be methamphetamine.

13 Q. And then what field test did you use?

14 A. We used the meth tester.

15 Q. Did the test come back positive or negative?

16 A. Came back positive.

17 Q. Once you got a positive field test for a
18 controlled substance, did you then conclude your field
19 test?

20 A. Yes.

21 Q. Did you test the substance for another
22 controlled substance, for example, cocaine?

23 A. No, ma'am, I didn't.

24 Q. And what did you do with that substance after
25 you conducted the field test?

1 A. It stayed in my possession.

2 Q. Did you pass it off to anyone else while you
3 were on scene?

4 A. No, ma'am.

5 Q. Where did you transport that substance -- well,
6 where did you go after the scene?

7 A. We transported the subject to jail where we
8 also have what we call a NOX center (phonetic), which is
9 a narcotics control center, where we tag the substance
10 as evidence.

11 Q. What is the process of tagging an illegal
12 substance that you find at scene into evidence?

13 A. We have to get it weighed, fill out paperwork
14 basically listing what the substance is and why we're
15 tagging it, and we put it into an envelope that looks
16 like this (indicating).

17 Q. And that substance -- you list the substance
18 that you performed your field test on, right?

19 A. Correct.

20 Q. And when you weigh the substance, you write
21 down the weight as well?

22 A. Correct.

23 Q. And based on your experience with many
24 possession of controlled substances cases where you
25 later find out the lab weight, is it very common the

1 weight is less than the weight that you get?

2 A. Yes, ma'am.

3 Q. And is that because you're not the lab?

4 A. Correct.

5 Q. And your instruments are not as accurate as the
6 lab's?

7 A. Correct.

8 Q. And what you are seeking is probable cause,
9 right?

10 A. Yes, ma'am.

11 Q. So did you weigh the substance in this case?

12 A. Yes, ma'am.

13 Q. And did you package it accordingly -- according
14 to HPD's policies and procedures?

15 A. Yes.

16 Q. Did you mark the substance with a unique
17 identifying number?

18 A. Yes, ma'am.

19 Q. And did you put it in an evidence bag that was
20 marked with a unique identifying number?

21 A. Yes, ma'am.

22 Q. Was that bag then sealed?

23 A. Yes, ma'am.

24 MS. ASSAAD: May I approach the witness?

25 THE COURT: Yes.

1 Q. (By Ms. Assaad) Is this that same bag that you
2 sealed on July 10th of 2013 (indicating)?

3 A. Yes, it is.

4 Q. How do you know that?

5 A. On the back of it, it has my initials, the
6 date. On the front side, it has my signature and my
7 payroll number. And that's my handwriting.

8 Q. And this bag that I'm referring to, I'm marking
9 State's Exhibit 4-A. It's a manilla opaque bag. How
10 did this bag get here to court today?

11 A. My partner went downtown to pick it up and
12 bring it in as evidence.

13 Q. And how was it opened? Did you see the person
14 who opened it today?

15 A. Yes, ma'am.

16 Q. Who was that?

17 A. That was you.

18 Q. And was it sealed before I opened it this
19 morning?

20 A. Yes, ma'am.

21 Q. Inside of the bag, what did I just pull out
22 (indicating)?

23 A. The substance that was found inside the
24 vehicle.

25 Q. Is that a clear baggie?

1 A. Yes, ma'am.

2 Q. Was this the baggie that you found inside the
3 vehicle or is it a different baggie?

4 A. The baggie that I found is inside a different
5 baggie now.

6 Q. So this clear baggie is a baggie that you
7 believe was -- where do you believe it came from?

8 A. From the lab.

9 Q. And I'm marking this State's Exhibit 4-B.
10 So the baggie inside of it, what is that?

11 A. That's the actual baggie that I found inside
12 the vehicle containing the substance.

13 Q. Is that how it appeared in the vehicle?

14 A. No, ma'am.

15 Q. How did it appear?

16 A. It was -- the baggie wasn't folded up and taped
17 up like this. It was more of a ball.

18 Q. Did it have initials on it?

19 A. No, ma'am.

20 Q. And Officer, just a few more questions about
21 the number. What is -- can you read out this number in
22 the yellow tape?

23 A. Yes, ma'am. 085773113.

24 Q. And that's on State's Exhibit 4-A.

25 And then on State's Exhibit 4-B, do you see

1 the number written on that?

2 A. Yes.

3 Q. What is that number?

4 A. 085773113.

5 Q. And what do the markings on this bag say
6 regarding, "List all evidence submitted"?

7 A. The initial weight, when we got it weighed down
8 at the narcotics center, 1.9 grams of methamphetamine
9 powder.

10 Q. So taking you back to the scene, we left off --
11 we left the scene and followed you to the station where
12 you booked the defendant and weighed the evidence, but
13 when you were field-testing the drugs at this scene,
14 where was the defendant?

15 A. In the backseat of the patrol car.

16 Q. And did -- was the window up or down?

17 A. The windows were down.

18 Q. And did you Mirandize the defendant in this
19 case?

20 A. No, ma'am, I didn't.

21 Q. And why is that?

22 A. That's not a normal procedure we do unless he's
23 going to be interviewed or something, or interrogated.

24 Q. Did you interview or interrogate the defendant?

25 A. No, ma'am.

1 Q. And was the defendant under arrest at that
2 point?

3 A. Yes, ma'am, he was.

4 Q. What are -- when are you required to give a
5 defendant Miranda warnings?

6 A. If we're going to interview him and interrogate
7 him.

8 Q. And you never interrogated or interviewed the
9 defendant in this case?

10 A. No, ma'am, I didn't.

11 Q. Did your partner?

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

13 Q. Did the defendant make a statement to you on
14 scene?

15 A. Yes, ma'am, he did.

16 Q. What was that statement?

17 A. While me and my partner were conversating by
18 the trunk of the vehicle about what we thought the
19 substance was, because we were contemplating whether it
20 was meth or powder cocaine, he overheard us conversating
21 and he said, "It's not meth, it's bath salts."

22 Q. And had you asked him any questions about what
23 it was?

24 A. No, ma'am.

25 Q. Did you see where the defendant was sitting in

1 the vehicle before he was taken out of the vehicle by
2 your partner?

3 A. Yes.

4 Q. Where was he seated?

5 A. In the driver's seat.

6 Q. And based on your view of the white crystal
7 substance, crystalized powder substance in the vehicle,
8 do you believe that the driver could have seen it in the
9 driver's side door?

10 A. Yes.

11 Q. And based on your training and experience, what
12 does it indicate to you when a defendant makes a
13 statement about what a substance is?

14 MR. LARSON: Objection. Improper
15 bolstering.

16 THE COURT: Sustained.

17 Q. (By Ms. Assaad) The defendant, the driver of
18 the vehicle, do you see him in the courtroom today?

19 A. Yes, I do.

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

21 A. Yes, ma'am. It's the gentleman wearing the
22 purple button-up shirt.

23 MS. ASSAAD: May the record reflect the
24 witness has identified the defendant?

25 THE COURT: Yes.

1 Q. (By Ms. Assaad) Do you know the street value of
2 1 gram of cocaine?

3 MR. LARSON: Objection to relevance.

4 THE COURT: Sustained.

5 MS. ASSAAD: Pass the witness.

6 THE COURT: Mr. Larson?

7 MR. LARSON: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MR. LARSON:**

10 Q. So Officer, you're testifying when you arrest
11 people, you don't Mirandize them?

12 A. I don't, sir.

13 Q. And is that your policy or HPD's policy?

14 A. I guess HPD's policy.

15 Q. You're guessing?

16 A. We don't ever Mirandize anybody when we arrest
17 them. Investigators Mirandize them when they interview
18 or interrogate.

