

1 officers stopped him. That's why he placed it in plain view  
2 so they we would see it.

3 So, we ask that you guys would render a verdict  
4 of not guilty based upon the evidence and the testimony that  
5 you'll hear and we look forward working with you. Thank you.

6 THE COURT: Thank you, Mr. White. Call your  
7 first witness, please.

8 MS. BUESS: Your Honor, the State would like to  
9 call Officer Sullivan to the stand.

10 THE BAILIFF: Your Honor, this witness has  
11 previously been sworn.

12 THE COURT: Thank you, Deputy. Good afternoon.

13 THE WITNESS: Good afternoon.

14 THE COURT: You may proceed.

15 MS. ADEYIGA: Thank you, Your Honor.

16 **OFFICER GORDON MITCHELL SULLIVAN,**  
17 after having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **MS. ADEYIGA:**

20 Q. Please state your name and spell it for the court  
21 reporter.

22 A. Yes. It's Gordon Mitchell Sullivan. G-O-R-D-O-N,  
23 S-U-L-L-I-V-A-N.

24 Q. And how are you employed?

25 A. With the Houston Police Department.

1 Q. And how long have you been so employed?

2 A. Five years.

3 Q. What did you do before being employed with the  
4 Houston Police Department?

5 A. I was in the U.S. Army.

6 Q. U.S. Army?

7 A. Uh-huh.

8 Q. For how long?

9 A. For four years.

10 Q. Okay. Now, did you have to go through training  
11 before you could become an officer for the Houston Police  
12 Department?

13 A. Yes, ma'am.

14 Q. Did that training including classroom training?

15 A. Yes, ma'am.

16 Q. What about field training?

17 A. Yes, ma'am.

18 Q. Can you describe maybe the classroom training?

19 A. It's about six months of classroom training. And then  
20 when you get out, you have to do a FTO-ship. And, FTO, Field  
21 Training Officer, you go through with him and for six months  
22 and he evaluates you and puts you through the field.

23 Q. Is that like an academy?

24 A. It's on-work training. I'm sorry. On-the-job  
25 training.

1 Q. On-the-job training. Okay. What about field  
2 training; can you describe that?

3 A. I thought I just did. Yeah. It's six months, like  
4 you just go out there, you're answering calls, everything  
5 like that.

6 Q. So, it's the same thing?

7 A. Yeah, it is the same thing as the FTO.

8 Q. Okay. And so, are you a certified peace officer?

9 A. Yes, ma'am.

10 Q. And how are you certified? Who certified you?

11 A. The City of Houston.

12 Q. Okay. Is that a TCLEOSE Certification?

13 A. Yes, ma'am.

14 Q. Okay. Now, what's your current assignment with HPD?

15 A. I'm in the Crime Reduction Unit, dayshift. Crime  
16 Reduction Unit.

17 Q. Okay. Can you describe what that unit is about.

18 A. Anytime -- there's a lot of hotspots in the City of  
19 Houston, like a lot of gang activity, or a lot of, you know,  
20 just crimes in general. And if it had spike -- you have a  
21 crime analysis person that looks at all the spikes in the  
22 city, in the areas. And then whenever one area spikes more  
23 than the other, they send a CRU in there to kind of bring it  
24 back down.

25 Q. You said they send a "CRU"?

1 A. Yes, CRU units, us, officers.

2 Q. Okay. Now, is there a specific shift you typically  
3 work?

4 A. Yes, ma'am.

5 Q. What shift is that?

6 A. Dayshift, 10:00 to 6:00.

7 Q. 10:00 to 6:00. Okay. So, can you just describe a  
8 typical day during that dayshift?

9 A. Yeah. A typical day, we get our assignment and what  
10 area we're supposed to be working in.

11 Q. Who gives you that assignment?

12 A. My -- our Sergeant.

13 Q. Okay.

14 A. And after that, we get our assignment and we go out  
15 into that area. And it's pretty much just a hotspot unit,  
16 like just going around and being proactive.

17 Q. So, by --

18 A. We don't answer calls or anything like that. We are  
19 just being proactive police officers, stopping cars for PC  
20 and trying to find it.

