

1 JURORS: Yes, sir.

2 THE COURT: Witnesses, will you
3 raise your right hand, please, to be sworn?

4 (Witnesses sworn)

5 THE COURT: Witnesses, we'll be
6 operating under the exclusionary rule. That means
7 any witness who's not on the witness chair in the
8 process of giving his testimony must remain out of
9 the hearing of the court. So, in a moment when the
10 first witness is called I'll ask the other witness
11 retire to the witness room nearby. Stay close by so
12 he can be called on short notice and while you're
13 out of the presence of the court, do not discuss
14 your testimony or anything pertaining to the case
15 with anyone except the attorneys. You may talk
16 freely with either or both of the attorneys, but be
17 sure you do so out of the presence of anybody else
18 who may be involved as a witness. Call your first
19 witness, please, Ms. Horton.

20 MS. HORTON: State calls Officer
21 Horn.

22 THE COURT: Officer Horn to the
23 witness chair, please. After you're seated, pull
24 the microphone to a point to you, you may need to
25 approach the microphone probably closer than you

1 think. Even with a microphone, you'll have to raise
2 your voice. Pull it down a little bit closer.
3 Proceed, please.

4 MS. HORTON: Thank you, Judge.

5 JOSHUA HORN,

6 After having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 Q. (By Ms. Horton) Officer, please
9 introduce yourself to the jury.

10 A. My name is Officer Joshua Horn. I'm a
11 police officer with the Houston Police Department.

12 Q. And you're not currently in uniform, but
13 you are a police officer, correct?

14 A. Yes, ma'am.

15 Q. You're dressed for court?

16 A. Yes, ma'am.

17 Q. Now, how long have you been with the
18 Houston Police Department?

19 A. A little over seven years.

20 Q. And what division are you currently
21 assigned to?

22 A. I'm currently assigned to the homicide
23 division.

24 Q. Now, on January 6, 2012 what division
25 were you assigned to?

1 A. The Gang Crime Reduction Unit.

2 Q. Can you explain to the jury what the
3 purpose of the crime reduction unit is?

4 A. Basically it's not a zero tolerance
5 unit, but it's a unit, basically we're just out
6 there to suppress crime. Any time we see any -- we
7 see anything, we try to make self-initiated traffic
8 stops, determine if there's any type of criminal
9 activity. We're out there trying to suppress
10 criminal activity. We're out there trying to
11 document gang members, things like that.

12 Q. Now, were you assigned to the crime
13 reduction unit on January 6th 2012?

14 A. Yes, ma'am.

15 Q. What day of the week was January 6th
16 2012?

17 A. It was a Friday.

18 Q. And what area were you patrolling on
19 that day?

20 A. We consider it the west side, 19
21 District.

22 Q. And can you kind of give some street
23 names around where you would have be?

24 A. Southwest Freeway, near 59, Bissonnet,
25 Beltway, near 59 -- I'm sorry Beltway area near

1 Beechnut, Bissonnet, Plainfield. There's a lot of
2 streets in that area. Now, when you ride in the
3 crime reduction unit -- or on that night, January
4 6th 2012 or early morning hours, were you riding
5 alone?

6 A. No. I had a partner with me.

7 Q. What is his name?

8 A. Clydell White.

9 Q. Now, why -- what area were you
10 patrolling in the early morning hours of January
11 6th?

12 A. We were patrolling the 19 district area,
13 off of Bissonnet and Forum Park. That's one of the
14 areas we like to target. There's a lot of criminal
15 activity out there.

16 Q. Do you recall in the early morning hours
17 of January 6, 2012 stopping an individual or making
18 an arrest in the Forum Park area?

19 A. Yes, ma'am.

20 Q. And that location where you stopped that
21 individual, was that in Harris County, Texas?

22 A. Yes, ma'am.

23 Q. Now, in these early morning hours on
24 January 6th 2012, around what time was it, if you
25 recall?

1 A. It's going to be somewhere around 1:20
2 in the morning when we made the initial traffic stop
3 or the initial stop, around 1:25 in the morning.

4 Q. For the jury's knowledge, you're looking
5 at your report; is that correct?

6 A. Yes.

7 Q. Or you have your report in front of you
8 to refer to if you need it?

9 A. Yes.

10 Q. In the early morning hours around 1:20
11 or 1:30, do you recall coming into contact with the
12 defendant in this case?

13 A. Yes.

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

16 A. Multicolored long-sleeved shirt.

17 MS. HORTON: Your Honor, let the
18 record reflect the witness has identified the
19 defendant.

20 THE COURT: The record will so
21 reflect.

22 Q. (By Ms. Horton) So, how did you come
23 into contact with him?

24 A. Initially, we were traveling westbound
25 on Bissonnet. We were going to go down Forum Park,

1 which is the street where we saw him on, standing in
2 the roadway. We approached him, observed him then
3 walk from the street over onto the sidewalk.

4 MS. HORTON: Your Honor, may I
5 approach the witness?

6 THE COURT: You may.

7 Q. I'm showing you what's been marked as
8 State's Exhibit No. 1 and State's Exhibit No. 2. Do
9 you recognize State's Exhibit No. 1?

10 A. Yes.

11 Q. Can you describe what it is?

12 A. It's a map of the area that we stopped
13 the defendant in.

14 Q. Is that a clear and accurate depiction
15 of the area you stopped the defendant on January 6th
16 2012?

17 A. Yes.

18 MS. HORTON: Your Honor, State
19 offers State's 1 into evidence and offers to
20 opposing counsel for inspection.

21 MR. AYERS: I have no objection,
22 Judge, to State's Exhibit No. 1, the map.

23 THE COURT: Being no objection,
24 State's Exhibit No. 1 is admitted.

25 MS. HORTON: Your Honor, may I

1 publish it to the jury?