19 Q. And you said you went to the academy about
20 six-and-a-half months?

21 A. Yes, sir.

22 Q. Okay. And do they train you in how to collect
23 evidence there?

24 A. Correct.

25 Q. And what does that training consist of?

1 A. What we just spoke about, tagging the evidence,
2 how to fill out the paperwork, how it needs to be done.

3 Q. Okay. Now, in this case, you collected the
4 evidence. What did you do out on the scene when you
5 found it?

6 A. I kept care, custody, and control of it until
7 we field-tested it.

8 Q. That's nice words, but what did you do with it?

9 A. Kept it in my possession.

10 Q. Okay. Where did you keep it in your
11 possession?

12 A. In my hands.

13 Q. You kept it in your hands? Did you ever put it
14 in your pocket?

15 A. No.

16 Q. Did you ever put it in anything else?

17 A. No, sir.

18 Q. Nowhere else, just kept it in your hand the
19 whole time until you got down to the evidence room?

20 A. Correct.

21 Q. How did you field-test it?

22 A. With a field tester.

23 Q. Okay. Now, what kind of training do you have
24 as far as having these field-testers?

25 A. Just basic training on how to put some of the

1 evidence in the tester, shake it, and it's supposed to
2 turn a certain color if it's positive.

3 Q. Okay. Where does that training take place?

4 A. In the academy.

5 Q. Okay. Do you recall how long that training is?

6 A. I don't recall how long it is.

7 Q. Do you recall that training at all?

8 A. Yes.

9 Q. Now, you also have field training where you're
10 out in the field like six months with supervisors?

11 A. Yes, sir.

12 Q. Do they show you how to do that?

13 A. Yes, sir.

14 Q. And what do you do when you field-test a
15 substance?

16 A. Test it.

17 Q. Right. But what do you do when you field-test
18 it?

19 A. I test evidence. Can you be more specific with
20 the question, sir?

21 Q. Well, what does the test consist of?

22 A. It's a small liquid vial that contains a liquid
23 substance inside.

24 Q. Okay.

25 A. We take a piece of the substance, drop it into

1 the vial, shake it, and it turns from one color to
2 another if it's positive.

3 Q. How do you get a piece of the substance?

4 A. You can either get it with -- it depends what
5 substance is. You can break off a piece, you can drop a
6 piece of it into the vial.

7 Q. And then you just drop it into the vial?

8 A. (Moving head up and down.)

9 Q. And you're looking for it to change color?

10 A. Correct.

11 Q. Now, the prosecutor asked you about the baggie
12 that she had, and you said that it looks a little
13 different now than when you found it.

14 A. Correct.

15 Q. What was the condition when you found it?

16 A. It wasn't folded. It was more balled up.

17 Q. More balled up?

18 A. Correct.

19 Q. You had to open it to get the substance out to
20 test it?

21 A. Correct.

22 Q. Okay. Now, the area that you found it, on the
23 driver's door panel, do you recall other items being
24 down there?

25 A. I don't recall, sir.

1 Q. So there could have been rings down there?

2 A. I don't recall what was in there, sir.

3 Q. Woman's hairbrush?

4 A. I don't recall what was in there.

5 Q. You just don't recall anything other than what
6 you found?

7 A. Correct.

8 Q. Now, there was a female in the car, also?

9 A. Yes, sir.

10 Q. Do you recall who she was?

11 A. Yes, sir. I don't remember her name, but I
12 recall who she was.

13 Q. You recall who she was, but you don't recall
14 her name?

15 A. (Moving head up and down.)

16 Q. Now, you also -- did you check the registration
17 of this vehicle?

18 A. I believe my partner did.

19 Q. Do you know who was the owner of the vehicle?

20 A. I don't recall.

21 Q. You don't recall.

22 Wouldn't you agree in a drug case where
23 there's a couple of people in the car, it might be
24 important to know if maybe the passenger was the owner
25 of the vehicle?

1 A. No.

2 Q. Wouldn't matter at all?

3 A. Not in this case.

4 Q. I'm sorry?

5 A. Not in this case.

6 Q. Not in this case.

7 Now, you said you weighed the evidence in
8 this case?

9 A. Correct.

10 Q. And it came out to be 1.91 grams?

11 A. Originally, yes, sir.

12 Q. Originally.

13 Well, you didn't use all of it in the field
14 test. The field test was done long before you weighed
15 it?

16 A. Correct.

17 Q. And the prosecutor asked you -- I think she
18 said the lab weight is almost always less than the
19 amount that you submit, isn't it?

20 A. Correct.

21 Q. Now, is that pretty standard for HPD?

22 A. Basically the lab has to take some of the
23 evidence to test, therefore you lose that amount of the
24 evidence.

25 Q. Okay. But they weigh it before they test it.

1 A. I'm not in the lab, so I wouldn't know how
2 their procedure goes.

3 Q. Well, you're familiar with the Penal Code. For
4 controlled substance cases, how do you differentiate
5 between a state jail felony and a third degree felony?

6 A. Weight.

7 Q. So if something weighs more, you get a higher
8 charge, don't you?

9 A. Yes.

10 Q. Now, you said there was another baggie that you
11 don't know about included in the evidence?

12 A. Correct.

13 Q. Okay. So you don't know where that came from?

14 A. It's not my initials on it. I'm guessing it
15 came from the lab.

16 Q. Okay. You're guessing, though. You don't
17 know?

18 A. I don't know.

19 Q. In a normal shift, how often do you recover
20 controlled substances?

21 A. It varies.

22 Q. It varies?

23 Pretty much every shift, though, would that
24 be fair to say?

25 A. Yes, sir.

1 Q. Now, when you submit evidence, you can request
2 that it be fingerprinted?

3 A. Correct.

4 Q. But you didn't do that in this case?

5 A. No, sir.

6 Q. Because you had already made up your mind?

7 A. About what?

8 Q. That the defendant was the one who possessed
9 this substance.

10 A. That's not what I stated.

11 Q. It's a question.

12 A. No.

13 Q. You hadn't made up your mind?

14 A. Nope.

15 Q. But you didn't have the bag fingerprinted, did
16 you?

17 A. I didn't.

18 MR. LARSON: Pass the witness.

19 THE COURT: Ms. Assaad?

20 MS. ASSAAD: Thank you, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MS. ASSAAD:**

23 Q. Officer Gallegos, do you typically wash your
24 hands?

25 A. Yes.

1 Q. And do you wash your hands after each shift?

2 A. Yes.

3 Q. Do you wash your uniform after each shift?

4 A. Yes.

5 Q. And did you make any other drug arrests before
6 this one that night?

7 A. No.

8 Q. Did you make any drug arrests in between the
9 scene of this crime and transporting the defendant to
10 HPD?

11 A. No, ma'am.

12 Q. Do you think that you had meth or cocaine on
13 your hands before you --

14 MR. LARSON: Objection. Calls for
15 speculation.

16 THE COURT: Sustained.

17 Q. (By Ms. Assaad) Before you field-tested this
18 narcotic that you got in the baggie from the defendant's
19 vehicle, had you touched or handled meth?

20 A. No.

21 Q. Had you touched or handled cocaine?

22 A. No, ma'am.

23 Q. Did you drop meth or cocaine into the baggie
24 yourself?

25 A. No, ma'am.

1 Q. Why did you not arrest the passenger for
2 possession of a controlled substance?

3 A. Because she wasn't in possession of it at the
4 time. She was in the passenger's side. It wasn't
5 within her reach. There was no way to prove that it
6 would even belong to her.

7 Q. Did you see any movements, from the time you
8 turned on your lights to pull over the defendant, made
9 by the passenger that could have been her trying to get
10 the drugs away from her?

