

1 target of any kind of investigation, right, just the
2 driver?

3 A. The vehicle was the reason.

4 MR. RAMIREZ: Pass the witness,
5 Judge.

6 MS. OSWALD: No further questions,
7 Your Honor.

8 THE COURT: May this witness be
9 excused?

10 MS. OSWALD: Yes, Judge.

11 MR. RAMIREZ: Yes.

12 THE COURT: You may step down.
13 Call your next witness.

14 MS. OSWALD: State calls Officer
15 Martinez to the stand.

16 THE BAILIFF: This witness has been
17 sworn, Your Honor.

18 THE COURT: Thank you. You may
19 proceed.

20 EDUARDO MARTINEZ,
21 After having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 Q. (By Ms. Oswald) Officer, will you
24 please introduce yourself to the jury, using your
25 first and last name?

1 A. My name is Officer Eduardo Martinez.

2 Q. Who are you employed by?

3 A. By Houston Police Department.

4 Q. How long have you been with the Houston
5 Police Department?

6 A. Five years.

7 Q. Prior to being employed with HPD, what
8 did you do before?

9 A. Before that I was with Harris County. I
10 was a jailer.

11 Q. You were a jailer?

12 A. Yes, ma'am.

13 Q. You worked in the Harris County Jail?

14 A. Yes, ma'am.

15 Q. Now, how long have you been in law
16 enforcement?

17 A. Five years. Before that I was four
18 years military police in the Air Force.

19 Q. So, where did you go to the police
20 academy?

21 A. The Houston Police Academy.

22 Q. And how long were you in the Houston
23 Police Academy? How long is that period of time?

24 A. Six months. Six months of training.

25 Q. Prior to being a jailer, how long were

1 you at the Air Force?

2 A. Four years.

3 Q. Were you military police the entire
4 time?

5 A. Yes, ma'am.

6 Q. What kind of training do you have to be
7 part of the military police in the Air Force?

8 A. You've got to go through the basic
9 training and then three months of training, to law
10 enforcement training.

11 Q. And what kind of training do you have to
12 be a jailer with the Harris County Sheriff's Office?

13 A. The jailer training they gave us. It's
14 a month, month and a half.

15 Q. And the six months at the police
16 academy, what did you do at the police academy?
17 What did you learn?

18 A. Of course, Penal Code, all the fun
19 stuff, the driving and how to be calling out chases,
20 how to talk in the mike, arresting people, searching
21 people.

22 Q. After you were finished with the police
23 academy what unit were you assigned to?

24 A. I was assigned to Magnolia, the Magnolia
25 substation. I was in patrol, night patrol for

1 three, four months. And then I went to crime
2 reduction unit for two years, and after that I went
3 to this tactical unit.

4 Q. Now, how long have you been with this
5 particular tactical unit?

6 A. Two years.

7 Q. And what are the goals of the tactical
8 unit that you're a part of?

9 A. Reduce crime.

10 Q. And how do you do that? What's
11 different about your tactical unit from, you know,
12 another patrol unit?

13 A. We have a crime analysis unit that's in
14 charge of putting the hot spots -- we call them hot
15 spots, where the burglaries happen, robberies,
16 shootings, agg assaults. So, they try to
17 concentrate us in that area to reduce the crime.

18 Q. Now, do you respond to any calls for
19 service when somebody calls 911 in that area?

20 A. No, ma'am.

21 Q. So, what do you do proactively in those
22 hot spot areas?

23 A. We do a lot of surveillance. We -- if a
24 call, robbery call drops, we try to look for the
25 robbery call. We look up warrants, concerned

1 divisions like robbery, homicide. They come to us
2 so we can look for suspects.

3 Q. Now, were you on duty with this tactical
4 unit on November 2nd of 2011?

5 A. Yes, ma'am.

6 Q. And who were you on patrol with that
7 night?

8 A. My partner, Officer Valle.

9 Q. How long have you guys been partners at
10 that time roughly?

11 A. Two years, three years.

12 Q. Now, is the tactical unit different, the
13 fact you have partners that you ride with?

14 A. Yes, ma'am.

15 Q. Now, on that evening, what shift were
16 you working?

17 A. We normally work 2:00 to 10:00, evening
18 shift. But this day, there was -- they asked us to
19 work over for the -- I think in that area the
20 burglaries were happening, a lot of burglaries. We
21 were getting hit really bad with burglaries of motor
22 vehicles.

23 Q. Some people breaking into cars in that
24 area?

25 A. Yes, ma'am.

1 Q. Is it frequent that you are -- do they
2 ask you often to stay extra hours, or is that just
3 when crime is really kind of concentrated in that
4 area?

5 A. They ask us a lot to stay.

6 Q. Now, on that evening of November 2nd,
7 did you have a chance to come into contact or see a
8 black Crown Victoria?

9 A. Yes, ma'am.

10 Q. When did you first see that car?

11 A. We -- the car -- we were parked at a
12 light. We stopped at a light, a red light. The
13 car, we actually saw the car going inside a parking
14 lot called Barney's pool hall. The car was --
15 circled a couple times. That's when we first saw
16 him.

