

1 guilty or not guilty?

2 THE DEFENDANT: Not guilty, sir.

3 THE COURT: You may be seated.

4 Ms. Flader, do you wish to make an opening
5 statement?

6 MS. FLADER: No, Judge.

7 State calls Deputy Gustafson.

8 THE COURT: All right.

9 THE BAILIFF: The witness has been sworn.

10 THE COURT: All right. You may proceed.

11 MS. FLADER: Thank you, Judge.

12 **MARK GUSTAFSON,**

13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MS. FLADER:**

16 Q. Would you introduce yourself to the jury?

17 A. Deputy Mark Gustafson with the Harris County
18 Sheriff's Office.

19 Q. How long have you been with the sheriff's
20 office?

21 A. Approximately 19 years.

22 Q. And can you tell us, how do you become a deputy
23 with the sheriff's department?

24 A. Back when I started, most of us started as a
25 civilian jailer and then when the opportunity is

1 available, we go to the academy.

2 Q. What year did you become a jailer?

3 A. 1993, '92, '93.

4 Q. And how long were you a jailer?

5 A. Right at a year.

6 Q. And then you went to the academy?

7 A. Yes, ma'am.

8 Q. Can you tell the jury what the academy consists
9 of?

10 A. A lot of physical. Do a lot of Penal Code,
11 things of that nature, just our job as a law enforcement
12 officer, determining if a violation was made, things of
13 that nature, according to law.

14 Q. So, you learn the law?

15 A. (Moves head up and down).

16 Q. Is that correct?

17 A. Yes, ma'am.

18 Q. Okay. And you learn your department's
19 procedures?

20 A. Correct.

21 Q. How long is the academy?

22 A. Back then, the one I went through was six
23 months.

24 Q. Six months.

25 And so, during that six months, it's 8:00

1 to 5:00 you're in school?

2 A. Correct.

3 Q. After that, did you just go out on the streets
4 or was there a training program after that?

5 A. No, ma'am. Actually, I stayed in the jail for
6 a few more years and then took the test to go to patrol.
7 And once I passed the department's test to go to patrol,
8 I went through a FTO program, training on the streets.

9 Q. Can you tell the jury what that is?

10 A. You ride with an officer that trains you. You
11 go over the procedures for patrol. They teach you how
12 to do traffic stops in depth, you know, your probable
13 cause for traffic stops. Get you in the habit of
14 looking for violations of traffic laws, things of that
15 nature. You respond to calls for service, whether it's
16 an assault report or a car theft. And just do your
17 general investigation, initial investigation on those
18 report calls.

19 Q. How long were you in that training program?

20 A. That was about four months back then.

21 THE COURT: Sir, can you get a little
22 closer to the microphone, please?

23 THE WITNESS: Yes, sir.

24 Q. (By Ms. Flader) After that training program,
25 what happens?

1 A. I started patrol out in the Katy area.

2 Q. And have you been on patrol in the Katy area
3 since then?

4 A. I did about four years over there. I've been
5 on the north side in the Aldene area after that.

6 Q. Can you tell the jury what your division is,
7 what area you cover?

8 A. I'm in the northeast district, which is
9 primarily east of 45, north of Little York up to the
10 county line that extends across Lake Houston as well.
11 The area I primarily work is CV, which is south of the
12 Beltway down to Little York between the east side of 45
13 onto where the Beltway curves back south on the east
14 end.

15 Q. And on a regular day what are your duties and
16 responsibilities?

17 A. Just general calls for service and traffic.

18 Q. And what is a call for service?

19 A. Somebody calls in and they say: My house was
20 broke into or my car was stolen, or they're having a
21 family disturbance, they need us to come out and deal
22 with it.

23 Q. And when you get called out to a scene like
24 that, what is your responsibility as a patrol officer?

25 A. Well, to document the incident as best we can.

1 If it's an assault, who the complainant is, if they know
2 the person that assaulted them, or if they didn't, get a
3 description of them. Just put as much detail as we can
4 get at that time into the report.