21 Q. What's "PC"?

22 A. Probable cause.

23 Q. So, is a typical assignment, you just being told to  
24 go and patrol a specific area?

25 A. Uh-huh.

1 THE COURT: Is that a "yes" or a "no"?

2 THE WITNESS: Uh-huh.

3 THE COURT: You have to say a "yes" or "no."

4 A. Yes.

5 Q. (BY MS. ADEYIGA) When you stop cars for PC, you  
6 said, probable cause. Can you describe what that's about?

7 A. Yeah. We drive down in the area that we're in, see  
8 cars that go by that have faulty equipment, changing lanes  
9 without using a signal, not maintaining a single lane, what  
10 have you, and we'll conduct a traffic stop on that vehicle.

11 Q. Okay. And so, typically, after you conduct a traffic  
12 stop on that vehicle, what do you do next?

13 A. Make sure that the driver has a driver's license and  
14 proof of insurance. If he can't produce that, you go a step  
15 further and a step further. Beyond that, you just keep on  
16 going down.

17 Q. Okay. So, you said your unit is involved in gang  
18 areas; is that correct?

19 A. Yes.

20 Q. So, do you have any specialized training in  
21 identifying members of a gang?

22 A. We --

23 MR. WHITE: Objection, Your Honor, this witness  
24 has not been qualified as an expert. I believe she's trying  
25 to go into expert testimony at this point, Your Honor.

1 (Discussion at the bench in the presence of the Jury.)

2 THE COURT: Counsel approach, please. What is  
3 the area that you want to qualify with him?

4 MS. ADEYIGA: Judge, he just said that his  
5 specific area that he's assigned to works in hotspots, gang  
6 activities. So, I'm just trying to ask him if he has  
7 training in the area that he works in as far as identifying  
8 members of a gang or why he's in those hotspot areas that are  
9 heavily gang populated.

10 MR. WHITE: Your Honor, I heard his testimony.  
11 I don't think he said anything about heavily gang populated.  
12 I think he said that there was an increase of gang activity.

13 THE COURT: It's incoherent. Can we hear this  
14 outside of the jury's presence and make that decision? Let's  
15 do that.

16 We're going to excuse the jury for a moment and  
17 take up a legal matter and then we'll have you back in here  
18 in a minute.

19 THE BAILIFF: All rise for the jury.

20 (Jury exits courtroom.)

21 THE COURT: All right. You may proceed.

22 **VOIR DIRE EXAMINATION**

23 **BY MS. ADEYIGA:**

24 Q. Okay. Officer Sullivan, do you work in areas of high  
25 gang traffic activities?

1 A. Yes, ma'am.

2 Q. Okay. And do you do that frequently?

3 A. Yes, ma'am.

4 Q. Okay. That's a part of your assignment, you would  
5 say?

6 A. Yes, ma'am.

7 Q. Okay. What training do you have to identify gang  
8 members?

9 A. Well, the training that we got in the academy. And  
10 then also every year annually, we'll take at least an 8-hour  
11 course as an elective for identification of gang members.  
12 Now, that's not every year. But every -- I'd say every other  
13 year, we take a class. And also just street experience.  
14 Experience as a police officer, you learn to identify the  
15 local gangs in the area that you patrol.

16 Q. Is that class mandatory?

17 A. It's sort of mandatory, I guess you'd say. Our  
18 Lieutenant will tell us to take this class.

19 Q. And is that because of the area that you work in,  
20 you're assignment?

21 A. Just because we work in the Crime Reduction Unit, yes,  
22 ma'am.

23 Q. Okay. Have you ever encountered a member of the  
24 5-Deuce Hoovers-Crips?

25 A. Yes, ma'am, I have.

1 Q. On few or many occasions?

2 A. I wouldn't say it's a great deal. I -- probably on a  
3 few occasions, I've run into a few.

4 Q. Have you been trained in how to identify members of  
5 the 52 Hoovers-Crips?

6 A. I'd say that's just more or less experience on the  
7 street.

8 Q. Do you have enough experience that you would be able  
9 to identify members of the Five Deuce Hoover Crips.

10 A. I think so, yes.

11 Q. Is that from your five years with HPD?

12 A. Yes, ma'am.

13 MS. ADEYIGA: Your Honor, I think the State has  
14 qualified this witness as an expert.

15 THE COURT: Well, he has a right to examine on  
16 that issue -- to Voir Dire.

17 MR. WHITE: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. WHITE:**

20 Q. Officer Sullivan --

21 A. Yes, sir.

22 Q. -- you said you've had few occasions in your  
23 interaction with members of the 52 Hoovers-Crips; is that  
24 correct?