11 A. No.

12 Q. Did you see her pass anything to the defendant?

13 A. No, ma'am.

14 Q. Why didn't you fingerprint the baggie?

15 A. It's not a common thing we do when it comes
16 down to narcotics.

17 Q. Why not?

18 A. Just that's not the way we were trained. We
19 don't fingerprint narcotics. It's something that we
20 never do.

21 Q. Do baggies -- where would a person, based on
22 your training and experience, get a baggie of narcotics?

23 MR. LARSON: Objection. Calls for
24 speculation.

25 THE COURT: Sustained.

1 Q. (By Ms. Assaad) Were you trained on how to
2 collect fingerprints?

3 A. Yes.

4 Q. And what type of surfaces -- what type of
5 surfaces do you get -- successfully retrieve
6 fingerprints from?

7 MR. LARSON: Objection. Calls for
8 speculation.

9 THE COURT: Overruled. You may answer that
10 question.

11 A. Smooth surfaces such as this table. I mean,
12 just anything that is solid and smooth.

13 Q. (By Ms. Assaad) Have you ever tried to get a
14 fingerprint off a baggie?

15 A. No.

16 Q. And have you ever tried to get a fingerprint
17 off something where you found that there were many other
18 fingerprints there?

19 A. No.

20 Q. Or you couldn't get a clear fingerprint?

21 A. No, ma'am.

22 Q. What is the difference -- is there a difference
23 in a charge between 1.9 grams of a controlled substance
24 and 1.77 grams?

25 A. No, ma'am.

1 Q. Is that the same level charge of possession of
2 a controlled substance?

3 A. Yes, ma'am.

4 MS. ASSAAD: Pass the witness.

5 THE COURT: Mr. Larson?

6 MR. LARSON: Nothing further, Your Honor.

7 THE COURT: You may step down, sir.

8 (Witness complies.)

9 THE COURT: State, call your next witness.

10 MS. ASSAAD: State calls Angelica Noyola.

11 I believe the witness is still en route.

12 May I make a phone call to determine how far away she
13 is?

14 THE COURT: Please retire to the jury room.

15 (Brief recess.)

16 (Open court, defendant and jury present.)

17 THE COURT: Call your next witness.

18 MS. ASSAAD: State calls Angelica Noyola.

19 (Witnesses sworn.)

20 THE COURT: All right. Go ahead.

21 MS. ASSAAD: Thank you, Your Honor.

22 **ANGELICA NOYOLA,**

23 having been called as a witness and being first duly
24 sworn, testified as follows:

25 **DIRECT EXAMINATION**

1 **BY MS. ASSAAD:**

2 Q. Will you please state your name?

3 A. My name is Angelica Noyola.

4 Q. And how are you employed? Where are you
5 employed?

6 A. I am employed with the City of Houston with the
7 Houston Forensic Science Center.

8 Q. How long have you been employed there?

9 A. I've been employed with the City for about
10 five years.

11 Q. Is there another name for the Houston Forensic
12 Science Center?

13 A. It was part of the Houston Police Department,
14 and it was the Houston Police Department Crime Lab.

15 Q. When was that changed?

16 A. It was changed in April of this year.

17 Q. So you've been employed at the same lab for
18 five years?

19 A. Yes.

20 Q. And what are your daily duties?

21 A. I analyze unknown substances for the presence
22 of controlled substances.

23 Q. And is the lab that you work for currently
24 accredited?

25 A. Yes, it is.

1 Q. Was it accredited in all of 2013 as well?

2 A. Yes, it was.

3 Q. And what does "accredited" mean?

4 A. It means that the lab follows specific
5 standards and it's able to do valid testing.

6 Q. What is your educational background?

7 A. I have a bachelor's in science in biochemistry
8 from the University of Houston.

9 Q. When you began working for the lab, did you go
10 through training?

11 A. Yes, I did. I went through a six-month
12 intensive in-house training where I was exposed to all
13 of the techniques and instrumentations.

14 Q. And have you testified before as an expert
15 witness?

16 A. Yes, I have.

17 Q. And did you testify in Harris County?

18 A. Yes.

19 Q. So is it possible to take a substance that's
20 unknown and identify it?

21 A. Yes, it is.

22 Q. Is that what you said that that's what you do
23 as part of your duties in the lab?

24 A. Yes.

25 Q. And describe to the jury how this is done.

1 A. Well, in a lab when we receive the evidence, we
2 basically do a comparison from the envelope or the
3 evidence packaging and the submission form. We make a
4 comparison, make sure that this file case belongs to the
5 case. And then we do an inventory of the case and then
6 we proceed with our analysis.

7 Q. How do you make sure your first step -- the
8 comparison and matching up, confirming that the case
9 belongs to the evidence, how do you do that?

10 A. Well, we receive a file that has a submission
11 form submitted by the submitting officer and with the
12 information as far as description and date and suspect
13 name and all of that and then I compare that with the
14 packaging, in this case, an envelope or a box or
15 whatever the substance is packaged in. I make sure that
16 on that envelope or packaging, it has the same written
17 information as far as the name of the suspect and the
18 contents of the envelope and date and signature of the
19 submission officer and all of that.

20 Q. Is there also a unique identifying number?

21 A. Yes, there is.

22 Q. Do you -- in addition to checking for a
23 defendant's name and the date and the officer's name, do
24 you also check that number?

25 A. Yes, we do, which is this number right here

1 (indicating). I make sure that this number is also on
2 the envelope or on the packaging.

3 Q. And then what is your next step?

4 A. So after I make sure that this case file
5 belongs to the evidence that I'm about to analyze, I
6 open and then do an inventory of the contents of the
7 envelope and I write that down on my examination sheet,
8 make a description of what I'm seeing, and then I
9 proceed to take the substance of interest and begin to
10 analyze it. I first make a description of what the
11 substance is packaged or how it's packaged and describe
12 that, and then I proceed to take a weight. I can
13 sometimes take a gross weight, but I make sure that I
14 always take a net weight of the substance that I'm going
15 to analyze. Net weight means the substance by itself,
16 without any packaging or any baggie or anything around
17 it, just the substance itself, and that gets recorded.

18 Once I do that, then I proceed with my
19 confirmatory test or the series of tests that I will do
20 for that particular case.

21 Q. Before we get there --

22 MS. ASSAAD: May I approach the witness,
23 Your Honor?

24 THE COURT: Yes.

25 Q. (By Ms. Assaad) Do you recognize State's

1 Exhibit 4-A, which is an envelope (indicating)?

2 A. Yes.

3 Q. How do you recognize it?

4 A. Well, it has my handwritten initials and my
5 handwritten initials on the tape that I used to seal it,
6 with the date that I handwrote myself, and it also has
7 the same incident number.

8 Q. I'm showing you State's Exhibit 4-B. Do you
9 recognize that (indicating)?

10 A. Yes, I do.

11 Q. What is that?

12 A. It's a zip-lock with a plastic bag with the
13 substance in there, and it has the incident number
14 written by me and the item number that I gave it, that I
15 assigned, as well as the -- my handwritten initials and
16 date. That's the date that I sealed the evidence.

17 Q. And where did this baggie come from?

18 A. It came from the envelope.

19 Q. That was submitted by the officer?

20 A. I'm assuming, yes.

21 Q. And is -- was this envelope, the zip-lock,
22 submitted by the officer or was the baggie inside
23 submitted by the officer?

24 A. This was inside of the envelope. So when I
25 opened it, that's what I found, so...

1 Q. Did you find it in this zip-lock or did you put
2 the evidence into this zip-lock?

3 A. No. That's the zip-lock that I found it in.
4 Everything was -- the zip-lock and then the contents.

5 Q. Okay.

6 A. So that's how I saw it.

7 Q. And those are your initials, "A.N."?

8 A. Yes.

9 Q. And that's the nine-digit unique identifying
10 incident number?

11 A. Yes, it is.

12 Q. And what does "1.1" mean?

13 A. That's the item number. So basically, we have
14 the unique identifier and it also has a 1. That means
15 this whole thing is Item 1. So what I did is the
16 contents, which is State's Exhibit 4-B, would be 1.1.
17 So that's how I assigned the 1.1.

18 Q. And what does -- on the seal that is still
19 sealed, what is written there?

20 A. It has the date that I sealed the evidence and
21 my handwritten initials.

22 Q. What is the date?

23 A. September 25th, 2013.

24 Q. Do you typically test the evidence on the same
25 day that an incident occurs?

1 A. Can you rephrase your question?

2 Q. When an officer arrests someone and submits
3 evidence, is there a delay in the time that you actually
4 get to analyze that?