17 Q. What brought it to your attention?

18 A. It was just weird. It was the same -- a
19 lot of people that break into cars do that. They
20 circle.

21 MR. RAMIREZ: Objection, Judge.

22 That's speculation.

23 THE COURT: Overruled.

24 Q. (By Ms. Oswald) What brought it to your
25 attention?

1 A. Just that it was circling.

2 Q. Is that what brought it to your
3 attention, it wasn't --

4 MR. RAMIREZ: Objection, Judge,
5 leading.

6 THE COURT: Sustained.

7 A. It was just circling the parking lot.

8 Q. (By Ms. Oswald) Now, what did you see it
9 do after you -- what did you do after you saw it
10 circling the parking lot?

11 A. At that moment we didn't do anything,
12 ma'am. We just maintained an eye on it, but it
13 never came to a stop. I didn't see it come to a
14 stop.

15 Q. Where did the car go after -- did it end
16 up leaving the parking lot?

17 A. Yes, ma'am.

18 Q. Where did it go at that point?

19 A. Continued eastbound on Winkler. Monroe
20 turns into Winkler, continues eastbound. Then it
21 went into a neighborhood located on the north of
22 Winkler.

23 Q. Did you follow the car into the
24 neighborhood?

25 A. We followed it for a little bit. Then

1 we stopped at -- there's a bar. I think it was a
2 Wednesday night. It was empty. So, we just parked
3 there. We said maybe it's somebody going to their
4 house or -- so, we just parked there, looked for
5 more traffic.

6 Q. Did you ever see the Crown Victoria
7 again coming out of that neighborhood?

8 A. Yes, ma'am. Maybe five, ten minutes
9 later it came out.

10 Q. And what did you see it do at that point
11 in time?

12 A. It went eastbound in a westbound lane,
13 went the wrong way. Then it cut through the median
14 and continued going eastbound.

15 Q. So, it took a left out of the
16 subdivision when it should have taken a right?

17 A. Yes, ma'am.

18 Q. Now, what did you -- you and your
19 partner do at that time?

20 A. At that time we followed the vehicle and
21 initiated a traffic stop, activated our lights, and
22 the guy wasn't responding. The driver wasn't
23 responding to the lights. So, we had to get our
24 siren, but we gave him a couple horns. He wasn't
25 responding. So, we had to get our siren.

1 Q. Now, were you the passenger of the
2 patrol car or driver?

3 A. The passenger.

4 Q. How long did the car drive before it
5 actually came to a stop?

6 A. A couple seconds, maybe seven, ten
7 seconds.

8 Q. Now, at this time do you know how many
9 people were in the car?

10 A. No, ma'am.

11 Q. And when it did come to a stop what did
12 you notice?

13 A. As soon as the car stopped, the front
14 passenger side door opened, and the suspect took off
15 running.

16 Q. What did you do at that point in time?

17 A. I took off running after him.

18 Q. What did your partner do?

19 A. He stayed with the car.

20 Q. Now, where did the suspect at that time
21 take off running towards?

22 A. He pulled -- they pulled into a gas
23 station. The guy opened the door, took off running,
24 took off running to a nearby building.

25 Q. I'm showing you State's Exhibit 2. Can

1 you point to the gas station in which the Crown
2 Victoria pulled into? And just press on the screen.
3 It should come up with a line. There you go. Okay.
4 Now, in what direction did the suspect run after he
5 got out of the Crown Victoria?

6 A. Westbound, towards this building.

7 Q. Towards that building?

8 A. Yes, ma'am.

9 Q. Okay. That should be a better color.

10 Now, pressing on the screen, can you point to where
11 the suspect began to run from the Crown Victoria and
12 where you ended up apprehending him?

13 A. You want me to do the whole run?

14 Q. Yeah. Using a line, draw across the
15 screen. Now, during that time did you yell "stop"?

16 A. Yes, ma'am.

17 Q. Did you identify yourself as a police
18 officer?

19 A. Yes, ma'am.

20 Q. Did you keep -- were you able to keep
21 the suspect in your sight the entire time?

22 A. Yes, ma'am.

23 Q. Did he do anything during that --

24 MR. RAMIREZ: Excuse me, Counsel.
25 Judge, may we approach for a second?

1 THE COURT: Yes.

2 (Conference at the bench, on the
3 record)

4 MR. RAMIREZ: Judge, I'd like to
5 take this witness on voir dire outside the presence
6 of the jury to question the stop, the stop of my
7 client, before he gets into the testimony regarding
8 what he observed.

9 (Conference concluded)

10 THE COURT: Okay. Ladies and
11 gentlemen, at this time I need to take up a legal
12 issue with the lawyers outside your presence, and
13 it's about the time I would normally take an
14 afternoon break. So, why don't you go with the
15 bailiffs. We'll take about a 15-minute break.
16 Hopefully, that will be enough time for us to
17 resolve our issue.

18 THE BAILIFF: All rise for the
19 jury.

20 (Jury out)

21 THE COURT: Thank you. Please be
22 seated. Okay. Mr. Ramirez, you may proceed.

23 VOIR DIRE EXAMINATION (Jury out)

24 Q. (By Mr. Ramirez) My name is Enrique
25 Ramirez. I'm going to ask you a few questions about

1 this case outside the presence of the jury.
2 Officer, you testified a minute ago that you were
3 pulling over the vehicle because of a traffic
4 violation; is that true?

5 A. Yes, sir.

6 Q. Okay. Now, you at some point came to
7 realize that there were three occupants of that
8 vehicle; is that right?

9 A. Yes, sir.

10 Q. Now, can you tell the Judge what law,
11 what legal violation or law violation of the law
12 that the backseat passenger had committed at that
13 time?