25 A. That's correct.



1 Q. How would you define a "few"?

2 A. Like, I'd probably say about three that I've actually  
3 identified to be on the gang cards, as well. The other ones,  
4 they've already been documented as gang members. So, I  
5 didn't actually have to put -- process them in -- in the game  
6 card -- in the Gang Tracker.

7 But, more or less, the ones that -- the gangs  
8 that we usually deal with is Houstons because they're the  
9 most populated here.

10 Q. So, now you've said, you've identified, perhaps,  
11 three in the past five years?

12 A. Right. Yeah. As far as putting them into the  
13 tracker. Yes, sir.

14 Q. Okay.

15 A. I've ran across more, but they were in the tracker  
16 already.

17 Q. Now, would you consider that to be a lot; or would  
18 you consider that to be a very, very small amount in the  
19 five-year span?

20 A. I consider it to be a few.

21 Q. You consider it to be a few, correct?

22 A. Yes, sir.

23 Q. Now, do you think the methods in which you've  
24 identified these people as gang members, are they based on  
25 any type of scientific study?

1 A. No, I don't think anything scientific.

2 Q. Are they based on any type of reliable study or  
3 reliable method?

4 A. As far as reliable method, yes, sir, I do believe.

5 Q. What's the method?

6 A. That you have eight criteria to look at. You have to  
7 identify them with two of the eight criteria. The criteria  
8 being, you know, colors, tattoos, self-admission, being  
9 around other documented gang members, having a confidential  
10 and reliable witness. I'm sorry. That's right.  
11 Confidential and reliable witness -- yes -- telling you this  
12 person was a gang member. A couple of other ones, too. I  
13 can't -- I got to have the tracker in front of me to see the  
14 rest of them. But, yes, those two -- you got to get at least  
15 two of the -- two out of the eight.

16 Q. Two of the eight?

17 A. Yes, sir.

18 Q. You listed out five to me. Do you remember what the  
19 other three are?

20 A. No. Like I said, I have to have the tracker in front  
21 of me because usually that's what I base --

22 Q. Now --

23 A. -- my information on.

24 Q. I'm apologize, I didn't let you finish.

25 A. That's okay. No problem.

1 Q. Now, would you consider any of these methods to be  
2 scientific or have any type of basis in theory, besides just  
3 from your own personal experience?

4 A. I'd say just experience from other officers and  
5 personal experience.

6 Q. Just experience from other officers.

7 A. Uh-huh.

8 Q. None of these methods have ever been tested, correct?

9 A. As far as I know, no.

10 Q. None of these methods have ever been used as the  
11 basis of any type of study, correct?

12 A. As far as I know, no.

13 Q. So these methods and these characteristics are all  
14 based on subjective opinions of other officers, as well as  
15 yourself; is that correct?

16 A. I -- I'm not sure. Honestly, say that again one more  
17 time.

18 Q. The criteria that you listed --

19 A. Yes.

20 Q. -- these were all created and they're all based on  
21 the subjective opinions of other officers, as well as  
22 yourself; is that correct?

23 A. I -- I'm not too -- I'm not the person who invented  
24 the Gang Tracker system, nor did I take the -- like teach the  
25 classes. So, I don't understand that.

1 Q. Okay. This is your own personal opinions, these  
2 characteristics, correct?

3 A. Yes.

4 Q. These are the opinions of some other officers who may  
5 have more experience than you, correct?

6 A. Yes.

7 Q. None of them have been used in any type of study of  
8 any sort?

9 A. As far as I know, no.

10 MR. WHITE: Your Honor, I'd ask that this  
11 witness not be able to testify as any type of expert. I  
12 don't believe he even qualifies as an expert under Daubert.

13 He stated himself that the characteristics he  
14 normally goes by, as far as identifying gang members, are  
15 based on his subjective opinions. This is just the  
16 subjective opinions of others officers who may have more  
17 experience than him.