5 Q. As a patrol officer, are you in charge of doing
6 investigations and following up on crimes?

7 A. It depends. Sometimes I may take an auto theft
8 report or something and they may say -- call back an
9 hour later and say: Hey, I just saw my car over here.
10 Then, yeah, I'd do a follow-up on that. After the
11 initial report, if we didn't come up with anything else,
12 it would just get referred to the Auto Theft Division
13 and they --

14 Q. Why is that?

15 A. They do the general follow-up investigations on
16 it. We do the initial entry. On an assault, if we
17 don't have a -- a known suspect -- like, a female's
18 boyfriend, let's say, assaults her, we already know who
19 he is, if we have the elements of the crime, we present
20 it to the D.A., they accept the charge, we file it. If
21 it's something that needs more investigation, then it
22 will go to a particular unit that does that, whether
23 it's assaults or burglary and theft, and they'll
24 continue that investigation from there.

25 Q. Approximately how many calls for service do you

1 receive on a daily -- on a regular shift?

2 A. I probably do about 20, 25 calls a shift.

3 Q. And how long is your shift?

4 A. Eight hours.

5 Q. It's quite a few?

6 A. It can be more, it could be less, but, yeah,
7 they can be busy.

8 Q. Okay. I want to talk to you about
9 September 12th, 2011. Do you recall that date?

10 A. Yes, ma'am.

11 Q. Were you on duty on that date?

12 A. Yes, I was.

13 Q. On that date, were you -- what shift were you
14 working at that time?

15 A. At that time, I was working third shift, 10:00
16 p.m. to 6:00 a.m.

17 Q. And did you receive a call for service that
18 day?

19 A. Yes, I did.

20 Q. And where were you called to respond to?

21 A. I was called for an aggravated robbery
22 carjacking at the Shell station at Mount Houston and the
23 Eastex Freeway.

24 Q. Is that in Harris County, Texas?

25 A. Yes, it is.

1 Q. Where were you when you received that call?

2 A. I was just coming on duty. It was right around
3 10:00 o'clock when I was heading into the district.

4 Q. And about what time were you able to arrive at
5 that location?

6 A. I believe I got to that location somewhere
7 around 10:15.

8 Q. Do you know what time that -- that incident had
9 been reported?

10 A. I want to say around 10:13 was the reported
11 time.

12 Q. So, you get on duty, you get a call for service
13 to go to this location in Harris County, Texas. When
14 you arrive, what did you see?

15 A. An elderly male, Asian male. And the call was
16 for the fact that he had been robbed for his vehicle.

17 Q. And when you -- when you first approached him,
18 did you identify him as the person who was reporting the
19 crime?

20 A. I think the person reporting it may have been
21 his son that called and stated that -- or a family
22 member that called and stated that the complainant was
23 at the service station and that he had been robbed of
24 his vehicle.

25 MS. FLADER: Your Honor, may I approach the

1 witness?

2 THE COURT: Yes.

3 Q. (By Ms. Flader) I'm going to show you what has
4 been previously marked as State's Exhibit 4. Do you
5 recognize this (indicating)?

6 A. Yes, ma'am.

7 Q. Does this fairly and accurately depict the area
8 that you were dispatched to?

9 A. Yes, ma'am.

10 Q. Okay. And if you would, using one of these
11 flags -- your choice of color -- can you show where you
12 first made contact with the complainant?

13 A. The Shell service station is on the southwest
14 corner of the intersection of Mount Houston and the
15 Eastex Freeway (indicating).

16 MS. FLADER: Your Honor, at this time,
17 State would offer State's Exhibit 4 into evidence,
18 tendering to opposing counsel for any objections.

19 **(State's Exhibit No. 4 Offered)**

20 MR. JOHNSON: No objection, Your Honor.

21 THE COURT: State's 4 is admitted.

22 **(State's Exhibit No. 4 Admitted)**

23 MS. FLADER: And, Your Honor, may I publish
24 it to the jury?

25 THE COURT: Yes.

1 Q. (By Ms. Flader) Showing you what has been
2 previously entered as State's Exhibit 4. Where we see
3 that red flag is where you responded and met with the
4 complainant (indicating)?

5 A. That's correct.

6 Q. You -- you described him as an elderly Asian
7 male. Can you tell us the way he was behaving, what his
8 demeanor was when you approached him?

