

Trial on Merits
July 15, 2015

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REPORTER'S RECORD
VOLUME 4 OF 5 VOLUMES
TRIAL COURT CAUSE NO. 2004882 FILED IN
COURT OF APPEALS NO. 14-15-00740 COURT OF APPEALS
HOUSTON, TEXAS

THE STATE OF TEXAS) IN THE COUNTY CRIMINAL COURT
) CHRISTOPHER A. PRINE
vs.) AT LAW NO. 1 OF
)
JOSE A. GARCIA) HARRIS COUNTY, T E X A S

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Clerk

TRIAL ON MERITS

On the 15th day of July, 2015, the following
proceedings came on to be held in the above-titled and
numbered cause before the Honorable Paula Goodhart,
Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype
machine.

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12 **EXHIBITS OFFERED BY THE STATE**

13

14 J - Jury Use is indicated as follows:
 R - Record Only D - Demonstrative
 B - Bill of Exceptions

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED	USE
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19 **EXHIBITS OFFERED BY DEFENSE**

20

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EXHIBIT	DESCRIPTION	OFFERED	ADMITTED	USE
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1 (Jury not present)

2 THE COURT: All right. Do we have any
3 issues that need to be addressed before we resume? Any
4 issues that need to be addressed?

5 MS. HAYNES: After this witness, Your
6 Honor, I will urge my Motion to Suppress. The next
7 thing is the breath test, so I will urge it after.

8 THE COURT: All right.

9 MR. VAZQUEZ: Nothing from the State, Your
10 Honor.

11 THE COURT: All right. Let's bring in the
12 jury. We will take a break in one hour.

13 *(At the Bench)*

14 MR. VAZQUEZ: Yesterday we admitted the
15 video.

16 THE COURT: Right.

17 MR. VAZQUEZ: Was that admitted only as to
18 the portion with Officer Morales?

19 THE COURT: No. The video is in, but I've
20 only allowed you to publish the part that was testified
21 to by the officer --

22 MR. VAZQUEZ: So, now with Officer
23 Gillham -- he's in the rest of the video --

24 THE COURT: If he's here to testify, he
25 can testify about his participation in the video. At

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1 that point, then I will allow it to be published, when
2 it becomes relevant.

3 MR. VAZQUEZ: Thank you, Your Honor.

4 THE COURT: Okay. Bernie, we are ready.

5 THE BAILIFF: All rise.

6 (Jury enters courtroom)

7 THE COURT: All right. Please be seated.

8 Okay. Welcome back, ladies and gentleman.

9 Thank you very much for your patience this morning. You
10 know we always have the best laid plan of starting at
11 10:00 o'clock as much as possible. But if you would
12 have been here at 10:00 o'clock, what you would have
13 seen is standing room only. So we were trying to get to
14 a point where we could reasonably take a break for all
15 of the folks having stuff pending this morning. So, I
16 do appreciate your patience. Sometimes those things are
17 unavoidable. We will now continue.

18 Yesterday the case -- the State was still
19 in their case in chief. So, Mr. Vazquez, you may call
20 your next witness, sir.

21 MR. VAZQUEZ: Thank you, Your Honor. The
22 State calls Officer Seth Gillham.

23 THE COURT: Come on up, Officer Gillham.
24 Please raise your right hand for me.

25 (Oath administered)

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1 THE COURT: All right. Thank you, sir.
2 Have a seat.

3 When you are ready, you may proceed.

4 MR. VAZQUEZ: Thank you, Your Honor.

5 **SETH GILLHAM,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. VAZQUEZ:**

9 Q. Good morning, Officer Gillham.

10 A. Good morning.

11 Q. Will you please state your name and spell it
12 for the record?

13 A. My name is Seth Gillham. It's spelled S-e-t-h
14 G-i-l-l-h-a-m.

15 Q. And you are a police officer, correct?

16 A. Yes, sir.

17 Q. With what agency?

18 A. The Houston Police Department.

19 Q. Are you a certified police officer in the State
20 of Texas?

21 A. I am.

22 Q. And how long have you been a certified police
23 officer?

24 A. For approximately two years.

25 Q. What kind of training did you have to go

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1 through to become a certified police officer?

2 A. Well, we go through a six-month-long police
3 academy. Within that we get numerous certifications
4 that range anything from how to deal with people that
5 have mental illness, victims of domestic violence, and
6 then also D.W.I. with field sobriety tests.

7 Q. And where are you currently assigned?

8 A. Currently until Saturday I'm at North Patrol.

9 Q. Until Saturday?

10 A. Yes, sir.

11 Q. What's happening on Saturday?

12 A. On Saturday, conveniently, I'm moving over to
13 the D.W.I. Task Force.

14 Q. And how do you get on the D.W.I. Task Force?

15 A. Well, I did 30 -- first, I did a 30-day
16 rotation where instead of going patrol, I went in and
17 rode with a D.W.I. Task Force for 30 days. I submitted
18 my resume, and I completed an interview with the
19 supervisors over at the Task Force.

20 Q. And is that fairly difficult to get into?

21 A. Yes, sir. There are a lot of people that
22 apply, yes, sir.

23 Q. What is the purpose of the D.W.I. Task Force?

24 A. Well, the D.W.I. Task Force mission is to
25 reduce alcohol and drug-related motor vehicular

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1 accidents through public-awareness education and
2 strategic enforcement.

3 Q. So you've had specialized training in dealing
4 with intoxicated drivers --

5 A. Yes, sir.

6 Q. -- in addition to the training you had at the
7 academy?

8 A. No extra training, just training -- or just 30
9 days riding with the Task Force members.

10 Q. And had you done 30 days at the time of this
11 incident?

12 A. No, sir, not at that time yet.

13 Q. You were still learning at the time?

14 A. Yes, sir.

15 Q. Are you certified to do field sobriety tests?

16 A. I am.

17 Q. And how did you get certified to do the field
18 sobriety tests?

19 A. We took an approximate five-day course where
20 there is an instructor that came in and taught us; and
21 then at the end of that, we took a written test and we
22 demonstrated the field sobriety tests.

23 Q. Have you done any field training --

24 A. Yes, sir.

25 Q. -- before the date of the incident?

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1 A. Yes, sir.

2 Q. What kind of field training did you do?

3 A. Well, there's a field training program that
4 every police officer has to complete. We ride on
5 different shifts. Within that, we have a more senior
6 police officer that's there to train us and we complete
7 that and we have to meet the standards in order to pass.

8 Q. And has all of your training led you to be able
9 to identify intoxicated drivers?

10 A. Yes, sir.

11 Q. What are some classic signs of intoxication?

12 A. There are numerous signs; red, bloodshot eyes,
13 odor of alcoholic beverage emitting from his breath and
14 person, trouble maintaining balance, trouble walking,
15 staggering.

16 Q. Based on your training and experience, does it
17 take an expert to identify an intoxicated driver?

18 MR. GUERRA: Object, Your Honor. That
19 calls for speculation.

20 THE COURT: Overruled.

21 A. I wouldn't think an expert, no, sir.

22 Q. (BY MR. VAZQUEZ) When you come across somebody
23 who has all of those signs as a driver, what are you
24 supposed -- what are you trained to do as a police
25 officer?

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1 A. Well, as a police officer, we never like to
2 jump to conclusions. You take into -- everything that's
3 going on, the totality of the circumstances, and we go
4 from there. We are supposed to perform the field
5 sobriety tests if we do believe they are intoxicated.

6 Q. Do you detain the drivers?

7 A. Yes, sir.

8 Q. And why do you detain them?

9 A. For their safety and everyone else's safety on
10 the road. We just detain them just long enough to
11 determine if they are intoxicated or not.

12 Q. Do you handcuff the detained suspects?

13 A. Yes, sir, temporarily.

14 Q. So, what is the point of -- what is the purpose
15 of a field sobriety test?

16 A. A field sobriety test, the main purpose is to
17 determine if they lost mental and physical faculties in
18 order to drive, if they can still safely drive or not.

19 Q. So if you come across somebody like that, you
20 can just write them a ticket and let them go?

21 A. No, sir.

22 Q. So you have to determine if they are safe to
23 drive?

24 A. According to our G.O.s, which is our general
25 orders, which is our rules and regulations for the

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1 police department, we do have to. It says we shall do
2 that.

3 Q. Now, Officer Gillham, on January 18, 2015, were
4 you working that day?

5 A. I was.

6 Q. And what shift were you working?

7 A. I was working night shift, so from 11:00
8 o'clock at night to 7:00 o'clock in the morning.

9 Q. And you and your partner were responding to an
10 accident?

11 A. Yes, sir. We checked by, meaning we provided a
12 traffic controller back up that night. Since it was on
13 the freeway we wanted to try to slow cars down and keep
14 other cars from hitting the R.D. or wrecked vehicle.

15 Q. Did you come in contact with Jose Garcia?

16 A. I did.

17 Q. And did you move Jose Garcia from one vehicle
18 to another, to your vehicle?

19 A. Yes, sir.

20 Q. Was he detained at the time?

21 A. He was.

22 Q. Was he handcuffed?

23 A. He was.

24 Q. Why was he handcuffed?

25 A. Just so we can determine if he was sober or

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1 not, if he could safely operate a motor vehicle as far
2 as if he was intoxicated.

3 Q. Is it the department's policy to handcuff
4 people?

5 A. When they are detained, yes, sir.

6 Q. What did you notice about the defendant when
7 you first made contact with him?

8 A. Well, the first thing I noticed is he had a
9 strong odor of alcoholic beverage emitting from his
10 breath and person. He had red, bloodshot eyes. When we
11 got him out of the vehicle, he was having trouble
12 maintaining his balance; and he was staggering.

13 Q. Did you notice anything else about his person?

14 A. Yes, sir, I did.

15 Q. What's that?

16 A. We noticed that he had a strong odor of urine
17 on him. His pants were wet -- and his pants were wet.

18 Q. Did you notice any signs of injury?

19 A. No, sir.

20 MR. VAZQUEZ: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. (BY MR. VAZQUEZ) Officer Gillham, I'm going to
23 show you what has previously been admitted as State's
24 Exhibit 5, once this warms up. Do you recognize that
25 picture, Officer Gillham?

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1 A. Yes, sir.

2 Q. And who is that?

3 A. That's the defendant, Jose Garcia, sir.

4 Q. And is that the night of the incident?

5 A. Yes, sir.

6 Q. Do you notice any bruising on his face?

7 A. No, sir.

8 Q. Do you notice any marks or injuries to his face
9 or head?

10 A. No, sir.

11 Q. If you had noticed any kind of injuries or if
12 he had told you he had been injured in any way, what
13 would you have done?

14 A. We would have obviously provided him medical
15 attention. We already had H.F.D. check by on the scene
16 as well.

17 Q. So, the Houston Fire Department was there as
18 well?

19 A. Yes, sir. Yes, sir.

20 Q. Had they checked with him?

21 A. Yes, sir. They cleared him medically.

22 Q. Had -- did the defendant tell you if he had any
23 medical issues?

24 A. Yes, sir, he did.

25 Q. What did he tell you he had?

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1 A. He said he was suffering from hypertension.

2 Q. Did he tell you he took any medications?

3 A. No, sir, he didn't.

4 Q. Officer Gillham, after you transported -- you
5 and your partner transported the defendant to -- or made
6 contact with him, what did you do after that?

7 A. Well, we swapped handcuffs, meaning Officer
8 Carroll who arrived first on scene that detained him --
9 I just put my pair of handcuffs on him and then gave
10 Officer Carroll's back, and he was placed in the back
11 seat of our marked patrol car.

12 Q. And did you clear the accident scene?

13 A. Yes, sir. We always try to get the accidents
14 off the freeway as soon as possible.

15 Q. Did it take a while to do that?

16 A. I wouldn't say any longer than normal, no, sir.

17 Q. After you cleared the accident scene, what did
18 you do?

19 A. We then went -- took the nearest exit which
20 would be the -- I believe it's the Greens Road which is
21 the Greenspoint Mall parking lot and we finished up
22 everything there, all of our paperwork and everything
23 there.

24 Q. And after that?

25 A. We transported him to Central Intox.

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1 Q. And why would you transport him to Central
2 Intox?

3 A. To further investigate whether he could safely
4 operate the motor vehicle or not.

5 Q. And at some point did you make contact with
6 Officer Morales?

7 A. I did, yes, sir.

8 Q. And why did you make contact with Officer
9 Morales?

10 A. Well, Officer Morales who was at the time with
11 D.W.I. Task Force was working Central Intox that night
12 and he offered to assist in the investigation.

13 Q. But you were certified to conduct D.W.I.
14 investigations?

15 A. I am, yes, sir.

16 Q. And you had done D.W.I. investigations before?

17 A. I did, yes, sir.

18 Q. So, yesterday we heard that Officer Morales did
19 the --

20 MR. GUERRA: Object, Your Honor. That is
21 a violation of the Rule.

22 THE COURT: Go ahead and finish your
23 question first. You heard what?

24 Q. (BY MR. VAZQUEZ) -- that Officer Morales
25 conducted the H.G.N.

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1 THE COURT: That's overruled.

2 Q. (BY MR. VAZQUEZ) Why did you do the H.G.N.?

3 A. He just offered to help. When you get down to
4 Intox, there is a lot of paperwork to complete. And
5 while he just offered, I accepted. There is no reason
6 in particular or anything like that.

7 Q. But you did -- did you conduct any field
8 sobriety tests?

9 A. Yes, sir, I conducted two.

10 Q. And what field sobriety tests did you conduct?

11 A. I conducted the one-leg stand and the walk and
12 turn.

13 Q. What is the purpose of the one-leg stand?

14 A. The one-leg stand, it divides your mental and
15 physical attention, so to speak. So, it requires the
16 subject to perform mental tasks and physical tasks at
17 the same time, much like if you were driving.

18 Q. And what is an individual asked to do in this
19 test?

20 A. Well, first, we ask the individual to stand in
21 a designated yellow square. We ask him to put his feet
22 together, his hands down by his side. We ask him to
23 raise either his left or right foot, whichever one he
24 chooses, approximately 6 inches; and I always say that's
25 about the height of a dollar bill. We ask him to count

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1 out loud, a thousand one, a thousand two, 1,003. During
2 that time we ask him to keep his foot parallel to the
3 ground, his toes pointed out, and for him to look at his
4 toes while doing so. And we tell him to do that until I
5 say to stop which is 30 seconds, sir.

6 Q. Are there any clues you are looking for on this
7 test?

8 A. Yes, sir, there are four clues.

9 Q. What are the clues you are looking for?

10 A. First clue is whether they use their arm,
11 meaning that their arm separates from their side more
12 than 6 inches. The second is if they sway. The third
13 is if they hop, and the fourth is if they drop their
14 foot or not.

15 Q. Is this a good indicator of physical or mental
16 impairment?

17 A. Yes, sir, it is.

18 Q. And how is that?

19 A. Well, it's been studied by NHTSA. It's been
20 studied numerous times; and, like I said previously,
21 it's a great indicator because it asks them to divide
22 their mental and, you know, physical attention.

23 Q. Did you demonstrate the test for the defendant?

24 A. I did.

25 Q. Did you ask the defendant if he had any

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1 handicaps or disabilities that would interfere with him
2 to be able to perform?

3 A. Yes, sir.

4 Q. How did the defendant perform on his
5 evaluation?

6 A. He showed three clues.

7 Q. And there are how many possible?

8 A. Out of four.

9 Q. In your opinion did the defendant pass or fail
10 this test?

11 A. He showed signs of impairment. So, you could
12 say he failed, yes, sir.

13 Q. And was this test conducted on video?

14 A. Yes, sir, it was.

15 Q. And were you present at -- was the -- sorry.
16 You were present during the recording of the video?

17 A. Yes, sir.

18 Q. And you are able to identify voices and names,
19 people on the video?

20 A. Yes, sir.

21 MR. VAZQUEZ: Your Honor, at this time I
22 would like to publish the one-leg stand portion of the
23 video.

24 THE COURT: All right. You may.

25 MR. GUERRA: Your Honor, before that's

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1 done, may I take this officer on voir dire to determine
2 whether he was qualified at the time he administered
3 these tests to administer the standardized field
4 sobriety tests?

5 MR. VAZQUEZ: I believe I've already
6 established that, Your Honor. He's a certified police
7 officer.

8 THE COURT: Who has been certified in
9 field sobriety tests. So, you will have an opportunity
10 to cross-examine him.

11 MR. GUERRA: Thank you, Your Honor.

12 THE COURT: You may publish that.

13 MR. VAZQUEZ: Thank you, Your Honor.

14 *(State's Exhibit 2 published to the jury.)*

15 Q. (BY MR. VAZQUEZ) Officer Gillham, it appears
16 that you are reading the instructions off of something.
17 What is that?

18 A. That is instructions that are published at the
19 Central Intox room. It's in every Intox room.

20 Q. And why are those there?

21 A. Because just to follow a standardized manner
22 that's published by NHTSA.

23 Q. So, are those NHTSA standards or Houston Police
24 standards?

25 A. Those are NHTSA standards.

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1 Q. Thank you.

2 (State's Exhibit 2 published to the jury.)

3 Q. (BY MR. VAZQUEZ) Officer Gillham, you were
4 looking at your watch while the defendant was doing that
5 test. Why was that?

6 A. Because they are supposed to hold their foot up
7 for 30 seconds; and we want to get the most accurate
8 time, obviously.

9 Q. Well, the defendant was counting the time. Is
10 that not accurate?

11 A. Well, with intoxicated people and even, you
12 know, possibly sober people, you know, it's hard to keep
13 an accurate 30-second count. So we obviously look at
14 our watch to make it as most accurate as possible.

15 Q. And what test did you do next?

16 A. I did the walk and turn, sir.

17 Q. And what is the walk and turn?

18 A. The walk and turn again is a standardized field
19 sobriety test. It divides the mental and physical
20 attention of the subject.

21 Q. So, it's a divided-attention test?

22 A. Yes, sir.

23 Q. Are there clues on this test?

24 A. Yes, sir.

25 Q. And what are the clues that you are trying to

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1 look for?

2 A. Well, there are eight clues on this test. The
3 first is: Does the subject or defendant have trouble
4 maintaining balance during the instruction phase?

5 Second, does he or she start too soon?

6 Third, does he or she use arms when
7 walking?

8 Fourth, does the defendant step off the
9 line?

10 Fifth, does he fail to touch heel to toe?

11 Sixth, improper turn.

12 Seventh, takes too many steps.

13 And eighth is -- excuse me -- I'm sorry, I
14 just drew a blank. I apologize.

15 Q. But there are eight total?

16 A. Yes, sir.

17 Q. Okay. Is this a good test to test the physical
18 or mental impairment?

19 A. Yes, sir, it is.

20 Q. In what way?

21 A. Again, it divides their attention; and so much
22 like if they were driving, they are having to perform
23 physical tasks and mental tasks at the same time.

24 Q. In your opinion, based on your training and
25 experience, does nervousness impede the ability of

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1 someone to perform this test?

2 A. No, sir.

3 Q. Did you demonstrate the test for the defendant?

4 A. I did.

5 Q. Did you ask if he had any handicaps or
6 disabilities that would interfere with his ability to
7 perform?

8 A. Yes, sir.

9 Q. How did the defendant perform on his
10 evaluation?

11 A. He showed seven clues.

12 Q. Seven out of the eight clues?

13 A. Yes, sir.

14 Q. Now, part of the test is to stand -- well, we
15 will see that on video.

16 MR. VAZQUEZ: I will withdraw that
17 question, Your Honor.

18 Q. (BY MR. VAZQUEZ) Was the test conducted on the
19 video?

20 A. Yes, sir, it was.

21 Q. And you were there?

22 A. I was.

23 MR. VAZQUEZ: Your Honor, at this time I
24 would like to publish the walk-and-turn portion of the
25 video.

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1 THE COURT: You may.

2 MR. VAZQUEZ: Thank you.

3 *(State's Exhibit 2 published to the jury.)*

4 Q. (BY MR. VAZQUEZ) Officer Gillham, why is the
5 defendant standing like that?

6 A. Why? Because that's NHTSA's -- they ask him to
7 get in that position and stay in that position, sir.

8 Q. And most people usually don't stand that way.
9 Why is this an important factor of the test?

10 A. Because, once again, it requires them to listen
11 and -- which is usually the mental side, and the
12 physical side is standing in one position.

13 Q. Okay. Now, on the video, you seem a little
14 relaxed in there.

15 A. Yes, sir.

16 Q. Why are you so relaxed?

17 A. I'm not very aggressive or --

18 MR. GUERRA: Object as to relevance, Your
19 Honor.

20 THE COURT: Overruled. Go ahead.

21 A. I'm not a very aggressive or Type A person. I
22 feel that once you are respectful to everyone that you
23 meet, you can still get your point out without getting
24 in everyone's face.

25 Q. (BY MR. VAZQUEZ) Thank you.

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Direct Examination by Mr. Vazquez

1 Officer Gillham, based on your training
2 and experience, if a person is intoxicated, can they
3 perform better on one test and poorly on another?

4 A. Oh, yes, sir.

5 Q. And did the defendant perform better on one
6 test and poorly on another in this case or did he
7 perform both --

8 A. I would say he probably performed poorly on
9 both because he had three out of four clues on the
10 one-leg stand and seven out of eight on the walk and
11 turn. So --

12 Q. And, officer, you are not saying that because
13 somebody has a strong odor of alcohol on his breath,
14 he's intoxicated, right?

15 A. Oh, no, absolutely not. You know, I talk to
16 numerous people that have had odor of alcohol on their
17 breath, but they weren't intoxicated by any stretch of
18 the imagination. That's why we look at everything and
19 we do the standardized field sobriety tests.

20 Q. And so having glassy, bloodshot eyes, also not
21 immediately intoxicated?

22 A. No, sir. I mean, that could be from numerous
23 things. You know, it could be from working late, you
24 know. I get bloodshot eyes when I work long hours. It
25 could be from smog. It could be from a lot of things.

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1 Q. Slurred speech means they are intoxicated?

2 A. No not necessarily.

3 Q. Poor balance means they are intoxicated?

4 A. No, sir.

5 Q. So, based on the totality of the circumstances,
6 it would take a lot of things to show intoxication?

7 A. Yes, sir. It's not -- it's never just one
8 thing that that's the reason why.

9 Q. And did the defendant show signs of
10 intoxication?

11 A. Yes, sir.

12 Q. And in your opinion, based on your training and
13 experience, was the defendant intoxicated?

14 A. Yes, sir.

15 Q. What do you base your opinion on?

16 A. Just like you just said, the totality of the
17 circumstances, how he performed poorly on the
18 standardized field sobriety tests. He had a strong odor
19 of alcoholic beverage emitting from his breath and
20 person. He had red, bloodshot eyes and he had trouble
21 maintaining balance and he staggered obviously when he
22 walked. And obviously, the urine, he had trouble
23 controlling his bladder.

24 Q. So, on your training and experience, had he
25 lost his physical faculties?

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Direct Examination by Mr. Vazquez

1 A. Yes, sir.

2 Q. Based on your training and experience, had he
3 lost his mental faculties?

4 A. Yes, sir.

5 Q. In your opinion, what was the source of the
6 defendant's impairment?

7 A. I believe it was alcohol.

8 Q. And why is that?

9 A. Once again, because of how he performed on the
10 field sobriety tests and everything that's mentioned.

11 Q. So, after you formed this opinion, what did you
12 do next?

13 A. We -- after we finished, then Officer Morales
14 conducted the -- well, we read him his DIC-24.

15 Q. You read him his DIC-24?

16 A. I did.

17 Q. And what is the DIC-24?

18 A. It's a standardized sheet that we read to
19 everyone placed under arrest for D.W.I., and that's when
20 they are formally under arrest at that point.

21 Q. And did you inform the defendant of the
22 consequences of refusing a breath or blood test?

23 A. I did.

24 Q. And what are those consequences?

25 A. A prolonged period of their license being

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1 suspended.

2 Q. Did the defendant tell you he refused to give
3 any evidence in this case?

4 A. No, sir.

5 MR. VAZQUEZ: May I approach, Your Honor?

6 THE COURT: Yes.

7 Q. (BY MR. VAZQUEZ) Officer Gillham, I am handing
8 you what's been previously marked as State's Exhibit No.
9 3. Do you recognize that?

10 A. Yes, sir.

11 Q. And what is that?

12 A. That's the DIC-24.

13 Q. And is that the same form that was done at the
14 night or at the date in question?

15 A. Yes, sir.

16 Q. Does it appear to be altered in any way?

17 A. No, sir.

18 Q. Is that your signature on the paper?

19 A. It is.

20 MR. VAZQUEZ: Your Honor, I am now showing
21 this to opposing counsel.

22 MR. GUERRA: One question, Your Honor. Is
23 this going to be on video?

24 THE WITNESS: I read it to him on video,
25 yes.

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1 MR. GUERRA: Okay. No objections.

2 THE COURT: State's Exhibit No. 3 is
3 admitted.

4 MR. VAZQUEZ: Thank you, Judge.
5 Permission to publish the portion of that, Your Honor?

6 THE COURT: Yes, you may.

7 MR. VAZQUEZ: Thank you.

8 *(State's Exhibit 3 published to the jury.)*

9 Q. (BY MR. VAZQUEZ) Did he consent to giving a
10 breath specimen?

11 A. Yes, sir.

12 MR. VAZQUEZ: Permission to publish
13 State's Exhibit 3, Your Honor?

14 THE COURT: Yes, you may.

15 *(State's Exhibit 3 published to the jury.)*

16 Q. (BY MR. VAZQUEZ) Mr. Gillham, is this the same
17 form you just read on video?

18 A. Yes, sir.

19 Q. And had the defendant refused to give a breath
20 specimen, what would have happened?

21 MR. GUERRA: Object to relevance, Your
22 Honor.

23 THE COURT: Overruled.

24 A. Well, in Harris County, if he refused to give a
25 breath test, then we would apply for a warrant through a

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1 judge, a search warrant; and then if the judge signs it,
2 then we have a search warrant to conduct a blood test at
3 that point.

4 Q. (BY MR. VAZQUEZ) I'm sorry, Mr. Gillham. I'm
5 referring to this form. What would you need on this
6 form if he refused?

7 A. Oh, I would have -- well, what box I would have
8 checked?

9 Q. Correct.

10 A. Oh, blood.

11 Q. And then --

12 A. Oh, yes, and --

13 Q. The defendant would have had to --

14 A. It would be the subject refused to the taking
15 of a specimen and further refused to sign to blow.

16 Q. Okay. Did the defendant refuse to sign or
17 refuse to give a specimen?

18 A. No.

19 MR. GUERRA: Objection asked and answered,
20 Your Honor.

21 THE COURT: Sustained.

22 MR. GUERRA: No further questions, Your
23 Honor.

24 THE COURT: All right. Mr. Guerra.

25 MR. GUERRA: Thank you, Your Honor.

CROSS-EXAMINATION

1
2 **BY MR. GUERRA:**

3 Q. Good morning, Officer Gillham. How are you?

4 A. I'm good.

5 Q. Good. I represent Mr. Garcia. I would like to
6 ask you a few questions, if that's okay?

7 A. Yes, sir.

8 Q. Let's talk about you testified that you have
9 been on the force two years; is that correct?

10 A. Approximately, yes, sir.

11 Q. As of today?

12 A. Yes, sir.

13 Q. So, back on January 18th of this year, you
14 would have been on the force for approximately a year
15 and a half?

16 A. Approximately, yes, sir.

17 Q. Now at that point, back in January of this
18 year, how many D.W.I. investigations have you conducted?

19 A. In January, I would say conservatively anywhere
20 from 10 to 15 in January, conservatively.

21 Q. So, 10 to 15 back in January?

22 A. Yes, sir.

23 Q. And back in January, you didn't have this
24 30-day course that you have now as you are going through
25 the Task Force, correct?