2 THE COURT: You may.

3 (Exhibit published to the jury)

4 Q. (By Ms. Horton) If you can describe on
5 that map -- you actually have it on the screen next
6 to you -- if you can describe on that map where you
7 were driving and in which direction you drove when
8 you found the defendant.

9 A. Mind if I show you on the screen?

10 Q. That's fine.

11 THE COURT: While you're away from
12 the microphone make a point to speak up and face the
13 jury to the extent possible so they can hear you.

14 A. Yes, sir. We traveled westbound on
15 Bissonnet, which is here, the top. You have two
16 lanes over here. We're on the northern lane. One
17 of our target streets, like I said, is Forum Park,
18 so we're intending to go down the street anyway. We
19 hang a left. We initiate the stop. We see the
20 defendant -- or prior to the stop we see the
21 defendant somewhere in the roadway right here. Then
22 he walks over on to the side, somewhere in this
23 area.

24 Q. (By Ms. Horton) Okay. You can have a
25 seat.

1 A. Okay.

2 Q. Once you observed the defendant, what
3 did you observe him doing?

4 A. Well, once we approached him in our
5 police car or the patrol car, we directed our spot
6 lamp at him. At that point, the spot lamp hit him.
7 The right hand, he had a bottle in his hand, Scope
8 bottle. We believe from our experience the Scope
9 bottle normally contains a drug called PCP.

10 Q. So, what'd you observe him do with the
11 bottle?

12 A. Observed him take the bottle, place it
13 towards the back portion of his waist band area and
14 start shoving it in between his shirt and his pants.

15 Q. What did you do at that time?

16 A. At that time we got out of our car,
17 approached him. As we came towards him, I believe
18 he made a couple steps towards us. Scope bottle
19 fell out from his right pant leg onto the ground.

20 Q. What'd you do after that?

21 A. I grabbed it. Based on my experience, I
22 mean, I picked up the bottle, knew it had the
23 distinct odor of PCP on it, opened it. We could see
24 little brown flakes inside of it which is consistent
25 with dipping the cigarette inside the bottle.

1 Opened it up, smelled it, knew it was PCP and after
2 that placed him under arrest.

3 Q. Now, you said that it had a strong
4 chemical odor. Describe -- does PCP always have a
5 strong chemical odor?

6 A. Yes. I mean, it's very distinct.

7 Q. And you said you observed that there
8 were -- that it was a brown color. Can you describe
9 to the jury why it would be a brown color?

10 A. What happens is most of the time PCP is
11 put in these little Scope bottles, is that the
12 cigarettes are only like a certain size. So, the
13 Scope bottle, if you dip the cigarette inside the
14 bottle, you're able to just lift the cigarette back
15 out without the cigarette falling and staying inside
16 the bottle.

17 Q. And this is going to seem silly, but the
18 strong chemical odor you smelled wasn't that of
19 Scope, correct?

20 A. No, not Scope at all.

21 Q. Now, what was the defendant's demeanor,
22 if anything?

23 A. I smelled PCP on his person. I don't
24 think he was extremely high on it. I think he was
25 coming down off of it.

1 Q. And you said that you've observed or
2 you've seen Scope bottles used before to contain
3 PCP?

4 A. Yes.

5 Q. Is this through your training and
6 experience?

7 A. Yes.

8 Q. And can you describe why that certain
9 bottle would be used, I suppose?

10 A. Right. Like I said, it's small enough
11 to where you can dip a cigarette in, take the
12 cigarette out, without the cigarette sinking inside
13 of a bottle.

14 Q. Why would someone choose to dip a
15 cigarette into PCP?

16 A. To get high.

17 Q. How does that work, if you can explain
18 to the jury?

19 A. You take a regular cigarette or a joint,
20 dip it inside the bottle, take it out, light it up
21 like a regular cigarette and smoke it.

22 Q. So, this PCP is in a liquid form; is
23 that correct?

24 A. Liquid form, yes, ma'am.

25 Q. And did you test the substance yourself?

1 A. No.

2 Q. Do you usually do field-testing on PCP?

3 A. No.

4 Q. And why is that?

5 A. There's really no field-test for it.

6 You pretty much know what it is, and you submit it
7 to the lab as evidence.

8 Q. Do you weigh the substance yourself, or
9 do you leave it?

10 A. We take it to our Narcotics Division
11 where they will -- I guess they have samples of how
12 much Scope bottles themselves weigh because it's so
13 common that people dip or people place PCP inside
14 these bottles. So, they know pretty much how much
15 that bottle weighs. Then they subtract that against
16 how much is inside of the bottle for their weight.
17 So, we're able to get the weight that we got.

18 Q. Is PCP a pleasant odor or is it kind of
19 a wretched odor? How would you describe the odor?

20 A. I would say it's kind of a wretched
21 odor.

22 Q. Now, what did you do with the defendant
23 after you determined he was in possession of PCP?

24 A. I placed him under arrest.

25 Q. And who did you -- what did you do with

1 the Scope bottle?

2 A. I handed it to Clydell White so he could
3 have it, take care, custody and control of it.

4 Q. Now, did you or Officer White write the
5 report in this case?

6 A. I wrote the report.

7 Q. And approximately, if you remember, how
8 long after his arrest, the defendant's arrest, did
9 you complete and enter the report in the HPD system?

10 A. Looks like about two hours after the
11 arrest. Report was entered, and I believe
12 completed.

13 Q. Let me back up. How did you identify
14 the defendant? Did he have a driver's license on
15 him, or did he tell you what his name was?