9 A. The complainant was excited, in an upset state.
10 I had difficulty communicating with him. He had a --
11 like a raspy voice, almost a whisper. And he spoke
12 mainly Vietnamese, very, very little English. And I --
13 I was just, at that point, trying to figure out what
14 exactly had happened. He advised he had left his work.
15 And eventually, after traveling for a short distance, he
16 had gotten rear-ended slightly.

17 Q. Okay. When you're talking to him, you said
18 that he doesn't speak English; is that right?

19 A. Very little, if any.

20 Q. So, was he able to get across words to you in
21 English?

22 A. You know, as with Spanish, a lot of times you
23 just are able to somehow manage to communicate a little
24 bit with people with bits and pieces of words, hand
25 gestures. And he was able to, basically, let me know

1 where he had come from, his place of business, and I
2 know where that is at, and --

3 Q. Okay.

4 A. -- from there on what had happened.

5 Q. Okay. And so, you were able to learn that he
6 had been involved in a car accident?

7 A. Correct.

8 Q. And after the car accident, did you learn that
9 he had been robbed?

10 A. Correct.

11 Q. All right. Was he able to give you any kind of
12 description of the individuals involved in the robbery?

13 A. The description at the time was very -- was
14 vague. It was a large and a small black male. The
15 larger of the two males was stated to have a black
16 T-shirt on or a black shirt and the smaller a white
17 shirt.

18 Q. Were you able to get details about the way they
19 looked or anything other than just a very bare
20 description?

21 A. That was about all I got from him at the time.

22 Q. Were you able to get information about the car
23 that had been taken?

24 A. Yes.

25 Q. And what information did you get about that

1 car?

2 A. I was able to get the full make and model of
3 the vehicle, which I forwarded to my dispatch so we can
4 report it as stolen.

5 Q. And why did you do that?

6 A. They put an alert on the license plate once
7 they have that. Any officer then that runs that license
8 plate is going to come up with a stolen hit, and,
9 therefore, they'd stop the vehicle.

10 Q. Okay. What kind of car was it that you were
11 looking for?

12 A. It was a white Honda Accord.

13 Q. Did you have a license plate number at that
14 time?

15 A. Yes, I did.

16 Q. And what was that license plate number?

17 A. Let me look at that in the report real quick.
18 I don't have it memorized.

19 942, Lincoln, Henry, X-ray.

20 Q. After you spoke with the complainant, did you
21 get detailed information from him about who he was and
22 how to get in contact with him?

23 A. Correct.

24 Q. And why did you do that?

25 A. In hopes that if we caught somebody in the

1 vehicle or obtained suspects eventually in the robbery,
2 that we would be able to get him to maybe identify them.

3 Q. So, while you were not able to necessarily
4 communicate with him like you would an English speaker,
5 you were able to communicate enough to get basic
6 information that you could enter into your report?

7 A. Correct.

8 Q. After you entered that information into your
9 report and you sent the information about the stolen car
10 to dispatch, what did you do after that?

11 A. I just resumed normal patrol duties. At that
12 point, before the end of the shift, I would generally
13 enter the report into the system. The main thing was
14 getting the stolen alert placed on that plate. And just
15 continued picking up calls at that point.

16 Q. Okay. At some point did you get another call
17 about this car?

18 A. Yes, ma'am. Dispatch contacted me and advised
19 me that the City of Houston had some officer that had
20 the stolen vehicle stopped.

21 Q. And about what time was it that you got that
22 dispatch call?

23 A. That was around midnight.

24 Q. So, less than two hours from the time the
25 incident was reported, another officer had stopped that

1 car?

2 A. Correct.

3 Q. And what did you do when you learned that that
4 car had been stopped?

5 A. I proceeded to that location. I was advised
6 that they had stopped it based on a LoJack hit and they
7 had two subjects detained.