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Cross-Examination by Mr. Guerra

1 A. No, sir, at that point, I did not.

2 Q. And to be clear, back in January -- you were
3 obviously not in the D.W.I. Task Force?

4 A. No, sir.

5 Q. D.W.I. Task Force officers are obviously more
6 experienced and more trained than you were back in
7 January?

8 A. Yes, sir, they are definitely more specialized.

9 Q. Okay. Now, Officer Gillham, you wrote a police
10 report in this case, correct?

11 A. I did, yes, sir.

12 Q. Now, in your training in the academy, they
13 teach you how to write these reports?

14 A. Yes, sir.

15 Q. And it's important to be detailed?

16 A. Yes, sir.

17 Q. It's important to be thorough?

18 A. Yes, sir.

19 Q. And it's important to be complete?

20 A. Yes, sir.

21 Q. So -- and you want all of those things in your
22 report, correct?

23 A. Of course.

24 Q. Now, these reports -- this report that you
25 wrote was written back in January, correct?

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Cross-Examination by Mr. Guerra

1 A. Yes, sir.

2 Q. Where the facts of this case were fresher on
3 your mind?

4 A. Yes, sir.

5 Q. Now, that report that you wrote, you also
6 talked to other officers when you wrote that report?

7 A. What do you mean by that? What are you
8 referring --

9 Q. In other words, you included information that
10 Officer Carroll provided to you?

11 A. In the interest of being thorough and complete,
12 yes, sir.

13 Q. Right. And that's documented in your report?

14 A. Yes, sir.

15 Q. Now, when you made the scene, this was about
16 2:30-ish in the morning?

17 A. Approximately 2:30 Sunday morning.

18 Q. And your shift is from 7:00 to 11:00?

19 A. No, sir.

20 Q. 7:00 p.m. to 11:00 a.m.?

21 A. No, sir.

22 Q. Tell me your shift.

23 A. I'm sorry. It's from 11:00 p.m. to 7:00 a.m.

24 Q. I'm sorry. I got that wrong.

25 A. Yes, sir.

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1 Q. 7:00 p.m. --

2 A. That's my permanent assigned shift, yes, sir.

3 Q. Okay. To 11:00 a.m.?

4 A. No. I think you've still -- it's from 11:00
5 o'clock at night to 7:00 in the morning.

6 Q. So you were about in the middle of your shift,
7 correct?

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

9 Q. Now, you were called out to the scene of a
10 major accident, correct?

11 A. Yes, sir.

12 Q. It was nonfatal, correct?

13 A. That's how it was reported, yes, sir.

14 Q. But indeed a major accident?

15 A. Yes, sir.

16 Q. Do you recall if the airbags were deployed in
17 that vehicle?

18 A. I do. They were.

19 Q. Do you recall whether or not the vehicle --
20 that vehicle was not drivable after the accident,
21 correct?

22 A. No, sir, I don't believe so. I'm not a
23 mechanic, but I wouldn't believe so.

24 Q. Well, was it -- did a tow truck -- a tow truck
25 came and took the car away, correct?

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1 A. Yes, sir, that's correct.

2 Q. Now, in your report, you indicate what the
3 license plate is, correct?

4 A. Yes, sir.

5 Q. Of the vehicle that was in an accident?

6 A. The Jetta?

7 Q. Yes.

8 A. Yes, sir.

9 Q. And you also indicate the VIN number, correct?

10 A. That VIN number, yes, sir.

11 Q. That's documented in your report?

12 A. Yes, sir.

13 Q. Okay. Now, were you the first -- you weren't
14 the first officer to get there on the scene?

15 A. No, sir.

16 Q. You were the second officer?

17 A. I can't remember if we were -- we had multiple
18 officers that came by that scene. We were not first,
19 but we were there shortly thereafter.

20 Q. And you were not the first one -- you didn't
21 make contact with Mr. Garcia initially, correct?

22 A. No, sir. Officer Carroll did.

23 Q. Right. You transported Mr. Garcia from Officer
24 Carroll's car to your car?

25 A. That's correct.

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Cross-Examination by Mr. Guerra

1 Q. And at this time, that's when you observed the
2 odor of urine?

3 A. Yes, sir.

4 Q. His eyes?

5 A. Yes, sir.

6 Q. His unbalance?

7 A. Well, the unbalance we wait till -- I would say
8 I waited until obviously he was unhandcuffed.

9 Q. Okay. So at the police department?

10 A. At Central Intox, yes, sir.

11 Q. So the observations that you made transporting
12 Mr. Garcia were his eyes?

13 A. Yes, sir.

14 Q. -- the odor of urine?

15 A. Yes, sir.

16 Q. -- and the odor of alcohol?

17 A. And alcoholic beverage and his slurred speech
18 as well.

19 Q. Okay. Now, before this night, you never met
20 Mr. Garcia?

21 A. No, sir.

22 Q. You never talked to Mr. Garcia?

23 A. No, sir.

24 Q. You don't know his speech is slurred naturally
25 like -- you never -- you don't know whether or not his

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Cross-Examination by Mr. Guerra

1 speech is slurred naturally?

2 A. Well, like I said earlier, yeah, obviously that
3 he could have a speech impediment which is something I
4 consider, like I said earlier, yes, sir.

5 Q. Now, as far as his eyes, we saw a picture of
6 them up on the screen. Do you remember that?

7 A. Yes, sir.

8 Q. Was he wearing glasses there?

9 A. At that time, no, sir.

10 Q. Is he wearing glasses here today?

11 A. Yes, sir.

12 Q. Did you ask him where his glasses were on the
13 scene?

14 A. On scene, once we -- well, on the freeway, we
15 just wanted to get it off the freeway.

16 Q. I understand that.

17 A. Uh-huh.

18 Q. Did you ask him about his glasses?

19 A. We asked him if he wore glasses or contacts,
20 yes, sir.

21 Q. When did you ask him that?

22 A. When we were off the freeway in the Greenspoint
23 Mall parking lot, sir.

24 Q. Okay. But you didn't give him his glasses,
25 correct?

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1 A. We couldn't find them.

2 Q. Okay.

3 A. I mean, I don't know if he had the glasses with
4 him or not is what I'm saying.

5 Q. You couldn't find them because of the airbags
6 that were deployed, correct?

7 A. No, not necessarily.

8 MR. GUERRA: May I approach the witness,
9 Your Honor?

10 THE COURT: Yes, you may.

11 Q. (BY MR. GUERRA) I'm showing you what's marked
12 Defendant's Exhibits 18 through 22.

13 A. Uh-huh.

14 Q. I'm going to draw your attention to obviously
15 the pictures. There is a VIN number there. There is a
16 year, and there is a model there. If you can check that
17 with your offense report and make sure we are talking
18 about the same vehicle.

19 A. Well, the -- we don't actually get the VIN from
20 the car. Usually -- especially when it's damaged like
21 that, usually we will run the license plate; and there
22 is a VIN registered within our computer system and we
23 will use that VIN.

24 Q. Is it in your report?

25 A. There is a VIN in my report, yes, sir.

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1 Q. Do you want to check it?

2 A. Yes, sir. Just give me one second to find it.
3 Here it is, yes, sir.

4 Q. Do you want to check all five of the pictures
5 and make sure it's the same Jetta?

6 A. Okay. Yes, sir. Yes, sir.

7 Q. Okay. Now, officer, do these pictures truly
8 and accurately depict this vehicle after the accident?

9 A. It exhibits the damage that occurred from the
10 accident.

11 Q. So, they truly, accurately depict the vehicle
12 after the accident?

13 A. Yes, sir.

14 Q. Okay.

15 MR. GUERRA: Your Honor, I'm going to show
16 these to the State and ask for them to be published to
17 the jury.

18 THE COURT: You are offering
19 Defendant's --

20 MR. GUERRA: 18 through 22, Your Honor.
21 Sorry.

22 MR. VAZQUEZ: Your Honor, the only thing
23 we would object to is the part of the beginning, at the
24 very top of the pictures. Hearsay, not relevant to
25 the --

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1 THE COURT: All right. May I see them,
2 please.

3 (At the Bench)

4 MR. GUERRA: Your Honor, they are not
5 important to me. If you want me to black them out, I
6 don't have any issues.

7 MR. VAZQUEZ: It really didn't -- I guess
8 just making an objection for the record, Your Honor.

9 THE COURT: Your objection is overruled.
10 They are really of no consequence, the information on
11 there.

12 MR. VAZQUEZ: Yes, Your Honor.

13 (Jury present)

14 THE COURT: All right. Defendant's
15 Exhibits 18 through 22 are admitted.

16 MR. GUERRA: May I publish, Your Honor?
17 Do you want me to give it to the bailiff?

18 THE COURT: You do it on the overhead.

19 MR. GUERRA: Can I just hand it to them,
20 so they can look at it?

21 THE COURT: Sure, just hand it to them.

22 Q. (BY MR. GUERRA) Okay. Officer Gillham, let me
23 turn your attention to the accident with Mr. Garcia.
24 Now you testified that he was in handcuffs, correct?

25 A. Yes, sir.

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1 Q. He was detained, correct?

2 A. He was temporarily detained after the accident,
3 yes, sir.

4 Q. He was not free to leave?

5 A. No, sir.

6 Q. All right. Officer Gillham, let me talk to you
7 about these standardized field sobriety tests.

8 A. Yes, sir.

9 Q. You testified that you had taken some courses
10 and are trained to administer those tests, correct?

11 A. I am.

12 Q. Now, in your training, you learned that those
13 tests can be compromised by not giving the exact
14 instructions, correct?

15 A. No, sir. Certain -- would you want me to
16 clarify or --

17 THE COURT: I think you answered his
18 question.

19 THE WITNESS: Okay.

20 Q. (BY MR. GUERRA) Are the tests compromised if
21 you don't -- well, these are standardized field sobriety
22 tests?

23 A. The ones I administered?

24 Q. Yes.

25 A. Yes, sir.

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1 Q. Which means the directions have to be given the
2 same way, correct?

3 A. They have to be given in a certain order, yes,
4 sir.

5 Q. The demonstration aspect of it has to be given
6 the same way, correct?

7 A. I believe the NHTSA manual says you have to
8 demonstrate it and then you ask if the subject
9 understands.

10 Q. Okay. So that's part of giving the
11 instructions the same way; the demonstration has to be
12 given the same way, correct?

13 A. Well, there's the instruction phase and the
14 demonstration phase, yes, sir.

15 Q. And they have to be given in the same manner as
16 NHTSA provides, correct?

17 MR. VAZQUEZ: Object, asked and answered,
18 Your Honor.

19 THE COURT: Overruled. You may answer.

20 A. I'm sorry. Will you repeat the question?

21 Q. (BY MR. GUERRA) The instruction and the
22 demonstration phase has to be done the same way as NHTSA
23 asks you to do it, correct?

24 A. Yes, sir. It has to be done in a certain
25 order, yes, sir.

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Cross-Examination by Mr. Guerra

1 Q. All right. Now, you've also learned that these
2 tests can be compromised if there is a recent head
3 injury, correct?

4 A. Certain tests, yes, sir.

5 Q. Okay. If there's certain medications, they can
6 be compromised?

7 A. That's why we asked him if he was taking any
8 medication or not.

9 Q. Right. And you testified that you asked him;
10 is that correct?

11 A. Yes, sir.

12 Q. So, that's on the video, correct?

13 A. Not everything -- not all interaction is on the
14 video, no, sir.

15 Q. Okay. So where did you ask him -- you had --
16 the field sobriety tests are on this video, right?

17 A. The field sobriety tests, yes, sir.

18 Q. NHTSA asks you to determine medical conditions
19 or medications before you administer these tests,
20 correct?

21 A. Yes, sir. It doesn't say you have to do it
22 directly before, though. It just says you have to ask
23 them.

24 Q. So, if so -- you asking Mr. Garcia about his
25 medical conditions is on this video?

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1 A. No, sir.

2 Q. Okay. It's not on the video?

3 A. No, not -- like I said, not -- our entire
4 interaction is not on the video. We are not issued
5 cameras.

6 Q. All right. Let me go back to recent head
7 injuries, okay?

8 A. Yes, sir.

9 Q. That includes concussions, correct?

10 A. Yes, sir, head injuries is a concussion or
11 would be classified --

12 THE COURT: Hold on. Hold on. What was
13 your answer?

14 A. I would say that a concussion is classified
15 under a head injury, yes, sir.

16 Q. (BY MR. GUERRA) And a concussion would
17 compromise these tests, right?

18 A. They could compromise some tests, I would
19 assume.

20 Q. Okay. All right. Are you aware that a symptom
21 of a concussion is someone not thinking clearly?

22 A. I am aware that there are numerous symptoms to
23 concussions. All of them I am not aware of.

24 Q. Okay. Well, let me ask you each one. Are you
25 aware that specifically someone that's suffered a

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1 concussion does not think clearly?

2 MR. VAZQUEZ: Objection, Your Honor. He
3 is not a medical expert, and he's not here to testify on
4 a medical capacity.

5 THE COURT: Sustained.

6 MR. GUERRA: May I approach, Your Honor?

7 THE COURT: Sure.

8 *(At the Bench)*

9 MR. GUERRA: This is the whole point. Our
10 defense is that -- my defense is that he suffered a
11 concussion.

12 MR. VAZQUEZ: He's not trained.

13 MR. GUERRA: Do you want me to lay a
14 better foundation?

15 THE COURT: Hold on. Then ask him that
16 question, okay? He's not a medical expert. He knows
17 there are numerous symptoms of concussion, of which he
18 doesn't know what they are. He's already told you that.
19 I don't think you should -- he's aware of them. He's
20 not qualified as an expert. So, don't ask scaled
21 questions that require that he be qualified as an
22 expert. You have already established that he doesn't
23 know or that's beyond --

24 MR. GUERRA: Okay. I will.

25 THE COURT: Just --

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1 MR. GUERRA: That makes sense, but I --
2 okay. I got it.

3 THE COURT: Okay.

4 (Jury present)

5 Q. (BY MR. GUERRA) All right. Officer Gillham,
6 you are not an E.M.S. expert, correct?

7 A. By no means, sir. Just a police officer.

8 Q. You are aware, however, that concussions could
9 affect or compromise standardized field sobriety tests,
10 correct?

11 A. Yes, sir. That has been established through
12 NHTSA.

13 Q. Okay. Now you were at a scene of a major
14 accident, correct?

15 A. Yes, sir.

16 Q. Okay. The vehicle is in very bad condition,
17 correct?

18 A. It's severely damaged, yes, sir.

19 Q. The airbags are deployed, correct?

20 A. That is correct.

21 Q. They are deployed specifically on the driver's
22 side, correct?

23 A. Yes, sir. I believe they are deployed all over
24 in the vehicle but, yes, sir.

25 Q. To the point where Mr. Garcia no longer has his

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Cross-Examination by Mr. Guerra

1 glasses, correct?

2 A. No, sir. There is no way I would know if he
3 would have had glasses in the first place.

4 Q. Did Mr. Garcia have glasses when you initially
5 made contact with him?

6 A. No, sir.

7 Q. Does he have glasses here today?

8 A. That doesn't mean that he had glasses.

9 MR. GUERRA: Objection, nonresponsive.

10 THE COURT: That is sustained. The
11 question was: Does he have glasses here today?

12 THE WITNESS: Yes, Your Honor.

13 A. Yes, yes, he does.

14 Q. (BY MR. GUERRA) I'm asking you what happened.
15 That's it. Okay?

16 A. Yes, sir.

17 Q. So, if you are aware that a concussion could
18 affect the outcome or compromise standardized field
19 sobriety tests, should you -- do you not know any of
20 those symptoms of a concussion?

21 A. No, sir. There's several steps that we take
22 when administering the field sobriety tests to ensure
23 that. Secondly, he stated he had no injuries; and he
24 told that to the H.F. -- excuse me -- Houston Fire
25 Department. They are medical professionals. So, we had

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Cross-Examination by Mr. Guerra

1 no reason to believe that he suffered from a concussion
2 at that time.

3 Q. Okay. That's it. Let me ask you: You
4 testified that there was E.M.S. there, correct?

5 A. That's the Houston Fire Department, yes, sir.

6 Q. That's an important detail to put in your
7 report, correct?

8 A. No, sir.

9 Q. It's not an important detail to document in
10 your report?

11 A. No, sir, because you could subpoena the call
12 slip and it would show that there is a fire slip drop.
13 So, there would be no confusion as to whether they were
14 there or not.

15 Q. Do you have those call slips with you?

16 A. I was not asked to bring them. No, sir.

17 Q. Okay. So, the other officers that were there
18 on the scene can testify that there was E.M.S. out
19 there, correct?

20 A. That there was H.F.D. -- Houston -- is it okay
21 that I refer to them as H.F.D.?

22 THE COURT: Yes. You've established that
23 it was Houston Fire Department.

24 THE WITNESS: Okay.

25 A. Yes, sir.

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Cross-Examination by Mr. Guerra

1 Q. (BY MR. GUERRA) So, when you get to the
2 accident, Mr. Garcia is in Officer Carroll's car,
3 correct?

4 A. The back seat, yes, sir.

5 Q. And he's transported to your car, correct?

6 A. We switched handcuffs, and he's placed in our
7 back seat.

8 Q. And he's taken off the freeway, correct?

9 A. Yes, sir.

10 Q. And then he's taken to Central Intox, correct?

11 A. Yes, sir.

12 Q. Okay. And just to be clear here, you have no
13 idea what the symptoms of a concussion are?

14 A. No, I never said that.

15 Q. Okay. Do you know that -- are you aware, sir,
16 that a symptom of a concussion could be poor balance?

17 A. I said that there's NHTSA standards that we go
18 through to establish that.

19 Q. My question is: Are you aware that a symptom
20 of a concussion could be poor balance?

21 A. I am aware there are numerous symptoms of a
22 concussion, yes, sir.

23 Q. My question is very specific: Are you aware
24 that a symptom of a concussion could be poor balance?

25 Yes or no?

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1 A. Yes, sir.

2 Q. Okay. Are you aware that a symptom of a
3 concussion could be dizziness? Yes or no?

4 A. No, sir. I'm not a trained medical
5 professional; and I cannot go through and list every
6 symptom of a concussion, if that's what you are asking
7 for me to do.

8 Q. Are you aware that a symptom of a concussion is
9 that somebody doesn't think clearly? Yes or no?

10 A. I have no formal training. I mean, I've heard
11 that, but I'm -- I've never had a trained medical
12 professional list to me the symptoms of a concussion, so
13 I wouldn't feel comfortable testifying to what they
14 might be.

15 Q. Officer Gillham, yes or no, are you aware that
16 a symptom of a concussion causes somebody not to think
17 clearly?

18 MR. VAZQUEZ: Asked and answered, Your
19 Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. GUERRA) Are you aware, sir, a symptom
22 of concussion is that someone can't remember
23 information?

24 MR. VAZQUEZ: May we approach, Your Honor?

25 THE COURT: Do you have an objection?

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1 MR. VAZQUEZ: I have an objection. Are we
2 to keep going down this line of questions?

3 THE COURT: What is your legal objection?

4 MR. VAZQUEZ: My legal objection is
5 Officer Gillham has already testified that he is not a
6 medical expert, and this is irrelevant to his testimony
7 today.

8 THE COURT: Sustained.

9 Q. (BY MR. GUERRA) So, in your observations of
10 Mr. Garcia, you were not looking for any symptoms of
11 concussions, correct?

12 A. No, sir, we did --

13 Q. Because you don't know what they are, correct?

14 A. No, sir. Like I said, there's NHTSA
15 standards --

16 MR. GUERRA: Objection, nonresponsive.

17 THE COURT: Overruled. Go ahead.

18 A. There are NHTSA standards that we look for to
19 establish whether they've had recent head injuries or
20 had head injuries in the past two years. Would you like
21 me to list those?

22 Q. (BY MR. GUERRA) No. Let me ask you: Was
23 E.M.S. called out to the scene?

24 A. H.F.D. was present on scene. They were called
25 out and they did arrive.

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1 Q. E.M.S., were they called?

2 A. Yes, they were E.M.S. Or, actually, I think
3 the correct term is E.M.T. They were E.M.T. trained,
4 yes, sir.

5 Q. So, your testimony is that there was an
6 ambulance out there?

7 A. There was a pumper truck. Whether they send an
8 ambulance or not -- usually from my experience -- and I
9 don't know their general protocols -- they will send a
10 fire --

11 MR. GUERRA: Objection, nonresponsive,
12 Your Honor.

13 THE COURT: Sustained.

14 Q. (BY MR. GUERRA) Okay. E.M.S., an ambulance,
15 were they out there?

16 A. No, sir.

17 Q. Okay.

18 A. I can respond --

19 MR. GUERRA: Objection, nonresponsive.

20 THE COURT: That's two questions. Was
21 E.M.S. out there?

22 A. There were trained E.M.S. professionals on
23 scene, yes, sir.

24 THE COURT: Was there an ambulance out
25 there?

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1 A. There was not an ambulance.

2 Q. (BY MR. GUERRA) Okay. All right. Let's move
3 to the police station.

4 A. Central Intox?

5 Q. Yes.

6 A. Yes, sir.

7 Q. Central Intox. And we saw that portion here on
8 the video, correct?

9 A. That is correct, yes, sir.

10 Q. All right. Can you -- how many people were in
11 that Central Intox, in this video?

12 A. That -- there was my permanent partner who I
13 believe testified earlier, Officer Parker; and there was
14 Officer Morales who was part of the D.W.I. Task Force at
15 that time.

16 Q. So, we had three officers?

17 A. Total, yes, sir.

18 Q. A room with four walls?

19 A. Yes, sir.

20 Q. One door in and out?

21 A. Yes, sir.

22 Q. We see on the video that yourself and Officer
23 Morales are talking to Mr. Garcia?

24 A. Uh-huh.

25 Q. Both are giving Mr. Garcia instructions?

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1 A. Yes, sir.

2 Q. Tell me how big that room is.

3 A. Like in feet or --

4 Q. Yeah, feet, inches, whatever you --

5 A. You know, I'm not too good at estimating in
6 measurements. I mean, it's enough to walk the nine
7 heel-to-toe steps back and forth, you know, so --

8 Q. 10 by 10?

9 A. Maybe 15 by 15, approximately.

10 Q. Okay.

11 A. Like I said, I have no clue exactly.

12 THE COURT: Let me pause you for just a
13 moment. Ladies and gentlemen, we need to take a break
14 so I can handle some court matters because I indicated
15 to the lawyers that I would take a break at 11:55. So I
16 do need to handle those matters. It will take about 15
17 minutes; and then when you come back in, we will work
18 until 12:45, 12:50, which is when your lunch will be
19 delivered. So if you will go with Deputy Kiminski right
20 now, please.

21 THE BAILIFF: All rise.

22 (Jury leaves courtroom)

23 THE COURT: All right, sir. You can step
24 down for 15 minutes. 15-minute trial break, and every
25 one can be seated.

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1 (Recess taken)

2 THE COURT: All right. Bernie, I think we
3 are ready.

4 THE BAILIFF: All rise.

5 (Jury enters courtroom)

6 THE COURT: All right. Be seated, please.
7 All right. Mr. Guerra, you may resume,
8 sir.

9 MR. GUERRA: Thank you, Your Honor.

10 Q. (BY MR. GUERRA) Officer, we were in the police
11 station, specifically the Intox room, correct?

12 A. Yes, sir.

13 Q. Okay. Three people, three officers including
14 yourself, in the room?

15 A. Yes, sir.

16 Q. Fairly small room?

17 A. Like I said, it's tough for me to --

18 Q. Very small room?

19 A. No, I wouldn't say it's really small. I mean,
20 it has plenty of space to do the field sobriety tests.
21 There were never any issues with that.

22 Q. 15 by 15?

23 A. Like I said, that's very approximate.

24 Q. And yourself and Officer Morales are giving
25 Mr. Garcia instructions, correct?

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1 A. Yes, sir.

2 Q. All right. Now, we've already -- you've
3 already testified about a recent head injury and a
4 concussion could affect the results, correct?

5 A. Yes, sir.

6 Q. Now, let's talk about other things that may
7 affect results, also.

8 A. Yes, sir.

9 Q. Someone's weight, correct?

10 A. I believe the NHTSA manual states that people
11 that are severely overweight, it could affect it, yes,
12 sir.

13 Q. In other words, weight would affect the
14 results?

15 A. If they are severely overweight, yes, sir.

16 Q. About 50 pounds?

17 A. Okay. Yes, sir.

18 Q. Is that correct?

19 A. I don't recall the exact pound or the exact
20 amount over. I know it is --

21 Q. 50 pounds sounds about right, correct?

22 A. If it -- well, you are saying that, yes, sir.

23 Q. Now, the shoes that somebody wears could affect
24 the results, right?

25 A. Yes, sir. The manual states that if they are

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1 wearing high heels, they should be given the opportunity
2 to take those off. But it never says that, you know, if
3 they are -- if they do perform the test in high heels,
4 it makes it invalid.

5 Q. So, my question is: Shoes may affect the
6 result? Yes or no?

7 A. It could, yes, sir.

8 Q. Now, we see Mr. Garcia in the video, correct?

9 A. Yes, sir.

10 Q. He's wearing some kind of boots with a heel,
11 correct? Yes or no, officer?

12 A. Whether -- I don't believe it was a severely
13 elevated heel like it says in the NHTSA manual, if
14 that's what you are trying to say.

15 Q. My question is: Was he wearing boots with a
16 heel? Yes or no?

17 A. There was a heel to the boots, yes, sir.

18 Q. All right. Now, in the video you don't ask
19 Mr. Garcia if he wants to do it without shoes or with
20 his shoes, correct?

21 A. Well, sir --

22 Q. That's a yes or no, officer.

23 THE WITNESS: I don't feel like I can
24 answer that question yes or no accurately, Judge.

25 THE COURT: Okay.

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1 Q. (BY MR. GUERRA) Yes or no, did you ask
2 Mr. Garcia if he wanted to take off his shoes?

3 A. Well, sir, like I said, the NHTSA --

4 MR. GUERRA: Objection, nonresponsive.

5 THE COURT: Bottom line, did you ask him
6 whether he wanted to take his shoes off?

7 A. No, sir. Actually, no, I did not.

8 Q. (BY MR. GUERRA) Bottom line, yes or no?

9 A. Yes.

10 Q. Now, you administered two tests, correct?

11 A. Two field sobriety tests, yes, sir.

12 Q. You administered the walk and turn?

13 A. Yes, sir.

14 Q. And the one-leg stand?

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

16 Q. Now, you testified that at that point you had
17 about a year and half experience, correct?

18 A. Approximately, yes, sir.

19 Q. 10 to 15 D.W.I. investigations?

20 A. Conservatively, yes, sir.

21 Q. Now, in the Intox room, we had Officer Morales,
22 correct?

23 A. Yes, sir, that is correct.

24 Q. He at that pint was with D.W.I. Task Force,
25 correct?

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1 A. Yes, sir.

2 Q. However, you are the one who administered these
3 two tests, right?

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

5 Q. All right. So, you testified about certain
6 clues that you saw on specifically the one-leg stand?

7 A. Yes, sir.

8 Q. You testified about three clues, correct?

9 A. There were three clues that I observed.

10 Q. First one, sways, right?

11 A. Yes, sir.

12 Q. All right. Tell me what the NHTSA manual says
13 about swaying as to the amount or the distance that
14 somebody must sway before you document that clue?

15 A. Sir, I notice you -- I just have a question. I
16 notice you are referencing the manual. Are you using --

17 MR. GUERRA: Objection, nonresponsive.

18 THE COURT: Well, do you have a question?

19 THE WITNESS: Yes.

20 THE COURT: What is your question?

21 THE WITNESS: Are you using the 2012 or
22 2006 manual?

23 Q. (BY MR. GUERRA) I'm using anything.

24 A. Oh, you are referencing --

25 Q. No. I'm looking at your report.

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1 THE COURT: When you reference its manual,
2 if you could reference which one you are referencing.

3 Q. (BY MR. GUERRA) The newest and greatest manual,
4 2012.

5 A. Thank you, sir.

6 Q. Yeah. No problem.

7 A. Yes, sir. Well, the 2012 one states that the
8 separation -- you observe swaying if they use their arms
9 more than 6 inches separate from their body.

10 Q. Okay. Now, uses arms for balance. What does
11 the 2012 NHTSA manual say about when to document that
12 clue?

13 A. That again also is used separating their
14 body -- separating their arm more than 6 inches.

15 Q. Both of them are 6 to 8 inches, correct?

16 A. No, sir.

17 Q. I'm sorry, you said 6 to 8 inches?

18 A. No, I did not.

19 Q. I'm sorry. What did you say?

20 A. I said more than 6 inches.

21 Q. Oh, okay. So, more than 6 inches. And that's
22 for both sways and uses arms for balance?

23 A. Yes, sir. But there's also more to the
24 swaying. I don't know if you would like me to add to it
25 or not.

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1 THE COURT: Just answer his questions.

2 THE WITNESS: Okay. Yes, sir. Yes,
3 Judge.

4 Q. (BY MR. GUERRA) Are you a little nervous?

5 A. Not at all.

6 Q. Now, hops, you observed that clue. That's
7 pretty obvious what that means, correct?

8 A. Yes. Yes, sir.

9 Q. Now, on the video that we see of Mr. Garcia,
10 the hopping that you documented, that was at about --
11 when he reaches about 23 to 25 seconds or so; is that
12 accurate?

13 A. Yes, sir. It was at the end.

14 Q. So it's towards the end, correct?

15 A. Yes, sir.

16 Q. So, he performs well up to about 23, 25
17 seconds, correct?

18 A. No, sir.

19 Q. Okay. Let me rephrase the question. So, the
20 clue of hopping that you observed is at the 23, 25
21 seconds?

22 A. That particular clue, yes, sir.

23 Q. That's exactly what I'm asking.

24 A. Yes, sir.

25 Q. 25 to 23 seconds?

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1 A. 23 to 25, yes, sir.