18 THE COURT: I think there's a dichotomy or a  
19 spectrum in Daubert that separates the soft sciences from  
20 hard sciences.

21 MR. WHITE: Yes, Your Honor.

22 THE COURT: What says the State with regard to  
23 that?

24 MS. ADEYIGA: Judge, we're not offering him as a  
25 scientific expert just based off of his experience. His

1 street experience, as well as the classes that he has taken,  
2 he has experience in identifying members of these gangs. We  
3 find him to be a good expert, soft expert, on the topic.

4 THE COURT: Response.

5 MR. WHITE: Your Honor, I believe three  
6 occasions in the past five years would qualify -- would  
7 definitely not qualify someone, not even as a soft expert, as  
8 well as his own testimony that he has not taken any type of  
9 additional gang classes or gang training, he has not  
10 developed the Gang Tracker or taken any Gang Tracker  
11 training.

12 MS. ADEYIGA: Judge, he specifically said that  
13 he, himself, logged three members of that gang into the Gang  
14 Tracker. He's had more contact with other members of that  
15 gang. It's just specifically he logged three in. The other  
16 ones he came into contact with were already logged into the  
17 system and he already identified them as members of that  
18 gang.

19 THE COURT: I'm going to overrule your  
20 objection. I'll give you a running objection. This witness  
21 will be permitted to identify as an expert on the issue of  
22 gang membership.

23 MR. WHITE: Thank you, Your Honor.

24 MS. ADEYIGA: Thank you, Judge.

25 THE COURT: Let's have the jury, please.

1 THE BAILIFF: All rise for the jury.

2 (Jury enters the court room.)

3 THE COURT: Please be seated. The objection is  
4 overruled. You may proceed.

5 MS. ADEYIGA: Thank you, Judge.

6 **DIRECT EXAMINATION, CONTINUED**

7 **BY MS. ADEYIGA:**

8 Q. Now, Officer Sullivan, you work in an area or areas  
9 in high gang activities, correct?

10 A. Yes, ma'am.

11 Q. Are you able to identify members of criminal gangs in  
12 Houston?

13 A. Yes.

14 Q. Okay. Is one of those gangs the 5-Deuce  
15 Hoovers-Crips?

16 MR. WHITE: Objection, Your Honor, leading.

17 THE COURT: Overruled.

18 A. Yes.

19 Q. (BY MS. ADEYIGA) How do you do that? How do you  
20 identify them?

21 A. Self-admission, wearing the -- wearing a gang's colors  
22 clothes or displaying a rag color, tattoos being in the gang  
23 area. Like they'll -- certain parts of the areas of Houston  
24 will be predominantly Five Deuce Hoover-Crips or Piru,  
25 Bloods, what have you, along those lines.

1 Q. Okay. Now, as far as you being able to identify  
2 members of this gang, is that based off of just general  
3 street experience?

4 A. Street experience, yes.

5 Q. Okay. Now, at any point, did you come into contact  
6 with the Defendant in this case?

7 A. Yes.

8 Q. And when we're referring to this Defendant, can you  
9 state who we're talking about?

10 A. Yes. It's Mr. Washington, sitting right over there.  
11 There's two gentlemen on the right.

12 Q. Can you please point to him and identify an article  
13 of clothing that he's wearing?

14 A. He's wearing a white button up.

15 MS. ADEYIGA: Your Honor, please let the record  
16 reflect this witness has identified the Defendant.

17 THE COURT: Yes.

18 MS. ADEYIGA: Thank you.

19 Q. (BY MS. ADEYIGA) Officer, can you explain when you  
20 first came into contact with the Defendant. What date was  
21 that?

22 A. It was October 4th, 2011.

23 Q. Were you on patrol that day?

24 A. Yes, ma'am.

25 Q. You were on an assignment?

1 A. Yes, ma'am.

2 Q. Where was that assignment?

3 A. It was Southeast.

4 Q. Okay. Where is Southeast? Where?

5 A. Southeast Houston.

6 Q. Okay.

7 A. Yeah.

8 Q. Okay. And continue. What happened with -- what  
9 brought this Defendant to your attention that day?

10 A. Well, rolled a little bit past him. Which I looked  
11 over, saw that he had an expired registration.

12 Q. Is an expired registration one of the probable  
13 cause --

14 A. Yes.

15 Q. -- reasons, you mentioned earlier to stop someone.

16 A. Yes.

17 Q. Okay.

18 A. And then drawled back. He pulled off of 610. Got  
19 behind him, conducted a traffic stop. He pulled over, over  
20 on Dolittle, conducted a traffic stop.

