

1 MS. STABE: Thank you, Your Honor.

2 JOHN O'BRIEN,
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (BY MS. STABE) Deputy, can you please introduce
6 yourself to the jury?

7 A. I'm John O'Brien. I work for the Harris County
8 Sheriff's Department. I've been employed with the Harris
9 County Sheriff's Department for 16 years. I'm currently
10 assigned to HIDTA and I've been there for seven years.

11 Q. Can you explain to the jury what HIDTA is?

12 A. High Intensity Drug Trafficking Area.

13 Q. What do you do as a HIDTA task force officer?

14 A. We're responsible for large-scale narcotics
15 investigations, tasked to the DEA.

16 Q. Sorry. You can continue.

17 A. We do multijurisdictional large-scale narcotics
18 investigations throughout the state of Texas and throughout
19 the United States.

20 Q. All right. What other agencies do you work with?

21 A. Houston Police Department, FBI, DEA, Homeland
22 Security, Texas Department of Public Safety, Montgomery
23 County, Fort Bend County and Wharton County.

24 Q. So a lot of agencies?

25 A. Yes, ma'am.

1 Q. And, I mean, are you guys always working together
2 on everything or are there more agencies to work with than
3 others?

4 A. We're usually working always together on a
5 multijurisdictional level.

6 Q. Okay. And how is it that you are working together?
7 Like, what does each agency do? How do they contribute to
8 the task force?

9 A. Depending on what the investigation is, say if it's
10 in Harris County, usually I'll take the lead or another
11 Harris County officer will take the lead. If it's in
12 Montgomery County, the Montgomery County officer will take
13 the lead but we do all of our own investigations until we
14 get to prosecutorial.

15 Q. And on April 16th, 2013, were you on duty that day?

16 A. Yes, ma'am.

17 Q. And were you a certified peace officer at the time?

18 A. Yes, ma'am.

19 Q. And you still are today, right?

20 A. Yes, ma'am.

21 Q. And what was the shift you were working? Do you
22 recall?

23 A. I have -- we don't have a set shift. We just --
24 when we're called, we go to work. We work a eight-hour day,
25 usually from 9:00 to 5:00, and I think on that day we were

1 working from noon until 8:00 PM.

2 Q. Okay. And on that day, were you stationed at a
3 particular area?

4 A. I was in a marked Harris County vehicle. I was in
5 full uniform and I was stationed at -- in the District 3
6 area, in the area of I-10 and Sheldon Road.

7 MS. STABE: Okay. Your Honor, may I approach
8 the, I guess, projector?

9 THE COURT: Yes.

10 Q. (BY MS. STABE) Okay. I'm showing you what's been
11 admitted as State's Exhibit No. 2. And so, is this the area
12 that we're talking about, I-10 and Sheldon area shown here?

13 A. Yes, ma'am.

14 Q. Okay. And so, what location were you stationed at
15 at that time?

16 A. I was in a Shell gas station, which would be in the
17 northeast corner of the picture.

18 Q. Okay. And if you -- you can actually, if you touch
19 that screen, it will show up a mark on there.

20 A. Oh, okay. I was at this gas station right here at
21 Sheldon Road and East Freeway.

22 Q. Okay. And you're in a marked patrol unit with --
23 did you have a partner at the time?

24 A. Yes, Deputy Santos.

25 Q. Okay. And that's who we just saw in here earlier?

1 A. Yes, ma'am.

2 Q. Is he your partner all the time?

3 A. Yes, ma'am.

4 Q. How long have y'all been working together as
5 partners?

6 A. Probably four years now.

7 Q. Okay. And around 7:30 that evening, did you get
8 any type of information about making a traffic stop?

9 A. Yes, ma'am, we did.

10 Q. Okay. What agency did that come from?

11 A. The FBI.

12 Q. Okay. So, you were given -- was it, like, a tip
13 or --

14 A. The FBI told us to be on the lookout for a -- I
15 would have to refer to my report but it was, I think, a
16 black Chrysler vehicle.

17 Q. Okay.

18 MS. STABE: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 Q. (BY MS. STABE) Here's a copy of your report if you
22 need to refresh your memory.

23 A. Thank you, ma'am. Yeah, it was a four-door black
24 Chrysler Cirrus with Texas tag 0X4 Robert 326.

25 Q. Okay. And so, you got a tip from the FBI and, I

1 mean, when you get that type of tip to look for a car, what
2 is it your job to do?