5 A. Yes. Yes.

6 Q. I've just opened State's Exhibit 4-B, and I'm
7 removing the contents. What does that say (indicating)?

8 A. It says "1.1" and my initials.

9 Q. Which are A.N.?

10 A. Yes, A.N.

11 Q. And what do you see?

12 A. Well, at the time of the inventory when I
13 started my analysis, it's a plastic bag with a
14 crystalline substance.

15 Q. So this is what was submitted in the evidence
16 bag?

17 A. Yes.

18 Q. The contents of State's Exhibit B?

19 A. Yes.

20 Q. And this is your baggie from the lab?

21 A. That is the baggie that was recovered or
22 retrieved from the State's Exhibit 4-A.

23 Q. Oh, okay.

24 And when you did your weight, did you weigh
25 the substance like this?

1 A. I took a net weight. That means that I opened
2 this plastic bag and retrieved only the substance, in
3 this case a crystalline substance, and weighed it on my
4 balance, just the substance by itself.

5 Q. In your experience with the lab and evidence
6 that's submitted to you, do you find that it's common to
7 get a different weight from the amount written on the
8 evidence envelope?

9 A. Yeah, it's common.

10 Q. How is your -- how are you confident in the
11 weight that you include in your lab report?

12 A. Well, we take a net weight. Sometimes it may
13 differ. I'm not sure if the officer, at the point, took
14 a gross weight, which means a weight with the packaging,
15 but whenever we report something, it's always the net
16 weight, which is the substance by itself. And it's on a
17 toploader balance. Our balances get calibrated once a
18 year by an outside vendor and gets quality checked once
19 a month by myself.

20 Q. And so was the evidence weighed in this case on
21 that instrument that you calibrate monthly?

22 A. On the balance. It was weighed on the balance,
23 yes.

24 Q. And that's the balance that's calibrated
25 monthly?

1 A. Yes. It's calibrated once a year, but it's
2 quality checked by me. I just make sure that I compare
3 it with some external weights and make sure that it's
4 reading properly. So it gets checked by me once a
5 month.

6 Q. So you check the accuracy monthly?

7 A. Yes. Actually, all the balances in the lab go
8 through the same process.

9 Q. So you are confident that the weight that you
10 gave is an accurate weight?

11 A. Yes.

12 Q. What is your next step after you weigh the
13 substance?

14 A. So once the substance gets weighed, the weight
15 gets recorded on my examination sheet, and then I
16 proceed with presumptive testing.

17 Q. What is presumptive testing?

18 A. A presumptive test is a test that does not
19 confirm the identity of the substance, but it gives the
20 analyst or the chemist, me, an idea of what controlled
21 substance could be present.

22 Q. And originally, do you base your presumptive
23 test on what the officer included on the evidence
24 envelope?

25 A. I base the -- what presumptive test to use

1 based on my observations.

2 Q. And in this case, what did you observe?

3 A. Well, I observed a crystalline substance, which
4 is how I described the State's Exhibit 4-B.

5 Q. So what presumptive test did you use?

6 A. I used the Marquis, the Marquis. It's a
7 chemical screening test or commonly known as a spot
8 test. So basically, we put our substance in a plate and
9 expose it to chemicals, and if we see a color change --
10 in this case, it could have been -- it depends on the
11 substance. If we see a color change, we note that color
12 change on the examination sheet. And then depending on
13 the color change, it then gives me an idea of what the
14 controlled substance could be present, if any. And then
15 from there, I proceed to do a -- my confirmatory test,
16 which confirms all the compounds present in that
17 substance.

18 Q. So what were the results of the presumptive
19 test in this case?

20 A. It came back negative.

21 Q. What does that mean?

22 A. That I didn't observe a color change.

23 Q. So what did you do next?

24 A. I then proceed to test it with other color
25 tests or other presumptive tests, and as well, I got a

1 negative for all of these.

2 Q. What does that mean to you?

3 A. It means that I didn't get any color change, so
4 I proceed to use a different type of presumptive test.
5 So I took the next step.

6 Q. What was that step?

7 A. I did a UV, which is an ultraviolet
8 spectrophotometer. It's a test that if there is a
9 compound present, it will produce a spectra. So I
10 performed a UV test.

11 Q. What were the results of that test?

12 A. Those were negative as well.

13 Q. So what did you do next?

14 A. Then I did a FTIR test, which stands for
15 Fourier Transform Infrared Spectroscopy, and I -- it's a
16 test that confirms the -- of what the substance could
17 be. It's a confirmatory test.

18 Q. What were the results of that test?

19 A. The results were not an acceptable match. That
20 means -- it's a test, basically, that -- it's a big
21 instrument. You expose a substance to an -- to IR
22 light, and it has a library where there is -- it will
23 compare your substance with what the internal -- if
24 there's anything that would match in the internal
25 library. In this case, it didn't match anything. So we

1 would -- in that case, we would write "no acceptable
2 match."

3 Q. What did you do next?

4 A. Then I did a gas chromatography mass
5 spectrometry test. It's another confirmatory test,
6 commonly known as GCMS. This test as well confirms the
7 identity of what compounds are present within that
8 crystalline substance. So I ran two of those tests.
9 The first test came out to be negative. So the second
10 time when I run the test, I added more sample,
11 concentrated it more, and then I got results.

12 Q. And before we talk about the results, is the
13 instrument that you used, is that a method that's
14 generally accepted in the field?

15 A. In the forensic field, yes.

16 Q. And has it been subject to peer review and
17 publication?

18 A. Oh, yes.

19 Q. And so it's generally accepted in the relevant
20 scientific community?

21 A. Yes, it is.

22 Q. Is that instrument calibrated and the accuracy
23 checked regularly?

24 A. Yes.

25 Q. How is that?

1 A. Every day we run a standard. So the way this
2 instrument works -- it's like -- it's a gas
3 chromatography. That's the first part of the
4 instrument. And then we have a mass spectrometry. The
5 gas chromatography part of the instrument, basically
6 when you expose a sample, it's like an oven. It
7 separates the compounds within that sample. And then
8 the mass spectrometry part of the instrument will
9 identify what substances are present based on a library.
10 So every day it gets quality checked using a cocaine
11 standard.

12 Q. And what were the results of your analysis of
13 the substance in this case?

14 A. It contains cocaine.

15 Q. And what does that mean?

16 A. That means that the crystalline substance
17 contains cocaine. I also did another presumptive test,
18 which is TLC. That came positive for cocaine. So the
19 combination of the TLC presumptive test and the GCMS
20 confirmatory test confirmed that the crystalline
21 substance contains cocaine.

22 Q. So do you -- are you familiar with what a
23 controlled substance is under the law of Texas?

24 A. Yes.

25 Q. And is cocaine a controlled substance?

1 A. Yes.

2 Q. Are you familiar with what adulterants and
3 dilutants are?

4 A. Yes.

5 Q. What are they?

6 A. They are -- adulterants and dilutants are
7 substances that are added to a controlled substance in
8 order to increase the bulk or the weight of that
9 controlled substance.

10 Q. Is there such thing as 100 percent pure
11 cocaine?

12 A. Not from my experience, no.

13 Q. And under the law of Texas, are adulterants and
14 dilutants -- if a substance contains cocaine, is the
15 weight reported including those adulterants and
16 dilutants?

17 A. Yes.

18 Q. You can't separate out the cocaine, or you
19 don't separate out the cocaine?

20 A. Not in the results, no.

21 MS. ASSAAD: State offers State's 4-A and
22 4-B into evidence and tenders to defense counsel.

23 **(State's Exhibit Nos. 4-A and 4-B Offered)**

24 MR. LARSON: Your Honor, can I take the
25 witness on voir dire for just one second regarding 4-B?

1 THE COURT: Okay.

2 MR. LARSON: I'm sorry?

3 THE COURT: Okay.

4 VOIR DIRE EXAMINATION

5 BY MR. LARSON:

6 Q. You've been asked a couple of times, ma'am,
7 about this. And 4-B contains another baggie with the
8 powder substance in it?

