

1 (Recess.)

2 (Jury present.)

3 THE COURT: Be seated, please.

4 And Ms. Stabe, please call your next witness.

5 MS. STABE: Yes. State calls Officer
6 Grossbard.

7 THE COURT: Come up here, please, Officer.

8 THE WITNESS: Afternoon, Judge.

9 THE COURT: Afternoon. If you would, please,
10 have your seat.

11 THE WITNESS: Thank you, ma'am.

12 THE COURT: And would you please state and
13 spell your name for my court reporter.

14 THE WITNESS: Mark, M-A-R-K, Grossbard,
15 G-R-O-S-S-B-A-R-D.

16 THE COURT: And you may proceed.

17 **MARK GROSSBARD,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 Q. (BY MS. STABE) Officer Grossbard, can you please
21 introduce yourself to the jury?

22 A. My name is Mark Grossbard. I've been a police
23 officer for six and a half years now with Houston Police
24 Department.

25 Q. Okay. What's your position currently with the

1 Houston Police Department?

2 A. I'm currently assigned to the Midwest Divisional
3 Gang Unit. That pretty much covers the area of Sharpstown,
4 Fondren Southwest and parts of Alief.

5 Q. What do you do as part of a gang unit?

6 A. We pretty much do gang investigations, document and
7 gather all the intel of all the gang activity that's in the
8 area and that's going on with all different gangs and gang
9 members.

10 Q. Okay. Did you have special training to become part
11 of the gang unit?

12 A. Yes, ma'am.

13 Q. What type of training did you go through?

14 A. I've attended several gang conferences, just things
15 like that.

16 Q. Okay. Now, back on June 4th of 2013, were you a
17 part of the gang unit at that time or doing something
18 different?

19 A. I was part of the gang unit.

20 Q. Okay.

21 A. I had just gotten back there.

22 Q. Okay. What other roles have you played at the
23 Houston Police Department?

24 A. Before that I was part of the Fondren tactical
25 unit, that we worked out of the Fondren Southwest area, like

1 the Gulfton area.

2 Q. Okay. And what does a tactical unit do?

3 A. We pretty much do a lot of proactive type
4 investigations on burglars, robbers, gang members. It's
5 anything that's violent crime, you know, that type of thing.

6 Q. Okay. So, for most of your career as a police
7 officer, you worked on, you know, gangs and, it sounds like,
8 burglaries and violent offenses?

9 A. Yes, that's correct.

10 Q. Okay. So, what training did you go through in
11 general to become a police officer in the first place?

12 A. Well, in the beginning, we had to go through the
13 police academy, which is six months, and then an additional
14 six months training on the street. To be on a tactical
15 unit, you have to go through several tactical schools that
16 include firearms training, undercover weapons training,
17 rolling surveillance training, pretty much, you know, all
18 different types of training.

19 Q. Okay. And you're a certified peace officer?

20 A. Yes, ma'am.

21 Q. And were you also a certified peace officer back on
22 June 4th, 2013?

23 A. Yes.

24 Q. That day were you working -- you know, were you on
25 duty?

1 A. Yes.

2 Q. Okay. Were you in a marked patrol unit, in
3 uniform?

4 A. Yes.

5 Q. What shift were you working? Do you recall?

6 A. We were working the 10:00 AM to 6:00 PM shift.

7 Q. Okay. And what area were you patrolling at the
8 time, on June 4th?

9 A. We were in the Sharpstown area that day.

10 Q. Okay. Is that all in Harris County, Texas?

11 A. Yes.

12 Q. Okay. So, at some point that day, were you
13 contacted about a suspicious person or vehicle?

14 A. Yes.

15 Q. Okay. Can you explain to the jury what happened?

16 A. Pretty much Officer Olvera, who was our officer
17 that day who was in the unmarked car, that's the undercover
18 car, observed the defendant with some other individuals --

19 MR. LUONG: Objection, Your Honor, calls for
20 hearsay.

21 THE COURT: Sustained.

22 Q. (BY MS. STABE) Okay. So, there was another
23 officer there?

24 A. Yes, ma'am.

25 Q. And his name was Officer Olvera?

1 A. Yes.

2 Q. Okay. And you said he was working in an unmarked
3 car, plain clothes?

4 A. Yes.

5 Q. Do you know why, as part of the unit, that you have
6 somebody in unmarked, plain clothes?

7 A. Yes. In that area, it's an area with a lot of, you
8 know, I guess you can say, high concentration of gang
9 activity, violent crime activity, so we generally have
10 officers in the area driving around in undercover cars to,
11 you know, see if they can see any types of activity
12 happening and then they can radio us that's in the marked
13 cars and we can come and, you know, detect that.

14 Q. Okay. And so, that day, did you get a radio call
15 from Officer Olvera?

16 A. Yes, I did.

17 Q. Do you recall about what time it was?

18 A. Sometime in the afternoon.

19 Q. Okay. And once you got that call, were you alerted
20 to a specific car?

21 A. Yes.

22 Q. Okay. What car -- can you describe it for the
23 jury?

24 A. It was an Oldsmobile.

25 Q. Okay.

1 A. Vehicle.

2 Q. Do you remember the make and model?

3 A. No.

4 Q. Okay. If you looked at your report, would it help
5 refresh your memory?

6 A. Yes, yes, it would.

7 Q. Okay.

8 MS. STABE: May I approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 A. It was a Buick LeSabre.

12 Q. (BY MS. STABE) Okay. Do you know the year?

13 A. It was around a 2013, gold.

14 Q. Was it 2013?

15 A. No, I'm sorry. It was an older model, Buick
16 LeSabre, gold.

17 Q. 2003?

18 A. Right about -- yes, around that time, that year.

19 Q. And a goldish-tan color?

20 A. Goldish-tan color, correct.

21 Q. Buick LeSabre? Okay. And at some point did you
22 come into contact or actually see that vehicle yourself?

23 A. Yes.

24 Q. Okay. What did you observe?

25 A. Well, we conducted the traffic stop on the vehicle

1 for driving erratically and I believe it was failing to use
2 turn signals while driving down Bellaire and then we stopped
3 the vehicle at the Fiesta parking lot at Bellaire and
4 Gessner.

5 Q. Okay. So, once you stopped the car, did you go up
6 to the window?

7 A. Yes, I approached the driver's side.

8 Q. And were there people in the car?

9 A. Yes, there were people in the car.

10 Q. How many people were in the car?

11 A. I believe it was a total of four people in the car.

12 Q. Okay. Did you talk to them? Did you get them
13 identified?

14 A. Yes.

15 Q. Okay. Do you recall who all was in the car?

16 A. Yes.

17 Q. What are their names?

18 A. It was four. I don't recall their names, like,
19 offhand, everyone's name.

20 Q. Okay. If you need to refresh your memory with your
21 report, you can.

22 A. Sure. Okay. It was Hadren Williams, Joshua
23 Williams, Curtis Perry, and Lorena Jones.

24 Q. Okay. And do you recall which person was the
25 driver?

1 A. I believe it was Hadren Williams.

2 Q. Okay. And you also mentioned the Joshua Williams
3 name.

4 A. Joshua Williams.

5 Q. Where was that person located in the car?

6 A. He was sitting behind him.

7 Q. So, behind the driver?

8 A. Behind the driver, yes, ma'am.

9 Q. So, in the back passenger seat behind the driver?

10 A. Exactly, yes, ma'am.

11 Q. And do you see Joshua Williams in the courtroom
12 today?

13 A. Yes, I do.

14 Q. Can you please point to him and identify an article
15 of clothing he's wearing?

16 A. He's sitting right here wearing the blue shirt.

17 *MS. STABE:* Okay. May the record reflect the
18 witness has identified the defendant?

19 *THE COURT:* The record will so reflect.

20 Q. (*BY MS. STABE*) Okay. So, you said he was sitting,
21 Joshua Williams, in the -- in that tan Buick behind the
22 driver's seat?

23 A. Yes.

24 Q. Okay. When you went up to that car and you started
25 talking to the occupants, did you notice anything?

1 A. I noticed pillowcases and other articles sitting
2 right next to him, yes.

3 Q. Okay. Did that draw your attention for any reason?

4 A. Yes, it did.

5 Q. Why is that?

6 A. Normally whenever I approach a vehicle and if I see
7 multiple individuals with pillowcases, that makes me think
8 that you possibly could have been involved in some home
9 burglaries.

10 Q. Okay. What is it about the pillowcases, in your
11 experience?

12 A. A lot of home burglars, when they burglarize your
13 home, they don't want to bring their own bags in there, so
14 when they break in, they take your pillowcases and take all
15 your jewelry and et cetera and put them in the pillowcases
16 and they leave with them.

17 Q. Okay. So, was there anything else you noticed
18 about the car that gave you reason to search?

19 A. Yes. I could smell a strong odor of marijuana
20 coming from inside the vehicle as well.

21 Q. Okay. How do you know what that smells like?

22 A. I mean, just in my years of experience now. I
23 mean, I've smelled it a lot, so.

24 Q. Okay. So once you smelled the marijuana, did you,
25 I guess, start searching the car or did you get them out of

1 the car first? What did you do?