16 A. I believe at the time he had an I.D.
17 with him.

18 Q. Now, approximately, you said it was a
19 couple hours later that you wrote the report, or you
20 can't recall?

21 A. No. System generation or system
22 generated a time. Time of arrest was 1:25. Report
23 was completed at 3:54. Report was generated at
24 3:20.

25 Q. This was on January 6th 2012?

1 A. Yes, ma'am.

2 Q. At some point did you write a different
3 date on your report?

4 A. Yes, I did.

5 Q. Why did you do that?

6 A. I wrote in here, I guess under my
7 narrative, January 12th 2012. It was a typo, but
8 the actual date is January the 6th 2012.

9 Q. Because January 6th 2012, that was a
10 Friday, correct?

11 A. Yes.

12 Q. And January 12th is actually a Thursday;
13 is that correct?

14 A. Yes.

15 Q. So, how is it that we can be sure that
16 these events involving this defendant happened on
17 January 6th and not on January 12th?

18 A. The date the system generated the report
19 is on January the 6th, and the date it shows the
20 report was completed was also on January 6th.

21 MS. HORTON: Your Honor, may I
22 approach the witness?

23 THE COURT: You may.

24 Q. Officer, do you have a knife or
25 something to open this?

1 A. No, I do not.

2 Q. Do you recognize this envelope?

3 A. Yes.

4 Q. And can you go ahead and open the very
5 top part --

6 A. Okay.

7 Q. -- for me.

8 MS. HORTON: For the record, Your
9 Honor, this is State's Exhibit 3 and its contents.

10 Q. Do you recognize this?

11 A. Yes.

12 Q. And what is this?

13 A. It's the Scope bottle.

14 Q. And is this the one that you recovered
15 off the defendant on January 6th 2012?

16 A. Yes.

17 Q. Did you place it in this bag, or did
18 someone else?

19 A. White would have placed it in the bag.

20 Q. That's your partner that was riding with
21 you that night?

22 A. Yes.

23 Q. Okay. So, let's be clear. When you
24 shined your light, is this a light on your patrol
25 vehicle?

1 A. Yes. Spotlight on the patrol vehicle.

2 Q. Do you commonly use that or --

3 A. Yes.

4 Q. And why do you decide to use it?

5 A. We want to make sure for officer safety
6 reasons that nobody's trying to conceal a weapon
7 from us or anything like that.

8 Q. And so when did you first observe the
9 Scope bottle in the defendant's hand?

10 A. Once I hit the spot lamp, I directed it
11 towards him and saw it in his right hand.

12 Q. And what did you see him do it with?

13 A. Shove it -- take his right hand -- can I
14 stand up or --

15 Q. Yes, sure.

16 A. Take his right hand and then just jam it
17 down this portion of his -- between his shirt and
18 his pants right here.

19 Q. Did you ever lose site of the defendant
20 from the point where you observed him placing the
21 Scope bottle in his pants to the time you saw it
22 come out of his pants leg?

23 A. No. We made the stop. We aimed the
24 vehicle so that we were actually looking straight at
25 him.

1 Q. And when he was in the middle of the
2 street and you first observed him and drove over in
3 his direction, was he impeding direction traffic?

4 A. There's constant traffic in the area,
5 vehicles, pedestrians walking around, yes.

6 Q. And is that a citable event --

7 A. Yes.

8 Q. Offense. You can write somebody a
9 citation for that?

10 A. Yes.

11 Q. And at the point that he dropped the
12 bottle in his pants and it came out of the pants
13 leg, was he in custody at that time?

14 A. No.

15 MS. HORTON: Pass the witness.

16 THE COURT: All right. Mr. Ayers.

17 MR. AYERS: Thank you, Judge.

18 CROSS-EXAMINATION

19 Q. (By Mr. Ayers) It's Officer Horn; is
20 that correct?

21 A. Yes, sir.

22 Q. You and I have never met or discussed
23 this case, have we?

24 A. No.

25 Q. You had an opportunity to discuss the

1 case with the prosecutor, correct?

2 A. Yes.

3 Q. Along with your partner, Officer White?

4 A. Yes.

5 Q. So, the three of you got together before
6 your testimony today to discuss this case and what
7 you recollect and what happened, correct?

8 A. Yes.

9 Q. Now, one of the things you said you did
10 is you wrote the offense report in this case,
11 correct?

12 A. Yes.

13 Q. You would agree with me that as a police
14 officer, that's an important thing, the offense
15 report, isn't it?

16 A. Yes.

17 Q. Isn't it really a fact that you write
18 these reports to use them to refresh your memory
19 when you later testify?

20 A. Yes.

21 Q. In fact, right before you testified this
22 morning, you asked if you could step back out to go
23 get your report, correct?

24 A. Yes.

25 Q. Because you like to have it there to

1 refresh your memory; is that correct?

2 A. Yes.

3 Q. It's an important document?

4 A. Of course.

5 Q. That's because in this case this arrest
6 happened back in January, right?

7 A. Uh-huh.

8 Q. So, that's well over five months ago,
9 right?

10 A. Yes.

11 Q. And you've made a number of arrests
12 since then?

13 A. Uh-huh.

14 Q. I mean --

15 A. Yes, sir.

16 Q. One, 2, 10, 50, 100?

17 A. Somewhere maybe around 50 or so. I
18 don't know.

19 Q. So, you guys are out there a lot making
20 these arrests, and it's easy to get confused. So,
21 you write it down so you remember which one is
22 which, right?

23 A. Yes, sir.

24 Q. This isn't the first time you've had a
25 PCP case?

1 A. No.

2 Q. You've had a number since then, right?

3 A. Yes, maybe a few since then.

4 Q. All right. And as I said, that report
5 that you write, it's important that you get all the
6 details in there right to refresh your memory,
7 right?