2 Q. That's accurate, right?

3 A. Approximately, yes, sir. Approximately.

4 Q. And you testified that you wanted him to count
5 to 30 seconds, correct?

6 A. Yes, sir.

7 Q. All right. Okay. Let's move on to the --

8 A. Oh, wait. I did not. That's incorrect.

9 MR. GUERRA: Objection, nonresponsive.

10 THE COURT: Overruled. Did you want to
11 change your answer?

12 THE WITNESS: Yes. I just realized I told
13 him -- I just told him when to count. I didn't tell him
14 when he would stop counting. I just told him to count.
15 I didn't count to 30.

16 Q. (BY MR. GUERRA) But here, before this jury, you
17 wanted him to count to 30 seconds. That's what you
18 testified; is that not accurate?

19 A. That's what time we go to. I did not actually
20 tell him -- they are not actually to count to 30
21 seconds. They are told, as you can see in the video,
22 that count until I tell you to stop.

23 Q. Okay. I am aware of that. But your testimony
24 was you wanted him to go to 30 seconds?

25 MR. VAZQUEZ: I believe the officer has

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1 already cleared -- objection, Your Honor. I believe the
2 officer has already clarified that, so that's asked and
3 answered.

4 THE COURT: Sustained.

5 Q. (BY MR. GUERRA) The testimony will speak for
6 itself; is that right?

7 A. Yes, sir.

8 Q. Okay. Let's move on to the walk and turn. All
9 right. Now you testified about seven clues that you
10 observed, correct?

11 A. Yes, sir.

12 Q. Can't keep balance, correct?

13 A. Yes, sir.

14 Q. Steps off line?

15 A. Yes, sir.

16 Q. Now let's talk about stepping off line.

17 A. Uh-huh.

18 Q. What does the 2012 NHTSA manual require for you
19 to mark that clue? How many inches or how far up the
20 line does he need to step?

21 A. There is no actual -- to my knowledge, there is
22 no actual exact measurement if his foot steps off the
23 line.

24 Q. Okay. Is there a requirement by NHTSA as to
25 the line that Mr. Garcia walks, how wide that line has

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1 to be?

2 A. The only requirement that I am aware of for
3 that line is that it must be generally flat, dry, and
4 preferably -- I think it states that it needs to be well
5 visible, very visible.

6 Q. But no 4-inch requirement, 2-inch requirement,
7 no requirement as to the width of the line?

8 A. I'm not aware of one.

9 Q. Okay. The third clue is uses arm for balance,
10 correct?

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

12 Q. And what does the 2012 NHTSA manual say as to
13 when to mark that clue, distance away from the body?

14 A. Again, 6 inches away from the body.

15 Q. 6 inches. Stop walking, that's pretty
16 apparent, correct?

17 A. I believe so, yes, sir.

18 Q. Misses heel to toe?

19 A. Yes, sir.

20 Q. What does the 2012 NHTSA manual say about that?

21 A. If they miss more than half an inch apart,
22 meaning if they are walking along the line and their
23 feet separate more than half an inch.

24 Q. Okay. Now, you've testified that these tests,
25 both of these tests are divided-attention tests,

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1 correct?

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

3 Q. They talk about mental faculties, following
4 directions?

5 A. That's correct.

6 Q. And the physical faculties which is performance
7 on the test, correct?

8 A. Yes, sir, doing the calisthenics, so to speak.

9 Q. Now, we know that certain things affect, could
10 affect, the results of these tests, correct, like
11 concussions, weight and shoes, correct?

12 A. Yes, sir.

13 Q. Okay. Now, what those things could affect is
14 the physical aspect of it, correct?

15 A. I don't believe the manual says exactly what --
16 what specifically it affects. It just states that it
17 could be affected, so I can't testify as to what would
18 be affected by that.

19 Q. Okay. Well, if somebody is having problems
20 keeping their balance, aside from the introduction of
21 alcohol in their body, that could affect the physical
22 part of these tests, correct?

23 A. Can you rephrase that? I'm sorry.

24 Q. Sure. If there is a condition which affects a
25 person from being able to keep their balance, that would

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1 affect the physical nature of these tests, correct?

2 A. I guess it would depend on the condition, yes,
3 sir.

4 Q. Sure. And the condition is unable to keep
5 balance, unsteady balance, and that obviously would
6 affect the physical aspect of these tests?

7 A. Yes, sir.

8 Q. Okay. Now, like you testified before, you gave
9 Mr. Garcia some instructions?

10 A. I gave him the NHTSA instructions, yes, sir.

11 Q. And you read them from the notes that are there
12 in the room, correct?

13 A. I didn't have to read them, no, sir.

14 Q. But you did?

15 A. Yes, sir, just to be as standard as possible
16 and follow everything as closely as possible.

17 Q. Sure, sure. And Mr. Garcia listened to your
18 instructions?

19 A. Yes, sir. For the most part, yes, sir.

20 Q. And for the most part, he followed your
21 instructions?

22 A. For the most part, yes, sir.

23 Q. The same as you observed when Mr. Morales asked
24 him some questions, asked him -- gave him some
25 instructions. Mr. Garcia followed those instructions?

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1 A. Yes, sir, I think he stated he had nothing to
2 hide.

3 Q. Right. And you were there. You observed that
4 and saw that take place, correct?

5 A. Along with other comments, yes, sir.

6 Q. Sure, sure. Okay. Now, the latter part of
7 that test or that video, you read these rights, correct,
8 the DIC-24?

9 A. Those aren't rights, sir.

10 Q. I'm sorry. You read that form?

11 A. I read the DIC-24, yes, sir.

12 Q. Okay. And in that form, you read it verbatim?

13 A. Yes, sir.

14 Q. You didn't deviate from that form?

15 A. No, sir, not to my knowledge.

16 Q. Okay. So, you at no point told Mr. Garcia that
17 he had a right to refuse that breath test, correct?

18 A. My exact verbiage was, I am now requesting a
19 specimen of your breath and/or blood.

20 Q. Okay. Now, once you asked that of
21 Mr. Garcia --

22 A. Yes, sir.

23 Q. -- without hesitation --

24 A. Uh-huh.

25 Q. -- he says, "Yes"?

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Redirect Examination by Mr. Vazquez

1 A. Yes, sir.

2 Q. Okay. He says, I have nothing to hide?

3 A. Yes, sir.

4 MR. GUERRA: I will pass the witness, Your
5 Honor.

6 THE COURT: Mr. Vazquez.

7 THE WITNESS: Thank you, sir.

8 MR. VAZQUEZ: Thank you, Your Honor.

9 THE COURT: He has some more questions for
10 you.

11 THE WITNESS: Oh, yes, Judge.

12 **REDIRECT EXAMINATION**

13 **BY MR. VAZQUEZ:**

14 Q. Officer Gillham, why was the vehicle towed
15 aside from the damage on it?

16 A. It's the Houston Police Department policy, any
17 vehicle involved in a D.W.I. arrest, that we tow that
18 vehicle, is the reason why that I couldn't -- somebody
19 way higher up than me made that decision.

20 Q. Officer Gillham, did you go over your report in
21 preparation for your testimony today?

22 A. Yes, sir, I did.

23 Q. Is there a spot on the form on your offense
24 report that asks about the attitude of the defendant?

25 A. Yes, sir.

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1 Q. And in that report that you wrote, what does it
2 say that the defendant was?

3 A. It says talkative, sir.

4 Q. And in the video, indeed, we see him talking a
5 bit, correct?

6 A. That is correct, yes, sir.

7 Q. At any point did he ask you where his glasses
8 were?

9 A. None, not at all.

10 Q. At any point did he tell you he was on
11 medication?

12 A. No, sir. He stated he wasn't.

13 Q. At any point did he tell you he was injured?

14 A. No, sir. He stated he wasn't.

15 Q. At any point did he tell you he had a headache?

16 A. No, sir.

17 Q. At any point did he tell you he was dizzy?

18 A. No, sir.

19 Q. At any point did he tell you he couldn't
20 perform any tests because of his shoes?

21 A. No, sir.

22 Q. At any point did he tell you he couldn't
23 perform any tests because of a physical disability?

24 A. No, sir.

25 Q. If he had told you any of those things, would

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1 you have conducted the tests?

2 A. Well, it just depends on which one; but, yes,
3 sir. No matter what, it would have been noted in my
4 report multiple times, in multiple places.

5 Q. He did tell you that he had blood pressure,
6 high blood pressure, correct?

7 A. Yes, sir.

8 Q. And what -- in your experience, does high blood
9 pressure medication affect the ability to perform these
10 tests?

11 A. Well, he told me that he wasn't taking any
12 medication. He just suffered from hypertension. But in
13 experience, no, sir, it wouldn't.

14 Q. Officer Gillham, we heard a lot about the room
15 that this was done in. Have you ever -- prior to this
16 incident, have you ever done D.W.I. investigations in
17 the field?

18 A. Prior to that incident?

19 Q. Yes.

20 A. Well, we've done the preliminary tests; but we
21 don't have a dash camera. So anything that we do, we
22 like to have it first -- as far as the standardized
23 field sobriety tests, we like to do it in there. So I
24 have done them in the field, just not recorded on video.

25 Q. So, you have done them in the field?

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1 A. Yes, sir.

2 Q. And when you do a D.W.I. investigation in the
3 field, is that ideal conditions?

4 A. They can be. I mean, they may and they may
5 not. We try to make it as ideal as possible.

6 Q. Is a controlled environment when you are out in
7 the field?

8 A. No, sir.

9 Q. Do you have a nice, big, black line that the
10 defendant can walk across?

11 A. No, sir.

12 Q. Do you have a nice, little, yellow square where
13 the defendant can stand in?

14 A. No, sir.

15 Q. So, in your experience and training, what would
16 be more ideal? Out in the field or in the Intox room?

17 A. Definitely in the Intox room since everything
18 is well lit. Like I say, they have the clear, black
19 line that contrasts with the white floor; and they have
20 plenty of space to move around to perform the tests.

21 MR. VAZQUEZ: Nothing further, Your Honor.

22 THE COURT: All right. Mr. Guerra,
23 anything else?

24 MR. GUERRA: Yes, Your Honor.

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25**RECROSS-EXAMINATION****BY MR. GUERRA:**

Q. So, you just testified about what Mr. Garcia did not say to you.

Let me ask you: Did you ask Mr. Garcia if he was thinking clearly?

A. I asked him if he had any head injuries.

Q. Did you ask him if he was thinking clearly? Yes or no?

A. Specifically?

Q. Yes, sir, specifically.

A. No. No, sir, I did not.

Q. Did you ask him if he felt a little slow? Yes or no?

A. That's not standard questions to ask. So, no, I did not.

Q. Did you ask him? Yes or no?

A. No, sir.

Q. Did you ask him if he was able to remember new information? Yes or no?

A. We've never been trained to ask that question. No.

Q. Did you ask him if he was able to concentrate? Yes or no?

A. Once again, we had never been trained to ask

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1 that question. It's not in the NHTSA manual. So, no, I
2 did not.

3 Q. Did you ask him if he had a headache?

4 A. Once again, not in the NHTSA manual. So, no, I
5 did not ask him.

6 Q. Did you ask him whether he had fuzzy or blurry
7 vision? Yes or no?

8 A. Once again, sir, I've never been trained to do
9 that. It's not in the NHTSA manual. I would not
10 deviate from that manual. So, no, I did not.

11 Q. Did you ask him if he was dizzy? Yes or no?

12 A. Once --

13 THE COURT: Just answer.

14 THE WITNESS: Yes, Judge.

15 A. No, sir, I did not.

16 Q. (BY MR. GUERRA) Did you ask him if he was
17 having trouble keeping his balance? Yes or no?

18 A. Well, that would be evident -- no, no, I did
19 not.

20 Q. Did you ask him if he was feeling sensitive to
21 light or noise? Yes or no?

22 A. No, sir, I did not.

23 Q. Did you ask him if he was feeling tired or no
24 energy? Yes or no?

25 A. Well, that would be a symptom of intoxication.

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1 But, no, I did not.

2 Q. Did you ask him if he was nervous or anxious?
3 Yes or no?

4 A. I could tell by his demeanor he wasn't nervous
5 or anxious. But, no, sir.

6 Q. So, you didn't ask any of these things?

7 A. None of those are in the NHTSA manual. And,
8 no, sir, I did not.

9 Q. You weren't looking for any of these things,
10 correct?

11 A. We haven't been trained to do that so I
12 wouldn't deviate from my training.

13 Q. Yes. We know you are not a trained E.M.S.,
14 correct?

15 A. I am not.

16 Q. Neither is Officer Parker?

17 A. No, sir, he is not.

18 Q. Neither is Officer Carroll?

19 A. No, sir.

20 Q. Okay. Now, one final point here. You
21 testified on redirect that it is standard operating
22 procedure for a vehicle to be towed from a D.W.I.
23 arrest, correct?

24 A. Yes, sir.

25 Q. Yes or no?

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1 A. He was not under arrest. But, yes, it is.

2 Q. Well, then why was his car towed? You just
3 testified that that's standard procedure --

4 THE COURT: Okay. Just ask the question.
5 No arguments.

6 MR. GUERRA: I'm sorry, Your Honor.

7 Q. (BY MR. GUERRA) Okay. Your testimony was
8 D.W.I. arrest; the car is towed?

9 A. He was detained but, yes, sir.

10 Q. D.W.I. arrest; car is towed?

11 A. What's the question?

12 Q. Policy, D.W.I. arrest, tow the vehicle?

13 A. Even though they are detained on scene, yes,
14 sir. They are not arrested until the DIC-24 is read.
15 The reason it -- I can elaborate or no?

16 Q. That's okay.

17 A. Okay. Yes, sir.

18 Q. Your testimony, he wasn't under arrest,
19 correct?

20 A. He was temporarily detained until I read him
21 the DIC-24.

22 Q. He was in handcuffs?

23 A. Yes, sir. But he was in handcuffs.

24 Q. Back of the different patrol cars?

25 A. He was moved from Officer Carroll's to mine,

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1 yes, sir.

2 Q. Transported to Central Intox?

3 A. That's correct.

4 Q. What time did you get to Central Intox?

5 A. Once again, that would be on my call slip that
6 you could subpoena --

7 Q. Is it in your report?

8 A. In the call slip. That's different from my
9 report, sir.

10 Q. Do you have something different than your
11 report here?

12 A. No, sir.

13 Q. Can I see your report?

14 A. Are you going to give it back?

15 Q. Yes.

16 A. Okay.

17 MR. GUERRA: May I have a moment, Your
18 Honor?

19 THE COURT: You may.

20 A. Here you go. It's a little crumpled. I
21 apologize.

22 MR. GUERRA: May I have a moment, Your
23 Honor? I haven't seen these.

24 THE COURT: You haven't seen his, right?

25 MR. GUERRA: Correct.

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1 THE COURT: Yes, you may have a moment.

2 MR. GUERRA: May I have a seat while I do
3 this, Your Honor?

4 THE COURT: Yes.

5 MR. GUERRA: And I will give it back to
6 you.

7 THE WITNESS: I appreciate it, sir.

8 MR. GUERRA: Just one point. May I
9 approach, Your Honor?

10 THE COURT: Yes.

11 Q. (BY MR. GUERRA) You testified that Mr. Garcia
12 told you he was taking some medication for high blood
13 pressure?

14 A. No, I did not. I specifically said he stated
15 that he was not, multiple times, sir.

16 Q. Okay. So, your testimony is that he was not on
17 any medication?

18 A. That's not my testimony at all, sir. I'm just
19 relaying to you what was stated to me which is he told
20 me he suffered from hypertension but he was not taking
21 any medication at the time.

22 Q. Okay. Thank you.

23 A. Thank you, sir.

24 MR. GUERRA: Pass the witness.

25

1 **FURTHER REDIRECT EXAMINATION**

2 BY MR. VAZQUEZ:

3 Q. Officer Gillham, why would it be important not
4 to allow somebody that you suspect of D.W.I., driving
5 while intoxicated, to continue driving their vehicle?

6 A. Well, I mean, I -- you know, it seems like in
7 Houston we see it every week. Harris County leads the
8 nation in D.W.I. related fatalities.

9 MR. GUERRA: I will object to relevance,
10 Your Honor.

11 THE COURT: Overruled.

12 A. You know, we lead -- or this county leads the
13 nation in D.W.I. fatalities; and it's very important to
14 ensure that the person that is intoxicated or suspected
15 to be impaired, to not let them get behind the vehicle
16 until they can operate in a safe manner because --

17 THE COURT: All right. Next question,
18 please.

19 THE WITNESS: Sorry.

20 Q. (BY MR. VAZQUEZ) So, if you suspect somebody of
21 D.W.I. and you want to get them to Central Intox, are
22 you going to call them a cab?

23 A. No, sir.

24 Q. Are you going to allow them to drive their own
25 vehicle?

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1 A. No, sir, definitely not.

2 Q. Are you going to call Uber?

3 A. No, sir.

4 Q. How are you going to get them to Central Intox?

5 A. In the back seat of a marked patrol vehicle,
6 seat-belted in.

7 Q. And in order to get them in the back seat of a
8 marked patrol vehicle, what is your department's policy?

9 A. We put -- anyone that goes in the back seat of
10 our patrol car are handcuffed because they are behind us
11 and that's just an officer's safety issue. I mean, we
12 are operating the vehicle, so they need to be restrained
13 some way. We don't know, you know, who we are dealing
14 with.

15 Q. And are they under arrest at that point?

16 A. No, sir.

17 Q. When are they under arrest?

18 A. Once the DIC-24 is read.

19 MR. VAZQUEZ: Thank you. No further
20 questions, Your Honor.

21 THE COURT: Mr. Guerra.

22 MR. GUERRA: Just a few more questions,
23 Your Honor.

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25**FURTHER RECROSS-EXAMINATION****BY MR. GUERRA:**

Q. Was Mr. Garcia allowed to take any belongings from the scene to Central Intox?

A. I don't remember what property -- I mean, he didn't ask -- I can't remember if he asked. If he would have -- I'm saying if he would have asked, Can I grab my cell phone? Can I grab my glasses? Can I grab anything, of course, you are more than willing to.

Q. This brown bag, have you seen this before with Mr. Garcia?

A. I couldn't tell you. No, sir, I don't recall.

Q. Okay.

MR. GUERRA: No more questions.

THE COURT: Mr. Vazquez.

MR. VAZQUEZ: Nothing further, Your Honor.

THE COURT: May this witness be excused?

MR. VAZQUEZ: Yes, Your Honor.

MR. GUERRA: Yes, Your Honor.

THE COURT: Any objections?

MR. GUERRA: No objections.

THE COURT: All right, sir. You are excused.

THE WITNESS: Thank you.

THE COURT: Perfect timing because your

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1 lunch has just arrived. Ladies and gentlemen, we are
2 going to take a lunch break for 45 minutes today instead
3 of an hour. I think we can all accomplish lunch in 45
4 minutes. So, if you will go with the deputy. We will
5 start back in 45 minutes.

6 THE BAILIFF: All rise.

7 (Jury leaves courtroom)

8 THE COURT: Okay. Y'all may be seated.

9 (Luncheon recess)

10 MR. GUERRA: Your Honor, at this point
11 Mr. Jose Garcia and defense counsel would urge our
12 Motion to Suppress the breath test results.
13 Specifically for -- at this point, we've heard testimony
14 from three different officers -- four different
15 officers, three of them which were on the scene. They
16 all testified that they spent approximately two minutes
17 observing Mr. Garcia. They testified that they are
18 not -- E.M.S.s are not trained in E.M.S. issues, if you
19 will. They testified that they smelled an odor of
20 urine, odor of alcohol, bloodshot eyes and unsteady
21 balance. It is our position that the officers did not
22 inquire as to whether or not Mr. Garcia had sustained a
23 head injury in the vehicle that he was in. The accident
24 was a major accident.

25 There's pictures in the record which

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1 demonstrate that the airbags were deployed. Mr. Garcia
2 was, in fact, unsteady on his feet. However, it is our
3 position that it was due to the injury or concussion
4 that he had suffered. These officers cannot distinguish
5 between what they observed as to his balance being a
6 result of an injury or the accident that took place.

7 Furthermore, Your Honor, they -- two
8 minutes after observing him, they handcuffed him, put
9 him in a vehicle without any further observations until
10 some time later where two other officers, Gillham and
11 Parker arrived. Again, they observed him for a couple
12 of minutes, put him in a different patrol car and, yes,
13 took him off the freeway but ultimately took him to the
14 police station or Central Intox without any further
15 observations, without any further standardized field
16 sobriety tests.

17 When they get to the Intox station, they
18 do perform an H.G.N. test. However, Officer Morales
19 testified as to performing the H.G.N. test. However, he
20 has testified that that test can be compromised by a
21 recent head injury which it is our position. He didn't
22 inquire as to -- he may have inquired, but he wasn't
23 diligent in performing the test. If you look at the
24 video, the part where he's checking for a possible
25 injury or head injury, he passes through it fairly --

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1 very quickly, and it is our position that he didn't
2 administer that part of the test correctly and missed a
3 very obvious concussion or head injury based on the
4 accident.

5 Furthermore, he also testified that he was
6 not aware of the seriousness of that accident. He was
7 told there was an accident but wasn't told that the
8 vehicle was totaled or potentially totaled. Wasn't told
9 that the airbags were deployed. Airbags being deployed,
10 Your Honor, on the passenger -- or the driver's side,
11 obviously, those airbags hit Mr. Garcia. He is not
12 wearing glasses in the picture that the State has put
13 up. Clearly, he is wearing glasses here. And Officer
14 Gillham testified that he never asked for his glasses.
15 Well, in fact, if you look at the video, he does ask for
16 his glasses.

17 Aside from that, Your Honor, at the time
18 where the breath test is actually administered, it is
19 approximately two hours after the fact. For those
20 reasons, Your Honor, we respectfully ask as stated in
21 our motion that these blood or breath test results be
22 suppressed.

23 THE COURT: Response.

24 MR. VAZQUEZ: Your Honor, I hear no legal
25 grounds for his motion. All he has stated is that the

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1 officers didn't have reasonable suspicion and that is
2 not legal grounds. They had every reasonable suspicion
3 to detain him. They suspected him of driving while
4 intoxicated and they've all testified that they had
5 experience in detecting intoxicated drivers. It was at
6 the accident scene. It did take some time to clear it.
7 The officers did testify that they tried to clear the
8 accident scene as quickly as possible. As we know, Your
9 Honor, sometimes that takes a little bit longer.

10 Officer Morales did testify that one of
11 the parts of the H.G.N. is to check for equal size,
12 equal pupil size, and he checked for that and he said
13 that is a sign of a head injury and he noted that his
14 eyes were equal. He did notice smooth pursuit which is
15 also designed to test forehead injuries. Again, Your
16 Honor, the defendant at no point told any of the
17 officers in all of his rant in the video that he
18 needed medical attention, that he had a headache, that
19 he was dizzy. The only thing he told him was he hadn't
20 had anything to drink. He told them that he wanted
21 their names. He asked them for their names, their
22 badges. He told them he had nothing to hide. He was
23 very talkative the entire time, Your Honor. He never
24 once asked for medical attention. The officers had no
25 reason to suspect that he would be injured. Fire

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1 department was on the scene. There were no signs of
2 injuries. There were no signs of injuries on his face.
3 There were no signs of injury on his head. Officers
4 didn't know that he wore glasses because he didn't have
5 them on at the time. I don't see how they could have
6 any indication that he was injured, Your Honor.

7 THE COURT: All right. Your motion is
8 denied.

9 MR. GUERRA: Thank you.

10 THE COURT: All right. Let's bring in the
11 jury and your next witness, please.

12 MR. VAZQUEZ: Yes, Your Honor. Do you
13 want me to get him now?

14 THE COURT: Go ahead and bring them in.

15 (Jury enters courtroom)

16 THE COURT: Welcome back.

17 THE WITNESS: Thank you. I guess.

18 THE COURT: The jury is coming in so just
19 remain standing, please. We're ready.

20 THE BAILIFF: All rise.

21 (Jury enters courtroom)

22 THE COURT: All right. Call your next
23 witness.

24 MR. VAZQUEZ: Thank you, Your Honor. The
25 State recalls Officer Morales.

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1 THE COURT: All right. Officer Morales is
2 still under oath. You may proceed when you are ready.

3 MR. VAZQUEZ: Thank you, Your Honor.

4 **FURTHER REDIRECT EXAMINATION**

5 BY MR. VAZQUEZ:

6 Q. Officer Morales, we met you yesterday, correct?

7 A. Yes, sir.

8 Q. Probably don't need to go through and introduce
9 yourself, but just remind the jury who you work for.

10 A. I'm employed with the Houston Police Department
11 for 13 years.

12 Q. And how were you employed? What division were
13 you assigned to?

14 A. At the time of the incident, I was with the
15 D.W.I. Task Force.

16 Q. Okay. Are you certified to run the Intoxilyzer
17 machine?

18 A. Yes, sir, I am.

19 Q. And so what are your duties as an Intoxilyzer
20 operator?

21 A. As the operator, we have some requirements we
22 have. We are required to observe the subject for 15
23 minutes prior to administering the breath test. Once
24 that has expired, we get -- we prepare the instrument
25 by -- it runs a self-diagnostic test and verifies that

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1 everything is working well on the instrument itself, and
2 then we also verify that the temperature is at the right
3 setting with the instrument.

4 Q. Okay. So, I'm sorry, I need to do this. I
5 obviously misspoke. It is an instrument, correct?

6 A. Yes, sir.

7 Q. I believe I stated it was a machine, but that's
8 my fault. I'm sorry about that. Thank you for
9 clarifying that.

10 A. Yes, sir.

11 Q. Okay. So, did you have to take any kind of
12 specialization courses to run the instrument?

13 A. Yes, sir. The training was with the Texas
14 Department of Public Safety. They put it on. I believe
15 it was a two-day class, if I'm not mistaken.

16 Q. All right. Officer Morales, let me direct your
17 attention. Do you recall the incident that happened on
18 January 18, 2015, correct?

19 A. Yes, sir.

20 Q. And let me direct your attention to
21 approximately 4:30 in the morning of that day. You were
22 still on duty, correct?

23 A. That's correct.

24 Q. And did you perform -- did you administer an
25 Intoxilyzer test to the defendant?

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1 A. Yes, sir.

2 Q. Now, in the video that we saw yesterday, you
3 had mentioned the H.G.N., correct?

4 A. Yes, sir.

5 Q. And then after that, Officer Gillham
6 administered the walk and turn and one-leg stand?

7 A. Yes.

8 Q. And then after that, what did you do?

9 A. After that, we administered the breath test.

10 Q. Okay. Did you wait at least 15 minutes prior
11 to administering the test?

12 A. Yes, sir. I started my observations upon
13 contact with -- my 15-minute observation period upon
14 contact with the defendant at the time.

15 Q. And what's the purpose of observing the
16 defendant?

17 A. The observation first is to verify there is
18 nothing in the mouth, that the defendant doesn't throw
19 up or burp or have any residual -- anything residual in
20 his mouth. The 15 minutes allows it to dilute so that
21 it will be a good breath sample.

22 Q. And did any of that -- any of those things
23 happen?

24 A. None of those things happened, sir.

25 Q. And what Intoxilyzer model did you use to

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1 conduct this test?

2 A. The Intoxilyzer 5000.

3 Q. Do you remember the serial number for that
4 test?

5 A. I would have to look at the -- no, sir.

6 Q. Could you please walk us through how the
7 Intoxilyzer test is done.

8 A. Okay. Like I mentioned earlier, there is -- we
9 have -- there is a display on it. There is a green
10 button and red button. The red button is the power
11 button. The instrument stays on all the time. Once you
12 press the green button, it will do a self-diagnostic
13 test and run a system check and make sure it's working.
14 If it's not, it will give an error, just like any other
15 instrument you deal with. If it's working fine, then
16 you will input the defendant's information, my
17 information, and the arresting officer's information in
18 the instrument. Once that's completed, it will then
19 prompt you -- well, before it will prompt you for that,
20 it will ask you to review, review all of the information
21 you put in. You review that, verify that everything is
22 correct the first time; and then it will prompt you to
23 start the breath test.

24 Q. And did you do all of that in the morning in
25 question?

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1 A. Yes, sir.

2 Q. And was that recorded on video?

3 A. It was.

4 Q. Would that be the same video that we saw
5 yesterday?

6 A. Yes, sir.

7 MR. VAZQUEZ: Your Honor, at this time I
8 would ask to publish the Intoxilyzer instrument of the
9 video -- portion of the video.