14 A. At that time, no, sir, that I know at
15 that time.

16 Q. Okay. What about the front seat
17 passenger? What law had he violated at the time you
18 were pulling him over?

19 A. Well, he was driving -- he was going
20 against the flow of traffic.

21 Q. Okay. That would be the driver though,
22 correct?

23 A. Yes, sir.

24 Q. So, you were pulling the vehicle over
25 because of the driver's actions and the manner he

1 was driving the car, potentially the violation; is
2 that fair to say?

3 A. Yes, sir.

4 Q. The question now is, what did the front
5 seat passenger do? What law did he violate when you
6 were pulling that vehicle over?

7 A. He fled the scene of the police
8 investigation.

9 Q. What were you investigating?

10 A. The traffic violation.

11 Q. Before he got out of the vehicle what
12 had he done?

13 A. Done nothing.

14 Q. Nothing?

15 A. No, sir.

16 Q. Did you -- if it were simply a traffic
17 violation, then you didn't need to talk to my client
18 about anything, did you?

19 A. No, sir. Just identify him.

20 Q. He took off running?

21 A. Uh-huh.

22 Q. We know he took off running. At the
23 moment that he took off running, you had no legal
24 reason -- he did not violate any law of the State of
25 Texas at that point, did he?

1 A. He fled the scene.

2 Q. So, it's your position that he fled the
3 scene of police investigation; that's it?

4 A. Yes, sir.

5 Q. And -- but you also said there was
6 nothing you needed to talk to him about regarding
7 that traffic violation?

8 A. But he was inside the vehicle that we
9 had stopped, sir.

10 Q. All right. He wasn't -- you weren't
11 trying to stop him for any other -- anything other
12 than what you now are saying is fleeing a police
13 investigation?

14 A. The traffic violation.

15 Q. Well, he wasn't the driver though. I
16 just want to make that clear.

17 A. No, he wasn't the driver.

18 Q. I'm not trying to be argumentative with
19 you, but I'm just trying to get those two issues.

20 A. Yes, sir.

21 Q. You've got a driver that you were
22 stopping for traffic --

23 A. Yes, sir.

24 Q. Then you had two passengers?

25 A. Yes, sir.

1 Q. At the moment you stopped that vehicle,
2 your partner was the driver of the vehicle -- the
3 moment y'all decided to pull him over, the only ones
4 you were investigating was the driver because he was
5 the driver of the vehicle. Is that fair to say?

6 A. Yes, sir.

7 Q. And the passengers had not done anything
8 at that point?

9 A. No, sir.

10 MR. RAMIREZ: Pass the witness,
11 Judge.

12 THE COURT: Anything from the
13 State?

14 MS. OSWALD: Yes, Your Honor.

15 REDIRECT EXAMINATION (Jury out)

16 Q. (By Ms. Oswald) You stated earlier that
17 the manner in which the car stopped was unusual to
18 you. Did that kind of way in which the driver
19 stopped the vehicle, was that unusual in any sort of
20 way?

21 A. Yes, ma'am.

22 Q. In what way was the manner in which the
23 car was stopped unusual?

24 A. Most people, you activate your lights
25 and they're (motioning) -- there was no traffic

1 during that night. Traffic was really slow.
2 They're going to pull over immediately.

3 Q. In your training and experience, when
4 somebody slow rolls, what does that indicate to you
5 is going on in the vehicle?

6 A. Either they're trying to hide something
7 or they're trying to get their story straight or
8 they're going to have to do something like bail out,
9 exit the vehicle.

10 Q. And once the defendant exited the
11 vehicle and started fleeing, did that give you
12 enough reasonable suspicion he was doing something
13 he shouldn't have been doing?

14 A. Yes, ma'am.

15 Q. Did you tell him to stop?

16 A. Yes, ma'am.

17 Q. Did you identify yourself as a police
18 officer?

19 A. Yes, ma'am.

20 Q. Was the car you pulled behind him, was
21 it a patrol car?

22 A. Yes, ma'am.

23 Q. Clearly marked?

24 A. Yes, ma'am.

25 Q. When he was running did he discard

1 anything that you saw?

2 A. Yes, ma'am.

3 Q. And what was your belief of that to be
4 at the time once he discarded it?

5 A. At that time I thought it was either a
6 weapon or a knife.

7 Q. Just evidence of a crime?

8 A. Yes, ma'am.

9 MS. OSWALD: Pass the witness.

10 THE COURT: Anything further, Mr.
11 Ramirez?

12 MR. RAMIREZ: No, Your Honor. Just
13 argument. I have a motion. I'm going to ask the
14 Court to suppress, not allow the State to use the
15 evidence that eventually will be that was found by
16 -- allegedly found by Officer Martinez on the basis
17 that the moment that they pulled the vehicle over,
18 Mr. Garza had no legal reason to be detained. He
19 had done nothing. He was not under investigation.
20 He had not committed a crime. He was a passenger in
21 the vehicle. And these officers made the jump from
22 watching a vehicle which they claim to be suspicious
23 to an arrest without anything more than possibly
24 being involved in something.

25 And, for the record, I would bring

1 the Court's attention to *Woods v. State*, 956, 2d 33,
2 where a police officer conducting a warrantless
3 arrest, as in this case, is in violation of Chapter
4 14 of the Texas Code of Criminal Procedure, when
5 they're not able to determine that the person that
6 they are trying to determine either was, is, or soon
7 will be involved in any criminal activity. This
8 officer has not testified or brought to this Court
9 any evidence that my client at the point that they
10 were trying to detain him, which was when he ran,
11 was involved in any criminal activity.