8 A. Yes.

9 Q. But you've already pointed out, the D.A.
10 pointed out, you did make a mistake?

11 A. I did make a mistake on the date, but as
12 I stated, the system generated the date as January
13 6th, so pretty much proves what I'm stating.

14 Q. I understand. I'm not saying it wasn't
15 January 6th. In fact, you're saying it was January
16 6th, right?

17 A. Right.

18 Q. But you wrote the date down. You wrote
19 the wrong date. You made a mistake, right?

20 A. I made a mistake.

21 Q. You're human, right? Is that correct?

22 A. Yes, sir.

23 Q. And as a human, you sometimes make
24 mistakes, right?

25 A. We all do.

1 Q. Were there any other mistakes that you
2 made in the report or your recollection of what
3 happened that night that you need to tell us about?

4 A. No, sir, not that I recall.

5 Q. Now, going back to what happened that
6 night -- I say that night. I guess it was really
7 the early morning hours, you said around 1:30 a.m.?

8 A. Uh-huh.

9 Q. Obviously, it's dark. It's night.
10 Okay.

11 Judge, may I?

12 A. The area is fairly lit.

13 Q. I understand.

14 A. Okay.

15 MR. AYERS: May I approach, Judge?

16 THE COURT: Sure.

17 Q. Looking through your diagram up here
18 that I believe is in evidence as State's Exhibit No.
19 1, you said that you and your partner were driving
20 your car, I guess that would be eastbound --
21 westbound?

22 A. Westbound.

23 Q. Which would be to the left of the
24 diagram on the other side of this net, right?

25 A. Right.

1 Q. Because it's two divided?

2 A. Right.

3 Q. And that where you say you initially saw
4 my client, Mr. Jones, was way down here, correct?

5 A. I didn't say that. I said somewhere in
6 this area.

7 Q. All right. So, what you're saying is
8 that you saw him at the corner of Forum Park and
9 whatever street?

10 A. Negative. I saw him in this area. We
11 didn't make -- I believe this street may have been
12 Sugar Branch or whatnot. I'm not not sure, but it
13 was right in this area.

14 Q. So, a little bit north of the
15 intersection of Forum Park and you're saying you
16 think Sugar Branch?

17 A. I believe it's Sugar Branch, yes, sir.

18 Q. All right. So, not down here where the
19 "A" is? Do you need to check your report?

20 A. No. I just need to know is that a
21 street or not right there or if that's an entrance
22 into an apartment complex.

23 Q. This is the map that you and the
24 prosecutor introduced into evidence. Did the
25 prosecutor go over this map with you ahead of time?

1 A. Yes.

2 Q. Are you familiar with that location?

3 A. I'm very familiar with it.

4 Q. Okay. So, when you go down Bissonnet
5 down Forum Park, is there a street that you come
6 down to here, Sugar Branch?

7 A. Sugar Branch is right off Forum Park in
8 that area, yes, sir.

9 Q. Okay. So, assuming this -- are you
10 saying this map isn't correct?

11 A. The map's probably correct.

12 Q. Okay. Well, I'm just saying. So, your
13 testimony that there is a street down here and it
14 was somewhere down in here that you actually saw
15 him, the guy --

16 A. It's going to be somewhere in that area,
17 yes, sir.

18 Q. So, it wasn't like right on Bissonnet.
19 It wasn't like at the corner of Bissonnet and Forum
20 Park. He was some distance down Forum --

21 A. Can I correct myself? Now that the map
22 is clear --

23 Q. Hold on a second. You're saying what
24 you said earlier you need to now correct?

25 A. I was assuming -- I'm sorry. Can I

1 approach the map?

2 Q. Sure.

3 A. I was assuming that this was Sugar
4 Branch right here and that this connected to the
5 freeway. I'm sorry. This is Sugar Branch right
6 here.

7 Q. So, then what street --

8 A. I'm sorry. This -- I don't know if this
9 is a street or if this is an entrance to an
10 apartment complex or whatnot.

11 Q. Okay.

12 A. It's probably going to be more like in
13 this area.

14 Q. All right. So, this what's depicted on
15 the map, you would agree with me what you're saying
16 you don't know if it's a street or not. The map
17 depicts it as a map that goes through and connects
18 back up with Bissonnet, doesn't it?

19 A. Yes.

20 Q. Right here. So, I mean it's obviously
21 not an apartment complex, you would agree, it's a
22 street?

23 A. Okay.

24 Q. You just don't know what street it is?

25 A. I do not know what street that is.

1 Q. So, there is an intersection somewhere
2 down here, right?

3 A. I'm sorry.

4 Q. There is an intersection --

5 A. I believe so.

6 Q. You're saying -- you say you saw
7 Mr. Jones down in this area here?

8 A. Somewhere.

9 Q. And where you saw him from was your car
10 as y'all were passing the north part of Bissonnet
11 going west; is that correct?

12 A. Yes, sir.

13 Q. All right. You can go ahead and have a
14 seat. Now, you're in a patrol car like a marked
15 police car?

16 A. Yes.

17 Q. Are you the driver or are you the
18 passenger?

19 A. I'm the driver.

20 Q. All right. So, you're the driver.
21 You're driving, right? So, you would be on the left
22 side of the car, the one closest, looking south
23 towards Forum Park; is that right?

24 A. We're both able to look south down if
25 we're driving southbound on Forum Park.

1 Q. We're not there. You're still on
2 Bissonnet. You're driving --

3 A. Okay. I'm driving on Bissonnet, yes.

4 Q. All right. Well, are you telling me
5 that you turn from Bissonnet onto Forum Park?

6 A. We were intending to go down that street
7 anyway. It's a target street for us.

8 Q. All right. I thought you said you saw
9 Mr. Jones when you were on Bissonnet?

10 A. Yes.

11 Q. Okay. So, you're driving on Bissonnet
12 and you're looking down Forum Park to your left
13 because you're going to turn left?