2 A. We detained everybody at that point.

3 Q. And you said "we." Were you riding with an officer
4 that day?

5 A. Yes, I was.

6 Q. What officer were you riding with?

7 A. Officer Culver.

8 Q. Okay. And you got everybody out of the car. Did
9 you detain them at the time?

10 A. We detained them, yes, ma'am.

11 Q. Okay. And once you did that, did you begin to
12 search the car?

13 A. Yes.

14 Q. Okay. So, as you're searching the car, did you
15 take out the pillowcases and find what was in them?

16 A. Yes.

17 Q. Okay. What did -- did you find property or what
18 did you find?

19 A. There was several articles of property that were
20 inside the pillowcases, yes.

21 Q. Okay. Now, did you try to find out if it belonged
22 to the defendant?

23 A. Yes.

24 Q. What did you do to try to find that out?

25 A. We asked him if these were his items.

1 Q. Okay. Did he indicate whether or not they were
2 his?

3 MR. LUONG: Objection, Your Honor. Anything
4 would be custodial interrogations and would not be
5 admissible, Your Honor.

6 THE COURT: Do you have a response?

7 MS. STABE: Your Honor, he said they're only
8 under temporary -- they were only temporarily detained.

9 THE COURT: Okay. Come on up for just a
10 second.

11 (At the bench, on the record.)

12 THE COURT: Okay. My question is: Was the
13 question asked to the group as a whole or to the defendant?
14 I just wasn't clear on that.

15 MS. STABE: I can clarify. Can I --

16 THE COURT: No, no. Don't ask him. I mean,
17 if you want to clarify that. At this point --

18 MS. STABE: Right.

19 THE COURT: At this point what I heard is that
20 nobody's under arrest; they're just investigating. Is that
21 right?

22 MS. STABE: Yes.

23 THE COURT: Okay. So let's be just clear
24 on -- because obviously you can't -- as far as what the
25 other people who were part of the group say -- but

1 particular to this defendant, that would be admissible but
2 not what the other people say since they're the
3 codefendants. Okay? I just want to be clear that it's not
4 just a general statement.

5 MR. LUONG: I guess I'll make my objections
6 then. That would be easier.

7 THE COURT: Yeah, kind of as we get -- I was
8 just unclear as to who was saying what.

9 *(End of discussion at the bench.)*

10 Q. (BY MS. STABE) So, Officer Grossbard, nobody in
11 the car was under arrest at the time; is that right?

12 A. That's correct, right.

13 Q. And when you were asking about the property, was
14 this a general statement to -- did you ask everybody, all
15 four occupants, or specifically Joshua Williams?

16 A. We asked everybody.

17 Q. Okay. Did -- was Joshua Williams the one that
18 responded or the other people?

19 A. Everybody pretty much gave a response.

20 Q. Okay. And so, it was just a general question:
21 Does anyone know who this belongs to? Or what did you ask?

22 A. Is -- are these bags yours and if they are, what's
23 in the bags, and does this belong to you or is it someone
24 else's?

25 Q. Okay. And the defendant gave a response?

1 A. Yes.

2 Q. So, what was the defendant's response?

3 MR. LUONG: Objection, inadmissible as a
4 product of a custodial investigation, custodial question.

5 THE COURT: Overruled.

6 Q. (BY MS. STABE) Okay. You can answer.

7 A. Right. He just said that he didn't know what I was
8 talking about and that it did not belong to him.

9 Q. Okay. At that point what did you do next in your
10 investigation?

11 A. Well, we tried to -- we tried to contact the
12 owner -- or -- wait. I'm sorry. Let me recall that. It
13 was awhile ago. We contacted the alarm company. We knew
14 that there was a burglary occurred over on the west part of
15 town and we had the home owner make the scene and ID those
16 items as being the items that were just burglarized from his
17 home.

18 Q. Okay. And was there an iPad that was found?

19 A. Yes.

20 Q. Do you recall, is that how you got that information
21 about the complainant or --

22 A. Yes, yes. We got -- yes. I'm sorry. We got the
23 home owner's information via that iPad, yes.

24 Q. Okay. Now, once you got that information, you saw
25 the complainant himself come to the scene?

1 A. Yes.

2 Q. Okay. Did you come to know his name at all?

3 A. When I met with him, yes, I did.

4 Q. Okay. What was his name?

5 A. May I look that up? It's been awhile. I'm sorry.

6 Q. Yes.

7 A. Herbert Butrum.

8 Q. Herbert Butrum?

9 A. I'm sorry. Yes, ma'am.

10 Q. Okay. And do you recall how you ended up being
11 able to get his name from the iPad?

12 A. I don't believe I was the one that looked that up.
13 I just remembered that we were able to get his name from the
14 iPad.

15 Q. Okay.

16 A. Right.

17 Q. And get contact information?

18 A. And contact him, yes.

19 Q. Okay. So, once the complainant came to the scene,
20 you said he was able to identify his stolen property?

21 A. Correct, yes.

22 Q. Okay. And that property that he identified, where
23 had that been located in that car that you stopped?

24 A. Some of it was in the pillowcases right next to the
25 defendant and the other articles were pretty much right next

1 to the defendant.

2 Q. Okay. So, were they, like, in the seat next to him
3 or on the floor? Do you know?

4 A. They were in the seat right next to him, yes.

5 Q. Okay. And then the pillowcases were on the floor
6 right next to his feet?

7 A. Yes, ma'am, correct.

8 MR. LUONG: Objection, Your Honor, leading the
9 witness.

10 THE COURT: Please don't lead your witness.

11 MS. STABE: Yes, Your Honor.

12 Q. (BY MS. STABE) So -- okay. The complainant comes
13 and he identifies the property and what do you do next?

14 A. At that point, once the complainant ID'd that that
15 was his property, that's when we called the DA's office for
16 charges.

17 Q. Okay. And were charges accepted?

18 A. Yes.

19 Q. Okay. And what charge was taken in that case?

20 A. It was theft of property and possession of
21 controlled substance.

22 Q. Okay. But the possession of controlled substance,
23 that's not this defendant?

24 A. Right, that's something completely different. I
25 mean, it was just part of that scene, right.

1 Q. The defendant, Joshua Williams, was only charged
2 with felony theft?

3 A. Yes, ma'am, that's correct.

4 Q. So, after he's charged, did you place him under
5 arrest?

6 A. Yes, at that point.

7 Q. Okay. What happened then?

8 A. He was placed under arrest, his rights were read to
9 him and then he started to complain, I believe it was --

10 MR. LUONG: Objection, Your Honor, calls for
11 hearsay, inadmissible statements, custodial interrogation,
12 Your Honor.

13 THE COURT: You want to ask your next
14 question?

15 MS. STABE: Yes.

16 Q. (BY MS. STABE) So you're saying you read him his
17 Miranda warnings?

18 A. Yes.

19 Q. When you said he started talking, did you ask him
20 any questions at all or did he just start talking on his
21 own?

22 A. No, I just -- after he was placed under -- or after
23 he was charged, that's when I just, you know, read him his
24 rights. That was it.

25 Q. Okay. And then I'm asking --

1 MR. LUONG: Objection to the nonresponsive
2 portion of his answer, Your Honor.

3 THE COURT: Overruled.

4 Q. (BY MS. STABE) Okay. So, you read him his rights?

5 A. Uh-huh.

6 Q. And then you just testified a minute ago that then
7 he started to say something?

8 A. Yes.

9 Q. Okay. Did he start saying that in response to a
10 question?

11 A. No, no, this was just something completely
12 separate. He started to complain about he had a chest pain.

13 Q. Okay. And so, did you call any EMS or anything to
14 the scene?

15 A. Yes, we called HFD to make the scene, examine him.

16 Q. Okay. Was he transported to the hospital?

17 A. He wasn't, no.

18 Q. Did you find out whether or not he had anything
19 wrong with him?

20 A. He didn't have anything wrong with him at all.

21 MR. LUONG: Objection, Your Honor, calls for
22 hearsay, speculation. He's not a medical provider.

23 THE COURT: You want to ask another question?

24 MS. STABE: Yes.

25 Q. (BY MS. STABE) After being examined by the EMS,

1 did they release him back to you?

2 A. Yes.

3 Q. Okay. As being in good condition to be
4 transported?

5 A. Yes, he was in fine condition.

6 Q. Okay. And during that time, after he was
7 complaining about that, did he -- was he making any other
8 complaints?

9 A. Yes, he was.

10 Q. Like what?

11 A. He wasn't happy with the way that the firemen were,
12 I guess, treating him or talking to him.

13 Q. Okay.

14 A. Uh-huh.

15 Q. Did he say anything?

16 A. Yes, he did. If you guys remember about a year
17 ago, that's when the four firemen were killed --

18 MR. LUONG: Objection, Your Honor. One, the
19 relevance, but also --

20 THE COURT: Sustained.

21 MR. LUONG: I think the prosecutor asked
22 more -- I think this is going to be a product of custodial
23 interrogation, Your Honor. He's been under arrest for quite
24 a bit of time at this point.