12 THE COURT: Mr. Ramirez, just so
13 that I understand, make sure that I have the facts
14 straight, they were stopped for traffic violation
15 and the testimony is your client fled immediately
16 after the car stopped; is that accurate?

17 MR. RAMIREZ: That's the way I
18 understand it. My argument is that they were
19 stopping the driver, committing a violation against
20 our laws. And the passenger, either the front or
21 the rear, were not being stopped for anything and
22 were free to leave.

23 THE COURT: Given that your client
24 fled from a police officer immediately upon being
25 stopped, even though it was the driver driving the

1 vehicle, I believe the police do have probable cause
2 to chase after him and detain him at a minimum and
3 probably arrest him for evading. So, your motion is
4 overruled.

5 MR. RAMIREZ: Thank you, Judge.

6 THE COURT: I have given the jury
7 till 3:00. So, we've got a few more minutes if
8 y'all would like to take a break. Court will resume
9 at 3:00.

10 MR. MOSS: Our analyst is currently
11 testifying in Court 7. She should be available
12 soon.

13 THE COURT: How soon?

14 MR. MOSS: I'll go down there and
15 check right now.

16 THE COURT: I suspect we'll reach
17 her today.

18 MR. MOSS: I understand. I'll go
19 find out.

20 THE COURT: Okay. Thank you.

21 (Short recess)

22 THE BAILIFF: All rise for the
23 jury.

24 (Jury in)

25 THE COURT: Thank you. Please be

1 seated. Ms. Oswald, you may proceed.

2 DIRECT EXAMINATION CONTINUED (Jury in)

3 Q. (By Ms. Oswald) Now, the line we see is
4 the line which the suspect fled; is that right?

5 A. Yes, ma'am.

6 Q. Did you ever lose sight of the front
7 passenger who exited the car?

8 A. No, ma'am.

9 Q. How far away were you from him,
10 approximately, the entire time he was running from
11 you?

12 A. Maybe from here to the table.

13 Q. Now, was he -- were you shouting within
14 earshot to let him know you're an officer?

15 A. Yes, ma'am.

16 Q. Now, besides running from you, did you
17 see him do anything else?

18 A. He was reaching to his waistband. I
19 don't know if he was picking up his pants to run or
20 if he was reaching for a weapon or reaching for
21 something else.

22 Q. When you saw him do that, did you yell
23 at him or say anything to him?

24 A. I just kept telling him to stop.

25 Q. Now, after he was reaching towards his

1 waistband, did you see him do anything else?

2 A. He did that for a couple of seconds
3 around the building, and then when we went around
4 the building, around this area, closer to the
5 building, he threw something with his left hand and
6 he kept running.

7 Q. Did you stop and see what he threw, or
8 did you keep running after him?

9 A. I kept running after him.

10 Q. How did he finally come to a stop? Did
11 you catch up to him or --

12 A. He -- there's a fence around the solid
13 building. It's kind of a high fence. So, I think
14 he decided he wasn't going to be able to jump it,
15 and I was able to apprehend him.

16 Q. Now, when you caught up to him what did
17 you do?

18 A. I asked him to go down. He wouldn't go
19 down, so --

20 Q. What do you mean by go down?

21 A. Lay down flat on his stomach so I could
22 do a felony approach on him because I didn't know if
23 he had a gun. So, he wouldn't -- so, I had to take
24 him down. So, we struggled for a few seconds and
25 then he finally gave me his hands and I arrested

1 him.

2 Q. At this point did you have your weapon
3 drawn or a weapon?

4 A. Yes, ma'am. I had my weapon and then
5 when -- I knew he wasn't going to go down. Holster
6 back on and hands on.

7 Q. What do you mean by hands on?

8 A. Took him down. We went down.

9 Q. At that point in time what did you do?

10 A. Handcuffed him, and at that time my main
11 concern was my partner at the gas station. So, to
12 my knowledge the gas station was still hot, which
13 means there's still danger at the gas station. My
14 plan was to take him back and help out my partner.

15 Q. After you took him back was the gas
16 station scene hot or --

17 A. At that time it was secure.

18 Q. At that point what'd you do with the
19 defendant?

20 A. I don't remember. We put him in the
21 backseat. Of course, searched him, got his name.
22 He came back, warrant -- with a family violence
23 warrant.

24 Q. At that point in time, did you identify
25 him with his I.D.?

1 A. I don't remember if he had an I.D.

2 Q. Do you recognize the person who fled
3 from you that evening in the courtroom today?

4 A. Yes, ma'am.

5 Q. Can you identify him using an article of
6 clothing?

7 A. It's a blue shirt.

8 MS. OSWALD: May the record reflect
9 the officer has positively identified the defendant?

10 THE COURT: Record will so reflect.

11 Q. (By Ms. Oswald) Did you ever get a
12 chance to go back to that area on the left side of
13 the building where you saw him discard something?

14 A. Yes, ma'am.

15 Q. Did you go back and recover what was
16 possibly discarded?

17 A. Yes, ma'am.

18 Q. And what did you recover?

19 A. A plastic baggy, like sandwich baggy,
20 with five individual Ziploc baggies with a white
21 substance inside.

22 Q. At that point in time what did you do
23 with those baggies?

24 A. Took them back to my patrol car and --
25 took them back to the patrol car. We have little

1 field testers. They test for presence of cocaine
2 and tested them, and they tested positive.