10 THE COURT: You may.

11 MR. VAZQUEZ: Thank you, Your Honor.

12 There's some feedback in the image, Your
13 Honor. We are trying to clear that up.

14 (Sotto voce discussion off the record)

15 MR. VAZQUEZ: Your Honor, I think there is
16 something wrong with the system here.

17 THE COURT: All right. Well, work on it.
18 Get it fixed. If you could try removing it and starting
19 over. Do you want to try that?

20 MR. VAZQUEZ: It's showing fine on the
21 screen, Your Honor. I think it's from the feed here
22 and, I did try to restart this to see if that is what it
23 is.

24 THE COURT: Okay. Did y'all plug anything
25 new in over the break?

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1 MR. VAZQUEZ: No, Your Honor. While we
2 are waiting for IT folks, Judge, I will just continue
3 on.

4 THE COURT: Okay. Sounds like a good
5 plan.

6 MR. VAZQUEZ: Thank you, Judge.

7 Q. (BY MR. VAZQUEZ) So, you operated the
8 machine -- the instrument, correct?

9 A. Yes, sir.

10 Q. Okay. I'm now going to show you what's been
11 previously marked as State's Exhibit No. 4. Do you
12 recognize that?

13 A. Yes, sir. It's a printout of the results of
14 the Intoxilyzer.

15 Q. Okay. Is this a printout of the results made
16 at or around the time that you administered the test?

17 A. Yes, sir.

18 Q. Is that your signature there at the bottom?

19 A. It is my signature.

20 Q. Is this a true and accurate depiction of
21 everything that was done that night?

22 A. Yes, sir.

23 Q. Has it been altered in any way to your
24 knowledge?

25 A. No, sir.

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1 MR. VAZQUEZ: Your Honor, I would like to
2 admit what's been previously marked as State's Exhibit
3 No. 4.

4 MR. GUERRA: Your Honor, I would object at
5 this time, Your Honor. I think it's a little premature
6 to admit it at this time.

7 THE COURT: That's sustained.

8 MR. VAZQUEZ: It looks like we've gotten a
9 result, Your Honor. May we publish the video now?

10 THE COURT: Yes.

11 *(State's Exhibit No. 4 published.)*

12 Q. (BY MR. VAZQUEZ) Officer Morales, that's a
13 different view than what we saw yesterday. Why is that?

14 A. There are multiple cameras in the Intox room.
15 It is that way so that you can get -- if you need to see
16 different angles from the test, you can see it.

17 Q. Thank you.

18 MR. GUERRA: May I approach briefly, Your
19 Honor?

20 THE COURT: Yes.

21 *(At the Bench)*

22 MR. GUERRA: I want to make sure that they
23 are not going to play the part where Officer Morales
24 states what the results are on the video.

25 THE COURT: Is it on there?

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1 MR. GUERRA: It is, Your Honor. It is.

2 MR. VAZQUEZ: I think he tells him he has
3 to wait.

4 THE COURT: We need to verify, because it
5 is not in response to -- you need to get the technical
6 supervisor to testify.

7 MR. VAZQUEZ: Right.

8 MR. GUERRA: I just want to make you aware
9 of that. And he asks --

10 MR. VAZQUEZ: I will stop before he asks.

11 THE COURT: Make sure that doesn't get
12 out.

13 MR. VAZQUEZ: I will make sure. I'm
14 pretty confident, I think we can get to the second.

15 THE COURT: Get to the second?

16 MR. GUERRA: Right, and then stop it right
17 there.

18 MR. VAZQUEZ: That's fine.

19 (Jury present)

20 MR. VAZQUEZ: May I proceed, Your Honor?

21 THE COURT: Yes.

22 (*State's Exhibit 2 published.*)

23 Q. (BY MR. VAZQUEZ) Officer Morales, after you
24 conducted the -- after you administered the test, did
25 you get a test result?

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1 A. Yes, sir.

2 Q. And is that the same slip I showed you earlier?

3 A. Yes.

4 Q. And to your knowledge, was the instrument
5 functioning properly that night?

6 MR. GUERRA: Objection. That calls for
7 speculation on the part of this witness.

8 THE COURT: As long as it's in the context
9 of this witness' exposure to the instrument. Overruled.

10 Q. (BY MR. VAZQUEZ) Officer Morales, we heard the
11 defendant talking quite a bit to you during that whole
12 interaction, correct?

13 A. Yes, sir.

14 Q. At any point did he tell you that he had a
15 headache?

16 A. No, sir.

17 Q. At any point did he tell you he was feeling
18 dizzy?

19 A. No, sir.

20 Q. At any point did he tell you he felt he needed
21 medical attention?

22 A. No, sir.

23 Q. And just to clarify, as far as your knowledge
24 as to the operation of the instrument, it was working
25 properly, correct?

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1 A. Yes, that is correct.

2 MR. VAZQUEZ: Nothing further, Your Honor.

3 THE COURT: Mr. Guerra.

4 MR. GUERRA: A couple of questions.

5 **FURTHER RECROSS-EXAMINATION**

6 **BY MR. GUERRA:**

7 Q. Officer Morales, as far as the -- there is a
8 15-minute observation period, correct?

9 A. Yes, sir.

10 Q. And you testified that that 15 minutes began as
11 soon as you made contact with Mr. Garcia?

12 A. Yes, sir.

13 Q. And that's when he came into the Central Intox?

14 A. I made contact just outside the room.

15 Q. Okay. So, as he was coming in?

16 A. Yes, sir.

17 Q. So, the 15-minute observation period would be
18 on this video?

19 A. Yes, sir.

20 Q. Okay. And according to your training, it has
21 to be at least 15 minutes, a minimum requirement,
22 correct?

23 A. That's right.

24 Q. If it's not at least 15 minutes, this test
25 would be invalidated, correct?

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1 A. Yes, sir.

2 Q. So, if we take a look at this video and it
3 began at the time where Mr. Garcia walks in and this
4 test is administered one minute before the 15-minute
5 observation period, that's a disqualification of this
6 result, correct?

7 A. You are asking if?

8 Q. Yes, I'm asking if.

9 A. Oh, yes, sir. That is correct.

10 Q. Okay. All right. Now, let me talk to you a
11 little bit about Mr. Garcia and what we saw on video as
12 to the -- him taking the test. There were two tests
13 or -- two tests taken or two samples taken, correct?

14 A. Yes, sir.

15 Q. And we see Mr. Garcia having trouble taking a
16 deep breath and blowing into the machine, correct?

17 A. Yes, sir.

18 Q. You had to -- you asked him a couple times to
19 take a deep breath and blow into the machine, correct?

20 A. That's correct.

21 Q. And that's on the first test and on the second
22 test?

23 A. Yes, sir.

24 Q. Now -- and this may seem trivial to you; but
25 you hear Mr. Garcia asking for his glasses clearly on

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1 this video, correct?

2 A. Yes.

3 Q. Not once but twice, right?

4 A. Yes, sir.

5 Q. On the video we don't see any glasses on
6 Mr. Garcia, correct?

7 A. Correct.

8 Q. And he clearly is wearing glasses here today;
9 is that correct?

10 A. Yes, sir.

11 Q. All right. Now I want to talk to you a little
12 bit about what -- a question from the State. They asked
13 you if Mr. Garcia ever complained of headache, correct?

14 A. Yes, sir.

15 Q. Asked you if he ever complained of him being
16 dizzy?

17 A. Right.

18 Q. Correct?

19 A. Yes, sir.

20 Q. Also asked you whether he asked you for medical
21 attention. Do you recall that?

22 A. Yes, sir.

23 Q. Well, let me ask you a couple questions. Did
24 you at any time ask Mr. Garcia if he was thinking
25 clearly?

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1 A. I did not.

2 Q. Did you at any time ask Mr. Garcia if he was
3 feeling slowed down?

4 A. No, sir.

5 Q. Did you at any time ask Mr. Garcia if he was
6 not able to remember any information or knew
7 information?

8 A. No, sir.

9 Q. Did you at any time ask Mr. Garcia if he was
10 not able to concentrate?

11 A. No, sir.

12 Q. Did you at any time ever ask Mr. Garcia if he
13 had a headache?

14 A. No, sir.

15 Q. Did you at any time ever ask Mr. Garcia if he
16 was fuzzy or had blurred vision?

17 A. No, sir.

18 Q. Did you at any time ask Mr. Garcia if he felt
19 dizzy?

20 A. No, sir.

21 Q. Did you at any time ask Mr. Garcia if he had
22 trouble maintaining his balance?

23 A. No, sir.

24 Q. Did you at any time ask Mr. Garcia if he had
25 any sensitivity to light?

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1 A. No, sir.

2 Q. Did you at any time ask Mr. Garcia if he was
3 feeling tired or had no energy?

4 A. No, sir.

5 Q. Did you at any time ask Mr. Garcia if he was
6 nervous or anxious?

7 A. No, sir.

8 MR. GUERRA: I will pass the witness.

9 THE COURT: Mr. Vazquez.

10 MR. VAZQUEZ: Thank you, Your Honor.

11 **FURTHER REDIRECT EXAMINATION**

12 **BY MR. VAZQUEZ:**

13 Q. Officer Morales, defense counsel just asked you
14 a whole list of questions and I'm not going back through
15 them. I'm sure you probably remember most of them.
16 Would any of those affect the outcome of the results on
17 the Intoxilyzer instrument?

18 A. Not at all.

19 Q. Thank you. Nothing further, Your Honor.

20 THE COURT: Mr. Guerra.

21 MR. GUERRA: One more question.

22 THE COURT: All right. I'm sorry. I
23 thought you said no more.

24 MR. GUERRA: One more. I'm sorry.
25

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1 MR. VAZQUEZ: Your Honor, the State calls
2 Tasha Israel.

3 THE COURT: Tasha Israel.

4 THE BAILIFF: Your Honor, this witness has
5 not been sworn.

6 THE COURT: Come on up, Ms. Israel. Good
7 afternoon, ma'am. Will you please raise your right
8 hand.

9 (Oath administered)

10 THE COURT: Thank you, ma'am. Come on up.
11 Have a seat. Please keep your voice up so we can all
12 hear what you have to say here today.

13 You may proceed when you are ready.

14 MR. VAZQUEZ: Thank you, Your Honor.

15 **TASHA ISRAEL,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **BY MR. VAZQUEZ:**

19 Q. Good afternoon, Ms. Israel. Can you please
20 state your name for the jury, please?

21 A. My name is Tasha Israel.

22 Q. And could you please spell that for the record?

23 A. T-a-s-h-a I-s-r-a-e-l.

24 Q. Thank you, ma'am. How are you presently
25 employed?

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1 A. I work for the Texas Department of Public
2 Safety.

3 Q. And what do you do for the Texas Department of
4 Public Safety?

5 A. I'm a technical supervisor in the Breath
6 Alcohol Section.

7 Q. And how long have you been employed as a
8 technical supervisor?

9 A. I hired on with the department in April, 2014.

10 Q. And all of that time you've been a technical
11 supervisor for Harris County?

12 A. Yes.

13 Q. How did you become a technical supervisor?
14 What educational background do you have to have?

15 A. You have to have a Bachelor's in some sort of
16 related science. I have a Bachelor of Science in
17 biology with a minor in both chemistry and criminal
18 justice from Sam Houston State University.

19 Q. And do you hold any memberships in any
20 scientific or professional organizations?

21 A. Yes.

22 Q. And could you please tell the jury what those
23 are?

24 A. I am a member of both the Alcohol Testing
25 Alliance and the International Association for Chemical

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1 Testing.

2 Q. Have you written or contributed to any of
3 the -- any professional publications or articles to
4 those organizations?

5 A. No.

6 Q. Let's talk a little bit about your current
7 duties. What are your current duties and
8 responsibilities as a technical supervisor?

9 A. As a technical supervisor, we are in charge of
10 the monthly maintenance and monitoring of the
11 instruments in our area, which is area 003. We are also
12 in charge of storing our certified reference materials.
13 We ensure that our operators are current with their
14 certification and proficiency in using the instrument,
15 and we are also the custodian of records.

16 Q. What agency certifies the breath and alcohol
17 testing program?

18 A. The Texas Department of Public Safety.

19 Q. Are you presently certified by the Texas
20 Department of Public Safety?

21 A. Yes, sir.

22 Q. On January 18, 2015, were you certified --

23 A. Yes.

24 Q. -- as a technical supervisor?

25 A. Yes, sir.

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1 Q. Thank you. What training must you undergo
2 before receiving such certification?

3 A. When you are hired on with the department, you
4 attend the same 40-hour operator's course that the
5 breath test operators attend. You then help monitor and
6 teach one of those courses. You also attend the
7 Borkenstein School on alcohol and safety at the Indiana
8 University. You also have to receive training from
9 C.M.I., the manufacturer of the Intoxilyzer, on the
10 maintenance and upkeep of the instrument; and you then
11 have to take and pass a certification exam.

12 Q. And is this the same for all technical
13 supervisors?

14 A. Yes.

15 Q. And why is that?

16 A. It's what's set forth in our standard operating
17 guidelines.

18 Q. And do you recall where you went to school or
19 received the specialized training?

20 A. In Austin and in Houston.

21 Q. Have you ever done any experiments on your own
22 as to the reliability of the Intoxilyzer instrument
23 number 5000?

24 A. No.

25 Q. Now let's move on to the science behind it all.

1 Are you familiar with the underlying scientific theory
2 of the Intoxilyzer 5000 instrument?

3 A. Yes.

4 Q. And what is that? Will you explain it to the
5 jury?

6 A. The instrument uses infrared spectroscopy. So,
7 on one end of the instrument you have a light source.
8 You then have a sample chamber and a photo detector at
9 the other end. When that sample chamber is 100 percent
10 clear and there is nothing present, that photo detector
11 will see 100 percent of that light coming through.

12 Now, if there are substances present, that
13 photo detector can detect how much is there and turn
14 that into a concentration.

15 Q. And is that scientifically valid or is that a
16 valid theory in the scientific community?

17 A. Yes.

18 Q. And how does that apply to the Intoxilyzer 5000
19 instrument?

20 A. The instrument applies that by using the
21 Lambert Beer Law. The Lambert Beer Law states that
22 molecules will absorb infrared energy at a known amount.
23 So each molecule has like a fingerprint. It's very
24 specific. So the amount of infrared energy absorbed is
25 directly equivalent to the amount of molecules present.

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1 So when that light shines through the chamber and those
2 ethanol molecules absorb that infrared energy, that
3 photo detector can see how much of that energy is being
4 absorbed and calculate that out into a concentration.

5 Q. Based on your training and experience, was the
6 theory properly applied in this case?

7 A. Yes.

8 Q. All right. So, when somebody goes to give a
9 breath test sample, do they just walk right up to the
10 machine and give the sample?

11 A. No.

12 Q. What has to happen?

13 A. The first thing the officer must do is what we
14 call a 15-minute waiting period which is where the
15 officer has to be in the continuous presence of the
16 subject for the 15 minutes exactly prior to the test.
17 And that's to ensure that the subject doesn't place
18 anything in their mouth, belch, regurgitate, vomit,
19 anything that could bring stomach contents which might
20 have alcohol into the mouth. When that happens, you
21 have residual mouth alcohol which can cause falsely high
22 results. That dissipates in about 12 minutes, but we
23 ask our operators to do 15.

24 Q. Okay. And what -- once the 15-minute period
25 has passed, what has to happen?

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1 A. Once that 15-minute waiting period is over, the
2 operator will hit the green start test switch that is on
3 the front of the instrument.

4 Q. Okay. Does the instrument have an automatic
5 self check?

6 A. Yes. The instrument will first perform a
7 circuitry check which is where it goes through and
8 checks several of the internal workings. That must pass
9 for them to continue on with the test.

10 Q. What happens if it doesn't pass?

11 A. If it doesn't pass, what it will do is print
12 out what we call a System A Report which let's us know
13 where in the diagnostics it failed. So, for them to
14 call us, let us know this is where the instrument failed
15 and we go and check it out.

16 Q. What happens if it successfully passes?

17 A. If it successfully passes, then the operator
18 can continue on with the testing sequence.

19 Q. And do they have to look for any data?

20 A. Yes. They will enter pertinent information
21 such as subject name, date of birth, their information
22 and certificate number and any arresting officer
23 information.

24 Q. Okay. And then after that, what happens?

25 A. After that the instrument will start into its

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1 self modulated-testing sequence. So, the instrument
2 will run through several steps which are -- which is
3 what the breath test is composed of.

4 Q. Obviously, there have to be people who operate
5 these. Do you know an operator, Intoxilyzer operator,
6 by the name of Christopher Morales?

7 A. Yes.

8 Q. And was Officer Morales certified on
9 January 18, 2015 to operate by the Texas Department of
10 Public Safety as an Intoxilyzer operator?

11 A. Yes, he was.

12 Q. Are you familiar with the Intoxilyzer
13 instrument Model 5000, Serial Number 68-012803?

14 A. Yes.

15 Q. How are you familiar with that instrument?

16 A. It is one of the instruments in our area.

17 Q. And where is it located?

18 A. At this time it was located at the Central B
19 Intox, Downtown Houston.

20 Q. In what -- what's the corresponding area number
21 that that was in?

22 A. 003.

23 Q. And that falls within your area?

24 A. Yes, sir.

25 Q. Is the Intoxilyzer instrument number 5000

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1 certified, this particular one, certified by the
2 scientific director of the Texas Department of Public
3 Safety?

4 A. Yes, it is.

5 Q. And was it certified on the date of January 18,
6 2015?

7 A. Yes.

8 Q. And was that instrument operated as part of the
9 Breath Alcohol Testing Program on that date?

10 A. Yes, it was.

11 Q. In your capacity as technical supervisor, are
12 you responsible for the maintenance and monitoring of
13 this particular Intoxilyzer 5000 instrument, Serial No.
14 68-012803?

15 A. Yes, I am.

16 Q. Are there other technical supervisors
17 responsible for the same?

18 A. Yes. There are two other ladies that are in
19 the area, and their names are Carly Bishop and Nakethia
20 Rogers.

21 Q. And to your knowledge, were the other technical
22 supervisors certified by the Texas Department of Public
23 Safety on January 18, 2015?

24 A. Yes.

25 Q. To your knowledge, did they undergo the same

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1 training in maintaining the Intoxilyzer and preparing
2 the reference solution as you did?

3 A. Yes.

4 Q. How do you know that?

5 A. It is what's set forth in our standard
6 operating guidelines.

7 Q. And finally, to your knowledge, do all
8 technical supervisors in the State of Texas have to take
9 and pass a test to demonstrate that they are qualified?

10 A. Yes.

11 Q. All right. Can you walk us through a little
12 bit about maintaining and monitoring the Intoxilyzer
13 instruments?

14 A. Once a calendar month, we actually go out to
15 the testing site and do an inspection of the instrument.
16 That includes running an acetone vapor through the
17 instrument to ensure that it will detect substances
18 other than ethanol and flag them as an interferent. We
19 also do what we call an Inspect TS. Set off to the
20 right of the instrument is a jar with a solution. That
21 solution is a .08 ethanol solution. When stirred and
22 heated constantly, the vapor above that solution is
23 approximately the same as the concentration of the
24 liquid. So what we do is we run -- we switch out that
25 solution, and we run basically the same exact thing as a

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1 subject test, providing two breaths of our own. And,
2 again, that's just to ensure that the instrument is
3 calibrated and still working properly.

4 Q. Okay. In your capacity as a technical
5 supervisor for area 003, are you considered a custodian
6 of records for the Intoxilyzer 5000 instrument, Serial
7 No. 68-012803?

8 A. Yes.

9 Q. And did you bring any -- as custodian of
10 records, are you required to keep records of the
11 maintenance and monitoring of the Intoxilyzer?

12 A. Yes.

13 Q. And did you bring any of those with you today?

14 A. Yes, I did.

15 Q. Are those records kept in the ordinary course
16 of business of the Breath Alcohol Testing Program for
17 the Department of Public Safety?

18 A. Yes, sir.

19 Q. Did an employee or representative of the Breath
20 Alcohol Testing Program for the Texas Department of
21 Public Safety, Area 003, make it or transmit the
22 information?

23 A. Yes, they did.

24 Q. Were the records made at or near the time soon
25 after?

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1 A. Yes.

2 Q. Were the records made actually soon after the
3 knowledge of the event?

4 A. Yes.

5 Q. Are the records with you originals or
6 duplicates?

7 A. They are duplicates.

8 Q. According to your records, what is the closest
9 date before the date of January 18, 2015 that this
10 particular Intox instrument was checked?

11 A. This instrument was inspected on
12 January 16th of 2015.

13 Q. And what was the operational condition of the
14 instrument at the time?

15 A. The instrument was functioning properly.

16 Q. And you said that was checked on January 16?

17 A. Yes, sir.

18 Q. So, that would be the closest date to
19 January 18, correct?

20 A. Yes, sir, the closest date before.

21 Q. To your knowledge, did the instrument require
22 any repairs between the dates that it was checked and
23 the date it was used?

24 A. No, sir.

25 Q. Based on your training and experience as to the

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1 operational condition of the Intoxilyzer 5000
2 instrument, Serial No. 68-012803, on January 18, 2015,
3 what is your opinion of that instrument?

4 A. That the instrument was functioning properly.

5 Q. I'm now going to show you what's been
6 previously marked as State's Exhibit No. 4.

7 MR. VAZQUEZ: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. (BY MR. VAZQUEZ) Do you recognize that?

10 A. Yes, sir.

11 Q. And what is it?

12 A. This is this breath test slip in the case.

13 Q. And is this record kept in the ordinary course
14 of business of the Breath Alcohol Testing Program for
15 the Department of Public Safety --

16 A. Yes.

17 Q. -- and Houston Police Department?

18 A. Yes.

19 Q. Did an employee or representative of the Breath
20 Alcohol Testing Program for the Houston Police
21 Department, Area 003, make or transmit this information?

22 A. Yes.

23 Q. Is it a regular practice of the Houston Police
24 Department to make this record?

25 A. Yes.

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1 Q. Were the records made at or near the time of
2 the event or reasonably soon thereafter?

3 A. Yes.

4 Q. And did a representative who made the entries
5 have actual knowledge of the event?

6 A. Yes.

7 Q. Based upon your training, does the test record
8 indicate the proper operational methods and testing
9 techniques were followed during the administration of
10 the test?

11 A. Yes.

12 MR. VAZQUEZ: I will tender to opposing
13 counsel.

14 MR. GUERRA: Just all of our prior
15 objections, Your Honor.

16 THE COURT: Are you offering State's
17 Exhibit No. 4?

18 MR. VAZQUEZ: I would like to offer
19 State's Exhibit No. 4, Your Honor.

20 THE COURT: Your objections are overruled.
21 State's Exhibit No. 4 is admitted.

22 MR. VAZQUEZ: Permission to publish,
23 Judge.

24 THE COURT: You may.

25 MR. VAZQUEZ: Thank you.

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1 Q. (BY MR. VAZQUEZ) All right. Can you tell from
2 looking at this record if the circuitry test had been
3 conducted?

4 A. Yes, sir.

5 Q. And how can you tell that?

6 A. The bottom line, at the end of the top
7 paragraph, says, "Circuitry check okay."

8 Q. And what is the significance of the phrase
9 "Circuitry check okay"?

10 A. That means that the instrument performed its
11 circuitry check and everything passed.

12 Q. Okay. The test record says, "Alcohol
13 concentration" in the bottom, center column. What does
14 that mean?

15 A. In breath, we do alcohol concentration in grams
16 per 210 liters of breath.

17 Q. What is "Air blank"?

18 A. "Air blank" is something that the instrument
19 does and there's several reasons: A, it's to clear the
20 sample chamber of anything that can be inside. It
21 checks the ambient conditions to the room air to ensure
22 there's nothing in the room that can cause a weird
23 result. And it also allows that light and the photo
24 detector to set a zero reference point before we start
25 our measurement.

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1 Q. And after the air blank, what does the operator
2 do?

3 A. The operator will then instruct the subject to
4 provide their first breath sample.

5 Q. Is that what the first term "subject test"
6 means?

7 A. Yes, sir.

8 Q. What happens after the subject blows?

9 A. Once the subject has met the minimum sampling
10 requirements and the sample is accepted, the instrument
11 will yet again do another air blank.

12 Q. And after the first sample, what -- why does
13 the operator perform a second air blank?

14 A. Again, that is to clear that sample chamber of
15 any ethanol, to check those ambient conditions, and to
16 ensure that it has a zero setting.

17 Q. And what happens after the second air blank?

18 A. After the second air blank is when the
19 instrument tests the vapor and that solution that we
20 change. You don't want to measure two unknowns without
21 measuring a known. You want to make sure your results
22 are accurate, and so that is what your reference sample
23 is.

24 Q. So the reference sample is verified that it's
25 operating correctly?

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1 A. Yes.

2 Q. And who prepares the solution used for the
3 reference sample?

4 A. We do.

5 Q. Technical supervisors?

6 A. Yes, sir.

7 Q. Based on your training and experience, is the
8 preparation technique for the solution used in the
9 reference samples standardized for all of Texas?

10 A. Yes, sir. We all use the same formula to
11 prepare our solution.

12 Q. How is that prepared?

13 A. For us, since we make such a large volume, we
14 have a small bottling plant in Austin at headquarters.
15 So we make several liters of the solution at once. We
16 submerge a UV light in it for two or three hours to kill
17 any microbes that could be in; and then we bottle that
18 solution, label it, and bring it back to our lab and run
19 it against a NIST traceable solution on a certified
20 Intoxilyzer to ensure that the concentration is
21 accurate.

22 Q. And do you check that periodically?

23 A. Yes. We sample three bottles out of the batch
24 we make, and it is sampled every time a test is run.

25 Q. And how is the predicted value entered into the

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1 Intoxilyzer 5000?

2 A. That predicted value is entered in by the
3 technical supervisor via a hidden menu on the
4 instrument.

5 Q. And does the test record reflect that the
6 result of the reference analysis was within tolerance of
7 the predicted reference sample value?

8 A. Yes, sir.

9 Q. And what is within tolerance? What is the
10 range for in tolerance?

11 A. The tolerance on that reference value is 8.01.
12 So as long as we fall between 8.07 and 8.09, that
13 instrument is still reading accurately.

14 Q. And what happens if the reference sample is out
15 of tolerance?

16 A. If the reference sample is out of tolerance,
17 the instrument will give you an error that says, "Out of
18 tolerance;" and it will print what we call an invalid
19 test slip. So, below that first paragraph you would
20 have none of that analytical data and it will say,
21 "Reference, out of tolerance."

22 Q. And what happened -- why is there another air
23 blank after the reference sample?

24 A. Again, that is to clear that sample chamber and
25 make sure that instrument can set a zero reference

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1 before taking a measurement.

2 Q. And then what happens?

3 A. And then the subject will provide their second
4 breath test -- or their second breath sample.

5 Q. Okay. And why does the subject give a second
6 breath sample?

7 A. That is another way we help fight against
8 residual mouth alcohol. Those two breath samples have
9 to agree within a .02 of each other. When you have
10 mouth alcohol, you will see a sharp incline and then a
11 sharp decline. So, your two samples would be really far
12 apart. So, to ensure we don't take samples that have
13 mouth alcohol, we narrow the standards on that. So, if
14 they fall outside of that range, you will get an error
15 slip.

16 Q. Okay. There we see -- there's a final air
17 blank given. Why is that final air blank run?

18 A. Again, just one more time to clear that
19 chamber, to check those ambient conditions, and to
20 ensure the instrument can perform a zero set.

21 Q. And after all this is said and done, what
22 happens?

23 A. After this is all said and done, the instrument
24 will flash the test results three times and print out
25 two copies of the test slip.

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1 Q. And what were the results of the two breath
2 slips of the subject in this case reflected on State's
3 Exhibit Number --

4 THE COURT: Four.

5 Q. (BY MR. VAZQUEZ) -- 4?

6 A. The first test or the first sample was a .145.
7 The second was a .146.

8 Q. Are there subject results in the expression of
9 numbers of grams of alcohol per 210 liters of breath?

10 A. Yes, sir.

11 Q. Were those two breath results within the
12 allowed tolerance specified by the scientific director
13 of the Texas Department of Public Safety?

14 A. Yes, sir.

15 Q. Are the results of Jose Garcia -- Jose Garcia's
16 breath analysis equal to or greater than an alcohol
17 concentration of .08?

18 A. Greater than.

19 Q. During the course of your training, do you
20 learn about the effects of alcohol upon a person's
21 mental and physical faculties?

22 A. Yes, sir.

23 Q. And based on your training and experience, how
24 can alcohol affect a person's mental faculties?

25 A. With your mental faculties, it affects things

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1 such as judgment, your inhibitions, your ability to
2 coordinate multiple tasks at one time; these things
3 which are needed to safely operate a motor vehicle.

4 Q. And based on your training and experience, how
5 can alcohol affect a person's physical faculties?

6 A. It will affect things such as balance, your
7 reaction times, your visual acuity which is the ability
8 for the eye to communicate with the brain as to what
9 it's seen, your depth perception. Again, all of these
10 things are needed to safely operate a motor vehicle.