8 Q. Can you tell the jury what a LoJack hit is?

9 A. LoJack is a security system that's placed in
10 vehicles that will track it. Not all patrol vehicles,
11 but some have a LoJack monitor. It's got four antennas.
12 It has what looks like a compass dial on it. And when
13 you get within a certain area near a stolen vehicle
14 emitting that signal, it will pop up with a code on your
15 little monitor. You give that to your dispatch. She
16 then matches that up, gives you the plate, make, model,
17 color, everything on the vehicle they have. And then
18 what you do is you try to get that strength to increase
19 by going the direction the arrow is telling you and it
20 should get higher and higher as you get closer. And you
21 just try to narrow it down. Usually, if they're
22 available, maybe three, four, however many cars that
23 have that system, will get in the area and saturate it
24 and they'll start circling around that signal and
25 narrowing it down until they locate the vehicle.

1 Q. Do you have one of those monitors in your
2 patrol car?

3 A. No, ma'am.

4 Q. So, after you learned that the vehicle that had
5 been stolen from Mr. Phan had been located, did you go
6 to that location?

7 A. Yes, I did.

8 MS. FLADER: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes.

11 Q. (By Ms. Flader) I'm going to now show you what
12 has been previously marked as State's Exhibit 5. Do you
13 recognize this (indicating)?

14 A. Yes, ma'am.

15 Q. Is this a fair and accurate depiction of the
16 location where the vehicle had been stopped?

17 A. I'm not as familiar with this area. It looks
18 like it is, yes.

19 Q. And can you use one of the flags to show where
20 you were -- about where you were dispatched and saw the
21 stolen car?

22 A. Dispatched to the location of Airline and
23 Rittenhouse.

24 Q. Okay. And is that in Harris County, Texas?

25 A. Yes, ma'am.

1 MS. FLADER: Your Honor, at this time the
2 State would offer State's Exhibit 5 into evidence,
3 tendering to opposing counsel for any objections.

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

5 MR. JOHNSON: No objection, Your Honor.

6 THE COURT: State's 5 is admitted.

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

8 MS. FLADER: And may I publish it to the
9 jury?

10 THE COURT: Yes.

11 Q. (By Ms. Flader) Okay. So, that's the location
12 you were dispatched to (indicating)?

13 A. Yes, ma'am.

14 MS. FLADER: Your Honor, may I approach the
15 witness again?

16 THE COURT: Yes.

17 Q. (By Ms. Flader) I'm going to show you now
18 what's been previously marked as State's Exhibit 6. Do
19 you recognize this (indicating)?

20 A. Yes, ma'am.

21 Q. And is this an accurate depiction of the
22 location that you were initially dispatched to and the
23 location where the stolen car was stopped?

24 A. Yes, ma'am.

25 MS. FLADER: Your Honor, at this time the

1 State would offer State's Exhibit 6 into evidence,
2 tendering to opposing counsel for any objections.

3 **(State's Exhibit No. 6 Offered)**

4 MR. JOHNSON: May I take this witness on
5 voir dire, Your Honor?

6 THE COURT: Yes.

7 **VOIR DIRE EXAMINATION**

8 **BY MR. JOHNSON:**

9 Q. Officer Gustafson, there's a line between the
10 two locations on this map (indicating).

11 A. Yes, sir.

12 Q. Is that -- I mean, were you-all able to trace
13 this car and say that that's the route it took?

14 A. No, sir. To my knowledge, LoJack doesn't trace
15 the actual tracking like a path, like a GPS can. It
16 basically just emits a signal that allows you to locate
17 the actual vehicle.

18 Q. So, this is probably just something that
19 MapQuest drew on some give-me-directions kind of
20 program?

21 A. Possibly, yes, sir.

22 MR. JOHNSON: Just with that understanding,
23 Your Honor, we have no objection.

24 THE COURT: State's 6 is admitted.

25 **(State's Exhibit No. 6 Admitted)**

1 MS. FLADER: Your Honor, may I publish it
2 to the jury?

3 THE COURT: Yes.

4 **DIRECT EXAMINATION**

5 **CONT'D BY MS. FLADER:**

6 Q. If you could just tell the jury exactly what
7 they're looking at. And you can press on that screen
8 and circle and it will -- it will be -- the jury can
9 then see it.