3 Q. Now, when the defendant threw the
4 object, how far away were you from him?

5 A. I think the whole time I was from here
6 to the table, ma'am.

7 Q. Now, did you see the area in which he
8 threw this object?

9 A. He threw it on the side of the building
10 by some shrubs.

11 Q. Was there anything else in the shrubs
12 when you went and recovered these baggies that he
13 could have possibly thrown?

14 A. No, ma'am.

15 Q. Did you search that area thoroughly?

16 A. Yes, ma'am.

17 Q. Did you find anything else in that area
18 besides this one baggy with five little baggies in
19 it?

20 A. No, ma'am.

21 Q. Was there any trash or anything else in
22 that area?

23 A. I don't recall about trash, ma'am.

24 Q. Was there anything else in that area
25 that looked like the object that he could have

1 thrown?

2 A. No, ma'am.

3 Q. So, the object in which you recovered
4 and that he threw were the drugs, the object he
5 threw were the drugs that you recovered?

6 A. Yes, ma'am.

7 MS. OSWALD: Your Honor, may I
8 approach?

9 THE COURT: You may.

10 Q. Officer, I'm handing you what has been
11 marked as State's Exhibit 4. Do you recognize this
12 envelope?

13 A. Yes, ma'am.

14 Q. How do you recognize it?

15 A. It has my markings, my handwriting, my
16 signature.

17 Q. Now, in this envelope, is this the
18 envelope in which -- what did you place in this
19 envelope?

20 A. The narcotics.

21 Q. Is this an envelope you typically use to
22 be able to maintain narcotics and submit it to the
23 lab?

24 A. Yes, ma'am.

25 Q. How do you know this is the envelope in

1 which you submitted the narcotics?

2 A. I sealed it, and I put my initials with
3 the date.

4 Q. And is this the baggy with the narcotics
5 that you recovered that evening?

6 A. Yes, ma'am.

7 MS. OSWALD: Other than the
8 initials on these bags, on the bags in State's
9 Exhibit 4, has this been altered in any way?

10 A. No, ma'am.

11 Q. Is it the same baggy with the five
12 individual baggies inside that you recovered that
13 evening?

14 A. Yes, ma'am.

15 Q. Okay. Is it in the same condition?

16 A. Yes, ma'am. After you collected the
17 baggies and placed them in the envelope with your
18 initials, where did you submit that?

19 A. 61 Riesner, the narcotics lockbox.

20 Q. Did you bring -- and where did you --
21 before you brought this to court today where did you
22 collect this from?

23 A. 1200 Travis.

24 Q. Were you present when this bag was
25 opened?

1 A. Yes, ma'am.

2 Q. And when it was -- before it was opened
3 today, was it sealed?

4 A. Yes, ma'am.

5 Q. And you don't recognize this, but you do
6 recognize --

7 A. No.

8 Q. When you sealed it, these are your
9 initials?

10 A. Yes, ma'am.

11 MS. OSWALD: Pass the witness, Your
12 Honor.

13 THE COURT: You may proceed.

14 CROSS-EXAMINATION

15 Q. (By Mr. Ramirez) Officer Martinez, my
16 name is Enrique Ramirez. I'm going to ask you a
17 series of questions regarding your observations and
18 what happened in this case. If I don't ask my
19 question clearly, just stop me. I'll be more than
20 happy to rephrase it. Okay?

21 A. Yes, sir.

22 Q. What was the first time that you saw
23 that black Victoria?

24 A. It was in the parking lot of the pool
25 hall.

1 Q. You testified that you saw it. You were
2 at a traffic signal; is that right?

3 A. Yes, ma'am.

4 Q. You saw it pull into the pool hall from
5 Barney's pool hall?

6 A. Yes, sir.

7 Q. Was your partner with you?

8 A. Yes, sir.

9 Q. And you were the passenger; is that
10 right?

11 A. Yes, sir.

12 Q. And what time was that?

13 A. 11:00-ish. I really can't tell you an
14 exact time, sir.

15 Q. 11:00?

16 A. Yes, sir.

17 Q. And can you tell me where in the report
18 -- let me ask you, did you prepare this report?

19 A. Yes, sir. From what I recall, yes, sir.

20 Q. Is there some way for you to look at to
21 determine whether or not you prepared it?

22 A. Yes, sir.

23 Q. Can you do that for the jury, please?

24 A. Yes, sir. It was me.

25 Q. Okay. And can you tell me where in your

1 report you put down that all this had happened at
2 the Barney's pool hall parking lot?

3 A. No, sir. I didn't put it in the report.

4 Q. You didn't put it in there?

5 A. No, sir.

6 Q. And so you denied my client and the
7 State of having knowledge of those facts prior to
8 getting here today?

9 MS. OSWALD: Objection,
10 argumentative.

11 THE COURT: Overruled.

12 MR. RAMIREZ: Judge, if I could be
13 allowed to finish my question before I'm objected
14 to.

15 Q. (By Mr. Ramirez) So, you denied my
16 client and the State from having knowledge of those
17 particular facts by not putting it in your report?

18 A. I listed the facts of the violation,
19 sir.

20 Q. Specifically about what you observed or
21 didn't observe at Barney's?

22 A. I didn't put it in the report.

23 Q. By doing so, would you agree you've
24 denied us access to those facts?

25 A. Yes, sir.

1 Q. Is that something that you commonly do?

2 MS. OSWALD: Objection, relevance.

3 THE COURT: Sustained.

4 Q. (By Mr. Ramirez) So, you said it was
5 about 11:00. After they left there, they pulled
6 into a neighborhood. Let me ask you if your partner
7 has testified that he didn't see the car go into the
8 Barney's parking lot, would that be incorrect?