25 THE COURT: That objection's overruled. But I

1 guess relevancy as to fire is sustained. Nonresponsive, I
2 suppose, would be the better objection.

3 *MS. STABE:* Okay. Sure, yes, Your Honor.

4 *Q. (BY MS. STABE)* Okay. But he was complaining about
5 the firefighters?

6 *A.* Yes.

7 *Q.* Okay. And after that, what did you do with him?
8 Do you transport him?

9 *A.* Yes, at that point he was transported.

10 *Q.* Okay. And where did you take him?

11 *A.* To central jail where he was booked.

12 *Q.* Did you have any other involvement with the case at
13 that point?

14 *A.* That was pretty much the end of it, yes.

15 *Q.* Okay. Now, when you detained, for the
16 investigation, all of the occupants of the vehicle, did any
17 of them indicate that the property was theirs, that they
18 owned it?

19 *MR. LUONG:* Objection, Your Honor, calls for
20 hearsay.

21 *THE COURT:* Overruled.

22 *A.* No, they didn't.

23 *Q. (BY MS. STABE)* Okay. Did you find out if anyone
24 had attempted to contact the complainant on their own?

25 *A.* No.

1 Q. Okay. Sorry. No, they didn't; or, no, you didn't
2 find out?

3 A. No, they told me that they never knew anything
4 about the items or anything like that.

5 Q. Okay. So, everybody was indicating, We don't know
6 anything about this?

7 A. Exactly, that's what everyone was saying.

8 Q. Okay. Okay. So, when you went up to the car and
9 you saw all the pillowcases with property in it, in your
10 opinion, being there at the scene, was there any way
11 somebody could have missed that property sitting right there
12 in the car?

13 MR. LUONG: Objection, Your Honor, calls for
14 speculation.

15 THE COURT: Sustained.

16 Q. (BY MS. STABE) Okay. Was it very obvious and in
17 plain view, where all the property was?

18 A. Yes.

19 MS. STABE: I'll pass the witness.

20 THE COURT: Mr. Luong.

21 MR. LUONG: Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 Q. (BY MR. LUONG) How long have you been assigned to
24 the Midwest Divisional Gang Unit?

25 A. In May here, it will be a year.

1 Q. And to be clear, the gang unit is not a typical
2 patrol unit; is that correct?

3 A. That's correct.

4 Q. And in fact, the -- it's a -- what we would call a
5 proactive unit, right?

6 A. Exactly, yes, sir.

7 Q. That they look for people that they would consider
8 suspicious or potentially engaged in suspicious activity in
9 order to prevent a crime?

10 A. Yes.

11 Q. You don't make routine patrol stops for speeding
12 violations or traffic violations; is that correct?

13 A. No, we do that as well.

14 Q. But as part of an investigation of people you've
15 determined to be suspicious, correct?

16 A. Correct.

17 Q. On the day of the incident, how many officers were
18 working the Sharpstown area?

19 A. As a whole or just our unit?

20 Q. Well, your unit assigned to that -- the Sharpstown
21 Mall area that day or the mall area that day?

22 A. Maybe anywhere from four to five.

23 Q. And of those, how many of those are undercover or
24 plainclothes officers?

25 A. If I recall, correctly, one.

1 Q. And that day would have been Officer Olvera?

2 A. Yes, sir, correct.

3 Q. And you're riding with officer -- which officer was
4 riding with you that day?

5 A. David Culver.

6 Q. And there was another unit, Officer Lui; is that
7 correct?

8 A. Yes.

9 Q. And who is Officer Lui's partner?

10 A. I believe it was Officer Campbell.

11 Q. And what is the general game plan when you have a
12 undercover officer?

13 Well, let me back up. It's fair to say that
14 the undercover officer is stationed at Sharpstown, looks for
15 suspicious persons or behavior or activities, radios you and
16 then you find a basis to stop them and pull over that car?

17 A. Correct, yes.

18 Q. And in terms of, in your experience, is there any
19 kind of written policy as to, for example, what you consider
20 to be suspicious persons or suspicious behavior?

21 A. There's no written policy, no.

22 Q. And realistically, Sharpstown is an area in which a
23 lot of Hispanic patrons are there; is that correct?

24 A. Yes.

25 Q. A lot of African-American patrons?

1 A. Yes.

2 Q. In fact, a lot of all types of people are there?

3 A. Yes, a very diverse area, yes.

4 Q. And it's not, say, for example, illegal for a young
5 Hispanic male to go shopping at Sharpstown, right? It's a
6 mall.

7 A. Right.

8 Q. And it would be typical for them to purchase items,
9 have bags with them, correct?

10 A. Correct, yes.

11 Q. Same thing with an African-American male, right?

12 A. Yes, sir, correct.

13 Q. And you don't stop every African-American male that
14 leaves a mall, do you?

15 A. No.

16 Q. And so, when Officer Olvera, he radios your unit
17 specifically or does he put a broadcast out and you're the
18 one who picks it up?

19 A. No, it was our unit specifically.

20 Q. Okay. And did he tell you what was the basis or
21 why he wanted you guys to stop this vehicle?

22 A. The defendant and I believe one other male appeared
23 to be running out of a store.

24 Q. Okay. Let's backtrack a little bit. As part of
25 your six and a half years of training and experience, one of

1 the basic things you're taught is the importance and the
2 purpose of an offense report; is that correct?

3 A. That's correct.

4 Q. And you've probably written hundreds, if not
5 thousands, of offense reports relating to different
6 incidences you've investigated; is that correct?

7 A. That's correct.

8 Q. And the importance of an offense report, you would
9 agree, is, one, that it should be accurate?

10 A. Yes, it should be.

11 Q. It should be truthful?

12 A. Yes.

13 Q. It should capture all the evidence that you
14 consider relevant to determining whether to charge a suspect
15 or not?

16 A. Yes.

17 Q. And in fact, the importance of accuracy and
18 truthfulness are so high that, in fact, you can review an
19 offense report any time; is that correct?

20 A. That's correct, yes.

21 Q. And you can correct it and supplement it at any
22 time as well.

23 A. Yes.

24 Q. And that offense report is also reviewed by a
25 superior to make sure it is in conformity with accuracy,

1 completeness, all those good things we want in the offense
2 report, correct?

3 A. Yes, correct.

4 Q. And for this offense --

5 MR. LUONG: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 Q. (BY MR. LUONG) For this offense, you wrote the
9 offense -- the narrative part of the offense report; is that
10 correct?

11 A. No, I did not, sir.

12 Q. Who wrote the narrative part of the offense report?

13 A. It was Officer Fisher, I believe.

14 Q. And who is Officer Fisher?

15 A. He's an officer that's assigned to the tactical
16 unit.

17 Q. And what rank is he in relation to you?

18 A. He's a police officer.

19 Q. But it would be important -- I mean, is it the same
20 rank or higher rank?

21 A. It's the same rank.

22 Q. Let me show you what begins as the narrative on
23 page 2.021, okay? Who wrote -- and continues through the
24 subsequent pages. Who wrote this narrative?

25 A. Was this a supplement or was this part of the

1 report?

2 Q. This is part of the report that begins on those
3 pages.

4 A. Let me make sure it's not a supplement.

5 This is Officer Fisher's report.

6 Q. And as part of any good police work, he would have
7 talked to Officer Olvera and officer -- and you, as the
8 primary responder in the scene, to make sure that the
9 offense report is accurate, correct?

10 A. Correct.

11 Q. And you would have a chance to review the offense
12 report to make sure it is accurate, right?

13 A. Not at the time he writes it, no.

14 Q. But at some point you would.

15 A. At some point, yes.

16 Q. Did you write any portion of the offense report?

17 A. No, I did not.

18 Q. And did you speak to Officer Fisher?

19 A. Yes, on scene.

20 Q. Okay. And how long did you speak with him?

21 A. Maybe 15, 20 minutes.

22 Q. And you would have relayed the information that
23 we've talked about in terms of the important evidence
24 pertaining to the charging decision that you made?

25 A. Yes.

1 Q. Is that right?

2 A. Yes, sir.

3 Q. And you were the one who made the charging decision
4 to call the DAs to get charges; is that correct?

5 A. No, I was not.

6 Q. Who was the officer who made that call and made
7 that decision?

8 A. That was Officer Fisher and Olvera together.

9 Q. Okay. So you actually didn't have any part in the
10 decision-making as to whether or not to charge which suspect
11 with what crime or even to charge them at all?

12 A. I was there assisting, yes.

13 Q. Okay. But you weren't the decision-maker in terms
14 of whether the charges should be made?

15 A. I think we were all deciding together, yes.

16 Q. But the officer calling it in was Officer Fisher.

17 A. Correct, yes.

18 Q. Would you agree that your memory of the incident
19 would be better at the time that the offense report is
20 written and the time -- nearer to the incident than it would
21 be today?