14 A. Yes.

15 Q. You've already decided you're going to
16 turn left?

17 A. We've already decided.

18 Q. Before you saw anybody?

19 A. Yes.

20 Q. Okay. Once you turn left, is that when
21 you say you saw Mr. Jones?

22 A. I saw him right as I'm turning left to
23 go down the street.

24 Q. You would agree with me from the way the
25 map depicts it and the way you told what happened,

1 that's some distance down the street that you saw
2 him, right?

3 A. The street is fairly lit, and we're
4 constantly observing activity on that street.

5 Q. All right. And you've mentioned a
6 couple times the street is fairly lit?

7 A. Yes.

8 Q. Okay. We'll get to that. Okay?

9 A. Okay.

10 Q. But the street -- and you mention
11 there's constant activity. There's a lot of
12 traffic; there's a lot of pedestrians?

13 A. Yes.

14 Q. There were more people out there than
15 just Mr. Jones, right?

16 A. Yes.

17 Q. So, you're driving down Bissonnet. You
18 look down to your left some distance down Forum Park
19 and you see someone standing in the street?

20 A. I see --

21 THE COURT: Let him finish the
22 question before you answer.

23 THE WITNESS: I'm sorry.

24 THE COURT: Complete your question.

25 Q. You see someone standing in the street?

1 A. Yes.

2 Q. Now, from that -- how -- could you
3 characterize, I mean, from the map, how far down
4 Forum Park you think that was?

5 A. I don't know, maybe a couple hundred
6 feet or so.

7 Q. All right. So, a couple of hundred
8 feet. Let's say 210 feet would be 70 yards; is that
9 a fair statement?

10 A. Something like --

11 MS. HORTON: Objection, calls for
12 speculation.

13 A. I didn't measure it. I'm sorry.

14 Q. (By Mr. Ayers) How many feet in a yard,
15 do you know?

16 A. Three feet.

17 Q. All right. So, doing the math if you
18 said -- and you said you would guesstimate 200 feet,
19 correct?

20 A. I didn't measure it. I just saw it and
21 I -- I saw the activity. I went to the activity.

22 Q. Everyone understands you didn't measure
23 it. I'm not asking that you measured it. Okay.
24 I've asked you -- you were out there to tell the
25 jury how far it was?

1 A. Right.

2 Q. You said 200 feet?

3 A. Possibly.

4 Q. Would you like to change that answer?

5 A. I can't give you a definite answer, I'm
6 sorry, on how many feet it was.

7 Q. So, you were there, and you're
8 testifying to the jury that they should believe you
9 about what happened. But you can't give us a --

10 A. I have no reason to lie.

11 Q. I'm not suggesting you'd lie. I'm
12 asking you to tell us how far it was,
13 straightforward question.

14 A. It was within my vision. I could
15 clearly see what was happening. That's all I'm
16 going to say to that.

17 Q. So, the only answer you have to
18 questions about distance was "I could clearly see"?

19 MS. HORTON: Objection, asked and
20 answered, Judge.

21 THE COURT: Overruled. We've heard
22 the answer. Continue, please.

23 Q. (By Mr. Ayers) Here's the question then.
24 You would agree with me that Mr. Jones or whoever
25 you saw down Forum Park was some distance down Forum

1 Park?

2 A. Yes.

3 Q. Whether it was 200 feet or more?

4 A. Right.

5 Q. They weren't right on the corner of
6 Bissonnet and Forum Park. Can I get you to agree to
7 that?

8 A. He was not on the corner of Bissonnet
9 and Forum Park.

10 Q. And you didn't measure, but let's say
11 you did have to drive some distance down Forum Park
12 before you got to this person; isn't that correct?

13 A. Yes.

14 Q. All right. So, when you look down Forum
15 Park, you're saying as soon as you looked, you knew
16 who -- it was Mr. Jones standing there?

17 A. He's wearing red t-shirt, blue jeans,
18 red shoes. He kind of stood out.

19 Q. All right. You said he stood out, but
20 you've told the jury there were other people in
21 traffic and pedestrians out there?

22 A. Right. At the same time I mentioned the
23 unit that I'm in, I'm looking for a certain -- also
24 maybe a certain type of clothing, things like that,
25 something that stands out.

1 Q. Okay. So, y'all are looking for people
2 wearing red clothes or red shoes, something that
3 stands out, that's your target?

4 A. At times, yes.

5 Q. In reality what you're saying is, you
6 kind of targeted him when you turned down the street
7 before you saw anything --

8 A. No. I just saw -- I'm saying it stood
9 out.

10 THE COURT: Let him finish his
11 question before you answer. Finish your question,
12 please.

13 THE WITNESS: I'm sorry.

14 Q. (By Mr. Ayers) My question was, you just
15 essentially told the jury that y'all target certain
16 people based on what they're wearing. Is that not
17 what you said?

18 THE COURT: You may answer.

19 MS. HORTON: Your Honor, may I
20 approach the bench, or may we approach the bench?

21 MR. AYERS: Sure.

22 THE COURT: All right.

23 (Conference at the bench, on the
24 record)

25 MS. HORTON: I feel like the

1 question defense counsel is asking is unfair given
2 his motion in limine to keep out anything about gang
3 affiliation. So, the fact that he was looking at
4 the guys clothing, he's testified to that. He's
5 trying to stay within the parameters I have set for
6 him on -- he's not affiliated -- not talking about
7 gangs but you keep pursuing it. So, he's feeling
8 conflicted because of the pursuit of this
9 questioning you're asking him because the purpose of
10 crime reduction units is to look into gang activity.
11 So, I'm asking if --

12 THE COURT: Repeat the last thing.

13 MS. HORTON: I'm trying not to be
14 too loud. Defense counsel's motion in limine
15 regarding --

16 THE COURT: You'll have to go into
17 it.

18 MS. HORTON: I feel like you're
19 treading on the line. So, I'm just saying be
20 careful because he can't answer the question.