9 A. Yes.

10 Q. Okay. Where did the envelope that has the tag
11 4-B come from?

12 A. Where did the envelope come from?

13 Q. Yes.

14 A. Can you rephrase your question?

15 Q. Is this your baggie? And I'm talking about the
16 bigger one. The smaller one containing the white -- I'm
17 trying to find out, the big one that has the tag 4-B on
18 it, is that your baggie?

19 A. That is not my baggie.

20 Q. Okay. Do you know where it came from?

21 A. From the envelope.

22 Q. It came from in here (indicating)?

23 A. State's Exhibit 4-A.

24 Q. So if the officer who submitted it, who
25 submitted what's included in here -- I'm sorry. The

1 little baggie inside here, if he submitted that and he
2 doesn't know where this baggie came from, we just don't
3 know where it came from, do we?

4 A. I know that it came from the envelope.

5 Q. It came from this envelope?

6 A. Uh-huh. Yes.

7 MR. LARSON: Your Honor, because of the
8 break in the chain of custody, I'm going to object to
9 this being entered in.

10 THE COURT: Overruled. 4-A and 4-B are
11 admitted.

12 **(State's Exhibit Nos. 4-A and 4-B Admitted)**

13 MS. ASSAAD: May I approach the witness?

14 THE COURT: Yes, ma'am.

15 **DIRECT EXAMINATION**

16 **CONT'D BY MS. ASSAAD:**

17 Q. I'm showing you what's been marked State's
18 Exhibit No. 5. Can you tell me what that is
19 (indicating)?

20 A. That is a copy of the report that I generated
21 for this particular incident.

22 Q. And how do you know that it is for this
23 particular incident?

24 A. Well, it has the same incident number, my
25 signature, and the person who technical-reviewed the

1 case, which is my supervisor's signature as well.

2 Q. And are you -- do you have control of this
3 report in the lab? Do you have access and control to
4 the report?

5 A. Yes. I can -- in the LIMS system, we can
6 retrieve this same report.

7 Q. And do you believe that it's been tampered with
8 in any way?

9 A. No. Once the report gets generated and once
10 the technical reviewer signs it, we no longer can make
11 any modifications. If we were to make some further
12 analysis, then another report would be generated. So it
13 gets locked. So it's just a copy of the report for this
14 case.

15 Q. And did you make this report at or near the
16 time that you conducted the analysis on the substance?

17 A. Yes.

18 MS. ASSAAD: State offers State's 5 into
19 evidence and tenders to opposing counsel.

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

21 MR. LARSON: No objection.

22 THE COURT: 5 is admitted.

23 **(State's Exhibit No. 5 Admitted)**

24 MS. ASSAAD: May I publish, Your Honor?

25 THE COURT: Okay.

1 Q. (By Ms. Assaad) The nine-digit number that is
2 referred to as the incident number on this report, is
3 that the unique identifying number that we have been
4 referring to?

5 A. Yes, it is.

6 Q. So that's the number that you match up with
7 State's 4-A, the exhibit bag and -- or I'm sorry -- the
8 evidence envelope and with your lab report?

9 A. The submission form, yes, and the lab report,
10 yes.

11 Q. And with your case file?

12 A. Yes. Yes.

13 Q. And the description, what do those descriptions
14 say?

15 A. So Item 1 is a sealed evidence envelope, which
16 is the envelope, State 4-A. 1.1, which is what I saw
17 when I first opened the envelope, zip-lock with plastic
18 bag with the crystalline substance because I opened it
19 and described it as a crystalline substance.

20 Q. Is this that bag?

21 A. Yes, 1.1. As we can see, the Incident
22 No. 085773113, which is the same for the report.

23 Q. And so what were the results that you got on
24 the substance in this case?

25 A. So for item 1.1, which is the zip-lock with

1 plastic bag with the crystalline substance, which is
2 right here, Item 1.1, weighs 1.77, which is what it
3 weighed before any analysis, and then the results:
4 Contains cocaine.

5 Q. Did you follow the lab's policy and procedures
6 when you tested this substance?

7 A. Yes, I did.

8 Q. And when you got the negatives on the
9 presumptive tests, did you follow the policies and
10 procedures by -- when you went to the next test?

11 A. Right.

12 Q. And is it part of the lab's policy and
13 procedure to add or concentrate the amount to determine
14 whether a controlled substance exists?

15 A. It's part of the procedure, yes, on the GCMS
16 portion part of the test, yes.

17 Q. And that's what you did in this case?

18 A. Right. If we were to get a negative Spectra,
19 basically there's no retention times or peaks on our
20 chromatograph, then our next -- according to SOP's
21 procedures, we would add more sample and then run it
22 again on the GCMS.

23 Q. Do you find that sometimes substances are not
24 controlled substances?

25 A. Yes.

1 Q. So at what point do you cease to test?

2 A. Once -- can you rephrase your question?

3 Q. At what point do you make a finding and write
4 your report stating that there's no controlled
5 substance?

6 A. Right. Once we perform our confirmation test,
7 in this case GCMS, or FTIR, or GCMS and FTIR, and that
8 would come out negative, then that's it. Or something
9 that's not controlled, we would just record all of the
10 analysis that we did and on the results, we would state,
11 "No controlled substance."

12 Q. And that happens when an officer who's written
13 on the evidence submission envelope that there was a
14 controlled substance -- let me rephrase that.

15 You have -- based on your experience in the
16 lab for five years, there have been times when an
17 officer thought something was a controlled substance,
18 and you in the lab determined it was not, correct?

19 A. It happens, yes.

20 Q. And similarly, you have seen that an officer
21 would write a certain controlled substance and the lab
22 has come back with a different controlled substance,
23 right?

24 A. It has happened to me, yes.

25 Q. Is that what happened in this case?

1 A. Well, in this case, the officer, on his
2 description, described it as methamphetamine/powder.

3 Q. And what did you --

4 A. Oh, and the results were contains cocaine.

5 Q. And is cocaine a powder?

6 A. Can you rephrase your question?

7 Q. Is cocaine -- does cocaine come in a powder
8 form?

9 A. Cocaine can come in different forms. It can
10 come in a powder form. I've seen it in a liquid form.
11 I've seen it in a chunk substance, or commonly known as
12 crack cocaine. It can come in any form. If there's a
13 bunch of adulterants and dilutants, it will probably
14 take the form of the adulterants and dilutants.

15 Q. What do you mean by that?

16 A. That, you know, for example, I've seen cocaine
17 in water, in liquid. So the adulterants could be the
18 liquid because it's adding to the cocaine weight.

19 Q. And in this case, a crystalline substance,
20 you're saying that cocaine can take the appearance of
21 the adulterants and dilutants?

22 A. Not cocaine, the compound, but other
23 adulterants and dilutants can interfere. We normally
24 see cocaine in powder or in chunk, but like I stated,
25 I've seen it in other forms as well. I've seen it in

1 liquid, I've seen it in gooey, sticky forms or
2 substances.

3 Q. Regardless of the appearance, are you confident
4 in the instrument that you used -- in the instrument's
5 accuracy in determining what the substance actually is?

6 A. I am confident of the analysis that I performed
7 and I am confident to -- to write the results as
8 containing cocaine based on my analysis and the results
9 of those analyses.

10 MS. ASSAAD: Pass the witness.

11 THE COURT: Mr. Larson?

12 **CROSS-EXAMINATION**

13 **BY MR. LARSON:**

14 Q. Is it possible for something to change from
15 methamphetamine to cocaine?

16 A. Do you mean the compound?

17 Q. Yes.

18 A. From the compound cocaine to change to
19 methamphetamine?

20 Q. Yes.

21 A. No, it's not possible.

22 Q. Okay. Now, you said your first gas
23 chromatograph test came up negative?

24 A. Yes.

25 Q. Okay. You said that's -- isn't that a

1 confirmatory test?