11 Q. That was going to be my next question. Thank
12 you.

13 Have you ever conducted any experiments on
14 a person's alcohol level and their mental and physical
15 faculties?

16 A. When we host our operator schools, we will
17 actually dose our operators. We have two drinking days,
18 and we will dose them to about a .08 and have them come
19 down and have their fellow classmates run them on the
20 Intoxilyzer so they know what it's like, a, to run
21 somebody who is impaired and, b, so those officers know
22 what a .08 feels like and just for, you know, purposes
23 out in the field.

24 Q. And based on your experience and studies, do
25 you have any opinion as to the alcohol concentration at

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1 which a person does not have the normal use of his or
2 her mental or physical faculties?

3 A. Yes.

4 Q. And what is that?

5 A. That would be a .08.

6 Q. And do you know of any organizations that hold
7 the same opinion?

8 A. Off the top of my head, I cannot list but I am
9 sure there some.

10 Q. In your opinion, would a person with an alcohol
11 concentration of .145 have loss the normal use of his or
12 her mental or physical faculties?

13 A. Yes.

14 Q. And what is the legal limit set by the Texas
15 legislature?

16 A. .08.

17 Q. How about tolerance? If a person has a
18 tolerance to alcohol, do they have a normal use of his
19 faculties?

20 MR. GUERRA: I'm going to object to
21 speculation.

22 THE COURT: Sustained at this time.

23 MR. VAZQUEZ: I will withdraw it, Your
24 Honor.

25 Q. (BY MR. VAZQUEZ) Okay. We talked about the

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1 defendant's blood alcohol concentration at 4:36 and
2 4:39. Those are the times of the breath test. Is it
3 possible to determine a person's B.A.C. at the time of
4 driving?

5 A. If we have certain facts, then we can perform
6 what we call a retrograde extrapolation which is just a
7 back estimation.

8 Q. And what facts would you need for that?

9 A. I would for sure need the time of last meal,
10 the time of last drink, the time of stop and the breath
11 test results.

12 Q. And do we have any of those facts in this case?

13 A. Oh, I don't -- I don't know.

14 Q. If we did would you have provided an
15 extrapolation result?

16 A. If we did have the facts to do it, then, yes, I
17 would have performed an extrapolation. But if we don't
18 have the minimum facts, then we cannot.

19 Q. What is absorption?

20 A. Absorption is the process of the alcohol
21 absorbing through the mucosal membranes in the body and
22 being distributed out to your tissues.

23 Q. And what about elimination?

24 A. Elimination is when your body starts
25 eliminating that alcohol, when elimination is occurring

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1 faster than absorption, when your body is actually in
2 the elimination phase. But when you were absorbing, you
3 know, more than you are eliminating, your curve is going
4 up.

5 MR. VAZQUEZ: Nothing further at this
6 time, Your Honor.

7 THE COURT: Mr. Guerra.

8 MR. GUERRA: Thank you.

9 **CROSS-EXAMINATION**

10 **BY MR. GUERRA:**

11 Q. Good afternoon, Ms. Israel. How are you?

12 A. Good. And yourself?

13 Q. I am okay. I would like to ask you a few
14 questions.

15 You began working with D.P.S. April of
16 2014?

17 A. Correct.

18 Q. This incident happened January of 2015?

19 A. Yes, sir.

20 Q. So, you were on the job approximately nine or
21 ten months?

22 A. Yes, sir.

23 Q. And where were you before April of 2015?

24 A. I worked at Texas A & M in their Lower Division
25 Biology Instruction Program as a lab technician.

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1 Q. You weren't doing what you are doing today?

2 A. No, sir, I was not.

3 Q. Now, in those nine months, did you perform any
4 of the maintenance that we discussed earlier on any of
5 these machines?

6 A. I was certified in November of 2014. So,
7 starting December, I was doing monthly maintenance on
8 the instruments. So, yes.

9 Q. Okay. So, January of 2015, you had been doing
10 the maintenance on these machines for about three
11 months?

12 A. Yes, sir.

13 Q. Now, specifically to this machine that we are
14 discussing, did you do the maintenance on this machine?

15 A. Not in January, but I had the first inspection
16 in February.

17 Q. So, who did the maintenance in January?

18 A. Nakithia Rogers did the beginning-of-the-month
19 inspection, and Carly Bishop did the mid-month.

20 Q. So, these inspections are done bimonthly?

21 A. With the Central, we do them twice a month due
22 to the fact of the shared volume of tests that they run
23 down there. Just to stay on top of the records, we
24 check beginning of the month and mid month.

25 Q. But you were not personally there for Ms.

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1 Rogers to do the beginning-of-the-month maintenance
2 inspection, correct?

3 A. Correct.

4 Q. And you were not there when Ms. Bishop did the
5 inspection mid month which was January 16, 2015,
6 correct?

7 A. Correct.

8 Q. You have to rely on what they conveyed to you
9 of their records, correct?

10 A. Yes, sir.

11 Q. So, you can't tell this jury with any
12 certainty -- certainty that Ms. Rogers and/or Ms. Bishop
13 did everything according to protocol?

14 A. We are all trained to follow our S.O.G.s. So,
15 there is no doubt in my mind that they would stray from
16 our S.O.G.s.

17 Q. But you weren't there?

18 A. No, sir, I was not there.

19 Q. Now, you talked a little bit about and the
20 State asked you some questions about the specific
21 science. Do you recall that?

22 A. Yes, sir.

23 Q. You testified that this is a scientific
24 community.

25 A. Yes, sir.

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1 Q. How we -- is it a nationwide scientific
2 community?

3 A. Oh, yes. The infrared spectroscopy and Lambert
4 Beer Law have both been around for a very, very long
5 time.

6 Q. So, is it your testimony that this science is
7 used throughout the United States?

8 A. Yes, sir.

9 Q. Is it your testimony that these machines, the
10 Intoxilyzer, are administered in every state in the
11 United States?

12 A. Not every state uses the 5000. There are, I
13 think, at least two other manufacturers of evidential
14 breath test instruments.

15 Q. And are those machines superior to the
16 Intoxilyzer 5000?

17 A. I have no idea.

18 Q. But we know several states that do not use
19 these specific machines?

20 A. Correct. Not every state uses the same
21 instrument.

22 Q. Okay. Now let me talk to you a little bit
23 about this process. Obviously, you get these results,
24 correct?

25 A. Yes, sir.

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1 Q. Okay. Now, this is a machine that measures
2 specifically alcohol?

3 A. Yes.

4 Q. So, people that are brought in to the Central
5 Intox, those people are under suspicion of consuming
6 alcohol to the point where it compromises their mental
7 or physical faculties or maybe above the legal limit,
8 correct?

9 A. Correct.

10 Q. And you have some training as to what some of
11 those indicators may be, correct?

12 A. Yes.

13 Q. For example, bloodshot eyes?

14 A. That could happen, yes.

15 Q. Poor balance?

16 A. Yes.

17 Q. Slurred speech?

18 A. Yes.

19 Q. Consumption of alcohol?

20 A. Yes.

21 Q. So, these people that are under suspicion of
22 consuming alcohol are brought to the station to provide
23 a breath sample --

24 A. If they agree, yes.

25 Q. -- under those circumstances that I just

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1 described?

2 A. If the officer sees that and assumes it's
3 enough for probable cause, then I would assume they
4 would bring him down, yes.

5 Q. Okay. Now, I want to be clear to the ladies
6 and gentleman of the jury that the results that you have
7 here for Mr. Garcia are taken at 4:36 a.m.?

8 A. Yes, sir, I believe that is the time.

9 Q. Okay. Are you aware that the initial contact
10 with Mr. Garcia took place at approximately 2:30 or two
11 hours prior to?

12 A. No, sir.

13 Q. Okay. Those facts weren't relayed to you?

14 A. No, sir.

15 Q. Now, so all you can testify -- or what you are
16 testifying to here is that at 4:36, the alleged alcohol
17 concentration was .145 and .146, correct?

18 A. Correct.

19 Q. You cannot testify that at 2:30, 2:40, when
20 Mr. Garcia allegedly was operating a vehicle, he had
21 this level of concentration or any other level of
22 concentration of alcohol, correct?

23 A. Correct. I cannot say what his concentration
24 was at the time of stop.

25 Q. Okay. So -- and in your training and I'm sure

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1 you've testified, what the law requires as to the
2 alcohol level, they have to prove that Mr. Garcia in
3 this case was above a .08 at the time he was operating a
4 motor vehicle?

5 A. Yes, or the loss of mental and physical
6 faculties.

7 THE COURT: The law is actually .08 or
8 greater.

9 MR. GUERRA: Correct.

10 Q. (BY MR. GUERRA) .08 or greater at the time of
11 operating a motor vehicle, correct?

12 A. Correct.

13 Q. And we are just talking about alcohol, a .08 or
14 greater. Okay.

15 And so just to be clear, you are not here
16 testifying that at 2:40, 2:30, Mr. Garcia was above a
17 .08, correct?

18 A. Correct. I have no way of knowing.

19 Q. And the State asked about extrapolation,
20 testified a little bit about that. You need certain
21 factors to be able to do that, correct?

22 A. Yes.

23 Q. And whose responsibility is it to obtain those
24 factors?

25 A. They are usually relayed to us by the

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1 prosecutor.

2 Q. So, would it be fair to say that the officers
3 that make the -- are suspicious of intoxication, those
4 officers would be responsible to ask those pertinent
5 questions as to extrapolation?

6 A. Yes. The officers usually do ask those
7 questions.

8 Q. Okay. And some of the questions that are
9 required are what they ate --

10 A. Yes.

11 Q. -- when was their first drink --

12 A. Yes.

13 Q. -- when was their second drink or last drink?

14 A. Yes.

15 Q. And obviously what the test results are,
16 correct?

17 A. Correct.

18 Q. Now, the most important thing -- and this is
19 extrapolation process -- is you have to have an accurate
20 reading or alcohol test result, correct?

21 A. Yes.

22 Q. If this is inaccurate, whatever you do is not
23 going to be accurate, correct?

24 A. Correct.

25 Q. Now, you testified about effects of alcohol,

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1 correct?

2 A. Yes, sir.

3 Q. And you received some training on that,
4 correct?

5 A. Yes, sir.

6 Q. Now, some of the things that you testified to
7 were -- was poor balance?

8 A. Yes.

9 Q. And now in your training and experience, could
10 poor balance be due to a medical condition?

11 A. Some medical conditions can cause poor balance,
12 vertigo, things like that.

13 Q. Concussions?

14 A. Yes, sir.

15 Q. Okay. Now, you've testified that you are --
16 you maintain these records, right?

17 A. Yes, sir.

18 Q. And as part of that process, you know, guys
19 like us, defense attorneys, we submit a motion and you
20 provide all of the discovery that's relevant to this
21 specific machine?

22 A. Yes, sir.

23 Q. And in those discovery materials, you include
24 some past results from other individuals?

25 A. Yes, we include subject records.

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1 Q. And those are all taken within, I guess, that
2 month or the following month, correct?

3 A. We do 30 days before and after.

4 MR. GUERRA: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes.

7 Q. (BY MR. GUERRA) I'm going to show you what's
8 been marked as Defendant's Exhibit 1 through 12. If you
9 will take a look at those.

10 A. Uh-huh.

11 Q. Can you tell the jury what those are?

12 A. These are test slips of other subjects.

13 Q. Are they test slips of the Intoxilyzer 5000,
14 specifically 68-012803?

15 A. Yes, sir.

16 Q. That's the machine that is in question here
17 today?

18 A. Yes.

19 Q. Are those records maintained in the normal
20 course of business?

21 A. Yes.

22 Q. Are they accurate? Do they reflect your
23 records?

24 A. Yes.

25 MR. GUERRA: Your Honor, I would like to

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1 admit those -- tender them to the State and admit them
2 as Defense 1 through 12.

3 MR. VAZQUEZ: Your Honor, I would object
4 on the fact that none of these test slips pertain to the
5 defendant in this case and, therefore, are irrelevant to
6 the proceedings.

7 THE COURT: Let me take a look at them,
8 please.

9 *(At the Bench)*

10 THE COURT: So, what's the relevance of
11 all of the .00? They show no alcohol.

12 MR. GUERRA: That this machine is capable
13 of making mistakes on that end. As to my client, Your
14 Honor -- I'm sorry?

15 THE COURT: Is it your position because
16 they are showing no alcohol that the machine is not
17 working properly? Because these people are probably
18 claiming that it is working properly since it was .00.

19 MR. GUERRA: I don't know what they're
20 claiming. Under my point, Your Honor, if they are
21 brought in under special D.W.I., the records of this
22 machine are giving a zero result. That means there may
23 be a problem with the machine. I can introduce the
24 entire record if the Court wants.

25 THE COURT: At this time the selected

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1 records that you pulled out, Defense Exhibits 1 through
2 12, that shows zero alcohol concentration for different
3 subjects on different dates are not admissible. So, I
4 am going to sustain your objection.

5 MR. GUERRA: Okay.

6 (Jury present)

7 Q. (BY MR. GUERRA) Ms. Israel, as part of the
8 discovery process, you provided to the defense attorneys
9 a disk, correct?

10 A. Correct.

11 Q. And that disk maintains a number of different
12 records, right?

13 A. Yes, sir.

14 Q. It maintains your maintenance records?

15 A. Yes.

16 Q. It maintains when the maintenance records were
17 given or took place?

18 A. Yes.

19 Q. It maintains your standard operating procedure
20 manual?

21 A. Yes.

22 Q. And all of those records are maintained within
23 the normal course of business, correct?

24 A. Correct.

25 MR. GUERRA: May I approach the witness?

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1 THE COURT: You may.

2 Q. (BY MR. GUERRA) I am showing you here a disk.
3 Would that CD contain those records that are in
4 question?

5 A. Yes, sir.

6 Q. Okay. And those records are kept in the normal
7 course of business?

8 A. Yes, sir.

9 Q. And you are familiar with those records?

10 A. Yes, sir. I believe I did this discovery.

11 Q. Okay.

12 MR. GUERRA: Can I tender to counsel
13 Defendant's Exhibit No. 13 and ask for them to be
14 admitted?

15 MR. VAZQUEZ: I haven't seen this, Your
16 Honor, so I don't know what's on here.

17 THE COURT: Ladies and gentlemen, let's
18 take our afternoon break. So, if you will please go
19 with the deputy.

20 THE BAILIFF: All rise.

21 (Jury leaves courtroom)

22 THE COURT: Y'all may be seated.

23 Juan, what is it you're trying to do? Get
24 to the test slips?

25 MR. GUERRA: I want to introduce the other

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1 test slips under the suspicion of D.W.I., being
2 intoxicated; they came back completely zero. And I will
3 wrap up in closing that if this machine is capable of
4 having 12 people come in under that suspicion and
5 marking zero, it is certainly capable of the other end
6 of somebody coming in with little or no alcohol and it
7 may be a mistake. I think that's appropriate. It's
8 proper. It's part of my defense. Not allowing me to do
9 that I think violates my due process and Sixth Amendment
10 right to put up a defense.

11 THE COURT: So, what I understand that you
12 are trying to accomplish --

13 MR. GUERRA: Yes, ma'am.

14 THE COURT: -- is you want to introduce 12
15 test slips that all show zero alcohol concentration,
16 even culled out of discovery that was provided to you by
17 the Department of Public Safety which presumably also
18 contains slips that show the presence of alcohol, right?

19 MR. GUERRA: Correct.

20 THE COURT: And you want to introduce the
21 limited exhibits for the purpose of the argument of,
22 look, if there are 12 exhibits, 12 test slips that were
23 produced to me that show a negative, there must have
24 been something wrong with the machine?

25 MR. GUERRA: Yes.

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1 THE COURT: Okay. Doesn't that counter
2 argument also apply which is maybe the machines were
3 working properly? Because we don't know the factual
4 circumstances behind each of those 12 test slips which
5 have nothing to do with your client, and your client
6 isn't at a .00. So --

7 MR. GUERRA: If the State wants to make
8 that argument, they certainly can make that argument;
9 but I think I am entitled to make the argument that I
10 think is appropriate.

11 THE COURT: Let me ask you this question.

12 MR. GUERRA: Yes, ma'am.

13 THE COURT: This is on the issue of
14 relevance. On those Exhibits 1 through 12, those test
15 slips that show zero alcohol for presumably 12 different
16 subjects over 12 different dates --

17 MR. GUERRA: Yes, ma'am.

18 THE COURT: -- how do they make -- how
19 have you established thus far that they make it more or
20 less probable that your client -- that there was a
21 mistake in the machine, based on what you presented so
22 far with this witness?

23 MR. GUERRA: I will admit all of them. If
24 the Court wants me to admit all 200 slips, that's fine
25 with me.

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1 THE COURT: Well -- and I don't know
2 whether they would be relevant or not. But I am asking
3 you: How have you established the relevancy up to this
4 point with this witness other than your speculation
5 about why those are all zeros?

6 MR. GUERRA: Okay. Then I will stop, and
7 I will bring her back as my own witness after I finish
8 my case.

9 THE COURT: Okay.

10 MR. GUERRA: Then I can bring them in. I
11 mean, is that --

12 THE COURT: You may or may not be able to.
13 That's why I'm asking you. How have you made these
14 relevant? At this point, they are not relevant. So you
15 haven't established the relevancy through this witness.
16 You can't introduce them and then establish the
17 relevancy. You have to establish it on the front end
18 for them to be admissible. I see what you are saying,
19 but you have to do it the right way.

20 MR. GUERRA: Okay.

21 THE COURT: Okay? So at this point, 1
22 through 12 are inadmissible. And if you want to
23 introduce the entire disk --

24 MR. GUERRA: I do.

25 THE COURT: -- then I'm going to let the

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1 State have an opportunity to look at it and see if they
2 have any objections to all of the documents that are in
3 there. But if 1 through 12 are on that disk, I've
4 already ruled on the objection to 1 through 12.

5 MR. GUERRA: There is -- yes, they are on
6 that disk, along with every -- all of the other
7 documents that are provided with that machine.

8 Your Honor, how is all of the discovery
9 materials that pertain to this machine as to whether or
10 not it was maintained and working properly, whether they
11 follow protocol, how is that not admissible?

12 THE COURT: You haven't established the
13 relevancy of one document that is on that disk. If you
14 are representing they are the maintenance records, you
15 haven't asked this witness a question about one
16 maintenance record that's on that disk or what the
17 meaning of those maintenance records are. And just
18 because they have revealed them in discovery does not
19 make them admissible.

20 MR. GUERRA: Okay.

21 THE COURT: Just like an offense report is
22 revealed in discovery. That by virtue of its revelation
23 does not make it admissible.

24 MR. GUERRA: I understand that, Your
25 Honor. But she has testified that her position is that

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1 she believes this machine was working properly. That's
2 her testimony.

3 THE COURT: What questions have you asked
4 her that would substantiate your claim that a zero
5 result indicates that it's not working properly?

6 MR. GUERRA: Well, the people that come in
7 to take breath tests, it's specifically alcohol related,
8 they come in under the -- under the factors that all of
9 these officers have testified to that are -- may be
10 related to intoxication due by alcohol.

11 THE COURT: To other people. Not your
12 client, right?

13 MR. GUERRA: They said it about my client
14 and other people as well.

15 THE COURT: Okay. I have made my ruling.
16 Let's take a break.

17 (Recess taken)

18 THE COURT: We are ready for the jury.

19 THE BAILIFF: All rise.

20 (Jury enters courtroom)

21 THE COURT: Please be seated. Mr. Guerra,
22 you may proceed, sir.

23 MR. GUERRA: Thank you, Your Honor.

24 Q. (BY MR. GUERRA) Ms. Israel, we were talking
25 about the materials that you provided that relate to

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1 this machine, correct?

2 A. Correct.

3 Q. Okay. Those materials include sample or test
4 slips from other individuals that perform the test on
5 this specific machine, correct?

6 A. Yes. We provide 30 days before and after, if
7 available, of subject test records on that instrument.

8 Q. Now, those individuals have nothing to do with
9 this case, correct?

10 A. Correct.

11 Q. Except for the fact that the test that they
12 took were administered -- was the same test that
13 Mr. Garcia gave a sample to, correct?

14 A. Well, they were tested on the same instrument.

15 Q. On the same instrument. Correct. Some of them
16 were tested some time before. Some of them were tested
17 on the same day?

18 A. Correct.

19 Q. And some were tested after the 18th, right?

20 A. Yes, sir.

21 Q. And you are familiar with those records,
22 correct?

23 A. Yes, sir.

24 Q. As a matter of fact, you testified that you are
25 the one that created this CD for me, correct?

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1 A. Yes, sir.

2 Q. And you reviewed those records?

3 A. Yes.

4 Q. Now, in those sample tests that we're
5 discussing, there is some tests that are completely
6 invalid, correct?

7 A. Yes.

8 Q. Now, to be fair to you, there's some tests in
9 there that show some or a significant amount of alcohol,
10 correct?

11 A. Correct.

12 Q. Now, there's also a test that show completely
13 zero alcohol, correct?

14 A. Yes, sir.

15 Q. Okay. Now, these are all individuals who came
16 into Central Intox, correct?

17 A. Yes, sir.

18 Q. Under suspicion of D.W.I.?

19 MR. VAZQUEZ: Your Honor, may we approach?
20 Objection.

21 THE COURT: What is your objection?

22 MR. VAZQUEZ: Still as to the relevance.

23 And if I may be heard, Your Honor.

24 THE COURT: Okay. That question is
25 sustained.

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1 Q. (BY MR. GUERRA) Okay. So, these are all
2 individuals that were requested to give a sample,
3 correct?

4 A. Yes, they agreed to give a breath sample.

5 Q. And they were all under suspicion of D.W.I.?

6 A. I would assume so, yes.

7 Q. Okay.

8 MR. VAZQUEZ: Calls for speculation, Your
9 Honor.

10 THE COURT: Sustained.

11 Q. (BY MR. GUERRA) Well, you've had some training
12 in this area, correct?

13 A. Yes.

14 Q. A sample is not requested from an individual
15 just for the sake of requesting it, correct?

16 MR. VAZQUEZ: Objection, Your Honor. It
17 still calls for speculation.

18 THE COURT: Sustained. As to this
19 witness' knowledge.

20 Q. (BY MR. GUERRA) As to your knowledge, okay --
21 okay. So, the Intoxilyzer 5000, it is used to measure
22 alcohol?

23 A. Correct.

24 Q. Correct. And they are -- the requests are made
25 for people to provide a breath sample, correct?

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1 A. Yes, sir.

2 Q. That's how the test is performed?

3 A. Yes, sir.

4 Q. Without that request, you can't perform the
5 test?

6 A. Correct.

7 Q. You need those samples?

8 A. Correct.

9 Q. Now, approximately how many -- well, in these
10 records that we're discussing, about 20 of these samples
11 came back with zero alcohol?

12 A. It's possible.

13 Q. Well, you reviewed those records, correct?

14 A. Yes, sir.

15 Q. So, about 20 samples came back with zero
16 alcohol, correct?

17 A. Yes, sir.

18 MR. GUERRA: I will pass the witness.

19 THE COURT: Mr. Vazquez.

20 MR. VAZQUEZ: Thank you, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. VAZQUEZ:**

23 Q. Ms. Israel, those samples, do you know the
24 facts of those cases?

25 A. No, sir.

1 Q. Is it possible to be intoxicated on something
2 other than alcohol?

3 A. Yes, sir.

4 Q. And if you were intoxicated on something other
5 than alcohol, would that show up on the Breathalyzer
6 machine, instrument?

7 A. No, sir, just alcohol.

8 Q. So, if you were intoxicated based on a
9 combination of drugs, would you -- would you have a zero
10 result on your Intoxilyzer results?

11 A. Yes.

12 MR. VAZQUEZ: Nothing further, Your Honor.

13 THE COURT: Mr. Guerra.

14 MR. GUERRA: Thank you, Your Honor.

15 **RECROSS-EXAMINATION**

16 **BY MR. GUERRA:**

17 Q. I'm a little confused. Intoxilyzer measures
18 alcohol, correct?

19 A. Yes, sir.

20 Q. So, the sample that is requested is to measure
21 the alcohol, correct?

22 A. If they are believed to be impaired, yes.

23 Q. So, if they are believed to be impaired by
24 alcohol, that's why you request this test?

25 A. Yes, sir.

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1 Q. So, the people that were requested to take this
2 test were due to -- there was a belief that there was
3 alcohol involved, correct?

4 MR. VAZQUEZ: Objection, Your Honor.
5 There is no evidence to support that.

6 THE COURT: What is your legal objection?

7 MR. VAZQUEZ: Irrelevant, Your Honor.

8 THE COURT: Sustained.

9 MR. GUERRA: Can I have a quick second,
10 Your Honor?

11 THE COURT: Sure.

12 Q. (BY MR. GUERRA) All right. Let me move to
13 something -- and just a quick question. Let's move to
14 something completely different.

15 You testified about effects of alcohol,
16 correct?

17 A. Yes, sir.

18 Q. And one of the things that you discussed was
19 depth perception?

20 A. Correct.

21 Q. Correct. You wear glasses?

22 A. Yes, sir.

23 Q. When you take your glasses off, what happens?

24 A. I am pretty blind.

25 Q. Okay. Your depth perception is altered?

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1 A. Yes, sir, definitely.

2 Q. What is your eyewear? What's your -- I don't
3 know.

4 A. Prescription?

5 Q. Prescription.

6 A. One eye, I think, is like a negative 3.5 and
7 the other is a negative 3.25.

8 Q. When you take off your glasses, are you a
9 little weird, a little dizzy?

10 A. Oh, no. I can walk around just fine without
11 them.

12 Q. But your depth perception is altered, correct?

13 A. Correct.

14 MR. GUERRA: Pass the witness.

15 THE COURT: Mr. Vazquez.

16 MR. VAZQUEZ: Nothing further, Your Honor.

17 THE COURT: All right. May this witness
18 be excused? Any objections from the State?

19 MR. VAZQUEZ: None.

20 THE COURT: Any from the defense?

21 MR. GUERRA: No.

22 THE COURT: Thanks for coming down, ma'am.
23 You are excused.

24 Your next witness, State?

25 MR. VAZQUEZ: At this time the State would

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1 rest.

2 THE COURT: Mr. Guerra.

3 MR. GUERRA: I would like to take up a
4 motion, Your Honor.

5 THE COURT: Do you want to do it up at the
6 Bench, or do you want to take a break?

7 MR. GUERRA: I would like to do it outside
8 the presence of the jury.

9 THE COURT: All right. Ladies and
10 gentlemen, we are going to take a break. It won't be as
11 long as the last one.

12 (Jury leaves courtroom)

13 THE COURT: Okay. Y'all may be seated.
14 Go ahead.

15 MR. GUERRA: Your Honor, I am going to
16 make a request for a directed verdict specifically on
17 the issue of above a .08. There's been no testimony as
18 to extrapolation regarding that issue. There's no
19 testimony before this Court that at the time of
20 operating, Mr. Garcia was above a .08. I understand
21 that the jury can take that into consideration; but I
22 would ask for a directed verdict, specifically on that
23 paragraph, for it not to be included in the jury charge.

24 THE COURT: Okay. Are we about to discuss
25 the charge. Or are you going to present a case?

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1 MR. GUERRA: I'm going to present a case.

2 THE COURT: Okay. Let me -- if that's a
3 charging issue, then we can address that later. But at
4 this time, if you are asking me to direct them out on
5 that particular definition of intoxication, that request
6 will be denied.

7 MR. GUERRA: Okay. Thank you, Your Honor.

8 THE COURT: But we can talk about your
9 charging concern at the appropriate time. Anything
10 else?

11 MR. GUERRA: That's it.

12 THE COURT: All right. Let's bring in the
13 jury.

14 (Recess taken)

15 THE COURT: All right. We are ready.

16 THE BAILIFF: All rise.

17 (Jury enters courtroom)

18 THE COURT: All right. Please be seated.
19 All right. Mr. Guerra.

20 MR. GUERRA: Your Honor, at this time we
21 call Mr. Garcia.

22 THE COURT: Mr. Garcia, please stand and
23 raise your right hand for me.

24 (Oath administered)

25 THE COURT: Thank you, sir. Come on up.

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1 Have a seat up here. Be sure to speak loudly so we can
2 all hear what you have to say.

3 You may proceed when you are ready.

4 MR. GUERRA: Thank you, Your Honor.

5 **JOSE A. GARCIA,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. GUERRA:**

9 Q. Mr. Garcia, can you please state your name for
10 the record?

11 A. Jose Alfredo Garcia.

12 Q. Mr. Garcia, where are you employed currently?

13 A. I am employed with Blue Green Vacation Club.

14 Q. For how long?

15 A. Six months.

16 Q. Where were you employed before that?

17 A. The Hilton New York.

18 Q. Now, where do you currently live?

19 A. I am living in Harlingen because I took a
20 promotion to be the store manager in Harlingen.

21 Q. How long have you been in Harlingen?

22 A. Four months.

23 Q. Now, on January 18, where were you living?

24 A. I had just recently moved from New York. I had
25 just been here two weeks, until I had my accident. Then

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1 shortly after I moved to the valley.