21 THE COURT: Be very cautious.

22 (Conference concluded)

23 Q. (By Mr. Ayers) Officer Horn?

24 A. Yes, sir.

25 Q. Back to what happened out there. All

1 right. You saw someone down the street wearing the
2 clothes you've described, and those clothes
3 attracted your attention. Is that a fair statement?

4 A. Yes, sir.

5 Q. So, in response to seeing that person --
6 and there were other people out there, right?

7 A. Yes.

8 Q. But this is the one you focused on?

9 A. He was the one standing in the roadway.

10 Q. All right. So, you went down there.
11 You drove down there, and the whole time you're
12 driving down there, the person is standing in the
13 roadway?

14 A. I believe when he sees our vehicle
15 approaching him, that's when he moves over on to the
16 sidewalk.

17 Q. All right. So, now near where you say
18 he was, there was obviously some type of
19 intersection, according to the map; is that not
20 correct?

21 A. According to the map, that's correct.

22 Q. All right. But you previously testified
23 to the State that that map is a true and accurate
24 representation?

25 A. Yes.

1 Q. So, when you saw him, isn't it possible
2 he was crossing the street?

3 A. There's no crosswalk in that area. I
4 saw him standing in the roadway.

5 Q. I understand.

6 THE COURT: Let him finish his
7 answer, please, Counsel. Have you finished your
8 answer?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Next
11 question.

12 Q. You said there was no crosswalk there?

13 A. Yes, sir.

14 Q. You don't remember the street, but you
15 remember there was no crosswalk?

16 A. I wouldn't have stopped him otherwise.

17 Q. All right. So, if there had been a
18 crosswalk you wouldn't have had any contact with
19 him; is that what you're saying?

20 A. I may have still had contact with him.
21 I often approach people just to have mutual
22 conversation. Oftentimes that leads to other
23 things.

24 Q. That's kind of what you do, approach
25 people, engage them, see if it leads to something

1 else, correct?

2 A. Yes.

3 Q. Now, but again, you don't really know
4 when you saw Mr. Jones out there, as far as you
5 know, he could have been starting across the street,
6 stopped, and when he saw you, went back; isn't that
7 possible?

8 A. When I saw him I saw him standing in the
9 street.

10 Q. All right. And how long did you see him
11 standing in the street?

12 A. It was just enough time for me to
13 believe that he was just basically standing in the
14 street. I didn't see any movement back and forth or
15 anything like that.

16 Q. Once you saw him stand in the street and
17 you started driving down Forum Park, by the time you
18 got to where he was, he had gone back up on the
19 curb; is that correct?

20 A. Yes.

21 Q. Okay. Which you would agree -- again,
22 you're in a marked patrol unit, right?

23 A. Right.

24 Q. Were you guys in uniform?

25 A. Yes.

1 Q. Okay. You would agree, that would be a
2 sensible thing to do if you were in the street and a
3 police car was coming to get back up on the curb,
4 correct?

5 A. Yes.

6 Q. Okay. Now, as you drove up, you say
7 that you observed him holding this Scope bottle in
8 his hand; is that correct?

9 A. Yes.

10 Q. And you're coming down Forum Park,
11 correct? So, now you're coming south. So, you
12 would be in the driver's seat, right?

13 A. Yes.

14 Q. So, you would be on the left side of the
15 car coming down Forum Park; is that right?

16 A. Right.

17 Q. Where was Mr. Jones? Was he over on
18 that side of the street, or was he on this side of
19 the street?

20 A. He was on the west side of the street.

21 Q. Would that be the right side of the
22 street?

23 A. The right side, yes.

24 Q. So, he wasn't on the side you were on?

25 A. I angled my car, and this is something

1 we do for officer safety so we can look dead on to
2 who we're looking at. I angled it directly at him.

3 Q. So, again, you turned and faced the car.
4 You kind of turned towards him --

5 A. Right.

6 Q. And he was by now standing on the curb?

7 A. Right.

8 Q. All right. And at that point you saw
9 him with this Scope bottle in his hand?

10 A. Yes.

11 Q. Now, you mentioned several times earlier
12 in response to questions I've asked you from where
13 you are on Bissonnet that it was really clearly lit.
14 You could see really well down Forum Park?

15 A. It was pretty well-lit, and my spotlight
16 helped illuminate the area.

17 Q. I find that interesting. If it was so
18 well-lit why did you need your spotlight?

19 A. Always used it, just a habit.

20 Q. Always -- no matter how well-lit, you
21 turn that --

22 A. At nighttime I always use the spotlight.
23 That's what we're trained to do.

24 Q. And the spotlight faces forward?

25 A. It has a -- I guess I could pull it

1 where ever I need it to go.