2 A. The GCMS confirms the identity of substances
3 within a compound -- or compounds within a substance.
4 Sorry.

5 Q. Is there some way that you notify the D.A.'s
6 office when a substance comes up negative?

7 A. If the results -- conclusive results are
8 negative, yes, we can notify the D.A. to let them know
9 that this case came out negative.

10 Q. Do you?

11 A. I'm sorry?

12 Q. Is there a protocol for you to notify them?

13 A. Yes, there is.

14 Q. Is there a protocol to notify the defense
15 attorney when you have a negative?

16 A. No, there is not.

17 Q. A negative test can help exonerate, prove the
18 innocence of someone, and you have that information and
19 you're not sharing it with the defense attorney?

20 A. A negative test -- if the results are negative,
21 it doesn't mean the innocence of anybody. I just -- if
22 it's negative, we would write "no controlled substance"
23 and then it would get -- the D.A. would get a
24 notification via e-mail stating this case came out to be
25 no controlled substance. In the case of a known

1 controlled substance case.

2 Q. Well, again, here you have a gas
3 chromatograph -- can we agree that's kind of like the
4 system to test an unknown substance on?

5 A. Yes, it is.

6 Q. Okay. And you had a negative test?

7 A. I had a negative result. The first run, it was
8 a negative result.

9 Q. And there's no protocol to let the defense
10 attorney know that there was a negative run?

11 A. The negative run, we just let --

12 Q. Ma'am, the question is very simple: Is there a
13 protocol to let the defense attorney know, "yes" or
14 "no"?

15 A. From the result, no, not to the defense
16 attorney. For the results of the entire analysis.

17 Q. What is contamination?

18 A. Can you rephrase your question differently or
19 specific to the case?

20 Q. Well, you're an expert.

21 A. Yes.

22 Q. What is contamination in a case like this?

23 A. Well, in a controlled substances case -- I am
24 not sure how to answer the word "contamination" or
25 describe contamination. I don't understand.

1 Q. James Miller is your supervisor?

2 A. He is our lab manager, yes.

3 Q. Lab manager.

4 Okay. He came and gave a talk to us
5 attorneys --

6 MS. ASSAAD: Objection to sidebar.

7 THE COURT: Sustained.

8 Q. (By Mr. Larson) When asked about the controlled
9 substances --

10 MS. ASSAAD: Objection to relevance and
11 sidebar.

12 THE COURT: Sustained. It's hearsay.

13 Q. (By Mr. Larson) Do you agree that regarding
14 analysis for controlled substances, that garbage in,
15 garbage out?

16 A. I don't understand your -- "garbage in, garbage
17 out," what do you mean exactly by that?

18 Q. What I mean is that if you were given something
19 that was contaminated and it came to you, you don't know
20 if it's contaminated, do you?

21 A. I do not know if it's contaminated.

22 Q. And contamination can be insidious, it can be
23 sneaky?

24 A. I'm not sure.

25 Q. Well, if something gets mixed with a sample,

1 how do you even know it sometimes?

2 A. I would not know.

3 Q. You wouldn't know if --

4 A. Not from the analysis, no.

5 Q. Would you say that the analysis you do is
6 pretty precise?

7 A. It is.

8 Q. You have to pay attention to the detail?

9 A. Yes.

10 Q. And you should pay attention to the details
11 when evidence is retrieved?

12 A. When I have the evidence in front of me and I'm
13 opening it, I don't know how the evidence was collected
14 or retrieved. All I know is that I'm opening the
15 evidence and analyzing the contents of the evidence.

16 Q. So if there was contamination in the collection
17 of the evidence, you don't know that?

18 A. No.

19 Q. When it's passed down through the chain of
20 custody and somebody adds a baggie to it, you don't know
21 if that could have added contamination, do you?

22 A. I do not know.

23 Q. So as -- my way of saying it is, "garbage in,
24 garbage out." You may not know what the original
25 substance that was found, you just know what you end up

1 with?

2 A. I know what I see according to my description
3 and according to the results of the analysis that I
4 performed. And I also have a chain of custody with me,
5 if you want to ask questions about that.

6 Q. So you would agree that in any type of evidence
7 collection, careful and precise handling is important?

8 A. Yes, it is.

9 Q. Now, when your report was done, you said you
10 were initially at the Houston Police Department Crime
11 Lab?

12 A. Yes.

13 Q. And now you're at the Forensic Science Center?

14 A. The Houston Forensic Science Center.

15 Q. And why was it made the Houston Forensic
16 Science Center?

17 A. It was appointed by the mayor. We're still
18 city, it's just we're not under the police department.
19 Now we are under the Houston Forensic Science Center.

20 Q. And, in fact, didn't the mayor conclude that
21 independence was crucial to the functionality --

22 MS. ASSAAD: Objection to relevance.

23 THE COURT: Sustained.

24 Q. (By Mr. Larson) Didn't the mayor find out --

25 THE COURT: It's hearsay --

1 MS. ASSAAD: Objection --

2 THE COURT: I sustained the objection.

3 Q. (By Mr. Larson) You still work with HPD?

4 A. I work for the City of Houston.

5 Q. How many times have you testified?

6 A. I would say about three times a year, on an
7 average.

8 Q. And who brings you in? Who subpoenas you? You
9 usually testify for the prosecution, don't you?

10 A. I testify for the analysis that I perform.

11 Q. Okay. And, again, who subpoenas you?

12 A. Can you rephrase your question?

13 Q. Do you testify for the prosecution or do you
14 testify for the defense?

15 A. I testify for the analysis that I perform. So
16 the results, I can testify for the results that I
17 perform and that I report. That's who my testimony is
18 for.

19 MR. LARSON: Pass the witness, Your Honor.

20 THE COURT: Ms. Assaad?

21 MS. ASSAAD: Thank you, Your Honor.

22 No further questions.

23 THE COURT: You may step down.

24 THE WITNESS: Okay.

25 THE COURT: What says the State?

1 MS. ASSAAD: State rests.

2 THE COURT: Let's go to lunch. Please
3 retire to the jury room.

4 (Lunch recess.)

5 (Open court, defendant present, no jury.)

6 THE COURT: Okay. So what's next?

7 MR. LARSON: Motion for directed verdict.

8 THE COURT: Okay. Well, that's denied.
9 What's next after that?

10 MR. LARSON: Defense rests.

11 THE COURT: Okay. So we're going to argue.
12 Does the State have any objections to the
13 charge?

14 MS. ASSAAD: We've discussed it, and we
15 both think that Page 4 should be taken out.

16 THE COURT: Okay. I agree.

17 MS. ASSAAD: Okay. That's all from the
18 State.

19 MR. LARSON: Same from the defense, Your
20 Honor.

21 THE COURT: Okay. So 10 minutes,
22 15 minutes?

23 MS. ASSAAD: Yes, sir.

24 THE COURT: Which one? That was multiple
25 choice.

1 MS. ASSAAD: Oh. Fifteen.

2 THE COURT: Okay.

3 THE BAILIFF: All rise for the jury.

4 (Open court, defendant and jury present.)

5 THE COURT: All right. What says the
6 defense?

7 MR. LARSON: Your Honor, defense rests.

8 MS. ASSAAD: State rests and closes.

9 THE COURT: All right. Ladies and
10 gentlemen of the jury, the evidence is concluded in the
11 guilt-innocence phase of the trial. It is now my duty
12 to read you the Court's charge on the law as it applies
13 to this case.

14 Now, you'll have the charge with you. You
15 don't have to memorize everything I say. I always say
16 that because I met a judge from Indianapolis that told
17 me that they don't give the jury -- the physical jury
18 charge to the jury. They just read it and tell them go
19 deliberate, which I think is the dumbest thing I've ever
20 heard of, but anyway... You get it, and you can read it
21 in detail while you deliberate.

22 (Court's Charge read.)