9 MS. OSWALD: Objection, hearsay.

10 THE COURT: Sustained.

11 Q. (By Mr. Ramirez) You said you followed
12 the car partially into the neighborhood?

13 A. Not into the neighborhood, sir.

14 Q. So, you didn't go into the neighborhood?

15 A. Not into the neighborhood.

16 Q. And what time did they pull into the
17 neighborhood?

18 A. Like I said, I don't know the exact
19 times.

20 Q. Take a guess.

21 A. Everything happened --

22 MS. OSWALD: Objection,
23 speculation, Your Honor.

24 THE COURT: Officer, if a lawyer
25 stands up, if you'll wait so I can rule. Your

1 objection is speculation?

2 MS. OSWALD: Yes.

3 THE COURT: Your question was,
4 could he guess at the time?

5 MR. RAMIREZ: I didn't ask it that
6 way.

7 THE COURT: Sustained.

8 Q. (By Mr. Ramirez) You didn't put that in
9 your report, what time they went into the
10 neighborhood, did you?

11 A. No, sir.

12 Q. And you didn't even put they had even
13 gone into the neighborhood, did you?

14 A. No, sir.

15 Q. And what time was it that your partner
16 activated the stop?

17 A. I don't know the exact time, sir.

18 Q. You don't know what time they started
19 the stop, but you did say it took them five to seven
20 seconds to pull over; is that right?

21 A. Yes, sir.

22 Q. And where exactly along that Winkler
23 road on that map did your partner activate the
24 lights and sirens?

25 A. Can I point?

1 Q. Sure.

2 A. (Indicating)

3 Q. Put a mark there perhaps.

4 A. Kind of like where the arrow is.

5 Q. Okay. So, kind of where the arrow is.

6 And then they continued forward and came around and
7 went into the gas station parking lot, right?

8 A. The gas entrance or the -- I mean, the
9 back entrance where the back exit, whatever. It's
10 right.

11 Q. Okay. And did you bring a video of
12 following that vehicle?

13 A. No, sir.

14 Q. Did you -- so, you don't have a video of
15 that incident?

16 A. No, sir.

17 Q. Do you have -- does your vehicle -- is
18 it equipped with a video?

19 A. No, sir.

20 Q. All right. So, we don't have a video
21 either?

22 A. No, sir.

23 Q. What was the lighting like that night in
24 that building where the gas station -- do you
25 remember where the lighting was?

1 A. I don't remember, sir. The gas station
2 was lit up.

3 Q. What part of the gas station was lit up?

4 A. The whole gas station. The whole
5 parking of the gas station was lit up.

6 Q. Kind of where the pumps are at?

7 A. The whole parking of the gas station is
8 lit up.

9 Q. So, at what time was it that you would
10 say that the vehicle came to a stop?

11 A. At what time?

12 Q. Yes, sir.

13 A. I don't recall the time, sir.

14 Q. All right. And up to that point, if I
15 understand what you have testified to, you were
16 pulling that vehicle over for a traffic violation?

17 A. Yes, sir.

18 Q. That traffic violation was that he drove
19 -- that the driver drove the vehicle against the
20 traffic; is that correct?

21 A. Yes, sir.

22 Q. Should have taken a right turn, but he
23 took a left turn, kind of shortcut?

24 A. Yes, sir.

25 Q. And at that moment when you decided to

1 pull that vehicle over, you had probable cause to
2 stop that vehicle for traffic violation; is that
3 right?

4 A. Yes, sir.

5 Q. So, you felt you and your partner had
6 the right to stop that vehicle. Now, do you recall
7 the name of the driver?

8 A. I think it was Mr. Patrick Fernandez.

9 Q. So, Patrick Fernandez was the driver,
10 and that's the person that was committing the
11 traffic violation; is that right?

12 A. Yes, sir.

13 Q. At that moment when that traffic
14 violation was occurring, what violation of law had
15 either the rear seat passenger or the front seat
16 passenger committed?

17 A. At that time, nothing.

18 Q. Nothing. So, the only person you were
19 interested in at that moment was the driver for
20 violating the traffic law; is that right?

21 A. Yes, sir.

22 Q. And, so, when the call -- vehicle was
23 pulled over, it was simply to conduct a traffic
24 violation, perhaps citation?

25 A. Yes, sir.

1 Q. And did you give that driver a citation
2 for or ticket for having driven the wrong way down
3 the street?

4 A. At that time?

5 Q. Yes, sir. Or after the whole
6 investigation was done?

7 Q. At any time did you give him a ticket
8 for --

9 A. I think he was arrested on new traffic,
10 sir, for no driver's license.

11 Q. No driver's license. Is that somewhere
12 in the report?

13 A. It says "new traffic", which is no
14 driver's license.

15 Q. Well, does it say no driver's license or
16 just says new traffic?

17 A. It's implied, new traffic.

18 Q. So, it doesn't -- okay. Forgive me, but
19 I'm just a lawyer here. I don't -- new traffic
20 means to me that it could be potentially anything in
21 the traffic code. Is that not fair to say?