2 Q. Where is it located on the car?

3 A. On the left, on the driver's side.

4 Q. There's a spotlight on the driver's side
5 that you manually control?

6 A. Yes.

7 Q. And you can point it straight ahead?

8 A. Straight ahead, to the right, to the
9 left, up/down, yes, sir.

10 Q. But if you point it to the right, it's
11 kind of going across the car, right?

12 A. Yes.

13 Q. But in this case you said you angled
14 towards Mr. Jones and pointed it right at him?

15 A. Yes.

16 Q. But regardless of how well-lit it was
17 that night, you needed this spotlight to see?

18 A. I always, from training, especially at
19 nighttime, I always use my spot lamp.

20 Q. And in your report which you wrote to
21 document all the important things and you have in
22 front of you --

23 A. Yes.

24 Q. -- it does mention that you directed the
25 spotlight at him, right --

1 A. Yes.

2 Q. -- as you approached him. But nowhere
3 in there does it say it was otherwise well-lit,
4 right? It just talks about using the spotlight,
5 right?

6 A. Yes.

7 Q. Okay. And now let's talk about that.
8 Now, and your partner, I guess, Officer White, he
9 was on the right side of the car closest to
10 Mr. Jones; is that right?

11 A. I angled the police car where we both
12 had a clear view of him, and it appeared to me at
13 the time the way I angled the car that he was in the
14 middle of the police car.

15 Q. All right. So, you pointed the car
16 enough directly at him, almost perpendicular --

17 A. Right.

18 Q. -- in the street that both of you were
19 looking right at him?

20 A. Yes.

21 Q. And was this when you hit him with a
22 spotlight?

23 A. Simultaneous.

24 Q. All right. And what you said was,
25 obviously, he must have seen y'all coming because he

1 got back up on the curb?

2 A. I assumed he did.

3 Q. Well, I mean, pretty clearly he's
4 looking right at you when you pull up?

5 A. Right.

6 Q. You're in a marked patrol car?

7 A. Yes.

8 Q. And you said it's well-lit out there, so
9 presumably he can see?

10 A. Yes.

11 Q. Right? Big blue car with lights on it
12 and a big spotlight, right?

13 A. Big white car.

14 Q. I'm sorry. Big white car.

15 A. White car.

16 Q. All white, not with a blue stripes?

17 A. It has blue stripes and says "Houston
18 Police" on it.

19 Q. So, he's standing there, looking right
20 at y'all and you're police officers and you're
21 saying he's holding this bottle of Scope where you
22 can see it?

23 A. Yes.

24 Q. Like that?

25 A. I don't know. I just know it was one of

1 those deals where I pointed the spot lamp at him,
2 could see what was in his hand. Then he moved it
3 right into the back portion of his waist area.

4 Q. Wasn't like you had snuck up on him or
5 had jumped up from behind something. I mean, he's
6 standing in the street in public, and you pull up
7 and spotlight him and he's holding a bottle where
8 you can clearly see it. That's what you're saying,
9 right?

10 A. Yes.

11 Q. Once he sees you and sees you've seen
12 him, then he starts trying to hide it; is that
13 right?

14 A. Yes.

15 Q. Too late though. You've seen him,
16 right?

17 A. Right.

18 Q. Now, the other pedestrians and traffic
19 out there, did you stop and talk to any of them?
20 Did they all take off or --

21 A. I didn't observe anything suspicious or
22 anything illegal from them.

23 Q. All right. You didn't talk to them as
24 far as potential witnesses, get their names, their
25 I.D.'s, anything like that?

1 A. My attention was towards the suspect at
2 that time.

3 Q. But certainly you've said there was a
4 number of other people out there that, certainly if
5 you had taken the time to talk to them and identify
6 them as witnesses, they could come down and testify
7 about what they saw, right?

8 MS. HORTON: Objection, calls for
9 speculation.

10 THE COURT: Sustained.

11 Q. (By Mr. Ayers) Well, were there other
12 people out there that night?

13 A. Yes, there were other people out there.

14 Q. You didn't talk to them or try to get
15 their information so they could be used as
16 witnesses, did you?

17 MS. HORTON: Objection, asked and
18 answered.

19 THE COURT: Overruled. You may
20 answer.

21 A. During this stop I had basically one
22 suspect.

23 Q. (By Mr. Ayers) I understand.

24 A. If I make a traffic stop and there's
25 other cars moving, I don't just stop the other cars

1 as well on a traffic stop. I continue with the car
2 that I have stopped.

3 Q. I think you said there were other
4 pedestrians out there, too, correct?

5 A. Right, right.

6 Q. So, those pedestrians that were around
7 there watching, you did not talk to any of them, get
8 any information so they could potentially be
9 witnesses. You didn't do that, did you?

10 A. No.

11 Q. Okay. Now, and there were two officers.
12 You weren't by yourself, right?

13 A. Right.

14 Q. Okay. There wasn't like a safety issue
15 with --

16 A. With PCP there's always a safety issue.

17 Q. I see. But at the point, as I'm saying,
18 you weren't alone like a lot of times Houston Police
19 officers are by themselves, right?

20 A. Right.

21 Q. You were in a two-person unit?

22 A. Right.

23 Q. Now, you mentioned that you detected
24 this strong odor and distinctive odor of PCP when
25 you picked up the bottle; is that correct?

1 A. Yes.

2 Q. And that -- I think the D.A. asked you
3 about Mr. Jones' demeanor. I think you said, "Well,
4 he seemed like maybe he was coming down from
5 something." Is that what you said?

6 A. Right. Often -- can I answer in more
7 detail?

8 Q. I'm just asking if that's what you said.

9 A. Yes.

10 Q. And did you ever -- I mean, you know,
11 he's not someone you know personally, right?

12 A. Right.

13 Q. And you're basing that on just this odor
14 of PCP?

15 A. I base it off my experience with dealing
16 with people on PCP.

17 Q. Right. Well, did he do something
18 unusually violent or cause you in any trouble or act
19 up in any way or --

20 A. No. And usually from what I observe
21 when people are coming off of PCP, they're very --
22 somewhat calm.

23 Q. All right. Would you agree --

24 A. Calm and incoherent.

25 Q. Would you agree with me someone could be

1 calm and even incoherent that's not coming off PCP?
2 That's not unique to PCP, right?