2 Q. Now, before we get to your accident, let me
3 talk to you about your medical history. Do you have any
4 medical conditions?

5 A. I have a series of medical conditions. I have
6 hypertension. I also have anxiety. I also have high
7 blood pressure, and I take a series of medicines as
8 well, which they have side effects, like dizziness,
9 shortness of breath --

10 Q. Let me stop you there.

11 A. Uh-huh.

12 Q. Let me ask you: Let's start with high blood
13 pressure. What medication do you take with high blood
14 pressure?

15 A. For the high blood pressure, I take the
16 Bystolic, the 5 milligrams.

17 Q. How many times a day?

18 A. I take that one at night.

19 Q. Okay. How much do you take?

20 A. How much I take?

21 Q. Correct.

22 A. I take one pill every night.

23 Q. Now, anxiety, what do you take for that?

24 A. I take the Hydroxyzine, and it is
25 25 milligrams. And I take that during the day.

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1 Q. Just any time during the day?

2 A. In the morning.

3 Q. Okay. Now, the hypertension, what do you take
4 for that?

5 A. The hypertension, I take the Clonazepam.

6 Q. How many times do you take that?

7 A. I take that one at night.

8 Q. Okay. How many milligrams?

9 A. That one's 10 milligrams. No. That one is 1
10 milligram.

11 Q. Okay. What are the side effects of that
12 medication?

13 A. The side effects for the Clonazepam is -- the
14 symptoms of urination, constant urination, also
15 dizziness, blurriness and speech -- those are the
16 symptoms on that one.

17 Q. Okay. Now, when do you take that?

18 A. I take that every night.

19 Q. Do you take it -- what time at night? Before
20 you go to bed or when?

21 A. I take it at -- right before bedtime.

22 Q. Now, what is the affects if you take this
23 medication with alcohol?

24 A. You cannot take alcohol before you take the
25 Clonazepam because that's as per -- the psychiatrist

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1 recommended that. You could go into a cardiac arrest if
2 you take any kind of alcohol four hours prior to taking
3 this medication.

4 Q. So, you cannot take alcohol four hours prior
5 to?

6 A. Correct.

7 Q. Okay. There's been a lot of talk about your
8 glasses. How long have you worn glasses?

9 A. Since I was five years old.

10 Q. Do you wear contacts or just always glasses?

11 A. I have always worn glasses. On my driver's
12 license, it says that I wear glasses. And, you know,
13 you are asking about the glasses. During the accident
14 that happened, the -- when the airbags deployed, they
15 broke my glasses and, you know, I didn't find them.

16 Q. Let me stop you there. Okay. So, tell the
17 jury what happens when you don't have your glasses?
18 What are the effects?

19 A. I can't see clearly. I see blurry. I -- my
20 balance is not where it should be. I see darker when
21 I'm not wearing my glasses.

22 Q. Okay. Now, you've seen yourself on that video,
23 correct?

24 A. Correct.

25 Q. And you didn't have your glasses?

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1 A. No.

2 Q. Did that affect the way that you performed on
3 those field sobriety tests?

4 A. Yes.

5 Q. All right. Let me bring you -- let's talk
6 about July (sic) 18 of 2015, okay? Let's start from
7 when you woke up.

8 A. Okay.

9 Q. What time did you wake up?

10 A. You are asking me about --

11 THE COURT: You said "July". Do you mean
12 January?

13 MR. GUERRA: I do, Your Honor. I'm very
14 tired. I'm sorry.

15 THE COURT: That's all right.

16 Q. (BY MR. GUERRA) January 18, 2015, what time did
17 you wake up?

18 A. Well, as I was -- I had just recently moved
19 here from Pasadena, from New York. I did not know the
20 city here in Houston. My phone had died on the --

21 Q. Let me stop you. Okay. Are you a little
22 nervous?

23 A. Yeah, a little.

24 Q. Okay. It's okay. So we're talking about the
25 day of the accident, January 18, 2015. Do you remember

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1 that day?

2 A. Yes.

3 Q. Okay. So, let's talk about from the very
4 beginning, okay? From what time did you wake up?

5 A. Okay. On the accident, when I was driving on
6 I-45 North, I woke up in the accident.

7 Q. Hold on.

8 A. Okay. Okay. Now I understand the question.

9 Q. Maybe I'm just not asking the question
10 correctly.

11 Okay. On January 18, the day of the
12 accident, where were you living?

13 A. I was living in Katy, Texas.

14 Q. With who?

15 A. With my sister.

16 Q. Okay. On that day, what time did you wake up?

17 A. Now I understand the question. Sorry. I woke
18 up at 7:00 o'clock in the morning. I started working
19 for my sister that owns a reception hall, and I was
20 working my whole entire day.

21 Q. Okay. What kind of things were you doing?

22 A. I was basically running errands, getting
23 prepared for an event that was going to happen that
24 weekend; and, you know, I had had a long day. I was
25 really tired.

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1 Q. Well, what kind of things were you doing? Tell
2 the jury what you were doing.

3 A. I was basically ordering flowers, getting
4 arrangements for the hall, getting the caterers ready
5 for the event, making sure that everything was set up
6 for the hall day. I was working many hours with my
7 sister when --

8 Q. Well, how big of an event was it?

9 A. She usually has about 2,000 people, anywhere
10 from 15 to 2500 people every weekend in her hall.

11 Q. Is this event center in Katy?

12 A. The what?

13 Q. Where is the event center?

14 A. She owns LaraUda Ballroom in Katy.

15 Q. Okay. So, what time did you finish helping
16 your sister set up that event?

17 A. I had finished like at 7:00 p.m., and I -- some
18 friends from the valley that went to --

19 Q. Okay. Let's talk about that. Okay. So tell
20 me about your friends from the valley.

21 A. Okay. I happened to know that friends from the
22 valley were here in town; and they were meeting at one
23 of my friends' house in Pasadena. So, we decided to
24 get-together over there. They were going to have a
25 barbecue since they were celebrating my coming to Texas

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1 back. Then we started barbecuing.

2 Q. Let me stop you there. What time did you get
3 over -- what's your friend's name? What time did you
4 get over to his house?

5 A. My friend's name is Carlos. I arrived at their
6 house around 7:00 o'clock.

7 Q. 7:00 p.m.?

8 A. Yes, right after I finished work.

9 Q. What time did y'all start barbecuing?

10 A. They had already started barbecuing by the time
11 I got there. They started around 6:00, so I arrived
12 there around 7:00, after I had completed working with my
13 sister.

14 Q. What were y'all barbecuing?

15 A. They had fajitas. They had chicken fajitas.
16 They had pico de gallo, quacamole.

17 Q. Did you help prepare any of the food?

18 MS. HAYNES: I'm sorry. May I interrupt
19 for a moment, Your Honor?

20 THE COURT: I'm sorry. What did you say?

21 MS. HAYNES: May I interrupt for a moment?

22 THE COURT: Yes.

23 MS. HAYNES: May we approach?

24 THE COURT: Yes.

25 *(At the Bench)*

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1 MS. HAYNES: Judge, I just realized that
2 nobody invoked the Rule at the beginning of the trial,
3 and I'm not sure who that gentleman is. You're not
4 calling him?

5 MR. GUERRA: I won't do that to you.

6 THE COURT: All right. Issue solved.

7 MS. HAYNES: Thank you.

8 (Jury present)

9 Q. (BY MR. GUERRA) Okay, Jose. At the barbecue,
10 you are having chicken fajitas, pico de gallo. Did you
11 help prepare the barbecue?

12 A. I helped for a little bit.

13 Q. What kind of things were you doing?

14 A. Well, I was doing the pico de gallo and, you
15 know, flipping the meat on the grill and, you know,
16 getting the -- everything prepared for the evening.

17 Q. Okay. What time did you guys have dinner?

18 A. 8:30, 9:00.

19 Q. Okay. Now, while you were preparing, helping
20 prepare the barbecue, the fajitas, the pico de gallo,
21 did you have anything to drink?

22 A. When I arrived there, I had one beer. I had a
23 Corona.

24 Q. Okay. What size beer?

25 A. A regular Corona Extra.

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1 Q. Bottle or can?

2 A. Bottle.

3 Q. What time was this?

4 A. This was around 7:15, 7:30.

5 Q. Did you have anything to drink at dinner?

6 A. No.

7 Q. Did you have anything to drink after dinner?

8 A. No.

9 Q. What time was -- what time did you and Carlos
10 and -- who else was at the house?

11 A. It was like three or four friends of mine from
12 the valley that were here in town, and we were just
13 there at Carlos' house, when we met up.

14 Q. Tell the jury how you know these people, how
15 you met them, how long you've known them and where in
16 the valley they are from.

17 A. I met the people that I know from McAllen. I
18 graduated with these people. I had just met up with
19 them here because they were in town in Houston at the
20 same time that they invited me to meet up with them, you
21 know, at a house in Pasadena. You know, they invited me
22 for this cookout that they were going to be having for
23 me.

24 Q. So, how long have you known Carlos and his
25 friends in Pasadena?

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1 A. Since elementary.

2 Q. How did you get in contact with Carlos and
3 other friends through -- how did you get in contact with
4 them?

5 A. They Facebooked me or friends of friends gave
6 me their numbers, and then I contacted them. I knew
7 that they now live in Houston. When I came back to
8 Houston, I looked them up; and I got in contact with
9 them and --

10 Q. So how long had this barbecue dinner -- how
11 long had it been planned?

12 A. Like maybe four days. I mean, that week that I
13 called them, they said, Oh, so and so is here. So and
14 so is here. So and so is here. Do you want to meet up
15 with us?

16 And I said, "Yeah."

17 Q. Well, let's be a little more specific. "So and
18 so"? Are you talking about the same friends? Who are
19 you talking about?

20 A. The friends that we were going to meet up at
21 that gathering, yes.

22 Q. Okay. So, what time did you guys finish
23 dinner?

24 A. Like 10:00 o'clock.

25 Q. Okay. What did you do after 10:00 o'clock?

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1 A. We were just catching up with old times, with
2 friends. We were just chatting and laughing about good
3 ole times when we were kids.

4 Q. Now, after 10:00 o'clock, did you have anything
5 to drink?

6 A. No.

7 Q. Do you remember what time you left?

8 A. I left their house around 1:45.

9 Q. Okay. Now, how did you get to their house?
10 Did you use the GPS system?

11 A. Yes, I used the GPS system.

12 Q. Now, do you have a GPS system in your car? Or
13 what kind of GPS system were you using?

14 A. I was using the Google Maps on my iPhone. And
15 actually on my way back, my phone went completely dead
16 and that's where I got lost going north on I-45.

17 Q. Where was your phone charger?

18 A. I didn't have one that day. I had left it in
19 the other vehicle that we use for the company.

20 Q. Okay. So, you left at 1:45?

21 A. Correct.

22 Q. What time did your phone go off?

23 A. I didn't hear the question. Sorry.

24 Q. I'm sorry. What time did your phone go off or
25 die?

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1 A. My charger -- my phone went off around 1:25,
2 1:30. It was shortly after that I got lost here, since
3 I didn't know the streets coming -- being here for two
4 weeks, coming back from New York.

5 Q. All right. Well, let's -- you said you left at
6 1:45, correct?

7 A. Correct.

8 Q. So your phone died before you left?

9 A. No. My phone died around 2:20. I didn't mean
10 1:20. I'm sorry. 2:20.

11 Q. So, that was a mistake when you said 1:20?

12 A. Correct.

13 Q. Now, do you remember -- at that time you had
14 been here, for how long?

15 A. Like -- I had just recently changed my license
16 to --

17 Q. How long had you been in Houston?

18 A. Two weeks.

19 Q. And in those two weeks, how were you getting
20 around Houston? Were you using GPS?

21 A. GPS, correct.

22 Q. Okay. So, your phone went off at about 2:20.
23 What happened after that?

24 A. Well, when I got lost, I had -- I was so tired
25 from my day that shortly after, like 2:32, I -- or

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1 around -- between 2:30 to 2:40 I had had the accident.
2 I fell asleep on the road when I had the accident. And
3 then when I woke up from the accident, I instantly took
4 control of the vehicle to not damage or hurt anyone. I
5 took control of the vehicle because the vehicle was
6 spinning. In the midst of all of that, the bags
7 deployed on me; and I, as I said, took control of the
8 vehicle, got the vehicle to the side of the road. And
9 at that point I was -- I couldn't call the police. So
10 the police arrived.

11 Q. Let me stop you there.

12 A. Uh-huh.

13 Q. I'm going to try to do this in question, okay?

14 A. Okay.

15 Q. Just try to answer the question that I ask.

16 So, before you left Carlos' house, did you have anything
17 to drink?

18 A. No. I didn't have to drink because when I go
19 to bed, I take the Clonazepam and the Bystolic; and you
20 cannot have -- especially with a Clonazepam, you cannot
21 have any kind of alcohol four hours prior to your -- to
22 you going to bed with those medications.

23 Q. Did you have anything to drink in the car?

24 A. No.

25 Q. Okay. So, we are talking about the accident.

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1 Let's just talk about the accident itself, okay? What
2 do you remember about the accident?

3 A. Well, when I was -- when the accident happened,
4 I know I had fell asleep on the vehicle. Then I
5 instantly woke up in the accident, and I saw myself that
6 the car was flipping. And then at that point I
7 instantly reacted and took control of the vehicle to get
8 it to the side of the road and not to hit any barriers
9 or anything. And then I pretty much just got it to the
10 side of the road until --

11 Q. All right. Now you said "flipping." Do you
12 mean the car flipped or was spinning?

13 A. Spinning.

14 Q. Okay. And that's what you remember, the car
15 was spinning, not flipping?

16 A. The car was not flipping. The car was spinning
17 like it was going, you know --

18 Q. Now when the car came to a stop, what do you
19 remember then?

20 A. Well, once the bags deployed, like on a Jetta
21 which is a very safe car -- and luckily it was already
22 on the side of the road. Actually, the -- you know, the
23 mother collapses and like the car crunches up like an
24 accordion. So, I mean, the car was no longer movable or
25 able to continue operating after that point.

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1 Q. How do you know that?

2 A. I know that because I used to sell Jettas. I
3 used to work at the Volkswagon store in the Valley when
4 I was younger, and I know the safetyness (sic) of the
5 cars and what it has and entails and all that.

6 MR. VAZQUEZ: Your Honor, may I take the
7 witness on voir dire as to his qualifications as to the
8 safety of the vehicle?

9 THE COURT: Not right now. You may ask
10 him those questions on cross-examination.

11 MR. VAZQUEZ: Thank you, Your Honor.

12 Q. (BY MR. GUERRA) Just to be fair, how long ago
13 did you sell those Jettas?

14 A. About six years ago.

15 Q. Okay. And how long did you work there?

16 A. Two years.

17 Q. All right. Let's continue with the accident,
18 okay?

19 A. Okay.

20 Q. So, the car is stopped. How long does it take
21 for officers to get to you?

22 A. They arrived about five minutes after the
23 accident.

24 Q. Now, when they arrived, where are you?

25 A. I was really shook up in the driver's side,

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1 waiting for assistance of the police officers to arrive
2 at the scene, after my phone was since -- you know, able
3 to call or anything like that. And I was -- I couldn't
4 hold my urine. I don't know if that had to do -- you
5 know, until they got there and then pretty much when
6 they got me right away, took me into the police car.
7 They didn't ask too much.

8 Q. Tell me what you felt when the airbags
9 deployed.

10 A. When the airbags deployed, well, for one, it
11 broke my glasses. They were in the car broken. I found
12 them later on when I went to take out everything at the
13 Kingwood Collision. I mean, I felt you know, hurt from
14 them, like it hit me and --

15 Q. Where did they hit you?

16 A. They hit me right in the face.

17 Q. Was there any dust or particles that came out
18 of the car -- or the airbags, sorry?

19 A. Well, the radio, as you can see on the pictures
20 that you have, everything was broken. So like the --
21 when the airbags deployed, you know, that's when the car
22 was crashed and, you know --

23 Q. Well, do you remember whenever the airbags went
24 off, if there was dust, if there was smoke or anything
25 like that?

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1 A. There was dust. There was smoke. There was --

2 Q. Did any of that get in your eyes?

3 A. A little bit, like the smoke that was coming
4 out.

5 Q. Right.

6 A. It did like, you know, coming into the car.

7 Q. Okay. Now you talked about not being able to
8 hold your urine.

9 A. Correct.

10 Q. How did that make you feel?

11 A. It made me feel disgusted, you know, with
12 having urinated in my car. I felt dizzy. I felt
13 disoriented. I felt unbalanced. I felt --

14 Q. So, when the officers got there, tell me what
15 happened. Tell the jury what happened.

16 A. When the officers got there, I needed
17 assistance to go to like the hospital. They never told
18 me at the scene that -- is there something hurting on
19 you? Is everything okay? How do you feel? Nothing
20 like that.

21 I was -- I feel that the police is here to
22 serve the people. But, I mean, I didn't feel that way.
23 I felt that they didn't have any assistance for me,
24 knowing that I was dizzy. I had a headache. I had -- I
25 was shook up. I was --

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1 Q. Let me stop you. Did the officers ask you if
2 you had a headache? Did they ask you any of those
3 questions?

4 A. No.

5 Q. Did the officers make any comments about you
6 urinating on yourself?

7 A. They didn't say anything about me urinating.

8 Q. Did they -- do you remember them saying that
9 they could smell it or anything like that?

10 A. No, they didn't say that.

11 Q. Okay. So, what happens when they take you out
12 of the car?

13 A. When they take me out of the car, they put me
14 in a police car with the first officer that was here,
15 and then they take me to the side. They did like a --

16 Q. Let me stop you. When they take you out of the
17 car, do they handcuff you?

18 A. Yes.

19 Q. They put you in one car?

20 A. Correct.

21 Q. How long were you in that car?

22 A. For like five minutes, until they got me to the
23 other car.

24 Q. So, then they take you to another car?

25 A. Yes.

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1 Q. So, when you are in the first car or the second
2 car, did any E.M.S. or fire department people, did
3 anybody come up to you and ask you any questions?

4 A. When -- they had the fire department checking
5 on the car with a fire, with the smoke and all of that.
6 They did not offer any kind of assistance to perform on
7 me, to see if I was okay.

8 Q. So, you heard Officer Gillham on the stand say
9 that he believed that E.M.S. or the fire department came
10 and talked to you and asked you if you were in need of
11 medical attention. Is that accurate?

12 A. No. E.M.S. was not there. The fire department
13 was there to perform duties as far as the fires and that
14 of the car.

15 Q. So, nobody from the fire department --

16 THE COURT: Just for clarification, when
17 you say "E.M.S. was not there," you didn't see an
18 ambulance there?

19 THE WITNESS: There was no ambulance.

20 Q. (BY MR. GUERRA) So, did anybody from the fire
21 department come over to car number one or car number
22 two?

23 A. It was a single-car accident. But it was --

24 Q. I'm sorry. What I meant is police car number
25 one or police car number two.

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1 A. Oh, okay. Okay. I saw the fire department
2 there to check for the fire.

3 Q. I want you to tell the jury if anybody from the
4 fire department, while you were there, ever came over to
5 you and asked you any questions about how you felt, if
6 you needed assistance or anything of that nature?

7 A. They didn't perform none of that, no.

8 Q. Okay. So, you're transported to Central Intox?

9 A. Yes.

10 Q. Do you remember how long that took?

11 A. Well, when they transferred me from that car to
12 the other car, then they just talked to me like for
13 three minutes; and then they just took me straight into
14 Central Intox. That's it.

15 Q. Okay. Let's talk about the police station.
16 All right? Now, you saw -- you've seen the video,
17 correct?

18 A. Correct.

19 Q. Well, before I -- let me ask you one final
20 question about the accident, okay?

21 A. Uh-huh.

22 Q. Three officers came in here and testified about
23 the accident. Did any one of those officers ask you any
24 questions about were you injured, were you hurt, do you
25 have a headache, were you dizzy, or anything of that

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1 nature?

2 A. No.

3 Q. All right. Let's go to the police station. Do
4 you remember how long it took to get from the accident
5 to the police station?

6 A. I want to say like 20 minutes.

7 Q. Now, I know this seems like a silly question;
8 but did you have anything to drink while you were in the
9 police cars?

10 A. In the police car, no. That -- no.

11 Q. Okay. So, you get to the police station. Tell
12 the jury what happens the moment you get there and
13 walking out to Central Intox where we see the video?

14 A. When I got off at the police department, I was
15 walking into the -- and I needed to use the restroom.
16 They did not allow me to use the restroom. So, I
17 urinated myself again, and then they took me into the
18 Intox room and they started performing this test. At
19 that point, I was not --

20 Q. Let me stop you real quick. So, when you
21 walked from the police car into the police station --

22 A. Correct.

23 Q. -- are you handcuffs?

24 A. Yes.

25 Q. Now I just want to be clear. You said you

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1 urinated on yourself again?

2 A. Correct.

3 Q. Now, was that what we see on the video or was
4 that before the video?

5 A. That was before the video. And then in there,
6 I knew they were not going to let me use the restroom so
7 I -- you know, I just urinated on myself again.

8 Q. So, it wasn't two times. It was three times?

9 A. Three times, yeah.

10 Q. Okay. Let's talk about the second time. How
11 did that make you feel?

12 A. It made me feel that they are not here to serve
13 you. I mean, they are -- they are not here to help you
14 with the series of events in the order in which
15 everything transpired. It was just not right. It was
16 not professional. It was not something that people that
17 are in public service should do.

18 MR. GUERRA: I will have to object, Your
19 Honor. That's narrative.

20 THE COURT: Sustained.

21 Q. (BY MR. GUERRA) Let's try to break it up, okay?

22 A. Uh-huh.

23 Q. Now, did you urinate on yourself because you
24 had way too much to drink?

25 A. No.

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1 Q. Was it because of your medicine or the
2 accident?

3 A. Well, on the Clonazepam, that's one of the
4 symptoms that it has that you urinate, yes.

5 Q. Okay. Well, has this -- have you ever --
6 before this accident, have you ever urinated on yourself
7 like you did on this night?

8 A. No, because every time that I need to go to the
9 restroom, I will end up stopping at a gas station and
10 go to the restroom. This time it happened when I had
11 the accident. I couldn't move anymore. I was in a car
12 accident. I was not in a situation where I can say, Oh,
13 let me walk to a restroom or anything like that.

14 Q. Okay. And, what, you asked to go to the
15 restroom? Is that on video? Or is that outside the
16 videoed room?

17 A. They didn't have that on video, no.

18 Q. Okay. Let's talk about when you get to the
19 video room. Okay?

20 A. Yes.

21 Q. How many doors can you go in and out of?

22 A. It was one door.

23 Q. Can you describe the room for me?

24 A. It was four walls. It was like a 12-by-12
25 room. Basically they had the machine on the corner.

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1 They had like the lines where you had to do like the
2 walking test that they do and the -- and all that. But
3 it was not a very -- it's probably a 12-by-12 room.

4 Q. Cold or hot?

5 A. It was pretty cold.

6 Q. Really cold or very cold?

7 A. To me it was cold, very cold.

8 Q. Okay. Now, there was -- how many offices were
9 in that room?

10 A. There was three officers.

11 Q. Now -- and we can see it on the video -- more
12 than one officer was giving you instructions?

13 A. Correct.

14 Q. How many officers were giving you instructions?

15 A. Well, the officers were giving me different
16 tests at, you know, at different times. Like, when I
17 was taking the test, I had that officer that was taking
18 the breath test. The other one was doing the line. You
19 know, the other one was --

20 Q. Well, tell the jury: Was that confusing to
21 you? Did that confuse you a little bit?

22 A. Well, at that time I was very upset with
23 everything that was going on, especially how I was
24 treated at the scene. And I was very disappointed with
25 everything that was going on and how they didn't even

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1 give me a chance to explain myself, how they did not ask
2 me if I needed any kind of medical help. I had like a
3 big headache that night. I was dizzy. I was
4 unbalanced. I was slurring which is actually part of
5 the -- the slurring is also part of the medication that
6 I take.

7 MR. VAZQUEZ: Objection, Your Honor,
8 narrative.

9 THE COURT: Sustained.

10 Q. (BY MR. GUERRA) Let's try to break it up,
11 okay --

12 A. Uh-huh.

13 Q. -- to when you are in that room. Okay?

14 A. Uh-huh.

15 Q. Explain to the jury, explain to them how that
16 made you feel?

17 A. It made me feel really bad that -- you know,
18 you are in a place. It's a police department, and they
19 don't even let you use the restroom. It's just not
20 right.

21 MR. VAZQUEZ: Objection, Your Honor,
22 relevance.

23 THE COURT: Sustained.

24 Q. (BY MR. GUERRA) Did these officers ever tell
25 you that you were free to leave at any point?

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1 A. No.

2 Q. Now, there when you were in the video room at
3 Central Intox, did those police officers ever tell you
4 that you could refuse to do any tests?

5 A. They didn't tell me that I could refuse to do
6 any tests, no.

7 Q. Okay. Now, you didn't have your glasses with
8 you, correct?

9 A. Yes. I didn't have my glasses.

10 Q. I may have already asked you this. But did
11 that in any way affect your ability to do those tests?

12 A. Yes.

13 Q. Now, you've talked about headaches and
14 dizziness. Did that happen because of the accident or
15 why did that happen?

16 A. It could have been a combination of both, the
17 medications and also the accident. With being so shook
18 up and --

19 Q. Well, let me ask you questions about your
20 medication. Did you take any medication before you got
21 in the car?

22 A. I didn't take any medications until I got home.
23 Because you cannot drive with those kind of medications
24 because it gets you drowsy, gets you --

25 Q. So, it's very important. Tell this jury about

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1 when -- did you take medications before you drove that
2 night?

3 A. No.

4 Q. Are you sure about that?

5 A. I take medications every day, but I didn't take
6 any that night. I took in the morning.

7 Q. Okay. So, before you drove, before your
8 accident, did you take any medications?

9 A. No.

10 Q. Now, in the video, we see officers asking you
11 for a breath test. Do you remember that?

12 A. Yes.

13 Q. And did you agree to give a breath test?

14 A. Yes, because I felt that I didn't have anything
15 to hide.

16 Q. Why did you feel that way?

17 A. Because one beer at 7:00 o'clock in the
18 afternoon and being -- leaving, having an accident at
19 2:30 in the morning doesn't feel like you have any kind
20 of alcohol in your system.

21 Q. All right. So we've seen the results of this
22 breath test. Do you think they are accurate?

23 A. No.

24 MR. GUERRA: I will pass the witness.

25 THE COURT: Mr. Vazquez.

1 MR. VAZQUEZ: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. VAZQUEZ:

4 Q. I need some clarification here because I'm
5 totally confused. So, you are saying that the drugs
6 make you urinate yourself, correct?

7 A. The Clonazepam.

8 Q. Yes or no, sir?

9 A. Yes.

10 Q. You are saying that the drugs make you dizzy?

11 A. Some --

12 Q. Yes or no, sir?

13 A. Yes, they do.

14 Q. And u said the drugs make you drowsy, correct?

15 A. Yes, they do.

16 Q. You are saying all of these things that the --

17 A. The ones that made me --

18 Q. I'm sorry, sir. I'm asking the question.

19 MR. GUERRA: I would ask the State allow
20 to witness answer his question.

21 THE COURT: Well, he didn't ask the
22 question. Go ahead.

23 Q. (BY MR. VAZQUEZ) All of these things that the
24 officers testified to, that you were off balance, that
25 you were unable to maintain your balance on the one-leg

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1 stand, that you did not follow directions, that you
2 urinated yourself, all of these are symptoms of your
3 medications, correct?

4 A. Yes.

5 Q. And you just told us you didn't take any
6 medication that day, correct?

7 A. I take medication.

8 Q. Yes or no, sir?

9 A. I take -- I did not -- I took medications in
10 the morning, yes.

11 Q. Yes or no?

12 A. Yes.

13 Q. Were you taking your medications that day?

14 A. Yes.

15 Q. In the morning?

16 A. I take them at the time that I am supposed to
17 take the medications.

18 Q. And you are telling us that you are not
19 supposed to drive after taking those medications,
20 correct?

21 A. Well, I didn't take my --

22 Q. Yes or no, sir?

23 A. I didn't take my --

24 Q. Yes or no, sir?

25 THE COURT: Hold on.

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1 A. Can I explain how I take my medications and --

2 THE COURT: Mr. Garcia, hold on. So it
3 has to be in question-answer form. If your lawyer needs
4 to clarify anything, he is going to have the opportunity
5 to do that. Okay? So, if you can listen to the
6 question that's being asked and do your best to answer
7 that particular question.