23 THE COURT: Ms. Assaad?

24 **STATE'S CLOSING STATEMENT**

25 MS. ASSAAD: Thank you, Your Honor.

1 The Judge just read to you the jury charge,
2 which, as he said, you will get a copy of. The first
3 page is some definitions, possession, adulterant or
4 dilutant, which we talked about during voir dire, and
5 you heard about from the analyst on the stand.

6 The second page defines "intentionally" and
7 "knowingly," which we talked about during voir dire, and
8 then is the operative paragraphs that involve the
9 elements that I've proved beyond a reasonable doubt.
10 So, it's not in dispute that this occurred in Harris
11 County, Texas. It's not in dispute that this occurred
12 on July 10th of 2013. And it's not in dispute that
13 we're talking about this defendant, Travis Lamb.

14 So, the elements for you to focus on for
15 your deliberations are the intentionally or knowingly.
16 And just to explain that, six of you can believe it was
17 intentionally, six can believe it was knowingly. That's
18 why there's an "or" there. Both of the definitions are
19 in there, but it's intentionally or knowingly possessed,
20 just to be clear on that.

21 And then possessing a controlled substance,
22 namely cocaine, weighing 1 to 4 grams including the
23 adulterants and dilutants. So, those are the elements
24 that are in issue.

25 And as I see it, the issues that the

1 defense has brought up is -- well, let's first talk
2 about knowingly, knowingly possess. When the officers
3 found the white crystal powder substance in the
4 defendant's vehicle, it was found right next to the
5 defendant in the driver's side door. Okay? And the
6 officer field-tested it. And the officer just did that
7 one test and thought, okay, it's meth. And when the
8 officers were talking, the defendant heard that and he
9 responded, "No, it's not meth, it's bath salts." So
10 that's pretty much knowingly possess right there. The
11 defendant knew about it, he could see it from the
12 driver's seat, and he was in possession of it. He had
13 care; he cared about it. It was in his custody, he had
14 control of that area and of the controlled substance.

15 He was driving the vehicle, had control of
16 the vehicle, the area around him. And the officer did
17 not have to move anything to be able to see the cocaine.
18 He said it was immediately apparent.

19 I would like you to listen to the defense
20 attorney when he's making his argument, how he explains
21 away the knowing possession. I don't know what he's
22 going to say. It's really unlikely that -- well,
23 frankly, it's just unreasonable that someone is going to
24 leave their cocaine laying around. Cocaine is not free.
25 It's not even legal. And when you can see the cocaine

1 and you have possession of that area and you have
2 control of the area, it's your cocaine. Someone doesn't
3 just leave something that's important to them, even
4 though it's an illicit drug, in someone else's vehicle.

5 The field test. So the other issue is the
6 amount, 1.77 grams, which is between 1 and 4 grams, and
7 whether it's cocaine. And we have this field test that
8 field-tested positive for meth. That's not in a lab.
9 That's just what the officer did. He didn't even test
10 it to see if it was going to come back cocaine.

11 You heard from the analyst about the
12 presumptive tests and that some of them were negative
13 and that she continued to do the testing. And once she
14 added a little bit more, that it came back positive for
15 cocaine in a presumptive test and in a conclusory test.
16 Okay? So -- or sorry. Confirmatory test.

17 I guess the defense would like you to
18 believe that either the meth changed into cocaine or
19 that somehow the officer who thought it was meth added
20 cocaine to the sealed bag or maybe the analyst added the
21 cocaine, which doesn't really -- is completely
22 unreasonable and there's no motive for her to do that at
23 all. So I'd like you to listen to the defense attorney
24 about what his explanation -- his reasonable explanation
25 about how it's not cocaine.

1 I submit that you would have to ignore the
2 oath that you took to uphold the law, which is
3 possession of a controlled substance in Texas, to go
4 along with what the defense attorney is going to get up
5 here and ask you to come back with, not guilty.

6 THE COURT: Mr. Larson?

7 MS. ASSAAD: I'll reserve the remainder of
8 my time.

9 THE COURT: All right. Mr. Larson?

10 MR. LARSON: May it please the Court?

11 THE COURT: Okay.

12 **DEFENSE CLOSING STATEMENT**

13 MR. LARSON: Ladies and gentlemen of the
14 jury: Houston, we have a problem. They were wrong
15 right from the beginning. They test it and it's
16 methamphetamine. Their analyst told you methamphetamine
17 doesn't change into cocaine, ever. There is a problem.

18 Ours is a system of checks and balances.
19 The jury system, as the Judge talked about in voir dire,
20 comes from the Declaration of Independence, our
21 constitution. It is against the government
22 overreaching. We talked a little bit about
23 institutional bias, how those FBI agents, even when they
24 got a negative, were funneled, and funneled everything
25 into a wrong conclusion. And that's really what this

1 case is about. They were wrong from the beginning. Red
2 flags are coming up. They're ignoring other
3 possibilities in their rush to judgment.

4 How many negative tests is it going to take
5 for them to make their case? Well, we know there was at
6 least eight. We know that their analyst, who is
7 supposedly independent, do any of you believe that
8 analyst was a dispassionate scientist, or was she more
9 of an advocate than the attorneys have been during this
10 case? She wouldn't answer any question about
11 contamination. What would contamination be? It's
12 insidious. A little bit could get in here. Those
13 officers handle drugs every day. Both of them talked
14 about that. I'm not saying they did it purposefully.
15 The problem with contamination is it can happen and you
16 don't even know it and the amount could be really
17 minuscule. So you have all of these negative tests.
18 And only when they add a bunch of the stuff and then
19 concentrate it does something finally pop up. Use your
20 reasonable and common sense. That's exactly what it
21 would look like.

22 Those officers, part of it is on their
23 training. They really couldn't tell you a lot of
24 specifics about their training, as far as you really
25 have to be careful when you're collecting evidence. You

1 really have to pay attention. You really have to store
2 it correctly. And then we have a magic baggie that the
3 officer doesn't know where it came from, the analyst
4 doesn't know where it came from. That should worry us
5 because we're really guardians of the integrity of the
6 system. And when you have things like that happen, you
7 have to go: There's a problem. And those problems and
8 those doubts that come up from that, those are
9 reasonable doubts.

10 Do you think they did a thorough
11 investigation or do you think they rushed to judgment,
12 and like a funnel, made all -- anything they documented
13 or anything else come to their conclusion? When there's
14 two people in a car, why not put both names down? Why
15 not put down the owner of the vehicle? Doesn't it make
16 sense if something is found in a vehicle it may be
17 yours? Do you really know what's in your spouse's
18 vehicle? Are you going to necessarily tell the police,
19 "Uh-oh, that's my spouse's"? No, you wouldn't.

20 Does it bother anyone that the officers and
21 the analyst say, "Yeah, I'm following all of these
22 policies and these protocols and these procedures, and
23 one of the things is we arrest people and we don't
24 Mirandize them." If you're really worried about
25 protecting someone's rights, don't you think you would

1 do that? Or is there a reason for it?

2 Does it worry anyone that most of the time
3 -- I'm not going to exaggerate. Most of the time when
4 Houston police officers submit what they believe is a
5 controlled substance, the weight comes out more than it
6 really is. Do you think that's being fair and a
7 thorough investigation or do you think they have their
8 thumbs on the scale, that the system actually is
9 weighted against you?

10 Part of doing a good investigation is being
11 open to the possibilities that there may be a problem
12 and catching it. We just had contamination happen in a
13 horrible way up in Dallas in those hospitals, and it
14 really wasn't until those nurses got sick with Ebola
15 that anyone would even acknowledge that there may have
16 been a problem. It took that much for the system to
17 acknowledge. Those are very, very bright people, and
18 they have protocols and stuff in place. Now, whether
19 they didn't follow them or they made a mistake, does it
20 matter or does getting this right matter? Getting this
21 right matters. And if there's a problem, we should fix
22 it.