22 A. Yes.

23 Q. And I saw that you had to look at the offense
24 report to remind you of some of the basic details of this
25 case, like the type of car it was. Did you have a chance to

1 review this offense report before today?

2 A. No, I did not.

3 Q. But you were aware that this case had been set for
4 trial before and that you'd been subpoenaed before?

5 A. Yes.

6 Q. And so, when the prosecutor handed you the report,
7 was that the first time you viewed the facts in this case?

8 A. No, it was not.

9 Q. Okay. When is the other time you reviewed the
10 facts in this case?

11 A. I looked at it yesterday briefly while I was at
12 training and then I briefly today.

13 Q. And when you say you looked at it, you mean you
14 looked at the offense reports?

15 A. Correct, yes.

16 Q. And did you notice anything erroneous or lacking in
17 the offense report as you read through it?

18 A. I can't say that I did, no.

19 Q. Okay. But if it were, you would have noticed it.
20 As a good officer, you would be observant of things that
21 were lacking in the offense report?

22 A. If it was something of any significance, yes.

23 Q. And you would expect -- and you work with the folks
24 at the Midwest Gang Unit, they would expect the same
25 adherence to the importance of offense reports when they

1 write their offense reports because you guys work as a team?

2 A. Correct, yes.

3 Q. How far away were you from Sharpstown Mall when you
4 received the call from Officer Olvera?

5 A. I was actually at the mall as well.

6 Q. But you did not actually see the -- Mr. Williams or
7 anyone walk out or towards the vehicle?

8 A. No, that's correct, I did not.

9 Q. If Officer Olvera -- well -- and you've had a
10 chance to review the offense report both yesterday and
11 today, correct?

12 A. Correct, yes.

13 Q. Would it surprise you that the offense report
14 doesn't note any of the people --

15 MS. STABE: Objection to hearsay.

16 THE COURT: Sustained.

17 Q. (BY MR. LUONG) Would you consider the fact that
18 the suspects -- excuse me. I'm sorry. Mr. Williams and
19 Mr. Curtis Perry were seen running towards the vehicle as a
20 important fact in your charging decision?

21 A. I think that it was a factor to get them stopped
22 and ask them why they were running but as far as getting
23 them charged, not -- that doesn't have anything to do with
24 getting them charged.

25 Q. But it was an important fact in terms of your

1 investigation in the totality, correct?

2 A. Yes, yes.

3 Q. And that's a fact that if it were true and it
4 occurred, would -- you would expect it to be noted in
5 something like an offense report?

6 A. Yes.

7 Q. And when you read the offense report, do you see
8 any of that noted in there?

9 A. No, I do not.

10 Q. So, according to the offense report, Mr. Perry,
11 Mr. Williams were simply walking out of the mall and
12 stopping -- and getting into a car?

13 A. Correct.

14 Q. How long after receiving the call from Officer
15 Olvera did you take to stop the car?

16 A. From the time they gave the announcements over the
17 radio to the time we stopped them, maybe five minutes.

18 Q. Maybe even less than that, given the distance that
19 you covered?

20 A. Possibly, yes.

21 MR. LUONG: May I approach the witness, Your
22 Honor?

23 THE COURT: You may.

24 Q. (BY MR. LUONG) Other than -- you stated that
25 Officer Olvera told you or you remember, at least today,

1 that he observed these two individuals running towards the
2 vehicle. Did he relay any other information as a basis for
3 why he wanted you to stop that vehicle?

4 A. Once they got in the car, I believe he was driving
5 erratically and it was failing to use turn signals, yes.

6 Q. Not what you all observed but what Officer Olvera
7 gave you as a purpose for stopping?

8 A. Correct.

9 Q. Or did you actually observe them driving
10 erratically?

11 A. I never observed them. That's what was being said
12 over the radio, yes.

13 Q. Did you actually see them commit any traffic
14 violations?

15 A. Once we got behind them, yes, we did.

16 Q. Let me show you what's been marked as Defendant's
17 Exhibit 1 and 2. And these are satellite photographs. Do
18 you recognize what's being depicted in satellites -- Exhibit
19 1 and 2?

20 A. Yes.

21 Q. Okay. What's being exhibited in those exhibits?

22 A. These are images of the Sharpstown Mall area
23 parking lot and streets and things like that.

24 MR. LUONG: After tendering to State counsel
25 Exhibits 1 and 2, defense would offer them into evidence.

1 MS. STABE: Your Honor, we don't have any
2 objections to Exhibits 1 and 2.

3 MR. LUONG: May I publish, Your Honor?

4 THE COURT: 1 and 2, right?

5 MR. LUONG: Yes, Your Honor.

6 THE COURT: Will be admitted. And yes, you
7 may publish them.

8 Q. (BY MR. LUONG) There is a weird marking on there.
9 I don't know if you can tap your screen and make it go off.
10 To the left. Maybe tap it twice.

11 THE COURT: Maybe try it on that one, Jason.

12 MR. LUONG: Tap up here?

13 THE COURT: Yeah, that may work.

14 MR. LUONG: Top left?

15 MS. STABE: Bottom left.

16 THE COURT: There we go.

17 Q. (BY MR. LUONG) This is an aerial shot of
18 Sharpstown Mall?

19 A. Yes.

20 Q. Okay. And the south side here, that's Bellaire?

21 A. Yes, that's Bellaire.

22 Q. Okay. Where were you situated at the time you
23 received the call from Officer Olvera?

24 A. I was situated -- I believe it was over here on the
25 east side of the parking lot.

1 Q. If you could, tap it once to indicate where you
2 were.

3 A. (Indicating.)

4 Q. Where did you first see the LeSabre that was part
5 of the stop?

6 A. I believe it was somewhere right in here. You want
7 me to touch it again?

8 Q. Yes, please. So, you did not see them until that
9 point?

10 A. Correct, yes.

11 Q. And when you first saw them, what did you first
12 observe about the vehicle?

13 A. It was driving at a high rate of speed and it was
14 kind of weaving in and out of traffic type deal.

15 Q. Inside the parking lot of Sharpstown?

16 A. No, this was at the time that they had turned onto
17 Bellaire from the parking lot. That's when I saw them.

18 Q. And do you remember whether -- you said the color
19 of the vehicle is what?

20 A. It was goldish-tannish.

21 Q. And it had tinted windows?

22 A. I don't believe. I can't recall that.

23 Q. Okay. Under Defense Exhibit 2, kind of a wider
24 shot of Sharpstown Mall, kind of marked as PlazAmericas. Is
25 that what it's called now?

1 A. That's what it called now, yes, sir.

2 Q. I grew up in Houston. I know it as Sharpstown
3 Mall. My mom used to work there, so I'm going to refer to
4 it as Sharpstown Mall.

5 Where did you actually make the stop of the
6 car?

7 A. You're probably going to have to keep going west.

8 Q. Okay. So further down west on Gessner?

9 A. Right.

10 Q. Now, when you talked about traffic violations you
11 saw, what did you see this particular car do?

12 A. I saw this particular car driving at a high rate of
13 speed and it was weaving in and out of traffic, you know,
14 kind of like not using turn signals and things like that.

15 Q. Do you have patrol video on your car?

16 A. We don't, no.

17 Q. And when you made the initial -- so, you make the
18 contact with the vehicle and you're walking on the front
19 passenger side, correct?

20 A. Yes.

21 Q. I'm sorry. The front driver's side?

22 A. The driver's side, yes.

23 Q. And your partner, Officer -- I'm sorry. Tell me
24 who your partner was.

25 A. Culver.

1 Q. Culver was walking on the passenger side?

2 A. Correct.

3 Q. And you're the first unit on the scene?

4 A. Right, yes, sir.

5 Q. And you don't note anything in terms of anyone
6 making furtive movements; is that correct?

7 A. I don't know about that.

8 Q. Well, you've had a chance to read the offense
9 report.

10 A. Right.

11 Q. If someone was making furtive movements, it's a
12 fact that you'd want to be included in the offense report,
13 right?

14 A. That's correct, yes.

15 Q. And those facts aren't noted in the offense report,
16 correct?

17 A. No.

18 Q. So, you don't observe him making or anyone making
19 any furtive movements, right?

20 A. Nothing significant, no.

21 Q. And as you walk towards them, you make contact with
22 the driver, who is Hadren, correct?

23 A. Correct.

24 Q. Before you make the actual approach of the vehicle,
25 do you do anything in terms of any further investigation

1 before you actually approach the vehicle?

2 A. I was looking in the backseat at the defendant, you
3 know, just to see where his hands were and what he was
4 doing, just to make sure that he didn't have, I mean, like,
5 any type of weapon that I could see.

6 Q. And nothing significant noted in your offense
7 report with respect to that?

8 A. No, nothing.

9 Q. And you've dealt with -- you've made a lot of
10 stops, right?

11 A. Yes.

12 Q. And it's fair to say that it's not uncommon for
13 people to sometimes feel indignant or upset that they feel
14 they're being targeted or harassed by the cops?