8 THE WITNESS: Okay.

9 THE COURT: What is your question, sir? I
10 think it was: Did you take your medicine in the
11 morning?

12 Q. (BY MR. VAZQUEZ) Did you take your medication
13 that morning?

14 A. Yes.

15 Q. And you just told us that you are not supposed
16 to drive when you take those medications, correct?

17 A. You are not supposed to take certain
18 medications. The one that I take in the morning has
19 nothing to do with the ones that --

20 MR. VAZQUEZ: Objection, nonresponsive.

21 THE COURT: Overruled. The one you take
22 in the morning, what?

23 THE WITNESS: I take --

24 THE COURT: Just finish your sentence.
25 The one in the morning has nothing to do with --

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1 A. -- with not being able to drive.

2 Q. (BY MR. VAZQUEZ) Okay. So, the ones -- you
3 just told us the medications you take in the morning
4 make you dizzy, drowsy; and you are not supposed to
5 drive. That's what you testified on direct.

6 MR. GUERRA: That's not accurate, Your
7 Honor. That is a misrepresentation of the testimony.

8 THE COURT: Just rephrase your question.

9 Q. (BY MR. VAZQUEZ) When your counsel asked you if
10 the medications make you dizzy or drowsy, you answered
11 yes, correct?

12 A. Every medication has different side effects.
13 The one that I take in the morning, you are able to
14 drive. The ones that you take at night, those are the
15 ones that you cannot drive, which those are the ones
16 that I was going to take whenever I got to my house.

17 Q. But you hadn't taken those?

18 A. No.

19 Q. But you are not supposed to drink alcohol
20 before you take those, right?

21 A. Absolutely.

22 Q. But you just testified that between 7:00 and
23 2:30 in the morning, you felt that all of the alcohol
24 was out of your system?

25 A. You can take the alcohol four hours before the

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1 medication.

2 Q. Right. But you said between 7:00 and 2:30 in
3 the morning, you felt that all of the alcohol was out of
4 your system, correct?

5 A. Yes.

6 Q. So, that means you had been drinking that
7 night?

8 A. I had one beer, yes.

9 Q. One beer?

10 A. Yes.

11 Q. Now, during the night in question, you told the
12 police officers that you didn't have anything to drink?

13 A. There's -- I told the officers that I had had
14 one drink in the afternoon.

15 Q. You've been here in the entire trial, correct?

16 A. Correct.

17 Q. And you've seen all of the officers testify,
18 correct?

19 A. And they testified differently. The first one
20 testified that --

21 Q. I -- may I --

22 A. Yes.

23 Q. Can you just say yes or no? Did you see all of
24 the officers testify in this trial or not? Yes or no?

25 A. Yes.

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1 Q. And any of those officers admit or say that, in
2 fact, you had told them you had anything to drink?

3 A. Yes.

4 Q. They did?

5 A. One of them said, Yes. The other one said, No;
6 and the other one said, No.

7 Q. Okay. And the police report that was written
8 says in here, Suspect stated that he did not have
9 anything to drink tonight.

10 MR. VAZQUEZ: Objection, Your Honor.
11 Counsel is reading from a document that is not in
12 evidence.

13 THE COURT: Sustained.

14 Q. (BY MR. VAZQUEZ) The officers wrote in the
15 police report that you hadn't had anything to drink and
16 they came in here and testified to that fact?

17 MR. GUERRA: Same objection.

18 THE COURT: Sustained.

19 Q. (BY MR. VAZQUEZ) Okay. So, you are saying four
20 officers came in here, correct?

21 A. Three.

22 Q. I counted four. Morales, Parker, Gillham, and
23 Carroll?

24 A. And Carroll, yeah.

25 Q. And Carroll was the first one on the scene?

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1 A. Correct.

2 Q. He testified that you told him you hadn't had
3 anything to drink?

4 MR. GUERRA: That is actually a
5 misrepresentation of the testimony, Your Honor.

6 THE COURT: Overruled.

7 Q. (BY MR. VAZQUEZ) Did he say that -- whether or
8 not you had told him you had anything to drink?

9 A. I had told them I had had one drink at 7:00
10 o'clock, yes.

11 Q. I'm asking you if you had told him -- if he had
12 told us -- never mind.

13 So, Officer Parker came in here and
14 testified, correct?

15 A. Okay.

16 Q. Yes?

17 A. Yes, he did.

18 Q. Did you tell Officer Parker that you had had
19 one drink?

20 A. He didn't ask that question.

21 Q. Did you tell Officer Gilham that you had one
22 drink?

23 A. He didn't ask that question.

24 Q. Did you tell Officer Morales that you had one
25 drink?

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1 A. He didn't ask that question.

2 THE COURT: Okay. Just listen to his
3 question. Okay?

4 THE WITNESS: Uh-huh.

5 THE COURT: The last question was: Did
6 you tell Officer Morales that you had one drink? Yes or
7 no? Not whether that question was asked. Did you tell
8 Officer Morales that you had one drink?

9 A. I told him I didn't have a drink.

10 Q. (BY MR. VAZQUEZ) Okay. So, you are saying that
11 one officer did come in here and said -- testified that
12 you had a drink. Which officer was that?

13 A. The second one.

14 Q. Officer Parker?

15 A. That's the one that said --

16 Q. Okay. And I just asked you if you had told
17 Officer Parker if you had a drink; and you told me, no,
18 that he didn't ask that question. So, how can Officer
19 Parker testify --

20 A. I said that that's what he testified here. He
21 didn't ask me directly that question.

22 THE COURT: Okay. The jury has heard what
23 the other witnesses have had to say. So, please ask
24 this witness the questions that pertain to him.

25 Q. (BY MR. VAZQUEZ) Okay. So, obviously somebody

1 is lying. Correct?

2 A. Lying about what?

3 Q. Lying about you -- whether or not you told them
4 you had a drink?

5 A. Well, with four different officers -- I mean,
6 you know, with all of the commotion of being dizzy and
7 unstable and everything, I can't say that I remember
8 clearly everything that happened.

9 Q. Okay. So, you don't remember telling them that
10 you had a drink?

11 A. I remember telling the first officer that at
12 7:00 -- when I had started my day, I had had one drink,
13 yes.

14 Q. But he's not the one that came in here and
15 testified and said that you had a drink.

16 MR. GUERRA: Your Honor, that is a
17 misstatement of the facts presented before this jury.

18 THE COURT: Okay. Just move on, please.

19 Q. (BY MR. VAZQUEZ) I guess my question is: You
20 lied to somebody, correct?

21 A. I didn't lie to anybody.

22 Q. You didn't lie to the officers and you didn't
23 tell them you didn't have anything to drink?

24 A. I already reiterated this, that I told the
25 officer that I had had one drink at 7:00 o'clock. After

1 that, the rest of the officers did not ask that
2 question.

3 Q. Okay. I'm still confused, but I will move on.
4 I think I've covered my point.

5 Tell me, you said you have hypertension
6 and high blood pressure. What's the difference?

7 A. High blood pressure is when you have episodes
8 of -- that your pressure can go up to 180, 190. It's a
9 medical condition that you get diagnosed, and they give
10 you medications so that you can take daily for -- to not
11 go into like a heart attack. Because if you don't get
12 medications for high blood pressure or you --

13 Q. I'm sorry. Maybe I miss -- maybe you didn't
14 understand my question. I want to know the difference
15 between hypertension and high blood pressure. I know
16 what they are. I want to know if you know what the
17 difference is between those two.

18 MR. GUERRA: Your Honor, I would object to
19 that question. He's not a medical doctor.

20 THE COURT: Overruled.

21 A. I am not a medical doctor.

22 Q. (BY MR. VAZQUEZ) But you've been diagnosed with
23 these issues, correct?

24 A. Yes.

25 Q. And you don't know what they are?

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1 A. I am not a medical -- I'm not a doctor to
2 answer those questions. I know what the symptoms are.
3 And I go through them every day. I do take medications
4 for them, and I -- that's how I live my life, take those
5 medications so that I can feel good.

6 THE COURT: Hold on. Mr. Garcia, what is
7 your understanding of the difference?

8 A. Well, hypertension is when you are really hyper
9 and you -- the psychiatrist gives you medication so that
10 you can calm down. That's for hypertension. I mean, I
11 take a series of medications, and each one has a
12 different affect and it is medicine that a psychiatrist
13 gives you to control you from a breakout or from a, you
14 know, a cardiac -- because I have been at work sometimes
15 and --

16 THE COURT: All right. And so you believe
17 that to be different than high blood pressure?

18 THE WITNESS: Yes.

19 THE COURT: Just to clarify the record.

20 THE WITNESS: Yes.

21 THE COURT: Okay. Move on.

22 Q. (BY MR. VAZQUEZ) Okay. I guess my
23 understanding is a little different.

24 MR. GUERRA: I'm going to object to the
25 side-bar, Your Honor.

1 THE COURT: Sustained.

2 Q. (BY MR. VAZQUEZ) The medication that you take
3 at night, that's for the hypertension or the high blood
4 pressure?

5 A. At night I take the Bystolic for the high blood
6 pressure, and I take the Clonazepam for the
7 hypertension.

8 Q. And those are prescribed by medical doctors?

9 A. By psychiatrists.

10 Q. Both of them?

11 A. Correct.

12 Q. So a psychiatrist is prescribing high blood
13 pressure medication?

14 A. The high blood pressure is -- I see a medical
15 doctor, and I see a psychiatrist. You are correct. The
16 high blood pressure is a regular doctor.

17 Q. And the Clonazepam is the one that causes
18 urination, dizziness, blurry speech and speech
19 impediment?

20 A. Correct.

21 Q. Do you wear diapers?

22 A. No.

23 Q. Do you wear a catheter?

24 A. No.

25 Q. Do you have a problem with frequent

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1 urination --

2 A. But I go to nearby restrooms to go and do that.

3 Q. Ever been in a situation where there is not a
4 nearby restroom?

5 A. No. I always -- I have a house where I can go
6 to the restroom. I work at a place where I can walk to
7 the restroom that's in the next room. That's it.

8 Q. How did you move here from New York?

9 A. How did I move here?

10 Q. Uh-huh.

11 A. I moved here from -- I moved back home. I'm
12 from McAllen. I just moved back.

13 Q. Did you drive?

14 A. Yes.

15 Q. And in your drive, there was never a spot
16 across maybe Kentucky or Georgia or one of those longer
17 states where, when you were driving across it, there was
18 never -- not a rest area?

19 A. There are rest areas and always convenient
20 stores to stop by to go to the restroom.

21 Q. Okay. So, that day -- and I believe counsel
22 misspoke, so I may -- correct me if I'm wrong, counsel.
23 He asked you about January 18th, what time you woke up.
24 But I believe that was the day of the accident, in the
25 morning. So the accident would have been January 17th,

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1 correct?

2 A. Correct.

3 Q. So, on January 17th, you got up, went to work
4 for your sister, right?

5 A. Correct.

6 Q. You were getting ready for a big event,
7 2000-plus people?

8 A. Yes.

9 Q. You got there about what time in the morning?

10 A. I did not get to my house back at night.

11 Q. No. No. What time did you get to the job in
12 the morning?

13 A. I started working at 7:00 o'clock.

14 Q. 7:00 a.m.?

15 A. Correct.

16 Q. So, you worked for 12 hours?

17 A. Yes.

18 Q. On a long day, big event, lots of people, you
19 worked 12 hours?

20 A. Correct.

21 MR. GUERRA: That's asked and answered,
22 Your Honor.

23 THE COURT: Sustained.

24 Q. (BY MR. VAZQUEZ) From there you drove to your
25 friend's house in Pasadena?

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1 A. Correct.

2 Q. And that's when you had your one Corona?

3 A. Yes.

4 Q. Nothing else to unwind after your long,
5 stressful day?

6 A. No.

7 Q. Nothing else after all of the stress of dealing
8 with 2000 people?

9 A. No.

10 Q. Nothing after having seen your friends for --
11 you hadn't seen for years?

12 A. No, because I knew I had to drive all the way
13 to Katy, and I wasn't about to do that. Plus, I knew
14 that I had to take those two -- the medications that I
15 tell you I can't drink within four hours.

16 Q. Nothing since, you know, you started sitting
17 and cooking? Nothing?

18 A. No.

19 Q. Nothing at dinner?

20 A. No.

21 Q. Nothing, you know, before you left?

22 A. No. I already answered that, no.

23 Q. How do you explain the .14 alcohol content?

24 A. How did I explain what?

25 Q. The .14 alcohol content in your system.

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1 A. Can you rephrase that question?

2 MR. GUERRA: Judge, that calls for
3 speculation on his part.

4 THE COURT: Overruled.

5 Q. (BY MR. VAZQUEZ) Explain to the jury since you
6 hadn't had anything to drink at 7:00 p.m., 7:00 p.m. to
7 2:30 a.m.

8 A. I already answered that question.

9 Q. You had nothing to drink?

10 A. No.

11 Q. Then at 4:30 in the morning -- in the police
12 car -- your counsel asked you: Did you have anything to
13 drink in the police car? Did you have anything to drink
14 in the police car?

15 A. No, I already answered that.

16 Q. Did you have mouthwash?

17 A. No.

18 Q. Did they give you any lipstick?

19 A. No.

20 Q. Then explain to the jury at approximately 4:30
21 in the morning, nine hours later, after your first beer,
22 one and only beer, that you had a .14 blood alcohol
23 content.

24 A. I don't know how to explain that because it
25 could be a multiple of things. It could --

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1 Q. Thank you. Did the medication, the medication
2 you take, cause your blood alcohol content to raise?

3 A. I'm not a doctor to answer that question.

4 MR. VAZQUEZ: May I have a moment, Your
5 Honor?

6 THE COURT: Yes.

7 Q. (BY MR. VAZQUEZ) Mr. Garcia, we've all seen the
8 video. You are pretty talkative in the video, correct?

9 A. Yes.

10 Q. Tell me, at what point in the video did you ask
11 the officers for medical assistance?

12 A. At that time of the scene, which there is no
13 video there.

14 Q. You asked him at the time of the scene?

15 A. Yes.

16 Q. That's not what you said earlier. You said
17 that they didn't provide you any investigation.

18 A. I asked them. They didn't give me the
19 assistance. That's what I said.

20 Q. Okay. I don't believe that's what you said.

21 MR. GUERRA: Objection to the side-bar,
22 Your Honor.

23 THE COURT: Sustained.

24 Q. (BY MR. GUERRA) So, you don't remember
25 everything that happened that night, right?

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1 A. At that time of the accident, as I had said
2 before, I was dizzy. I was disoriented. I was -- my
3 vision was blurry and fuzzy. I was unbalanced, and I
4 was -- at that point. Then gradually after, you know, I
5 was coming back to the senses after a while. Then I was
6 getting ahold of what was going on.

7 Q. What did you hit?

8 A. A barrier.

9 Q. A barrier?

10 A. Yes.

11 Q. And your car was spinning and spinning and
12 spinning?

13 A. Yes.

14 Q. And then you were able to take control of it?

15 A. Correct.

16 Q. And then you were able to drive it to the
17 shoulder?

18 A. Correct.

19 Q. Yet you told your counsel that the vehicle was
20 completely undriveable after the accident?

21 A. The car was completely undriveable --

22 Q. Yes.

23 A. Let me finish answering the question. The car
24 was completely non-drivable up to the point where the
25 airbags deployed and it was on the side of the road.

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

3 THE COURT: Sustained.

4 Q. (BY MR. VAZQUEZ) Can you -- was the car -- you
5 told your counsel that the car was not drivable,
6 correct?

7 A. The car was not drivable after I took it to the
8 side of the road.

9 Q. But it was drivable to get it to the side of
10 the road?

11 A. It was -- as it was flipping and in the midst
12 of the accident, it just happened to fall on the side --
13 get it to the side of the road, when I took control of
14 the vehicle to get it to the side of the road.

15 Q. Okay. I'm confused because that's not what you
16 just said. You said you were able to take --

17 THE COURT: Okay. Stay away from the
18 side-bar.

19 MR. GUERRA: Objection. That's
20 argumentative, Your Honor. That is exactly what he
21 said.

22 THE COURT: Guys, the side-bar comments
23 are unnecessary. Just make an objection, and I will
24 rule on it if you have an objection that --

25 MR. GUERRA: It's argumentative, Your

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1 Honor.

2 THE COURT: That is sustained. Refrain
3 from your side-bar, argumentative comments.

4 MR. VAZQUEZ: Yes, Your Honor.

5 Q. (BY MR. VAZQUEZ) Mr. Garcia, how long did you
6 spend in jail?

7 A. Six hours.

8 Q. In those six hours, did you ask anybody for
9 medical assistance?

10 A. Yes, I did.

11 Q. Were you given medical treatment?

12 A. As soon as I walked into the jail, they
13 actually administered medicine. You know, I didn't know
14 that they could administer medicine if you were
15 intoxicated. That's one thing I can say about that.

16 Q. What did they administer medicine for?

17 A. For my high blood pressure going crazy then.

18 Q. Did they do an evaluation on you?

19 A. Evaluation? I don't know what they do -- what
20 the medical people there do. I don't know.

21 Q. How did they find out your blood pressure was
22 high?

23 A. Because they took vitals. I mean --

24 Q. So, they did an evaluation?

25 A. Yes.

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1 Q. They checked you out?

2 A. Yes.

3 Q. Did you tell them you were dizzy?

4 A. I told them I was dizzy and I wasn't feeling
5 good.

6 Q. Did they evaluate you for a concussion?

7 A. They did not evaluate me for anything like
8 that. Only for my -- they actually gave me pills to
9 control my depression.

10 Q. Did they evaluate -- did they treat you for any
11 injuries that you sustained in the accident?

12 A. No.

13 Q. Did you sustain any injuries in the accident?

14 A. I don't -- I didn't have no injuries. I had
15 headaches. I had -- like I had mentioned all of the
16 other things that I had previously said, yes.

17 Q. But you didn't tell the medical staff that,
18 yes, I told the medical staff there; and they didn't
19 evaluate you for a concussion?

20 A. No.

21 Q. They just took your blood pressure?

22 A. Yeah.

23 Q. Now, Mr. Garcia, how long have you had high
24 blood pressure?

25 A. About a year.

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1 Q. About a year?

2 A. Since last August.

3 Q. Did you educate yourself on it?

4 A. It happened to me at work one day that I was
5 working, and I had to call the ambulance because my
6 pressure had gone up to like 186 and -- they finally got
7 my pressure down. And then as -- I just left that day
8 from work; and when I left, I actually had to call an
9 ambulance because I couldn't even drive. Then they
10 tested and they diagnosed the fact that I had high blood
11 pressure. Then they started treating that.

12 Q. I'm sorry, I was asking for after the fact that
13 you were diagnosed. Did you like read any materials or
14 anything like that?

15 A. No. The doctor did that for me.

16 Q. He gave you some material to review?

17 A. The doctor prescribed me medications, and they
18 diagnosed me with that. I don't -- I didn't have any
19 knowledge about that because I'm not a doctor.

20 Q. Did he tell you any of the possible signs and
21 symptoms that you should look for if your blood pressure
22 gets high?

23 MR. GUERRA: Your Honor, I'm going to
24 object to relevance at this point.

25 THE COURT: Sustained.

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1 Q. (BY MR. VAZQUEZ) If I told you, would you have
2 any reason to disagree that headaches could result as a
3 result of high blood pressure?

4 A. Then again, I'm not a doctor to answer that. I
5 have a multiple series of medical issues that I don't
6 know what is -- what happens with what. I just know
7 that I take medications for the three different items
8 that I listed, as to what I had mentioned earlier and --

9 MR. VAZQUEZ: Objection, Your Honor,
10 nonresponsive.

11 THE COURT: Sustained.

12 Q. (BY MR. VAZQUEZ) Mr. Garcia, my question was:
13 Would you object -- would you have any reason to object
14 if I told you that one of the -- let me see if I can
15 rephrase it. Would you have any reason to disagree if I
16 told you that blood pressure, headaches, could be as a
17 result of high blood pressure?

18 MR. GUERRA: Objection as to -- I would
19 think that --

20 MR. GUERRA: Objection as to it being
21 speculation on the part of this witness.

22 THE COURT: Overruled. Based on his
23 personal experience.

24 Q. (BY MR. VAZQUEZ) You may answer the question.

25 A. I would think that you would get headaches with

1 high blood pressure, yes.

2 Q. So, when you got to the jail, your blood
3 pressure was extremely high, correct?

4 A. Correct.

5 Q. And, indeed, a stressful situation such as a
6 car wreck would cause your car to -- I mean, I'm
7 sorry -- a car wreck would cause your blood pressure to
8 go up, correct?

9 MR. GUERRA: Your Honor, I'm going to --
10 that's speculation on the part of this witness.

11 THE COURT: Sustained.

12 Q. (BY MR. VAZQUEZ) The year that you've had high
13 blood pressure, during stressful situations, as a
14 result, your blood pressure increased?

15 A. No.

16 Q. You haven't felt your blood pressure increase
17 in stressful situations?

18 MR. GUERRA: Asked and answered, Your
19 Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. VAZQUEZ) When you got to the police
22 station, you said you had a headache, correct?

23 A. Yes.

24 Q. How long after you left -- what's it called --
25 Central Intox were you seen by medical personnel?

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1 A. Right after I got -- they took the -- right
2 after they did the Intox test and then I requested to
3 see the medical staff there because I wasn't feeling
4 good.

5 Q. So, immediately after the Central Intox --

6 A. Correct.

7 Q. -- you asked for medical personnel?

8 A. Correct.

9 Q. And that's when they determined that your blood
10 pressure was high?

11 A. Yes.

12 Q. So, at the time -- would it be safe for me to
13 say that at the time you were at Central Intox, your
14 blood pressure was high?

15 MR. GUERRA: Objection to speculation,
16 Your Honor.

17 THE COURT: Sustained.

18 Q. Would you disagree with me if -- let me see if
19 I can --

20 (Sotto voce discussion off the record)

21 MR. VAZQUEZ: I will withdraw, Your Honor.

22 Q. (BY MR. VAZQUEZ) Mr. Garcia, do you have any --
23 do you have your prescriptions with you?

24 A. Yes, I do. The same bag that I had the day of
25 the accident, I have the same --

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1 THE COURT: You have answered his
2 question, sir.

3 MR. VAZQUEZ: May we see those
4 prescriptions?

5 THE WITNESS: Sure.

6 MR. VAZQUEZ: I can bring it back to you
7 if you are okay with that.

8 THE WITNESS: Yes.

9 MR. VAZQUEZ: May I approach, Your Honor?

10 THE COURT: Yes, you may.

11 A. There's the Bastolic. That's the Hydroxyzine.
12 And the Clonazepam I just left at home because that one
13 I take at night.

14 Q. (BY MR. VAZQUEZ) So, there aren't any other --

15 A. I just take the three. The Clonazepam, I take
16 at night. And that one I have at the house.

17 Q. Which one do you take in the morning?

18 A. The Hydroxyzine.

19 Q. The Hydroxyzine. This is the Hydroxyzine right
20 here.

21 A. Yes. That is for anxiety.

22 Q. Can you read what that label says right there?

23 A. Blurred vision.

24 Q. Read the whole thing, please, sir.

25 A. This medicine may cause blurred vision.

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1 Q. And.

2 A. On this sticker, that's what it says.

3 Q. This sticker right here, the top, yellow one.

4 Are you having a difficult time seeing it?

5 A. May --

6 Q. If you would like, I can read it for you.

7 A. Yeah.

8 MR. VAZQUEZ: Would that be okay with you,
9 counsel?

10 MR. GUERRA: I would object as to it being
11 hearsay, Your Honor.

12 THE COURT: Overruled.

13 Q. (BY MR. VAZQUEZ) And you looked at it, correct?

14 A. Yes. It's very small.

15 Q. I haven't altered it here since you looked at
16 it?

17 A. No.

18 Q. May cause drowsiness. Alcohol may make it
19 worse. Use care when operating a vehicle or machinery.

20 Would that be a fair and accurate
21 representation of what that says?

22 A. That's what it says, yes.

23 Q. And you take that in the morning?

24 A. Yes, because I need it for -- that's how the
25 doctor instructed for me to take it.

1 Q. But so it says it may cause drowsiness and take
2 care when operating a machinery?

3 MR. GUERRA: Object as to asked and
4 answered, Your Honor.

5 THE COURT: Sustained.

6 Q. (BY MR. VAZQUEZ) So you take that in the
7 morning, and you drive to work?

8 A. That's how I'm -- I have to take that
9 medication, how it's instructed by the physician.
10 That's how --

11 Q. Objection, nonresponsive, Your Honor.

12 THE COURT: Sustained.

13 Q. (BY MR. VAZQUEZ) And so you took that
14 medication the morning of the accident, correct?

15 A. Yes.

16 Q. Yet it tells you as a caution not to operate
17 machinery, correct, a vehicle?

18 A. Many people take that medication like that.

19 Q. Objection, nonresponsive, Your Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. VAZQUEZ) Does the medication warn you
22 not to drive or -- let me rephrase that. Does the
23 medication caution you against driving while taking this
24 medication?

25 MR. GUERRA: Asked and answered, Your

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1 Honor.

2 THE COURT: Sustained.

3 THE WITNESS: So how do --

4 THE COURT: You don't have to answer that.

5 Next question.

6 Q. (BY MR. VAZQUEZ) Did you take anything else
7 that day?

8 A. No. I only take what I am prescribed by the
9 physician.

10 Q. Those are the only prescriptions you have?

11 A. Yes.

12 Q. And yet --

13 (Sotto voce discussion off the record)

14 MR. VAZQUEZ: Nothing further, Your Honor.

15 MR. GUERRA: No more questions, Your

16 Honor.

17 THE COURT: All right. Mr. Garcia, you
18 may resume your seat, sir. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Guerrra. Anything else?

21 MR. GUERRA: No, Your Honor. Defense

22 rests.

23 THE COURT: State, you rest and close?

24 MR. VAZQUEZ: Yes, Your Honor.

25 THE COURT: And you close your case as

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1 well; is that correct?

2 MR. GUERRA: Yes, Your Honor.

3 THE COURT: Ladies and gentleman, we are
4 going to talk about the jury charge. So, if you will go
5 with the bailiff, we will have you in here shortly.

6 THE BAILIFF: All rise.

7 (Jury leaves courtroom)

8 THE COURT: All right. Y'all may be
9 seated. Okay. So, Terri gave y'all the proposed
10 charge. We obviously will take out the part about
11 failing to testify. Wait. Is that in here?

12 THE COURT REPORTER: Yes, ma'am.

13 THE COURT: All right. That comes out.
14 Does either side have any objections, requests for
15 admissions or deletions to the charge?

16 MR. VAZQUEZ: Your Honor, at this time the
17 State would ask to track the 49.01 of the Penal Code,
18 intoxication, 49.01 (12)(a), it says not having the
19 normal use of mental or physical faculties by the reason
20 of the introduction of alcohol, controlled substance, a
21 drug, dangerous drug or a combination of the two of
22 those substances or a .08.

23 MR. VAZQUEZ: The definition of
24 intoxication is in here.

25 MR. VAZQUEZ: It doesn't --

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1 THE COURT: Means not having the normal
2 use of mental or physical faculties by the reason of the
3 introduction of alcohol in the body.

4 MR. VAZQUEZ: But I would like that --

5 THE COURT: Okay. You would like to add a
6 controlled substance, drug, a dangerous drug or
7 combination of two or more substances?.

8 MR. VAZQUEZ: Yes, Your Honor.

9 THE COURT: What evidence do you have to
10 support that?

11 MR. VAZQUEZ: The defendant just testified
12 that he took the medication that day and the fact that
13 that medication he read allowed does caution against
14 driving for operating a vehicle when taking the
15 medication.

16 THE COURT: Okay. That request is denied.
17 Anything else?

18 MR. GUERRA: I would -- oh, I'm sorry.

19 THE COURT: Hold on. He's not done.
20 Anything else?

21 MR. VAZQUEZ: And you said we are taking
22 out the part -- obviously. All right. No, Your Honor.

23 THE COURT: Mr. Guerra.

24 MR. GUERRA: Yes, Your Honor. I would ask
25 for the paragraph of alcohol concentration means grams

1 per liters, that paragraph to be removed along with the
2 intoxicated means not having -- well, intoxication means
3 the normal use of mental or physical faculties by reason
4 of the introduction of alcohol into the body or having
5 alcohol concentration of .08 or more, I would ask that
6 for that paragraph to be removed because there's been no
7 evidence before this honorable court that at the time
8 Jose Garcia was above a .08. Obviously, the jury can
9 take the results into consideration; but because there's
10 no extrapolation evidence or factors, the State has not
11 proven -- there's not a scintilla of evidence that at
12 the time of operating he was above a .08. The test was
13 taken two hours after the fact, Your Honor.