23 Do we want the best system, one we can be
24 confident in? There's a book called the "Black Swan,"
25 and it's written by a person who makes his money -- he's

1 a mathematician, but he trades. And he's a very good
2 mathematician, very brilliant. And he talks about when
3 he talks with other people who are highly educated, if
4 you have a basic probability, if you have a fair coin
5 and you flip it, it's a 50-50. And one of the intro
6 classes of statistics, the professor will always ask:
7 Okay. You have a fair coin and you flip it 99 times,
8 and 99 times in a row it comes up heads. What are the
9 odds on the hundredth throw? Well, if it's a fair coin,
10 the odds are still 50-50. And the author writes that
11 when he talks to people who are very well educated, they
12 will go "Oh, it's 50-50." He has a friend, who's made a
13 lot of money, but who's kind of street smart. And he
14 asks him the same question, and the person that's street
15 smart says, "Yeah, if it came up heads 99 times in a
16 row, you don't have a fair coin."

17 Do you really think after all those
18 negative tests and everything else the evidence in this
19 is credible and fair? You know better. There are
20 problems. Can you call that lab independent, or was
21 there bias obvious out there to not even be open to the
22 possibilities?

23 Did those officers pay attention to the
24 details as far as who was in the car or anything else
25 and document it? No, they don't even know who the

1 passenger is, they don't even know who the owner of the
2 car is. Do you really think they were as careful as
3 they should have been with whatever substance was taken
4 out of that car? Do you know that's where the
5 contamination could have happened, if that was
6 contamination? I don't know. It's impossible to prove.
7 But you know from all of those negative tests from the
8 lab, there is a problem. And the burden of proof is on
9 the prosecution to prove their case beyond a reasonable
10 doubt. And there are just problems. Methamphetamine
11 does not change into cocaine. Negative test after
12 negative test, a baggie that comes out of nowhere, those
13 are all issues. And those issues are doubts.

14 Your verdict is feedback in our system,
15 because our system is a system of checks and balances.
16 What did it take for change to occur at that Dallas
17 hospital? Those nurses getting sick. What will it take
18 before HPD officers give the true weight of a substance
19 and not jack it up a little bit? Because not only does
20 the severity of the charge go up, but so does the bond.
21 It's just unfair all the way around. It's not justice.
22 It's not right. We want a system where a thorough
23 investigation is done, because most people really don't
24 care about what happens down there until it's their kid
25 or their neighbor or themselves. Only then do they

1 really look at the system.

2 You have a unique chance to do something
3 about the wrong as you've seen it. We have a problem
4 and you've all seen it. I'm going to ask that you hold
5 the State to its burden. They have to prove the case
6 beyond a reasonable doubt. Don't let them minimize the
7 burden down to the preponderance, what it takes in a
8 case over money, or even clear and convincing, which the
9 Judge talked about in voir dire. It's beyond a
10 reasonable doubt.

11 In addition, don't let them switch the
12 burden over to the defense. They have to prove their
13 case. They could say, "Oh, the defense could bring in
14 this or the defense could bring in that," because when
15 you're talking about things like contamination, they
16 don't know what happened. It doesn't matter. They have
17 to prove their case.

18 You have a big decision to make. We trust
19 you. That's why we put you on the jury. I have to ask
20 you this, and I'll do it as a hypothetical. Let's take
21 all the different things that that substance that they
22 recovered from that car came out as, bath salts,
23 methamphetamine. Negative, negative, negative,
24 negative, negative, negative, negative, and then
25 cocaine. Let's say -- and this is hypothetical only --

1 but you have a child who has ingested the substance.
2 And in order for them to get the antidote, it has to be
3 the correct one. So, if they ingested it and you think
4 it's bath salts, they have to get a bath salt. And if
5 they get the wrong one, if it's bath salts and you give
6 them the cocaine remedy, it will kill them. So, this is
7 a very serious decision. And the evidence of what it
8 was is what they brought to you. Would you make a
9 decision based on the evidence that they brought to you,
10 or would you go, "You know what? I'd really like to
11 hear a truly independent lab result"?

12 And if you'd like to hear a truly
13 independent lab result, that's reasonable doubt and
14 we're done. You can go home and you can feel good about
15 your verdict because you will make a difference. They
16 will sharpen up their reports, they will sharpen up
17 their testing, they will sharpen up their lab, and it
18 might make the lab become truly independent, instead of
19 the advocacy organization it still is.

20 Credible evidence isn't there in this case.
21 Houston, we have a problem. And for that reason, they
22 haven't met their burden of proof and this is a not
23 guilty.

24 THE COURT: Ms. Assaad?

25 **STATE'S CLOSING STATEMENT**

1 MS. ASSAAD: Just because when an officer
2 uses a scale that hasn't been calibrated or checked for
3 accuracy every month like the one in the lab and it
4 comes back with a different number doesn't mean they are
5 putting their thumb on the scale. That's offensive.

6 The burden, of course, is the State's
7 beyond a reasonable doubt, but keep in mind the word
8 "reasonable." The officer had the crystal substance
9 that was in a powder form in a baggie and he held it in
10 his hand until he got to the station. It's not like the
11 powder was in his hand and he was just holding it. It
12 was in a baggie.

13 The negative results. As the analyst
14 discussed, she wanted to make sure that she got the
15 accurate response, so she did a whole bunch of tests.
16 And she returns "no controlled substance" when it's no
17 controlled substance. And when she used the gold
18 standard, the instrument that she talked to you about
19 and she saw that it was cocaine, that's what she
20 reported and she reported it confidentially. She had a
21 presumptive test and a confirmatory test saying it was
22 cocaine. She didn't report meth. It's not a system
23 where she's just regurgitating what the police officers
24 tell her. Otherwise, it would have come back meth,
25 right? And she tested it for meth. It didn't come back

1 meth. It is not meth, it's cocaine.

2 And as the defendant said, "It's not meth."
3 He thought it was bath salts. And you know what? Maybe
4 there were a lot of adulterants and dilutants in it.
5 Maybe it was a really low cocaine amount. And I guess
6 the defense attorney is asking you to send a message
7 with your verdict that you don't like the law that you
8 can include adulterants and dilutants, and that if it
9 doesn't come back really strong cocaine on the first few
10 presumptive tests, then we should just ignore it and we
11 should just send a message that we don't like this law.
12 Well, that's really not the place you're in right now.
13 Most respectably you've taken an oath to uphold the law
14 and you've said you would follow the law, and that's
15 what the jury charge directs you to do. If you don't
16 agree with the law, talk to your Legislator, but this is
17 not the forum when you've taken an oath to uphold the
18 law.

19 Now is the time for you to go back and
20 deliberate. You talk about the evidence, you talk about
21 what you believe, and you make a decision about whether
22 I met the burden of proof beyond a reasonable doubt. If
23 you look at the defendant's actions, since the defense
24 attorney is trying to turn everything away from that,
25 that's what we're looking at. Did he knowingly possess

1 cocaine, 1.77 grams, between 1 and 4 grams? The officer
2 finds the substance in his vehicle, and he says, "No,
3 that's not meth, it's bath salts." He knew it was
4 there: He cared about that substance enough to clarify
5 what it was: He had control over it.

6 I'm asking you to be bold enough to make a
7 decision about what you believe and to uphold the law.
8 This is a victimless crime. You knew that when you were
9 coming in, but you took an oath. And at this stage,
10 it's just guilty or not guilty. During the punishment
11 stage, you get to consider --

12 MR. LARSON: Objection. Irrelevant.

13 THE COURT: Sustained.

14 MS. ASSAAD: Right now, it's guilty or not
15 guilty.

16 When I sit down, I'm going to think about
17 what I argued and there are going to be about a thousand
18 things that I wish I had said, but you guys are 12 times
19 smarter than I am, with 12 times more life experience,
20 and you paid attention to the evidence in this case. We
21 do trust you to uphold the law, to consider the
22 evidence, and to come back with a verdict of guilty.

23 THE COURT: Ladies and gentlemen of the
24 jury, please retire to the jury room to deliberate your
25 verdict.

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THE BAILIFF: All rise for the jury.

(Jury deliberating.)

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