15 A. Yes, that's true.

16 Q. And that itself isn't an indication of guilt; it's
17 just an indication of prior bad experience with cops, right?

18 A. Sure, yes.

19 Q. And here, you talk about -- you said that the
20 pillowcase was found right next to Mr. Williams?

21 A. Yes.

22 Q. Was it found right next to him on the seat or on
23 the floorboard?

24 A. The pillows were on the floorboard, yes.

25 Q. And they were closed, correct?

1 A. They were closed, yes, sir.

2 Q. So, someone in the car who may have been in there
3 for less than a few minutes wouldn't know what's in there,
4 right?

5 A. It's possible.

6 Q. And in fact, while you're following them from the
7 point of Sharpstown to the actual point you stopped them
8 off, you don't notice anyone reaching towards or adjusting
9 or manipulating the pillowcases.

10 A. Correct, no, I don't.

11 Q. And the jewelry box, I guess the other items that
12 we're talking about here, was found directly next to him or
13 on the seat?

14 A. On the seat directly next to him.

15 Q. And the location of the items, where they were
16 found specifically would be important facts to be accurate
17 and true in the offense report, correct?

18 A. Correct.

19 Q. And you've had a chance to review the offense
20 report?

21 A. Yes.

22 Q. And you've told the facts -- well, let me ask you
23 this. Did anyone document the scene in terms of
24 photographing the car to see where the items were actually
25 found?

1 A. I never did any type of photographing on that
2 scene, no.

3 Q. And in your mind is location of items an important
4 indicator of who's responsible for that item?

5 A. Yes, it is.

6 Q. And crime scene -- I mean, you have access to a
7 photographer if you need a photographer, right?

8 A. Correct, yes.

9 Q. And did anyone make a call out to try to get a
10 photographer?

11 A. Unfortunately a photographer's not going to really
12 come out for a scene like that. I mean, we don't have the
13 manpower.

14 Q. So, in that instance, it's even more important that
15 the documentation of items be accurate?

16 A. Yes, absolutely.

17 Q. Would it surprise you that the offense report --
18 you've read the offense report and it indicates --

19 MS. STABE: Objection to questions that are
20 going to lead to hearsay.

21 MR. LUONG: Your Honor, I think we --

22 THE COURT: Sustained.

23 Q. (BY MR. LUONG) The offense report actually doesn't
24 indicate that the box of jewelry was next to Mr. Williams.

25 MS. STABE: Objection, again, Your Honor, the

1 offense report is not in evidence. It's hearsay. It can't
2 come into evidence.

3 *THE COURT:* Sustained.

4 *Q. (BY MR. LUONG)* If the offense report indicated
5 that the jewelry box was actually found --

6 *MS. STABE:* Objection, again, Your Honor, to
7 hearsay.

8 *THE COURT:* Come on up.

9 *(At the bench, on the record.)*

10 *THE COURT:* Jason, I know you know the rules,
11 that you cannot impeach this witness with someone else's
12 offense report, so let's move on to something that's
13 admissible.

14 *MR. LUONG:* Well, I want to be able to
15 establish he didn't know the box was found next to the
16 person.

17 *THE COURT:* But it's not his report. You know
18 the rules. He didn't write the offense report. Yes, you
19 do. Do you want me to show them to you? I know you know
20 them.

21 *MR. LUONG:* He also knows that he read the
22 offense report. He's now testifying in contradiction with
23 the offense report.

24 *THE COURT:* It's not his report. You know
25 that.

1 (End of discussion at the bench.)

2 MR. LUONG: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 Q. (BY MR. LUONG) On 2.021, it indicates that you and
6 Officer Culver wrote the report. The narrative indicates
7 and says "we," correct?

8 A. Yes, it does.

9 Q. Okay. So, normal use of the language would
10 indicate that one of you two wrote the report.

11 THE COURT: Can I see the lawyers, please?

12 (At the bench, on the record.)

13 THE COURT: You've already asked him if he
14 wrote the report and he said no. The rules are very clear
15 that you cannot impeach somebody -- maybe you don't know
16 this, but the rule is you can't impeach somebody with
17 something they didn't write.

18 MR. LUONG: I want to establish that he
19 actually did write it.

20 THE COURT: You've asked him that and he said
21 the other guy did it.

22 MR. LUONG: But I want him to review the
23 specific wording. He hasn't reviewed this in so long, I
24 think he wrote it, he just maybe doesn't remember it.

25 MR. MENSING: It's his statement you're

1 impeaching him with. Your Honor, this is the law.

2 *THE COURT:* Counsel, thank you.

3 *MR. LUONG:* I can impeach him with his own
4 statement.

5 *THE COURT:* If it's not his report, you can't
6 impeach him with it.

7 *MR. LUONG:* Okay.

8 *THE COURT:* He said it's not his.

9 *MR. LUONG:* I would like to see whether or not
10 he refreshed his recollection as to whether or not he hasn't
11 wrote it if he reviews that first paragraph --

12 *THE COURT:* Okay. Then why don't you ask him
13 to refresh his recollection as to whether or not he wrote
14 the report or Officer Fisher and if he says Officer Fisher
15 wrote the report, then let's move on. If he says I just
16 remembered I wrote the report, then you can question him all
17 day long about it.

18 *MR. LUONG:* Okay.

19 *THE COURT:* Okay?

20 *MR. LUONG:* Yes.

21 *(End of discussion at the bench.)*

22 Q. *(BY MR. LUONG)* Officer Grossbard, I want you to
23 take a moment to read the paragraph I've indicated here
24 under page 2.21, specifically the first sentence. Read it
25 to yourself.

1 A. (Nods head affirmatively.)

2 Q. Okay. Based on the wording of that first
3 paragraph, is it fair to indicate that it would seem as if
4 either you or Officer Culver wrote the report?

5 A. Yes.

6 Q. Okay. And reading that paragraph, does it refresh
7 your recollection as to who actually wrote this report?

8 A. Officer Fisher wrote the report.

9 Q. Okay. Do you know why he would write it in a way
10 that would make it sound as if you or Officer Culver wrote
11 the report? Only if -- do you know why he would do it that
12 way?

13 A. Knowing his personality, I mean, he may have an
14 issue with some grammar.

15 Q. So, that error, you think, is a reflection of bad
16 grammar?

17 A. I would say, knowing his personality, yes, sir.

18 Q. But you would -- if Mr. Fisher -- how did
19 Mr. Fisher, when he conveyed the information to you or, I
20 guess, you conveyed the information to him as to where all
21 the items were allegedly found, did you do anything to
22 confirm that what you remember today was accurately
23 reflected in the offense report that was written, I guess,
24 within days of the actual incident?

25 A. I'm sorry. Can you repeat that? I didn't

1 understand what you said.

2 Q. Okay. If there's a conflict as to where the items
3 were found, okay, you testified that certain items were
4 found right next to Mr. Williams, if they're not accurately
5 reflected in the offense report that way, did you do
6 anything to correct them?

7 A. No.

8 Q. And we've talked about how important it is, for
9 example, the prosecutor reads the offense report and relies
10 on the facts stated therein to decide whether or not to
11 charge or not charge someone, correct?

12 A. Correct, yes.

13 Q. And so, at no point did you ever review the offense
14 report or even read this report to see whether or not the
15 locations were accurately reflected?

16 A. Read it when?

17 Q. Before the -- at any time after the writing of the
18 offense report.

19 A. I mean, are -- I'm just trying to understand you.
20 As in getting ready for the trial or read it -- I mean,
21 like, in the -- days after the incident?

22 Q. Well, just to make sure that the correct
23 information is conveyed to the statement.

24 A. No, no, I didn't. I had no reason to read it.

25 Q. So, if there are numerous errors --

1 MS. STABE: Objection, Your Honor, to improper
2 impeachment.

3 MR. LUONG: It's a hypothetical, Your Honor,
4 and he's --

5 THE COURT: Sustained.

6 Q. (BY MR. LUONG) Now, what specific traffic
7 violations did you all observe and that you used to -- as
8 probable cause to pull over the vehicle?

9 A. I stated before I observed the vehicle driving at a
10 high rate of speed and failing to signal, weaving in and out
11 of traffic.

12 Q. And you pulled them over for that basis, correct?

13 A. Yes, sir, correct.

14 Q. And then when you made contact with them, as you
15 indicated, there were actually three other people in the
16 vehicle as well?

17 A. Yes.

18 Q. Mr. Williams was not the driver?

19 A. No, he was not.

20 Q. Did he also have shopping bags in the car?

21 A. Yes, there were shopping bags as well.

22 Q. And where were they located?

23 A. They were in the backseat as well.

24 Q. Okay. And they contained clothes that were
25 recently purchased in Sharpstown, correct?

1 A. Correct.

2 Q. And those were the same bags that Officer Olvera
3 observed these defendants walking out of Sharpstown with?

4 A. Yes.

5 Q. And the jewelry box in question wasn't found in
6 that bag, the shopping bags, right?

7 A. Correct.

8 Q. None of the cufflinks were found in the shopping
9 bags?

10 A. No.

11 Q. And the iPad wasn't found in the shopping bag?

12 A. No.

13 Q. So, the actual bag that somebody observed him
14 touching or controlling had none of the alleged items that
15 we're talking about here today in them, correct?