22 A. Yes, sir. But the most common is no
23 driver's license.

24 Q. Okay. But you didn't give him a
25 citation for driving down the wrong way?

1 A. No, sir.

2 Q. And did you have an option to give him a
3 citation or arrest him? Is that an option?

4 A. It is an option, sir. I really don't
5 recall if we did put it on a citation or if we
6 didn't. I think my partner was the one that wrote
7 the ticket.

8 Q. But it's an option, right? You could
9 have given him a ticket and let him go --

10 A. Yes.

11 Q. -- along his way, or you could have
12 arrested him; is that right?

13 A. Yes, sir.

14 Q. And in this case you chose to arrest
15 that driver?

16 A. Yes, sir.

17 Q. Okay. Now, when you were pulling over
18 that vehicle, when you and your partner were pulling
19 over that vehicle, you had no knowledge or any
20 suspicion that my client or any of the occupants of
21 that vehicle were involved in any kind of criminal
22 activity other than that traffic violation; is that
23 fair to say?

24 A. Yes, sir.

25 Q. You didn't see them do anything over at

1 Barney's parking lot. You didn't see them -- you
2 didn't follow them in the neighborhood. You didn't
3 see any of that. It was just simply they were
4 driving, correct?

5 A. Driving the wrong way, yes, sir.

6 Q. And, so, once the vehicle was pulled
7 over, you had no legal reason to hold onto or detain
8 the rear seat passenger or the front seat passenger,
9 did you?

10 MS. OSWALD: Objection, calls for
11 legal conclusion.

12 THE COURT: Sustained.

13 Q. (By Mr. Ramirez) What probable cause do
14 you believe in your mind as an officer and
15 understanding that you've got some knowledge of that
16 as an officer, what -- to stop my client at that
17 point when he decided to leave?

18 A. He fled the scene. He ran away from me.

19 Q. What violation of the law is that?

20 A. We're investigating the traffic stop,
21 and he immediately exited the vehicle after he saw
22 the marked patrol car. And with the lights, he
23 decided to take off running.

24 Q. Well, forgive me, but weren't you
25 investigating the driver?

1 A. The traffic stop.

2 Q. The driver. The person who's driving
3 the car is the one that was being investigated,
4 right?

5 A. Yes, sir.

6 Q. So, what investigation were you
7 conducting on my client at that moment?

8 A. Once he decided to exit the vehicle and
9 take off running, that's probable cause enough for
10 me to give chase to him.

11 Q. So, you believe that you're
12 investigating the driver and you're telling this
13 jury that you're investigating the driver and you
14 have probable cause to stop him for a traffic
15 violation but you had probable cause for everybody
16 else?

17 A. I didn't even know the car was occupied
18 until the car came to -- car was occupied by the
19 passengers. I knew there was a driver, of course.
20 But at the moment of the stop, the suspect exited
21 the vehicle and immediately took off running.

22 Q. Okay. But doesn't that go more to my
23 point? You didn't even know there was anybody else
24 in the car, according to your testimony?

25 A. No, sir.

1 Q. So, what legal reason would you have to
2 investigate him at that point with respect to
3 probable cause?

4 MS. OSWALD: Objection, calls for a
5 legal conclusion.

6 THE COURT: Sustained. Ask your
7 next question.

8 Q. (By Mr. Ramirez) Can you tell me, other
9 than what you've already said, if there's any other
10 reason why you stopped or tried to arrest or detain
11 my client?

12 A. He fled the scene.

13 Q. Pardon me? What was that?

14 THE COURT: You can answer the
15 question.

16 A. He fled the scene, sir.

17 Q. Did you ever -- was he charged with
18 evading arrest or anything?

19 A. No, sir.

20 Q. Was he ever charged with any type of
21 fleeing offense?

22 A. No, sir.

23 Q. Did you have an opportunity -- let me
24 ask you this. On that map and the path that you
25 claim that he ran, where is it that you claim that

1 there were bushes that he dropped something or threw
2 something?

3 A. Close to the building.

4 Q. Could you mark it?

5 A. It keeps marking to the right. I tried
6 marking next to it.

7 Q. If you want to stand up -- well, that's
8 kind of high, isn't it?

9 A. Around the building (Indicating).

10 Q. All right. So, you're saying that
11 there's a bush there where it appears to be a
12 parking lot?

13 A. It's around the building, sir. I really
14 can't --

15 Q. Well, I mean, if you could maybe be a
16 little more specific for the jury. Where exactly do
17 you say that you found -- or where he threw
18 something?

19 A. I don't recall the exact location. I
20 know it was on the side of the building, sir.

21 Q. You don't remember the exact location?

22 A. No, sir.

23 Q. Now, we've talked about the lighting
24 over at the gas station?

25 A. Uh-huh.

1 Q. At 11:00 o'clock at night what's the
2 lighting like right here at this location?

3 A. I think the only lighting they have is
4 security lighting, actually lighting around the
5 building.

6 Q. Do you know where the lights are at?

7 A. No, sir.

8 Q. Have you had the opportunity to go back
9 and take a look at the scene to prepare yourself for
10 this testimony?

11 A. No, sir.

12 Q. And you're familiar with the area,
13 right?

14 A. Most of it.

15 Q. I mean, this is kind of the area you
16 patrol? Is it fair to say? Is that what you
17 testified to earlier?

18 A. It's part of the area. It's not the
19 only area I patrol but, it's part of the area.

20 Q. Yeah. So, I mean, you've had the
21 opportunity to travel up and down Winkler since
22 November of last year, have you not?