10 A. Okay. The -- up in the top right, the letter
11 "A" here, that's the gas station where the offense
12 actually took place or the robbery. It's at the
13 southwest corner of Mount Houston and the Eastex Freeway
14 where that service station was. The blue line is --
15 like the gentleman said over there -- possibly just a
16 way MapQuest or something did a short path from Point A
17 to Point B. I'm not sure of the exact distance, whether
18 it's six or eight miles. I'm not sure, but you come
19 down 59. You can take Little York across on down to
20 Airline and go just south of Little York. And that's
21 where Rittenhouse is where the suspect vehicle was.

22 Q. And where we see the -- I guess it's a "B"?

23 A. Yes, ma'am. Right here (indicating).

24 Q. All right. When you arrived at the location
25 where the car had been stopped, did you speak with the

1 patrol officers that had stopped that car?

2 A. Yes, ma'am.

3 Q. Okay. And what is the purpose of speaking with
4 them?

5 A. Originally, I didn't even know the car was
6 actually equipped with LoJack. I just knew I was
7 reporting it as a stolen and for that hit to be placed
8 on the plate. While en route, I learned that's why they
9 stopped, it was a LoJack hit. I spoke with the
10 officers. They advised me they had two subjects
11 detained that were in the vehicle when they stopped it.

12 Q. When you learned that there were two people in
13 the stolen car that had been detained by HPD, what did
14 you think about that?

15 A. Well, all I knew for sure at that point was
16 that neither one of them were supposed to be in the
17 vehicle. I knew the vehicle was taken by force from the
18 complainant. And at that point, with the vague
19 description I had, I just knew I had two subjects in the
20 vehicle that could have been the persons that had taken
21 it from him.

22 Q. Did they potentially match the description
23 given by the complainant?

24 A. General descriptions, yes.

25 Q. Okay. Now, one of the individuals that was

1 stopped in the stolen car, he was not black; is that
2 right?

3 A. Correct.

4 Q. Okay. Can you describe him for the jury?

5 A. He's a Hispanic male, medium-brown skin, could
6 have been mistaken to be a light black male, in my
7 opinion.

8 Q. Okay. And when -- in the dark -- because it
9 was dark out, right?

10 A. Correct.

11 Q. In the dark, could he be mistaken for a black
12 male?

13 A. Yes.

14 MR. JOHNSON: Calls for speculation.

15 THE COURT: Sustained.

16 Q. (By Ms. Flader) When you got to the location,
17 did you see the two individuals that had been stopped in
18 that stolen car?

19 A. Yes, ma'am.

20 Q. Do you recognize either one of them in the
21 courtroom today?

22 A. Yes, ma'am, I do.

23 Q. Would you please point to him and identify him
24 by an article of clothing that he's wearing?

25 A. The gentleman in the green shirt here

1 (indicating).

2 MS. FLADER: Your Honor, would the record
3 reflect that the witness has identified the defendant?

4 THE COURT: Yes.

5 Q. (By Ms. Flader) When you got to the location,
6 do you recall what the defendant -- this defendant was
7 wearing?

8 A. Yes. A T-shirt.

9 Q. Do you remember what color T-shirt he was
10 wearing?

11 A. Yeah. Black.

12 Q. Was it a black T-shirt or was it a white
13 T-shirt?

14 A. As far as I recall, he was wearing a back
15 T-shirt as described in the original...

16 MS. FLADER: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes.

19 Q. (By Ms. Flader) When you booked him into jail,
20 did you have him change clothing at all?

21 A. No, I did not.

22 Q. Okay. And when he's booked into jail, there's
23 a picture taken of him. Correct?

24 A. Correct.

25 Q. And that was the picture that was later used by

1 the investigator; is that right?

2 A. I believe so.

3 Q. Okay. And so, the picture of the defendant's
4 booking photo, he's not wearing a black shirt, is he?

5 A. No, ma'am, he's not.

6 Q. And what color of shirt was he wearing?

7 A. It is white.

8 Q. Okay. So, could you have been mistaken about
9 what color shirt he was wearing when you saw him?

10 A. I could have, yes.

11 Q. Okay. Did you put that in your report, what
12 color shirt he was wearing when you found him?

13 A. No, I did not. Not in the supplement report, I
14 did not.

15 Q. Okay. Did you put what color shirt the other
16 defendant was wearing?

17 A. No.

18 Q. When you talked to the complainant -- let me
19 back up.

20 Did you then call the complainant and tell
21 him that his car had been located?

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

23 Q. And why not?

24 A. Due to the time of morning. A lot of times our
25 dispatch generally informs people. We have the vehicle

1 towed and then they pick it up from the tow storage lot.