16 A. Correct, yes.

17 Q. You're familiar with the process of fingerprints?

18 A. Yes.

19 Q. And it's fair to say that a glass surface is more
20 conducive to retaining fingerprints than a nonglass surface.

21 A. Absolutely, yes.

22 Q. For example, an iPad has a glass surface?

23 A. Yes.

24 Q. Did you ever have the iPad fingerprinted?

25 A. I didn't. I didn't want to damage it and the

1 powder that we have can, you know, sometimes damage that
2 type of thing and I didn't want to damage the home owner's
3 iPad.

4 Q. Okay. So, rather than -- you would admit that
5 fingerprints could be pretty important evidence in a case
6 like this?

7 A. Yes.

8 Q. And did you ask the permission of the owner,
9 saying, hey, in order for us to determine who actually broke
10 into your home, we'd like to finger -- we'd like to
11 fingerprint your iPad; can we have your permission? Did you
12 ever ask him that?

13 A. I asked him, I believe, on scene, because I have a
14 kit in my bag and I do a lot of fingerprinting myself and I
15 guess, given the fact that the iPad was right next to the
16 defendant, we didn't feel that there was a need to have to
17 lift the prints because it was right there.

18 Q. Okay. So, now it's not a issue of damaging the
19 iPad; it's an issue of you thought you had enough evidence
20 based on the proximity of the bag?

21 A. No, I would say it was a little bit of both. The
22 complainant didn't want his iPad damaged. The powder I have
23 could possibly damage that iPad and as well it was right
24 next to him, and so, it was a little bit of both.

25 Q. You would agree that fingerprint evidence, whether

1 it's taken or not taken, is an important part that should be
2 noted in an offense report.

3 A. Yes.

4 Q. For example, the reason why fingerprint evidence
5 isn't taken should be noted if it was otherwise available?

6 A. Yes.

7 Q. And reviewing the offense report, does that reason
8 appear anywhere in there?

9 MS. STABE: Objection, Your Honor, hearsay.

10 THE COURT: Sustained.

11 Q. (BY MR. LUONG) Wouldn't you want to make sure that
12 information made its way into the offense report?

13 A. I guess, given the circumstance, I mean, I just --
14 I guess we didn't feel the need because it was right next to
15 the defendant, I mean.

16 Q. Okay. But don't you think that -- okay. So, at
17 that point you -- you believe the -- these particular stolen
18 items belonged to Mr. Williams because of the proximity,
19 right?

20 A. Because of the proximity, yes.

21 Q. But you're aware that they actually charged
22 everyone in the car with theft of these same items?

23 A. Yes.

24 Q. So, the proximity apparently didn't make that
25 make-or-break decision here?

1 A. No, the proximity, we felt that they were all
2 involved, yes. I mean, we felt that everybody was involved
3 with the home burglary because they were all in the car with
4 the stolen items.

5 Q. A person -- if the -- if, as you say, the
6 pillowcase and the jewelry box were right next to the
7 person, right, as were the -- how many bags did they have in
8 the car, in terms of shopping bags?

9 A. Maybe a couple.

10 Q. Like, two or three?

11 A. Two or three.

12 Q. Are they the large, kind of large brown bags?

13 A. No.

14 Q. Are they the small, like --

15 A. They're like the bags that you -- you know, when
16 you go into the mall, like, a JCPenney bag, something like
17 that.

18 Q. So --

19 MR. LUONG: May I use a demonstrative, Your
20 Honor?

21 THE COURT: Sure.

22 Actually, Mr. Luong, let me stop you before
23 you start with your drawing.

24 Ladies and gentlemen, we're going to go ahead
25 and break for lunch at this time. If y'all will step back

1 in the jury room, the bailiffs will be with you in just a
2 few minutes to take you to lunch.

3 (Jury not present.)

4 THE COURT: Okay. I anticipate they'll be
5 back about 1:30. All right? We're in recess.

6 (Lunch recess.)

7 (Jury present.)

8 THE COURT: Be seated, please.

9 Counsel, you may proceed.

10 MR. LUONG: Thank you, Your Honor.

11 Q. (BY MR. LUONG) Before we get to a diagram, I want
12 to talk to you about how an offense report is written.
13 Okay. Do you do it as a computer terminal? Is that
14 correct?

15 A. Yes, correct.

16 Q. And do you have to log in with, like, your payroll
17 number or unique identifier so we know who is drafting or
18 writing a particular part of an offense report?

19 A. Yes.

20 Q. And if someone else is writing the offense report
21 for a incident but obviously that one officer doesn't see
22 everything, he has to talk to the officers to get their
23 statement and write an accurate report; is that correct?

24 A. That's correct.

25 Q. And in your experience, what is done to make sure

1 that the statement that is taken and the offense report
2 which is written is actually correct and reflective of the
3 accuracy of the statements?

4 A. Well, normally whoever writes the report talks to
5 the officers that were involved and, you know, asks every
6 officer who did what so he can, you know, write an accurate
7 police report. Generally that's how it works.

8 Q. And with respect to this offense report --

9 MR. LUONG: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 MR. LUONG: Do you have the offense report
13 that he was shown to refresh his recollection?

14 MS. STABE: I do. It's my copy.

15 MR. LUONG: Okay. May I use it to show him,
16 since that's the one he looked at?

17 MS. STABE: I have another copy.

18 MR. LUONG: As long as it's the same, then I'm
19 fine.

20 Q. (BY MR. LUONG) I'm going to show you a copy of the
21 offense report for this incident, another version of the
22 same one we saw. I'll have you look at the top part here.
23 Does an offense report -- how is the author of any
24 particular part of an offense report reflected in that
25 offense report?

1 A. Can you repeat the question? I'm sorry.

2 Q. How do we know who authors what part of an offense
3 report?

4 A. We can tell who wrote it by the name and payroll
5 number that's on the report.

6 Q. Okay. And on this section does that indicate who
7 wrote the following section of the offense report?

8 A. Yes.

9 Q. Okay. And you had earlier indicated that you
10 believed it was Officer Fisher.

11 A. Correct.

12 Q. Now, in reviewing this offense report here, does it
13 refresh your recollection as to who actually wrote this
14 narrative?

15 A. Yes.

16 Q. And who is that?

17 A. Officer Culver.

18 Q. And he's your partner?

19 A. He rode with me that day. He's not my partner.

20 Q. But for instance, his observations about where
21 things were located, he'd actually have firsthand knowledge
22 of that, correct?

23 A. He and I both did, yes.

24 Q. Okay. And he came on the passenger side, so things
25 that he would have observed on the passenger side would be

1 accurate. It would be firsthand knowledge.

2 A. Yes, that's correct.

3 Q. And did you have a chance to review the offense
4 report again over the lunchtime?

5 A. No.

6 Q. And when you read through the offense report
7 yesterday and today, your testimony is you didn't notice
8 anything inconsistent with what you've said today?

9 A. No, not offhand.

10 Q. Okay.

11 MR. LUONG: You know, actually I need that
12 offense report again. I'm sorry.

13 MS. STABE: Don't you have a copy?

14 MR. LUONG: I do, but I want to use the same
15 one so that way there's no risk of inconsistencies in what
16 he's been shown.

17 Q. (BY MR. LUONG) I'm going to show you on here, page
18 2.022, I guess, reading from this statement, "we also," if
19 you can read the rest of the paragraph to yourself.

20 A. Okay.

21 Q. And in that it has a description of where a jewelry
22 box was found?

23 A. Yes.

24 Q. And in reading that paragraph, does it refresh your
25 recollection as to where the jewelry box was actually found

1 at the scene?

2 A. Pretty much, yeah, I mean.

3 Q. Okay. And where was the jewelry box found?

4 A. It was -- the jewelry box here is saying it was
5 found on the seat.

6 Q. Okay. And which seat, though?

7 MS. STABE: Your Honor, I'm going to object
8 again. This is not the officer's report that he wrote, so
9 it's improper impeachment.

10 THE COURT: Sustained.

11 Q. (BY MR. LUONG) Does it refresh your recollection
12 to where the jewelry box was actually found?

13 A. Not really, no.

14 Q. Okay. Doesn't give a specific location?

15 A. I mean, it does, but it --

16 MS. STABE: Your Honor, objection, same
17 objection.

18 THE COURT: Sustained.

19 Q. (BY MR. LUONG) Okay. But you're -- it's fair to
20 say that your statement as to where the jewelry box was
21 found is consistent with what the offense report says.

22 MS. STABE: Objection, same thing.

23 THE COURT: Sustained.

24 MS. STABE: Improper impeachment.

25 Q. (BY MR. LUONG) Did you notify the DA of any other

1 inconsistencies in the offense report as you reviewed it?

2 MS. STABE: Your Honor, objection again. He's
3 asking the same questions. He's trying to use a report that
4 this officer didn't write to try to make him look like he's
5 being inconsistent.