3 A. I smelled the PCP on or about his
4 person, so --

5 Q. But you say that you had the bottle of
6 Scope right there which had the PCP in it?

7 A. Yes.

8 Q. Very strong odor?

9 A. Yes.

10 Q. Permeates everything around it
11 sometimes, right?

12 A. Uh-huh.

13 Q. Now, you didn't do any kind of testing
14 of him. You didn't call -- do you know what a
15 D.R.E., a drug recognition expert is?

16 A. Yes.

17 Q. And HPD has people that are D.R.E.'s,
18 right?

19 A. Yes. They normally deal with D.W.I.'s.

20 Q. Right. But it's not like you called a
21 D.R.E. to say, hey, this guy is taking PCP or
22 anything like that, right?

23 A. Right.

24 Q. So, in reality it's really just
25 speculation on your part when you say --

1 A. No. No, sir, not speculation on my
2 part. The bottle fell from his pant leg.

3 Q. I'm not asking about the bottle. I'm
4 asking, you say you think he had been using it.
5 That's speculation on your part, right?

6 A. I don't believe so.

7 Q. So, based on your training and
8 experience you couldn't be wrong about that?

9 A. I highly doubt it.

10 Q. You don't make mistakes, do you?

11 A. I've made mistakes.

12 Q. You could have been wrong about that
13 assumption?

14 A. Anything's possible.

15 Q. I understand. Okay. Now, you mentioned
16 in describing in great detail how this PCP is used,
17 that they dip cigarettes in it. That's how they use
18 it, right?

19 A. Yes.

20 Q. So, there's a liquid in this Scope
21 bottle, right?

22 A. Yes.

23 Q. Is that liquid pure PCP?

24 A. Sometimes. Sometimes it can be mixed
25 with other things. I don't know, but the odor

1 itself is pretty distinct.

2 Q. As a rule, do they -- people that do
3 this, do they put some other liquid and some PCP in
4 these bottles?

5 A. As a rule, that I don't know. I just
6 know -- I know the smell of P.C.P. I don't know
7 what other people are putting inside of it. I know
8 when I smell PCP.

9 Q. I'm sorry. Earlier when the prosecutor
10 asked you about your training and expertise, you
11 testified extensively about, well, they put it in
12 these bottles to dip cigarettes --

13 A. They put PCP in the bottles --

14 THE COURT: Gentlemen, you're
15 talking over each other. Let the witness finish his
16 answer, and then when he asks a question, let him
17 finish before you answer.

18 Q. (By Mr. Ayers) I guess what I'm asking
19 is that's not within your area of knowledge, what is
20 in that bottle, other than some PCP? What other
21 liquid is in there, the base liquid if you will?

22 A. People can mix anything with whatever
23 they want.

24 Q. So, there's some liquid in there. You
25 said it has a brownish tint and little pieces of I

1 guess tobacco floating in it because people dip
2 cigarettes in it, right?

3 A. Yes.

4 Q. That's how it's consumed, right?

5 A. Yes.

6 Q. You did not find any cigarettes or
7 cigars recovered from Mr. Jones, right?

8 A. Right.

9 Q. So, he didn't have any cigarettes or
10 cigars or anything like that on his person?

11 A. No.

12 Q. Certainly, if he had, that would be in
13 your report. You would have documented that, right?

14 A. Yes.

15 Q. So, what you recovered was the small
16 plastic bottle which turned out to have PCP?

17 A. With the cigarette, with some cigarette
18 residue inside the bottle.

19 Q. Well, to be clear, what appeared to be
20 cigarette residue, right?

21 A. What appeared to be cigarette residue.

22 Q. Little brown flakes, right?

23 A. Yes.

24 Q. It's not like you tested that somehow,
25 right?

1 A. No.

2 Q. All right. Now, you say you took the
3 bottle and, I guess, in processing of evidence you
4 gave it to Officer White, and he's the one who
5 tagged it?

6 A. Yes.

7 Q. Turned it into the lab?

8 A. Yes.

9 Q. Did you guys try to submit it for being
10 processed for fingerprints or anything?

11 A. No.

12 Q. All right. But that's certainly
13 something HPD has a crime lab that could process
14 something like that for fingerprints, right?

15 A. Yes.

16 Q. And to be sure, it wasn't that you tried
17 and were unsuccessful. There was no effort made,
18 right?

19 A. I didn't see the need to.

20 Q. All right. Because in your mind you saw
21 that's all you needed, right?

22 A. Yes.

23 Q. Once you saw him with it, case closed,
24 right?

25 A. Not necessarily. I just believed he was

1 in possession of it.

2 Q. Right. But I'm just saying, you didn't
3 make any attempts to recover any other --

4 MS. HORTON: Objection, asked and
5 answered, Judge.

6 THE COURT: Sustained.

7 MR. AYERS: I'll pass the witness,
8 Judge.

9 THE COURT: All right. Is there
10 redirect examination?

11 MS. HORTON: No, Your Honor,
12 nothing further from this witness from the State.

13 THE COURT: May the witness be
14 excused by agreement?

15 MR. AYERS: Yes, Judge.

16 MS. HORTON: Yes, Your Honor.

17 THE COURT: Thank you, Officer.
18 You are excused and appreciate your promptness in
19 being here on time. Call your next witness, please.

20 MS. HORTON: State calls Officer
21 White.

22 THE COURT: Officer White, come to
23 the witness chair please, and be seated. Please
24 adjust the microphone that best suits your voice.
25 Get closer to it and still raise your voice even