2 Q. Did you then -- when you got to that location,
3 did you take -- did you take -- the two defendants that
4 had been detained, did you take them to jail?

5 A. Yes, I did.

6 Q. All right. And what did you do after you took
7 them to jail?

8 A. I called the D.A., got charges accepted at the
9 time, placed him in custody in the jail, and just
10 continued -- did my report and that was it.

11 Q. What charges did you have accepted?

12 A. Unauthorized use of a motor vehicle on the
13 driver and trespass of a motor vehicle on the passenger.

14 Q. Okay. And who was the driver of that car?

15 A. The gentleman on my left here.

16 MS. FLADER: And would the record reflect
17 that the witness has identified the defendant again?

18 THE COURT: Yes.

19 Q. (By Ms. Flader) Did you -- when you had the
20 defendant in your custody, did you try to interview him?

21 A. No, I didn't.

22 Q. Why not?

23 A. At this time, I just didn't --

24 MR. JOHNSON: I'm going to object. Calls
25 for -- it's irrelevant, Judge.

1 THE COURT: Sustained.

2 Q. (By Ms. Flader) Had you already referred this
3 case to a detective?

4 A. Yes. After calling the D.A.'s office and
5 getting those charges accepted, basically, when I
6 complete my report, it was referred over to them for a
7 possible photospread to see if they were involved in the
8 robbery portion.

9 Q. Is it sometimes a practice of the -- of your
10 department to have the complainant brought to the scene
11 to identify the suspects?

12 A. Yes.

13 Q. Did you do that in this case?

14 A. No, I did not.

15 Q. Why not?

16 A. Just, there again, the time of night. He was
17 an elderly gentleman, just really shaken up, and I
18 just -- to try to get him back to the scene would have
19 probably been really time-consuming at that point as
20 well.

21 Q. All right. So, you took the two people that
22 you had arrested down to the station and then you
23 referred the case to the detectives to follow up with
24 the investigation?

25 A. Correct.

1 Q. Did you have any other involvement in this
2 case?

3 A. No.

4 MS. FLADER: I pass the witness, Judge.

5 THE COURT: Mr. Johnson.

6 MR. JOHNSON: May I proceed, Judge?

7 THE COURT: Yes.

8 MR. JOHNSON: Thank you.

9 **CROSS-EXAMINATION**

10 **BY MR. JOHNSON:**

11 Q. Officer Gustafson, when you first responded to
12 this case and you talked to Mr. Phan, I know you said
13 that you found out where he had been that night, you got
14 a general description. Did he also tell you that there
15 had been some money and his driver's license in the car?

16 A. Correct.

17 Q. Do you remember how much money he said was
18 lost?

19 A. I want to say it was like \$400.

20 Q. And did he tell you one of the men was a large
21 man and one was a smaller man?

22 A. Yes.

23 Q. And did he tell you that it was the larger man
24 that had on the black T-shirt?

25 A. Correct.

1 Q. When you responded over to the Jack-In-The-Box,
2 was Mr. Harmon the larger of the two?

3 A. Yes, he was.

4 Q. And now we've cleared up the fact that he
5 didn't, in fact, have a black T-shirt, he had a white
6 T-shirt on?

7 A. Correct.

8 Q. Unless you let him go home and change between
9 the time you arrested him and booked him in.

10 A. No, sir.

11 Q. So, we can assume, when he was stopped over
12 there by that Jack-In-The-Box, he had a white T-shirt?

13 A. Correct.

14 Q. And you're saying that Mr. Phan told you that
15 two black men had robbed him. And you found out that --
16 and the one -- and the man that was with Mr. Harmon, in
17 fact, was Hispanic?

18 A. Correct.

19 Q. So, when you say they matched the general
20 description, I'm a little curious as to how that can be
21 when you're told it's two black men, the big one has got
22 a black T-shirt, and you get over there and it's, in
23 fact, a large black man with a white T-shirt and a
24 Hispanic gentleman. What exactly matched? Two guys?