6 MR. LUONG: Your Honor, he's designated as an
7 expert in burglary investigations. I think we can ask him
8 as to his qualification in his area.

9 THE COURT: I don't think he's been designated
10 as an expert, has he? Nobody certainly asked for that.

11 MR. LUONG: He has.

12 Q. (BY MR. LUONG) You've had a chance to review this
13 thoroughly?

14 A. Yes.

15 Q. You understand this is an important -- your
16 testimony could be important in this case?

17 A. Yes.

18 Q. Are there any other inconsistencies? Are there any
19 inconsistencies in what you said -- your recollection of the
20 events and what's actually reflected in the offense report
21 for this incident?

22 MS. STABE: Same objection, Your Honor,
23 improper impeachment.

24 THE COURT: Sustained.

25 Q. (BY MR. LUONG) The offense report is a statement

1 adopted by your unit as to what happened at that incident,
2 correct?

3 A. Correct.

4 Q. Even if not written for you, you adopt it as your
5 own statement, correct?

6 A. Not necessarily, no.

7 Q. So, did you do anything to make sure that the
8 offense reports with accurate as to the facts that you've
9 now testified to?

10 A. No.

11 Q. Now, you testified that one of the reasons why --
12 or you were given notice that two black males were seen
13 running from Sharpstown Mall?

14 A. Correct, yes.

15 Q. Did anyone go back to Sharpstown Mall to interview
16 people who may have been chasing them or if they were
17 running, why were they running?

18 A. No, we did not.

19 Q. Did anyone -- it's correct to say that there was
20 not any -- let me reword that. Mr. Williams wasn't found
21 with a large amount of cash on him, was he?

22 A. No.

23 Q. And no indication that, for example, he had --
24 well -- and none of the items in the bags that he was
25 carrying out of the mall were stolen, right? They were

1 bought for; they were purchased.

2 A. I'm not sure which bag he was carrying.

3 Q. Well, the bags that had the clothing, none of the
4 allegedly stolen items were found in those bags, according
5 to your testimony?

6 A. Correct, yes, that's correct.

7 Q. Never went back to Sharpstown to find out if there
8 was a recent shoplifting or anything like that to somewhat
9 explain why someone would even be running from the mall?

10 A. No.

11 Q. That didn't seem strange to you?

12 A. Well, I guess once we got the car stopped and we
13 called the complainant and we realized that there was just a
14 burglary and his items from his home were in the car, our
15 focus kind of shifted to that and we just wanted to make
16 sure that the home owner was going to get back his items, so
17 we just focused more on that.

18 Q. But you weren't concerned that allegedly these guys
19 were running from the mall and you weren't concerned about
20 figuring out who they may have been running from, maybe
21 another officer or another complainant?

22 A. Well, I mean, if that were the case, we would have
23 heard a call drop over the radio if it was something that
24 serious but once the complainant, you know, arrived at the
25 scene, our focus was on him to make sure that he got back

1 his items that were just stolen.

2 Q. Again, that was an assumption. You didn't just
3 drive the half mile back to figure out if -- what could have
4 been the scene from what these guys were running from?

5 A. Correct, because if it was something that was
6 serious, we would have heard about it over the radio drop.

7 Q. Okay. So, you're just assuming the evidence will
8 come to you?

9 A. Not necessarily the evidence come --

10 MS. STABE: Objection, Your Honor,
11 argumentative.

12 THE COURT: Sustained.

13 Q. (BY MR. LUONG) You are familiar with the way
14 marijuana smells, right?

15 A. Yes.

16 Q. And you described smelling a strong smell of
17 marijuana, right?

18 A. Yes.

19 Q. Recently-smoked marijuana?

20 A. No, sir.

21 Q. No, sir?

22 A. No, sir.

23 Q. Okay. And no marijuana was found in the car.

24 A. No.

25 Q. Not even -- and you did a thorough search of the

1 vehicle?

2 A. Correct, yes.

3 Q. But you understand that by saying you have -- smell
4 marijuana, you ostensibly have probable cause to search the
5 entire vehicle?

6 A. Yes, correct.

7 Q. I want to clarify what you testified today to as to
8 where the pillowcase with the iPad and the jewelry box with
9 the cufflinks were actually found. I thought I initially
10 heard you say the pillowcase was found at the feet of
11 Mr. Williams and then I thought I heard you say it was on
12 his side. Which one was it?

13 A. No. I said that the pillowcase was found on the
14 floorboard next to his feet and the other items were on the
15 seat next to him.

16 Q. And you understand -- you said you're part of the
17 arresting decision but that is only the first step in the
18 investigation; is that a fair statement?

19 A. Oh, yes, absolutely.

20 Q. And in your understanding, was this case then
21 assigned for follow-up investigation to a detective?

22 A. Yes.

23 Q. Who is that detective?

24 A. I'm not sure.

25 Q. Would it surprise you if it was a detective by the

1 name of Detective Godwin or Goodwin?

2 A. I've never heard of him.

3 Q. But your investigation at that point is to
4 establish probable cause for the arrest.

5 A. Correct, yes.

6 Q. And my understanding -- well, do you keep track of
7 the demographic profile of the people you stop and detain?

8 A. Yes.

9 Q. And you've been working at the Sharpstown area for
10 a good number of -- I guess at that point how many months?

11 A. At that point I've been there for about three and a
12 half years, I would say, in that area.

13 Q. And in that demographic, is it fair to say -- what
14 is the majority of the demographic of the people you stop
15 and detain?

16 MS. STABE: Objection, Your Honor, to
17 relevance.

18 THE COURT: Sustained.

19 Q. (BY MR. LUONG) You said one of the duties of the
20 gang unit, as a proactive unit, is to proactively stop crime
21 and to search for suspicious activities or persons?

22 A. Yes.

23 Q. What type of things do you consider to be
24 suspicious?

25 A. In my area, individuals walking around wearing gang

1 colors, wearing gang paraphernalia, things like that, for
2 the most part.

3 Q. Do you remember what Mr. Williams was wearing that
4 day in terms of clothing?

5 A. No, I don't.

6 Q. You've investigated thefts and burglaries before?

7 A. Yes.

8 Q. And the Houston Police Department also has a crime
9 scene unit to process more -- I guess a finer or more
10 detailed types of evidence?

11 A. Yes, correct.

12 Q. Did you notice any glass particles on Mr. Williams'
13 clothing or shoes?

14 A. I'm sorry? You said "particles"?

15 Q. Did you notice any glass particles on his clothing
16 or shoes?

17 A. No, I didn't notice any glass particles, no.

18 Q. Did you notice any fibers that were unusual either
19 on his person or on his shoes?

20 A. No.

21 MR. LUONG: Pass this witness, Your Honor.

22 THE COURT: Ms. Stabe?

23 MS. STABE: Thank you, Your Honor.

24 **REDIRECT EXAMINATION**

25 Q. (BY MS. STABE) Officer, you testified earlier

1 about -- or the defense attorney was asking you about the
2 fingerprint powder. Do you recall that?

3 A. Yes, I do.

4 Q. Okay. And you testified that fingerprinting
5 something like electronics, like an iPad, can damage the
6 equipment.

7 A. Yes.

8 Q. Okay. And did you ask the complainant if he wanted
9 his iPad dusted for prints?

10 A. Yes.

11 Q. Okay. And what was his response?

12 A. Just, no, that's okay, it's fine, I just want it
13 back.

14 Q. Okay. And what about if the suspects have been
15 wearing gloves when they broke into the house? Would that
16 do something, you know, about the prints?

17 A. There would be no prints if they're wearing gloves.

18 Q. And so, if they were also wearing gloves and they
19 were touching the property, would there be any prints on the
20 property?

21 A. No.

22 Q. And you also don't always leave a fingerprint when
23 you actually touch a surface; is that right?

24 A. That's correct.

25 Q. Okay. Can you explain that at all to the jury?

1 A. Yeah, I mean, in order for us to lift a good print,
2 it pretty much has to be, like, on a solid -- for the most
3 part, liftable surface and in order for us to lift a good
4 print and take that print to a lab and to have that print
5 processed at the lab, pretty much everything that was in his
6 car, other than the iPad, you weren't really going to be
7 able to lift a good print from, just based on the surface
8 that was in the car and just the items that were in the car.

9 Q. Okay. And so, that combined with -- if,
10 potentially, they were wearing gloves, I mean, you very
11 likely wouldn't have had any prints, even if they had been
12 attempted to be lifted?

13 A. Correct, I mean, I couldn't have gotten anything.

14 Q. Okay. And there were -- you testified that there
15 were four people in the car; is that right?

16 A. Yes.

17 Q. Okay. And you also testified that you arrested or
18 you were involved in the arrest of all four -- the defense
19 attorney's asking you about, well, the proximity of the
20 property then doesn't matter. So, can you explain to the
21 jury why you felt all four people were involved in this
22 theft?