14 Respectfully, I think it's appropriate to take that out.

15 THE COURT: All right. This is a really
16 common mistake. I don't mean you to do it in your
17 argument. It's .08 or greater.

18 MR. VAZQUEZ: You've said it five times.

19 THE COURT: I know everybody does it. The
20 prosecutors do it regularly. I anticipated that you
21 were going to ask me that, so I did some research and
22 the case that I found is a Court of Criminal Appeals
23 case callws Kirsh and so it -- based on Kirsh your
24 request will be denied. If you have any subsequent case
25 law that supports your position, I will consider it; but

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1 that's a 2010 case; Guerra we read Guerrita because we
2 anticipated this coming up. I think it's
3 distinguishable from this set of facts and I -- I don't
4 remember why but --

5 THE COURT: Let's that a short break
6 because I need to use the restroom anyways and I will
7 let you finish your part.

8 MR. VAZQUEZ: Thank you, Your Honor.

9 THE COURT: Okay. We are back on the
10 record to -- I will allow you to continue your argument.

11 MR. GUERRA: I don't have a great part,
12 Your Honor. I think the State has a point in this case.
13 I think that case has two different scenarios where it
14 will be -- it would be accurate or appropriate to grant
15 my request. However, if the Court is not inclined to
16 grant my request, I would ask that the definition be
17 more clear that the alcohol concentration of .08 or more
18 is required at the time of operating the vehicle.

19 THE COURT: Okay. So what this
20 instruction does is it -- it clearly says that they have
21 to find that they are intoxicated, operating a motor
22 vehicle while intoxicated, then it tasks the jury with
23 looking at the definition of intoxication. Now, there
24 is another charge that where the application spells out,
25 like if you believe beyond a reasonable doubt that the

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1 person was operating the motor vehicle in a public place
2 while intoxicated, namely not having the normal use of
3 Mental or -- and then it goes on to discuss normal use
4 of physical or alcohol concentration of .08 or greater,
5 then you will find the defendant guilty. So that's
6 another option. So if you would prefer that, where it's
7 spelled out in the application paragraph, we can do
8 that. I am referring to the last paragraph on Page 1.

9 MR. GUERRA: Yes, Your Honor, if it's okay
10 with the Court, I would prefer that.

11 THE COURT: All right. Now, other than
12 the previous objections that I have already ruled on,
13 are there any objections to the charge as it currently
14 is from either side? State?

15 MR. VAZQUEZ: May I have just a moment,
16 Your Honor?

17 THE COURT: Yes.

18 MR. VAZQUEZ: Nothing from the State, Your
19 Honor.

20 THE COURT: Mr. Guerra.

21 MR. GUERRA: Nothing from the defense,
22 Your Honor.

23 THE COURT: All right. Bernie, let's
24 bring in the jury.

25 THE BAILIFF: All rise.

1 (Jury enters courtroom)

2 THE COURT: Okay. Y'all may be seated.
3 Thank you.

4 All right, ladies and gentleman, both
5 sides having rested and closed their cases it is now
6 time for me to read you the law that applies in this
7 case. So this is the Court's Charge we talked about
8 yesterday. You will get to take it back into the jury
9 room with you when you start deliberating and it will
10 serve as your guide to deliberations.

11 *(Court's Charge read to the jury at this*
12 *time).*

13 THE COURT: All right. Mr. Vazquez.

14 MR. VAZQUEZ: Thank you, Your Honor. May
15 it please the Court.

16 THE COURT: Yes, sir.

17 MR. VAZQUEZ: Opposing counsel.

18 MR. VAZQUEZ: Ladies and gentlemen of the
19 jury, I told you at the get go that this is a
20 straightforward case. You just heard the judge's charge
21 where she defined to you intoxication. I'm not going to
22 go over it again. You are going to have the charge.
23 You are going to be able to read it. Loss of mental
24 faculties, the defendant didn't know where he was at.
25 The officers testified that he thought he was in Katy.

1 The defendant lost control of his vehicle. Hit
2 something. He and the defendant -- oh, I'm sorry hit a
3 barrier. Hit a barrier. All right. Was unable to
4 control his bladder, urinated himself. The defendant
5 was unable to stand with one leg out for more than 30
6 seconds and hopped to keep his balance. Wasn't able to
7 walk a line without losing his balance or putting his
8 arms out to the side for help. Smelled of alcohol.
9 Officers came in and told you, all of the officers came
10 and told you -- that they smelled alcohol on his breath.
11 All of the officers came in and told you that they
12 noticed red, bloodshot eyes. You saw a picture of the
13 defendant right after the accident or right after his
14 arrest with red, bloodshot eyes. You saw a video where
15 you can see on his shirt the wetness from his urination.
16 All of those are loss of physical faculties.

17 In addition to that, the defendant told
18 you -- he came in and told you that he had one beer at a
19 friend's house after a long, stressful day at work, with
20 friends he hadn't seen for quite -- a few years, couple
21 years, I believe he said. Friends from elementary
22 school. He had one drink. Yet when I asked him to
23 explain how his blood alcohol content was .14, he had no
24 answer. Why is that, ladies and gentleman? Well, it is
25 a simple fact. The defendant did not have just one

1 beer. He had several drinks. He was hanging out with
2 friends, had a long, stressful day. Had a few drinks in
3 his system. He said that he thought from 7:00 o'clock
4 to 2:30, somewhere around there, the alcohol had burned
5 out of his system. If you had one beer, sure, that's
6 probably out of your system by 2:30. More than one
7 beer? Maybe. Several? Probably not.

8 This case involves a defendant that has
9 high blood pressure. He has hypertension. He has
10 anxiety. He takes medications for those. He told you
11 he takes medications for those. It cause dizziness,
12 drowsiness, headaches. He testified that shortly after
13 his arrest the medical staff at the jail evaluated him
14 and determined that his blood pressure was high. Yet he
15 didn't tell any of the officers, from the first officer
16 on the scene till the last officer, that came in contact
17 with him that he had a headache. He didn't tell any of
18 the officers that he felt dizzy. He didn't tell any of
19 the officers that he was injured. He never ever asked
20 any of the officers to provide medical assistance. You
21 heard the officers testify that had he asked for medical
22 assistance, their duty as a police officer is to provide
23 that person with medical assistance. They are not
24 E.M.T.s. They are not E.M.T.s. They are trained
25 personnel in the Houston City, City of Houston that are

1 trained E.M.T.s that will go out and evaluate somebody
2 if the police officers request them. They don't know to
3 look for signs of concussions. If they see somebody
4 who's just in a bad wreck, going to ask them a standard
5 question: Are you okay? And if the defendant had told
6 them right then and there, no, I am not, they would have
7 contacted an ambulance. You heard them testify that
8 they would have contacted an ambulance, and I'm pretty
9 sure that that ambulance would have shown up. E.M.T.s
10 would have seen the wreck and said off we go.

11 Yet none of that happened. Why did none
12 of that happen? Because the defendant never asked for
13 it. He never told the officers he was dizzy. He never
14 told the officers he had a headache. You saw his
15 picture. There is no bruising on his face anywhere. He
16 testified that he was wearing his glasses at the time of
17 impact, that the airbag came out and took those glasses
18 right off. You saw the picture. Where are the marks?

19 You heard him testify that without his
20 glasses he can't walk straight. Without his glasses,
21 he's dizzy. He's unsteady on his feet. Yet without his
22 glasses that's not going to cause him to blow a .14. At
23 the very end, there has still been no explanation to how
24 we got to that blood, alcohol content at .14. That in
25 and of itself, ladies and gentleman, is enough for you

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1 to follow the Court's instructions that if the blood
2 alcohol content was .08 or greater, you must find the
3 defendant guilty.

4 Are you okay?

5 VENIREPERSONS: Yeah. I just have to
6 cough. Sorry.

7 THE COURT: Go ahead, sir. Do you need
8 water?

9 A JUROR: I have some. Thank you. Sorry.

10 MR. VAZQUEZ: Without any other stuff,
11 even if you believe his story that his blood pressure
12 medication caused his unsteadiness, even if you believe
13 that his anxiety medication caused his unsteadiness. If
14 you believe the accident discombobulated him so bad that
15 he wasn't able to perform on this field sobriety tests,
16 counsel, defense made a good point or made it clear that
17 the field sobriety tests happened over two hours after
18 the accident. Now, that story of the accident causing
19 him to be dizzy and the accident causing him to be
20 unsteady, that might be believable if they did the field
21 sobriety tests right then and there. He had two hours
22 to recover from that accident. He had two hours of
23 interaction with the police. He had interaction -- the
24 fire department was on the scene. None of that time did
25 he ever ask for help. So, you've got loss of mental

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1 faculties not knowing where he's at. He lost those
2 mental faculties by the introduction of an alcohol,
3 alcoholic beverage into his system. You've got loss of
4 physical faculties. He lost those physical faculties by
5 the introduction of alcohol into his system. And you
6 have a .08 or greater breath result, specifically .14.

7 Ladies and gentlemen, given the totality
8 of the circumstances and all of the evidence that's been
9 presented here in the last two days, I feel you have no
10 choice but to come back with a guilty verdict. Thank
11 you very much.

12 THE COURT: Thank you, Mr. Vazquez. All
13 right. Mr. Guerra.

14 MR. GUERRA: Thank you, Your Honor.

15 MR. GUERRA: To the unwilling and
16 untrained, this is a simple D.W.I. But we are not the
17 unwilling. We ask questions. We dig deeper. We want
18 the truth, what we deserve, our family deserves. It's
19 what our children deserve. Otherwise, innocent people
20 go to jail. Innocent people are prosecuted.

21 Let's talk about the accident. Jose told
22 you he loss control, he fell asleep. When the officers
23 arrived there, what they smelled was pungent, fresh
24 urine not alcohol. That's what they smelled. And in
25 two minutes, three officers observed him, Jose in two

1 minutes and decided he was in custody for suspicion of
2 D.W.I. Two minutes. Untrained E.M.S. officers observed
3 him for two minutes, handcuffed him, put him in the back
4 of a patrol car. Didn't give him any E.M.S. treatment.
5 Didn't ask for it. They didn't ask the questions that
6 were important in this scenario. An accident, a serious
7 accident. You saw the pictures. Airbags deployed. The
8 train and willing would ask the questions that are
9 significant to a concussion. Do you have a headache.
10 Are you dizzy? Can you stay on your feet? They didn't
11 ask those questions. They weren't trained. And think
12 about what a concussion is. We all like football.
13 Football players get concussions all the time. It
14 doesn't take them two hours to recover. Some athletes
15 because of concussions don't ever play again. And when
16 you see those concussions -- those helmets, do you see
17 any abrasions on their face? You see any marks on their
18 face? No. I say to you the airbag is the reason why
19 Jose here is the reason that he doesn't have any
20 abrasions but has a concussion. Just like those
21 football players you see on Sundays.

22 MR. VAZQUEZ: I would object to that, Your
23 Honor. There is no evidence that the defendant had a
24 concussion.

25 THE COURT: It's a reasonable doubt, Your

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1 Honor.

2 THE COURT: Ladies and gentlemen, you
3 heard it from the evidence, the evidence that came from
4 the witness stand and the evidence admitted.

5 All right. Please continue.

6 MR. GUERRA: Thank you, Your Honor.

7 Officer Gillham, they all said the same
8 thing. I want to be thorough. I want to be detailed.
9 I want to be complete. And I suspect that they will do
10 however you can't do it in two minutes. You can't do it
11 by observation of someone in two minutes after a major
12 accident. You can't do it. It's impossible. It takes
13 more time than that.

14 Officer Gillham took Mr. Garcia to the
15 police station and he -- because he wants to become
16 D.W.I. Task Force asked to perform the field sobriety
17 tests. Didn't let the more experienced officer provide
18 those standardized field sobriety tests. He wanted to
19 do them himself. What does that say? He jumped to a
20 conclusion quickly, in two minutes. Said that's not
21 urine. That's alcohol. He's unsteady on his feet.
22 Signs of a concussion. Redness in the eyes. Airbags
23 deploys. What happens when an airbag deploys? Douc
24 debris comes out. He testified some of that got in his
25 eyes. His glasses, it's frustrating to me. It reminds

1 me of the scene in a movie where I think it was my girl,
2 her friend had just been beaten and died from bee stings
3 and she -- he doesn't have his glasses, and she's upset
4 because he needs his glasses. Otherwise, he can't see,
5 and I feel the same way about this situation. He needs
6 those glasses. He can't see without them. He's
7 unsteady on his feet because of them because he doesn't
8 have them. You heard him testify. You heard the way he
9 talks. For us that don't know him, for somebody that
10 doesn't know him, met him for the first time, yeah, I
11 would suggest that it's a little slurred. It's a little
12 slurred.

13 Now, these medications that he's taking, I
14 want to be crystal clear, he has three different
15 prescriptions. One he takes in the morning. He took
16 that that morning, about 7:00 when he woke up. He
17 didn't take anything the entire day. The accident
18 happened about 2:30 in the morning. The medications
19 that he's not supposed to take alcohol with are taken at
20 night. Remember what he said about those medications.
21 What happens if he drinks alcohol? Cardiac arrest
22 potentially. He wasn't drinking. He had one beer. He
23 had one beer.

24 They say use your common sense. That's
25 what they say. Well, common sense tells us, officer --

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1 the technical supervisor said, testified, that in the
2 samples that she provided to me, at least 20 people who
3 were taken in to provide a breath test because they were
4 under suspicion of drinking alcohol, this machine tests
5 alcohol and nothing else. They were under suspicion --

6 MR. VAZQUEZ: Objection.

7 MR. GUERRA: -- to come in and provide a
8 breath test?

9 THE COURT: What is your objection?

10 MR. VAZQUEZ: Mischaracterization of the
11 testimony.

12 THE COURT: Ladies and gentlemen, once
13 again, you will recall the testimony as you heard it.

14 MR. GUERRA: At least 20. At least 20.
15 And they came back with a zero or on at-least 20
16 occasions. What does that mean? Use your common sense.
17 That's what they are asking you to do. That's what I'm
18 asking you to do. That machine makes. It made mistakes
19 at least two times, and what's good for the goose is
20 good for the gander. If it can make a mistake when
21 there is complete alcohol, it can may a mistake when
22 there is not. That machine makes mistakes. So use your
23 common sense what I'm asking .

24 Now, we heard from Mr. Garcia. We heard
25 about his medical conditions. And the urination, it's

1 embarrassing. Let's be honest. Let's be brutally
2 honest. It's embarrassing it really is. He said it so
3 can see it on his face, okay? But let me say something
4 to you. If in fact Mr. Garcia urinated on himself
5 because of the introduction of alcohol, because he had
6 too much to drink, do you think it would just be a .14?
7 I submit to you it would be much, much, much higher. He
8 urinated on himself because of the accident, because of
9 his medical conditions. That's why. That's what the
10 officer smelled. That's why they brought him in for
11 suspicion of D.W.I. because they jumped the gun. They
12 did not take the time to fully and thoroughly in detail,
13 in detail, and investigate what was actually happening
14 with Mr. Garcia.

15 Remember what Mr. Morales said. When they
16 came in to give the breath test, the field sobriety
17 tests, it's just an accident. They didn't tell him the
18 airbags were deployed. They didn't tell him the car was
19 inoperable. Didn't tell them that stuff. Now,
20 everybody on that stand has said the same thing.
21 Somebody with a recent head injury, concussion, the
22 standardized field sobriety tests would affect those
23 outcomes. They would compromise those tests. That's
24 what happened here. That's why you see Mr. Garcia
25 perform the way that he did. Recent head injury.

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1 The breath test. I know, it's difficult
2 to get around, Picked up one beer. Because he can't
3 drink anymore, otherwise he would go into a cardiac
4 arrest. Use your common sense. That result is
5 compromised. It's a mistake. It's not accurate.

6 Thank you.

7 THE COURT: All right. Mr. Guerra --
8 Mr. Vazquez, you have about two minutes. If you would
9 like to use it.

10 MR. VAZQUEZ: Thank you, Your Honor.

11 Ms. Israel, the D.P.S. lady that came in,
12 she talked about the Intoxilyzer machine. She also
13 spoke of how the alcohol leaves the body. She also told
14 you how it would be easy to do an extrapolation related
15 back to the time of the accident. But she didn't have
16 enough information. She said she gets that information
17 from the prosecutor. The prosecutor gets that
18 information from the police. The police didn't have
19 that information because the defendant never gave it to
20 him. They asked him for it. He never provided it.
21 Instead, he asked for their names. He said, I have
22 nothing to hide. He was very talkative on the video,
23 very talkative. Not once did he say, I was at my
24 friend's house. I was at a barbecue. I had fajitas.
25 I had pico de gallo. All of it sounds pretty tasty.

1 But he had never told the police officers any of that,
2 and he never told them he had one Corona. Why did he
3 not tell them any of that? Because it simply just
4 wasn't true. He didn't have one Corona. He had
5 several. And then he got behind the wheel of his car,
6 slammed his car into a barrier and after that this
7 investigation happened and we're here. Ladies and
8 gentleman, there is no doubt that this defendant was
9 intoxicated when he was driving his vehicle, and you
10 have one choice, come back with a guilty verdict. Thank
11 you.

12 THE COURT: Thank you, Mr. Vazquez. All
13 right. Ladies and gentlemen, you will now retire --
14 gentleman. I keep saying men like there's more than
15 one. You will retire to the jury room where you will
16 begin your deliberations and we will stand in recess
17 until we hear back from you all.

18 THE BAILIFF: All rise.

19 (Jury retired for deliberations)

20 THE COURT: Let's go on the record.
21 Mr. Guerra, do you have something -- well, I want the
22 record to reflect that the jury has buzzed and indicated
23 that they have a verdict, but we have not taken the
24 verdict yet because it was just brought to the Court's
25 attention by Mr. Vazquez and Mr. Guerra have this issue

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1 that they wanted to address. And while we were
2 discussing that is when the jury bus wed a verdict. So
3 before we take the verdict Mr. Guerra, I'm going to
4 allow you to put some things on the record if you would
5 like to, sir.

6 MR. GUERRA: Sure. Thank you, Your Honor.
7 Your Honor, shortly after we concluded with trial,
8 Mr. Vazquez indicated to me that there were some 911
9 recordings that were not previously turned over to the
10 defense. I honestly think the State was -- they were
11 not aware of these 911 tapes until probably today. But
12 the information contained in those 911 tapes indicates
13 that it was a two-vehicle accident, that somebody
14 potentially hit Mr. Garcia and then left the scene. It
15 indicates that there was a tow truck driver -- tow truck
16 driver, a wrecker there already at the scene.
17 Obviously, if we would have had this information we
18 would have been able to investigate who the truck driver
19 was, what if anything they have to say regarding
20 Mr. Garcia and/or the other vehicle that was involved.
21 If the other vehicle that was involved was at fault in
22 this accident, it makes a big difference as to how we
23 move forward, how we present the case to the jury. I
24 believe that these tapes would have been discovered in a
25 timely fashion by both the State and myself. There

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1 could have been some investigation done on my part, on
2 our part to investigate what those recordings say
3 happened at the time of the accident. I would ask for
4 those recordings to be presented or placed as part of
5 the record. I believe it's four recordings and I would
6 ask respectfully for a mistrial at this point based on
7 those recordings.

8 THE COURT: Okay. Do you want to -- are
9 they on one tape or disk?

10 MS. HAYNES: We can download them, I
11 believe to a disk, Your Honor.

12 THE COURT: So, I would like to hear the
13 recordings before I rule on your motion for a mistrial.

14 MR. GUERRA: Thank you, Your Honor.

15 THE COURT: If you will play -- I guess
16 you will mark it as an exhibit, right, for the record?

17 MR. GUERRA: Yes, ma'am.

18 THE COURT: If it ends up being a guilty
19 verdict. So, you can mark it -- you don't have a 23.

20 MR. GUERRA: I was all off base, Your
21 Honor.

22 THE COURT: You didn't have a 14, either.

23 MR. GUERRA: I think I have a disk here or
24 at least a cover with -- we can use this as -- I was
25 going to use this as 13. I was going to use this as 13.

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1 THE COURT: You have 13. Let's do it as
2 12 since it will be -- since it's after the fact.

3 MR. GUERRA: That's fine.

4 THE COURT: And we are going to put the
5 recordings on defense Exhibit No. 23 which is a disk
6 which I will admit for the purposes of your motion for
7 mistrial in the event that I deny it and this is a
8 guilty verdict. Okay. So, let's hear the recordings.

9 MR. VAZQUEZ: Your Honor, we don't have
10 any audio disks here, so I'm going to go find one while
11 the recordings are playing if that's all right.

12 THE COURT: Okay.

13 *(Defense Exhibit 23 played before the*
14 *Court.)*

15 THE COURT: Is that it?

16 MR. VAZQUEZ: Your Honor.

17 THE COURT: Anything else from either side
18 before I rule on your motion?

19 MR. VAZQUEZ: I just would like to add,
20 Your Honor, that the fact -- this jury -- this jury
21 based on what they heard, they take that accident --
22 they are going to take that accident into account and
23 into consideration and they are blaming him, Mr. Garcia,
24 without question; and he did testify he believed he fell
25 asleep. But now we have a second vehicle that is

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1 involved. The fact that there is a second vehicle
2 involved and it's a hit-and-run situation, Your Honor, I
3 believe that that open tends to be exculpatory. So on
4 that point, again I would reurge my motion for a
5 mistrial at this point.

6 THE COURT: Okay. Your motion for a
7 mistrial is denied. So we are going to bring in the
8 jury and find out what their verdict is. In the event
9 that it is a guilty and in the event that your client
10 appeals the matter, then you will have this as a part of
11 the record.

12 MR. GUERRA: Yes, ma'am.

13 THE COURT: All right. Let's bring in the
14 jury.

15 THE BAILIFF: All rise.

16 *(Jury's enters.)*

17 THE COURT: Please be seated. Ladies and
18 gentleman, have you reached a verdict?

19 THE JURY: Yes, we have.

20 THE COURT: Is it unanimous, ma'am?

21 THE JURY: Yes, it is.

22 THE COURT: Pass it to the bailiff.

23 Mr. Garcia, remain standing. All right. This is Cause
24 No. 2004882, "the State of Texas versus Jose A. Garcia.
25 We, the jury, find the defendant guilty. Signed by the

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1 foreperson." Anything more from either side?

2 MR. VAZQUEZ: Nothing from the State, Your
3 Honor.

4 MR. GUERRA: Nothing from us.

5 THE COURT: All right. Ladies and
6 gentlemen, I will accept your verdict and this will
7 conclude your jury service. So, if you will step into
8 the back one last time. I will be back there with your
9 work excuse forms. And does anybody want a bus pass? I
10 forgot to tell the jury about that yesterday. Y'all are
11 all entitled to a free bus pass. It also works on Metro
12 Rail. It will be effective for today. Does anyone need
13 one?

14 VENIREPERSONS: No.

15 THE COURT: All right. If y'all will step
16 back in the back, I will be back there shortly.

17 THE BAILIFF: All rise.

18 (Jury leaves courtroom)

19 THE COURT: I know that you are coming to
20 the Court for punishment. I don't know if you guys
21 wanted to talk before so that they can make a
22 recommendation or if you want to have a punishment
23 hearing where I will make a decision about what the
24 punishment should be. All right. Let me go talk to the
25 jury while you guys talk.

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1 (Recess taken)

2 THE COURT: Okay. The jury having found
3 Mr. Garcia guilty of the offense of driving while
4 intoxicated, it is now time to move on to the punishment
5 phase of the trial. I understand that when we took a
6 break after the verdict, both sides had an opportunity
7 to talk and come to an agreement; is that correct?

8 MR. VAZQUEZ: Yes, Your Honor.

9 MR. GUERRA: It is, Your Honor.

10 THE COURT: What is the recommendation of
11 the State and the agreement by the Defense?

12 MR. VAZQUEZ: Your Honor, the State would
13 offer 15 months probation, a 1,000-dollar fine. Of
14 course, all the standard conditions that come with
15 probation, including D.W.I. education, random
16 urinalysis, the D.A.E.T., Thinking for a Change class,
17 \$50, Crime Stoppers; 24 hours community service; and
18 breath test refusal.

19 MR. GUERRA: That is our understanding,
20 Your Honor.

21 MR. VAZQUEZ: Your Honor, I'm not sure it
22 will be helpful; but we've discussed -- because he lives
23 in Harlingen, the State is not opposed to transfer his
24 probation to Harlingen.

25 THE COURT: Mr. Garcia, I know when you

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1 first came to court I put bond conditions on you that
2 you indicated that you have not a car. And I know your
3 car was wrecked. Have you since acquired a car?

4 THE DEFENDANT: The first month I was on a
5 home device; and since I got a car, you honored to put
6 it on a car.

7 THE COURT: Oh, I've allowed you to put it
8 on a car?

9 THE DEFENDANT: Yes.

10 THE COURT: There is not an amended
11 condition in here so I allowed you to do it through your
12 officer.

13 MR. VAZQUEZ: I will check, Your Honor.

14 THE COURT: I know there hasn't been any
15 violations because there is a violation report, so you
16 do have the interlock on your car.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Where is it that you are
19 working in Harlingen? I didn't catch it.

20 THE DEFENDANT: I am working in Harlingen.

21 THE COURT: Doing what?

22 THE DEFENDANT: I'm a store manager for
23 Outdoor Traveler at Bass Pro shop.

24 THE COURT: Bass Pro Shop. All right.
25 The jury having found you guilty I am now going to

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1 assess your punishment at 180 days in jail. That will
2 be probated for a period of 15 months. There will be a
3 \$500 fine. \$50 to Crime Stoppers, 24 hours of community
4 service. Random drug and alcohol testing. There will
5 also be a drug and alcohol evaluation. If it's
6 determined that you need some treatment, you will have
7 to follow the treatment recommendations. You will
8 attend a D.W.I. education course. You are also not
9 going to be allowed to drive without a valid license,
10 insurance and that ignition interlock device on your
11 vehicle. And I will grant consent to allow you to
12 transfer it to -- what county is that?

13 THE DEFENDANT: Hidalgo County.

14 THE COURT: Hidalgo County.

15 THE DEFENDANT: I was wondering if I could
16 move to Las Vegas. I am right now in Hidalgo County,
17 but I definitely want to leave Texas. I was wondering
18 if I could transfer the probation to Las Vegas.

19 THE COURT: I cannot answer that question
20 for you right now because Las Vegas would have to accept
21 supervision of you. So that is something that once you
22 start probation in Hidalgo County, if you make that
23 request then their transfer unit will have to get
24 permission from Las Vegas for them to even except you as
25 a probationer there. And then you wouldn't be able to

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1 transfer without their permission. It has to do with
2 state-to-state agreements. So I -- we can't make that
3 decision right now.

4 THE DEFENDANT: Okay.

5 THE COURT: So as you start this
6 probation, since you currently reside in Hidalgo County,
7 that's where you will be supervised once there is a
8 transfer. Our probation officer has left for the day so
9 you are going to have to come back tomorrow morning. So
10 I will ask that you be here by 9:30 so that she can go
11 over all of these conditions with you.

12 THE DEFENDANT: Okay.

13 THE COURT: Okay.

14 THE DEFENDANT: I was going to ask if I
15 could come back like next week to complete it. It's
16 just like I have an emergency in the valley.

17 THE COURT: No, sir. You have to come
18 back tomorrow. You do. I'm sorry about your emergency,
19 but you have to be back tomorrow because you are
20 technically sentenced today. So you have to come back
21 and go over your conditions tomorrow. But if you are
22 hear at 9:30, she will get you out of here as soon as
23 she can. You will be probably one of the first people
24 that she seize in the morning, okay?

25 THE DEFENDANT: Do I come to this Court?

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1 THE COURT: You will come to this Court.
2 And the probation people will know before you are here
3 to what -- to expect and ideally she will have the
4 paperwork ready for you by the time you get here.

5 That concludes this trial.

6 I do need to tell you that because you
7 were convicted, you do have a right to appeal this
8 matter. You have 30 days to file your notice of appeal.
9 You can discuss that option with your lawyer if you
10 choose to do so.

11 All right. With that, this trial is
12 concluded. Thank you.

13 MR. GUERRA: Thank you, Your Honor.

14 MR. VAZQUEZ: Thank you, Your Honor.

15 *(Proceedings concluded)*
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July 15, 2015

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3

4 I, Terri L. Johnstone, Official Court Reporter in
5 and for the County Criminal Court at Law No. 1 of Harris
6 County, State of Texas, do hereby certify that the above
7 and foregoing contains a true and correct transcription
8 of all portions of evidence and other proceedings
9 requested in writing by counsel for the parties to be
10 included in this volume of the Reporter's Record in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, offered by the respective parties.

16

17

/s/Terri L. Johnstone

18

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