25 A. Well, I'm sure you've met a black gentleman or

1 a person in your life that is very, very light-skinned.
2 As in a lot of things, when your adrenaline and you're
3 being attacked, you may make a slight mistake in that,
4 in that it was a Hispanic male that was mistaken,
5 possibly.

6 Q. You're speculating that Mr. Phan, in fact, in
7 the excitement of the situation just misidentified one
8 of the men?

9 A. I'm saying he made a mistake in that he wasn't
10 actually black.

11 Q. I'll accept that.

12 You said you got this report at 10:13, the
13 initial report about the carjacking?

14 A. Correct.

15 Q. Do you have the exact time that you went over
16 to the Jack-In-The-Box and met over with the HPD
17 officer?

18 A. No, sir. I don't have either one of those call
19 slips printed out. So, the exact time, I don't have
20 written out.

21 Q. You think it's about two hours later?

22 A. Yes, sir.

23 Q. Do you know how long it takes you to drive
24 between the two locations?

25 A. Probably between five and seven minutes or so.

1 Q. So, that's at least an hour and 55 minutes kind
2 of unaccounted for?

3 A. Yes, sir.

4 Q. A lot can happen in Houston in an hour and 55
5 minutes, can't it?

6 A. Definitely.

7 MS. FLADER: Judge, I object to the
8 sidebar.

9 THE COURT: Sustained.

10 MR. JOHNSON: Judge, I pass the witness.

11 MS. FLADER: Judge, may I proceed?

12 THE COURT: Yes.

13 **REDIRECT EXAMINATION**

14 **BY MS. FLADER:**

15 Q. Is it possible with the miss -- with the
16 complainant's inability to speak good English, is it
17 possible that you confused his description of the males?

18 A. It's possible.

19 Q. So, when he said that the larger man was
20 wearing a black T-shirt and the smaller man was wearing
21 a white T-shirt, you could have confused what he was
22 saying, correct?

23 A. Correct.

24 Q. Okay. Or, in that sort of a situation, people
25 sometimes give incorrect descriptions; is that correct?

1 MR. JOHNSON: I'm going to object to the
2 leading, Your Honor.

3 THE COURT: Sustained.

4 Do not lead the witness.

5 MS. FLADER: Yes, Judge.

6 Q. (By Ms. Flader) Can you tell the ladies and
7 gentlemen of the jury, in your experience is it common
8 for complainants to give incorrect information about
9 suspects?

10 MR. JOHNSON: I'm going to object to
11 relevance, Your Honor.

12 THE COURT: Overruled.

13 You can answer the question.

14 THE WITNESS: I'm sorry, Your Honor?

15 THE COURT: You can answer.

16 A. Yes, it is.

17 Q. (By Ms. Flader) Okay. And why is that?

18 A. There again, I've actually made the mistake
19 before of maybe an article of clothing due to the rush
20 of adrenaline in a pursuit or something of that nature.
21 The adrenaline rush that you get, you know, either --
22 when you're involved in a fight, you can make a few
23 mistakes.

24 MS. FLADER: I pass the witness, Judge.

25 THE COURT: Mr. Johnson.

RECROSS-EXAMINATION

1
2 **BY MR. JOHNSON:**

3 Q. And, Officer, you said you could have been
4 mistaken because of the language problem, but he
5 actually was able to give you quite a bit of
6 information, was he not?

7 A. Yes, sir, he was.

8 Q. And, obviously, I think what you're saying,
9 people can make mistakes in times of stress in terms of
10 making identifications?

11 A. Yes, sir.

12 MR. JOHNSON: Pass the witness, Your Honor.

13 THE COURT: Ms. Flader.

14 MS. FLADER: I'll call Officer Peak.

15 THE COURT: You may step down, sir.

16 MS. FLADER: Judge, may this witness -- I'm
17 sorry. Before he leaves, may this witness be excused?

18 THE COURT: You're on-call, sir. You can
19 go.

20 THE BAILIFF: The witness has been sworn.

21 THE COURT: All right. Ms. Flader.

22 MS. FLADER: Thank you, Judge.

23 **SCOTT PEAK,**

24 having been first duly sworn, testified as follows:

25 **DIRECT EXAMINATION**