23 A. Yes, sir.

24 Q. You've done that in the evening hours,
25 right?

1 A. Yes, sir.

2 Q. And it's been dark at times, right?

3 A. Yes, sir.

4 Q. And have you had an opportunity just to
5 glance over there?

6 A. Yes, sir.

7 Q. And take -- you don't know what the --
8 where the lights are at of this building where this
9 incident --

10 A. No, sir.

11 Q. Fair enough. Just want to make sure.
12 Did you have an opportunity to go into the gas
13 station and ask them if maybe there was some type of
14 cameras as part of your investigation so that maybe
15 we could show the jury what had occurred?

16 A. No, sir.

17 Q. Is it something that you would not
18 normally do or something that you would do or what?
19 How did you make that determination not to even
20 inquire?

21 A. I didn't, sir.

22 Q. You don't have any reason. You just
23 didn't do it?

24 A. I didn't, sir.

25 Q. And if we had a video of what happened,

1 the vehicle driving up and all that stuff, that
2 would probably help the jury to see what had
3 happened, right?

4 A. Yes, sir.

5 MS. OSWALD: Objection,
6 speculation.

7 THE COURT: Sustained.

8 Q. (By Mr. Ramirez) And this Barney's is
9 just -- isn't it a family pool hall?

10 A. At night it's over 18, 18 or 21 after a
11 certain hour.

12 Q. You never saw my client go in there, did
13 you?

14 A. No, sir.

15 Q. You didn't see anybody that was in that
16 vehicle go in there, did you?

17 A. No, sir.

18 Q. So, this guy was just driving the wrong
19 way, and that was the basis of the stop?

20 A. Yes, sir.

21 Q. The passengers that you didn't know were
22 passengers at the time, hadn't done anything? Does
23 that kind of summarize it? You made the stop, and
24 then you chased my guy?

25 A. Yes, sir.

1 Q. Who were the other officers that made
2 the scene besides you and Officer Valle?

3 A. It was Officer Gutierrez and Morin.

4 Q. Are they here today? Did you bring
5 them?

6 A. No, sir.

7 Q. How about anybody else? Any other
8 officers that were there?

9 A. No.

10 Q. So, there were just four of you on the
11 scene?

12 A. My sergeant was there, Sergeant Vega,
13 V-E-G-A.

14 Q. Five officers on the scene?

15 A. And there was a South Houston officer.

16 Q. And what's that officer's name?

17 A. He got there until I came back to help
18 out my partner and he left.

19 Q. You put his name in the report, by any
20 chance?

21 A. No, sir. He left.

22 Q. All those other officers, how many of
23 those officers' names did you put in the report so
24 that we could talk to them?

25 A. Officer Gutierrez and Officer Morin.

1 Q. Just those two?

2 A. Yes, sir.

3 Q. Anybody else you didn't put in the
4 report?

5 A. No, sir.

6 Q. What was the time of -- what was the
7 time of his arrest? What time did you -- strike
8 that. I'm sorry. What was the time of his arrest?

9 A. The exact time, sir, I don't remember
10 sir.

11 Q. Are you the one who took my client to
12 jail?

13 A. Yes, sir.

14 Q. Do you know what time you actually got
15 him booked in, what time you got him to the jail?

16 A. The exact time we got him there, no. It
17 should be on calls for service, but it's not in our
18 -- our computer tells us everything, whenever we
19 arrive, whenever we take somebody.

20 Q. Okay. So, that's not in your report
21 either?

22 A. No, sir.

23 Q. How long were you on the scene, like
24 from the time you actually stopped my client or, you
25 know, brought him back to the -- to where the

1 vehicle was at, to the time you actually drove off
2 to get him to the -- wherever you were taking him, I
3 guess? How long were you there?

4 A. 30, 45 minutes.

5 Q. 30 to 45 minutes?

6 A. Yes, sir.

7 Q. Now, I'm looking at your report. It
8 says that it was 11:41. Is that the time you left
9 the scene or is that the time you started this
10 investigation?

11 A. That's the time the paperwork --

12 Q. 11:41?

13 A. -- started it, we began, yes, sir.

14 Q. The paperwork, is that like after
15 everybody's --

16 A. That's like his booking blotter. It's a
17 paper where we've got to put his information for the
18 jail so they have an identification on him.

19 Q. Okay. How much -- how long was the time
20 between the time that you -- you say my client
21 exited the vehicle and started running and the time
22 you actually were able to arrest him?

23 A. Three minutes, five minutes.

24 Q. Three to five minutes?

25 A. Yes, sir.

1 Q. How long did it take you after you
2 got -- I think your testimony was you took him back
3 to where your partner was at because it was -- you
4 said it was hot. Found out it was okay. How long
5 before you went back to search the area?

6 A. Maybe another five minutes.

7 Q. Another five minutes. How long were you
8 over there before you made your way back to search
9 him? How long were you searching him is probably a
10 better question.

11 A. Another five minutes maybe.

12 Q. And so --

13 MR. RAMIREZ: Pass the witness,
14 Judge.

15 MS. OSWALD: Nothing further from
16 the State, Your Honor.

17 THE COURT: May this witness be
18 excused?

19 MS. OSWALD: Yes, ma'am.

20 THE COURT: Call your next witness.

21 MS. OSWALD: The State calls Miriam
22 Kane to the stand, Your Honor.

23 THE BAILIFF: This witness has not
24 been sworn.

25 (Witness sworn)