21 Q. Okay. After you decided to conduct a traffic stop,  
22 what happened next?

23 A. I walked up and spoke to the Defendant and asked for  
24 his driver's license and proof of insurance.

25 Q. Did you tell him why he was being stopped?



1           A.    Yes, I did.

2           Q.    Okay.  And after you, I guess, acquired initial  
3 information from him, what did you do next?

4           A.    Went back.  I ran him on the MDET.  Saw that he  
5 wasn't --

6           Q.    Sorry.  What's an "MDET"?

7           A.    It's a computer that we use inside the patrol car.  We  
8 pretty much answer calls that way.  We receive calls and send  
9 out messages and then we also use it to look up the histories  
10 of people.

11          Q.    Okay.

12          A.    And he didn't have no warrants or any warrants.  And I  
13 came back and I informed him again about his traffic  
14 violation.  And then just in conversation with him, I noticed  
15 that he was --

16          Q.    So, you basically let him know that he had an expired  
17 registration?

18          A.    Uh-huh.

19          Q.    And then did the interaction with the Defendant  
20 continue?

21          A.    Yes.

22          Q.    Okay.  And then what happened?

23          A.    I noticed that he was wearing all blue.  He had a blue  
24 du-rag -- I mean -- I'm sorry -- a blue bandana in the center  
25 console of his car.  So, I just plainly asked -- I said, "Are

1 you a gang member?" And he said --

2 MR. WHITE: Objection, Your Honor, it's going to  
3 be hearsay.

4 THE COURT: Overruled.

5 Q. (BY MS. ADEYIGA) Continue. What did he say?

6 A. He said, "I was a former" -- "I was a former 52  
7 Hoovers-Crips." I said, "Okay. Former. But you're wearing  
8 all blue and you got a blue bandana and a blue car." I mean,  
9 he might want to match his car. I don't know. But he was  
10 wearing all of that.

11 And then I asked him if he had any tattoos. He  
12 said, "Yes, sir, I do." I pulled him out of the car. He  
13 showed me his tattoos. Saw a lot of --

14 Q. When you pulled him out of the car, did he willingly  
15 show you the tattoos?

16 A. Yes.

17 Q. Did you force him to show you the tattoos?

18 A. No. Mr. Washington was very cooperative.

19 Q. Very cooperative?

20 A. Yes.

21 Q. Okay. Continue.

22 A. Pulled him out of the car. He removed his shirt,  
23 showed us his tattoos. He had a few that I recognized as 52  
24 Hoovers-Crips.

25 MR. WHITE: Objection, Your Honor, that's

1 grounds for speculation.

2 THE COURT: Overruled.

3 A. That I recognized as 52 Hoovers-Crips gang tattoos.  
4 He had it on his abdomen, 52. He had the dice over his chest  
5 with the 52 sticking out and just multiple tattoos. He had a  
6 lot of them. But, I mean, only a few that I identified with  
7 52.

8 Q. (BY MS. ADEYIGA) Okay. On that day you identified  
9 certain things on or about the Defendant that linked him to  
10 this gang, did you arrest him for any offense that day?

11 A. No, I didn't. I didn't even issue him a citation.  
12 His demeanor was very cooperative. It was only a couple of  
13 months behind. In his discretion, just let him go.  
14 Documented, and let him go.

15 Q. Okay. Is there anything else about the stop that  
16 called -- I guess, heightened your attention?

17 A. No. No, not other than that.

18 Q. Okay. Now, after the Defendant willingly showed you  
19 his tattoos and you noticed the car and the bandana all being  
20 blue, what did you do? Did you do anything to document that?

21 A. Yes, I put him into the Gang Tracker.

22 Q. What is "Gang Tracker"?

23 A. Gang Tracker is a program we use here in Houston to  
24 identify gang members. And once you put them in, they get a  
25 little sequence number and I update -- you can update it

1 further along, if they commit a crime later on, you can find  
2 out everything about that person.