23 A. Sure. Normally in my --

24 MR. LUONG: Objection, Your Honor, calls for
25 speculation.

1 THE COURT: Overruled.

2 A. In my experiences on burglary cases, normally when
3 they, what we call a crew of people, when they go and
4 burglarize a house, they use anywhere from three to four to
5 five people. They may use two people as lookouts on the
6 corner, then another two may go in the house and burglarize,
7 so it's never just one or two guys; it's multiple people
8 doing multiple things to successfully complete the burglary.
9 So in this case, it was four people in a car with stolen
10 property from a house that was just burglarized and nobody
11 wanted to acknowledge the fact that those items were theirs,
12 so that tells me that everybody that's in the car is more
13 than likely responsible for it.

14 Q. (BY MS. STABE) Okay. And so, when you tried to
15 inquire anybody's knowledge of the property, everyone
16 indicated I have no idea where this came from?

17 A. That's what everybody's response was. Nobody knew
18 anything about the items, nobody knew how they got in the
19 car. No one knew anything about anything.

20 Q. And you also testified on cross about furtive
21 movements and you said there wasn't really any significant
22 furtive movements going on in the car. Was there anything,
23 though, movement-wise that caught your attention?

24 A. The defendant's hands were just shaky, like this a
25 little bit, like that, which, kind of, you know, I didn't

1 see it as a sign of anything big but any time you're -- I
2 can see you shaking, that just kind of catches my eye, so
3 that's what he was doing.

4 Q. That's just one thing of many that you look at?

5 A. One of several things, yeah.

6 Q. Okay.

7 MS. STABE: May we approach, Your Honor?

8 THE COURT: Sure.

9 (At the bench, on the record.)

10 MS. STABE: So, Your Honor, at this time the
11 defense, on their cross-examination, has gone over and over
12 and over about where property was located and he was even
13 having him refresh his memory with sections from the offense
14 report about where the jewelry box was located but that
15 section in the offense report he was having him review said
16 that there were several jewelry boxes in the car, some in --
17 you know, so we feel like it's opened the door to describe,
18 you know, what -- we don't want to leave a false impression
19 in the mind of the jury about where the property was.

20 MS. BRUCHMILLER: At least in regards to
21 multiple jewelry boxes.

22 THE COURT: Well, here's the thing. The
23 witness testified -- and this is where -- is that when he
24 said that -- when he said does it refresh your memory, when
25 he said, no, because clearly he was remembering where it

1 was, so, I mean, if you want to ask a specific question as
2 to that jewelry box, where it was, and then you can, when
3 you put the other officer on, you can talk about -- I mean,
4 which jewelry box he was referring to, I get that, based on
5 the cross-examination, to clear up any misimpression but not
6 with this witness.

7 MS. STABE: Okay.

8 THE COURT: This is not the appropriate
9 witness for that.

10 MS. STABE: Okay.

11 MS. BRUCHMILLER: You can ask him where that
12 jewelry box was.

13 MS. STABE: Okay.

14 *(End of discussion at the bench.)*

15 MS. STABE: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 Q. (BY MS. STABE) Officer, I'm showing you State's
19 Exhibit 3. Do you recognize this?

20 A. Yes.

21 Q. Okay. And what is in State's Exhibit 3?

22 A. It's a wooden box.

23 Q. Okay. Do you recognize this as being one -- or the
24 box that you saw in the car with the defendant?

25 A. Yes.

1 Q. Okay. And where was the box that's in State's
2 Exhibit No. 3 located? Do you recall?

3 A. I believe it was up on the -- it was on the
4 passenger seat.

5 Q. Okay. So this box here in State's Exhibit No. 3,
6 that's what you're talking about when you say it was a
7 jewelry box on the seat next to the defendant?

8 A. Right, exactly. Yes.

9 Q. And then you testified that the iPad itself was in
10 one of the pillowcases that was at the defendant's feet in
11 that car?

12 A. Yes.

13 MS. STABE: I'll pass the witness.

14 THE COURT: Mr. Luong, anything?

15 MR. LUONG: Thank you, Your Honor.

16 **REXCROSS-EXAMINATION**

17 Q. (BY MR. LUONG) You said that to get a good
18 fingerprint, you'd need a smooth surface, right?

19 A. More like a glassy type surface, if you want to get
20 the best print that you can get, yes.

21 Q. State's Exhibit 3 has a smooth --

22 A. That's not a glassy surface, though.

23 Q. But you could get a print or attempt to get a print
24 off this surface, correct?

25 A. You couldn't get a solid print off that type of

1 surface, no.

2 Q. And have you ever had people fingerprint guns
3 before?

4 A. No.

5 Q. You've never heard of fingerprinting guns before?

6 A. The -- with -- the print kit that we're given on
7 patrol, we do not have the ability to lift a print off of a
8 gun.

9 Q. But you can call another unit that has a
10 specialized type of fingerprint unit to lift fingerprints
11 off this type of surface, correct?

12 A. Crime scene's not going to come out for that.

13 Q. Did you even request it?

14 A. Because I know they don't come out for that.

15 Q. But you didn't request it.

16 A. No.

17 Q. So, based on your testimony, you believe that
18 Mr. Williams should be charged because he fit the profile of
19 a member of a burglary crew?

20 A. No, that's not what I'm saying, no.

21 Q. Well, when the prosecutor asked you what was your
22 reason why you charged everyone, you said because they fit,
23 including Mr. Williams, the profile of a burglary crew,
24 right?

25 A. No, the -- they didn't fit the profile. They were

1 in a car with stolen property that was in arm's reach of
2 everybody.

3 Q. Oh, so now it's an arm's reach issue, not an issue
4 of that they fit a profile of a burglary crew?

5 MS. STABE: Objection, Your Honor,
6 argumentative.

7 THE COURT: Sustained.

8 Q. (BY MR. LUONG) You're aware that other individuals
9 who were initially charged have had their cases dropped?

10 MS. STABE: Objection, Your Honor, relevance.

11 THE COURT: Sustained.

12 Q. (BY MR. LUONG) And you're aware that he's actually
13 not charged with burglary?

14 A. Yes.

15 Q. It's a theft.

16 A. Correct, yes.

17 Q. And again, you never saw him handle that box?

18 A. No.

19 Q. You never saw him handle that pillowcase?

20 A. No.

21 MR. LUONG: Pass the witness, Your Honor.

22 THE COURT: Counsel, anything further?

23 MS. STABE: Just one two or questions, Your
24 Honor.

25

1 you're saying?

2 MR. LUONG: Objection, Your Honor, calls for a
3 legal conclusion.

4 THE COURT: Sustained.

5 Q. (BY MS. STABE) He was close enough to the property
6 to touch it?

7 A. Yes.

8 Q. Okay. And it was all, you said, in arm's reach of
9 the defendant?

10 A. Yes.

11 Q. And the defense attorney asked you about if he was
12 charged with burglary of a habitation. To be charged with
13 that, you have to be found in the house.

14 A. Yes.

15 Q. Okay.

16 A. Right.

17 Q. So, we have here the house is burglarized and
18 within an hour and a half, the defendant was in possession
19 of all that stolen property?

20 A. Yes.

21 Q. Okay.

22 MS. STABE: I'll pass the witness.

23 THE COURT: Mr. Luong?

24 MR. LUONG: Briefly.

25

FURTHER RECROSS-EXAMINATION

1
2 Q. (BY MR. LUONG) So you charged him because he got
3 into a car in which there was already allegedly stolen
4 property, correct?

5 A. No, that's not why he was charged.

6 Q. Never saw him handle it?

7 A. No.

8 Q. Never saw him touch it?

9 MS. STABE: Objection, asked and answered.

10 THE COURT: Sustained.

11 Q. (BY MR. LUONG) For all we know, and by all
12 accounts of the evidence, the pillowcase and the jewelry box
13 were already there when he got into the vehicle, correct?

14 A. I have no way of knowing that.

15 Q. But your testimony is you didn't see him carrying
16 any of those items out from the mall, correct?

17 A. Correct.

18 MR. LUONG: Pass the witness.

19 MS. STABE: Nothing further from this witness,
20 Your Honor.

21 THE COURT: All right. May this witness be
22 excused on call?

23 MS. STABE: Yes, Your Honor.

24 THE COURT: Thank you, Officer. You're free
25 to go.

1 THE WITNESS: Appreciate it.

2 THE COURT: Thank you so much.

3 Call your next witness, please.

4 MS. STABE: State calls Officer Olvera.

5 THE COURT: Right up here, please, Officer.

6 If you would, please have your seat.

7 THE WITNESS: Thank you.

8 THE COURT: Once you get settled, if you'd
9 please state and spell your name for my court reporter.

10 THE WITNESS: My name is Al Olvera,
11 O-L-V-E-R-A.

12 THE COURT: You may proceed.

13 **AL OLVERA,**

14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 Q. (BY MS. STABE) Can you please introduce yourself
17 to the jury?

18 A. Hello. I'm sorry.

19 Q. Officer Olvera, where are you employed?

20 A. Employed with the Houston Police Department.

21 Q. Okay. How long have you been working there?

22 A. Approximately six years now.

23 Q. What steps did you go through to become a police
24 officer?

25 A. Aside from the initial interview, application, the