3 Q. And what's the purpose of the Gang Tracker?

4 A. It tracks gang members in Houston.

5 Q. So, when you, I guess, document -- or log someone  
6 into the Gang Tracker, is it just verbal information or  
7 written information or is it pictures?

8 A. It's picture as well.

9 Q. Pictures. Okay.

10 A. And verbal and everything.

11 Q. Okay. So, that day when you logged the Defendant  
12 into the Gang Tracker, what all did you put in the system  
13 under his number?

14 A. On the two criteria, I put descriptions on him and I  
15 also put in his height and weight, where he stated that he  
16 lived at. And then I also put in photographs of the vehicle  
17 itself and the -- I'm sorry -- the Defendant's tattoos.

18 Q. You stated two criteria?

19 A. Uh-huh.

20 Q. What exactly does that mean?

21 A. You got to get two of the eight criteria to be able to  
22 program them -- to put them into the system as a documented  
23 gang member.

24 Q. So, how many did you note on this Defendant?

25 A. I had two.

1 Q. Two?

2 A. Yes.

3 MS. ADEYIGA: Your Honor, may I approach the  
4 witness?

5 THE COURT: Pardon?

6 MS. ADEYIGA: May I approach the witness?

7 THE COURT: Sure.

8 Q. (BY MS. ADEYIGA) I'm going show you what has been  
9 marked as State's Exhibit 1.

10 A. Uh-huh.

11 Q. Are you familiar with this picture?

12 A. Yes.

13 Q. Does it fairly and accurately depict what you  
14 witnessed on October 4th, 2011?

15 A. Yes, ma'am.

16 Q. Has the picture been altered in any way.

17 A. No, ma'am.

18 Q. I'm going to show you what has been marked as State's  
19 Exhibit 2. Are you personally familiar with this picture?

20 A. Yes, ma'am.

21 Q. Does it fairly and accurately depict what you saw on  
22 October 4th, 2011?

23 A. Yes, ma'am.

24 Q. Has the photograph been altered in any way?

25 A. No.

1 Q. I'm going to show you what's been marked as State's  
2 Exhibit No. 3. Are you familiar with this picture?

3 A. Yes.

4 Q. Does it fairly and accurately depict what you saw on  
5 October 4, 2011?

6 A. Yes.

7 Q. Has it been altered in any way?

8 A. No.

9 Q. I'm going to show you what's been marked as State's  
10 Exhibit No. 4. Are you familiar with this picture?

11 A. Yes.

12 Q. Does this fairly and accurately depict what you saw  
13 on October 4th, 2011?

14 A. Yes.

15 Q. Has it been changed or altered in any way?

16 A. No.

17 Q. Now, I'm going to show you what has been marked as  
18 State's Exhibit No. 5. Are you familiar with what's in this  
19 photograph?

20 A. Yes.

21 Q. Does it fairly and accurately depict what you saw on  
22 October 4th, 2011?

23 A. Yes.

24 Q. Has it been changed or altered in any way?

25 A. No.

1 Q. I'm going to show you what has been marked as State's  
2 Exhibit No. 6. Are you familiar with what's in this  
3 photograph?

4 A. Yes.

5 Q. Does it fairly and accurately depict what you saw on  
6 October 4th, 2011?

7 A. Yes.

8 Q. Has it been changed or altered in any way?

9 A. No.

10 Q. I'm going to show you what has been marked as State's  
11 Exhibit No. 7. Are you familiar with what's in this picture?

12 A. Yes.

13 Q. Does it fairly and accurately depict what you saw  
14 October 4th, 2011?

15 A. Yes.

16 Q. Has it been changed or altered in any way?

17 A. No.

18 MS. ADEYIGA: Your Honor, I would like to offer  
19 State's Exhibit Nos. 1 through 7 for Defense Counsel to  
20 inspect.

21 MR. WHITE: No objections, Your Honor.

22 THE COURT: 1 through 7 are admitted into  
23 evidence and may be published to the jury.

24 Ms. ADEYIGA: Thank you.

25 THE COURT: Is this a -- do you want to publish