3 A. To look for the car and establish probable cause to
4 stop the vehicle.

5 Q. Okay. And so, what did you do in this case or what
6 probable cause did you see that allowed you to stop this
7 vehicle?

8 A. Deputy Santos and I were stationed at the Shell
9 station at I-10 and Sheldon Road. We observed the vehicle
10 pass underneath Shelton traveling northbound and run the red
11 light on the north side of the freeway going north on
12 Sheldon Road.

13 Q. Okay. And running a red light, is that a traffic
14 violation?

15 A. It's a traffic violation.

16 Q. Okay. And so, that gives you probable cause to
17 pull a car over?

18 A. Yes, ma'am.

19 Q. Now, are you the driver or the passenger of the
20 patrol car?

21 A. I was the driver that day.

22 Q. What do you do? Do you activate your lights and
23 sirens? What do you do?

24 A. We go behind the vehicle, we ran the registration
25 and I activated my emergency equipment just north of the

1 Shell station on Sheldon Road.

2 Q. Okay. And did that car pull over right away or did
3 it take awhile?

4 A. The vehicle traveled approximately a quarter mile
5 maybe to the 700 block of Sheldon Road and pulled into a
6 convenience store.

7 Q. Okay. And while it was driving down Sheldon Road,
8 did you ever see at any time, you know, like, the driver
9 making any furtive movements?

10 A. No, ma'am.

11 Q. Did you ever see anything coming out of the
12 driver's side window, anything thrown out of there?

13 A. No, ma'am.

14 Q. What was the weather like that day?

15 A. It was drizzling rain at the time of the traffic
16 stop.

17 Q. Okay. And was it still daylight, like --

18 A. It was still daylight. It was around 7:30, so it
19 was getting dark but there was still adequate light to see.

20 Q. Okay. Once this car pulled into this convenience
21 store parking lot, what did you do?

22 A. I made a contact with the driver of the vehicle,
23 Mr. Edward Davis.

24 Q. That was the driver?

25 A. Yes, ma'am.

1 Q. Okay. How many people were in the car?

2 A. Two people.

3 Q. And so, Edward Davis was the driver?

4 A. Edward Davis.

5 Q. Was there a passenger then?

6 A. Yes, there was.

7 Q. Where was the passenger seated?

8 A. In the passenger front seat.

9 Q. Do you see that passenger in the courtroom today?

10 A. I do.

11 Q. Could you please point to him and identify an
12 article of clothing he's wearing?

13 A. Gray shirt.

14 MS. STABE: May the record reflect the witness
15 has identified the defendant?

16 THE COURT: It will.

17 Q. (BY MS. STABE) Oh, let me go back. Where this
18 traffic stop occurred, you said the 700 block of Sheldon
19 Road?

20 A. Yes, ma'am.

21 Q. Is that in Harris County, Texas?

22 A. It is, ma'am.

23 Q. All right. So, once you pulled the car over, you
24 said you made contact with the driver, Edward Davis?

25 A. Yes, ma'am.

1 Q. What do you do when you first make contact with
2 someone on a traffic stop?

3 A. I advise them why the traffic stop was made, ask
4 them for their license and registration of the vehicle.

5 Q. Okay. So, in this situation, did the traffic stop
6 go, you know, normally or did something happen that, you
7 know, kind of changed the situation?

8 A. The traffic stop went normal. As I approached the
9 driver's side, made contact with Mr. Edward, the passenger
10 was making furtive movements, pulling something out of his
11 pocket and putting it between the seat and the center
12 console.

13 MR. AYERS: I'm going to object. Is he saying
14 he saw this?

15 THE COURT: You'll get him on cross.

16 MR. AYERS: All right.

17 Q. (BY MS. STABE) And you saw this yourself?

18 A. Yes, I saw this myself.

19 Q. Okay.

20 A. With my own eyes.

21 Q. Okay. So, you're on the driver's side looking
22 through the driver's side window?

23 A. Yes, ma'am, I am.

24 Q. Did the driver roll the window down?

25 A. The window was all the way down.

1 Q. Okay. So you're looking through -- so you can
2 see -- you can see the front seat passenger?

3 A. Yes, ma'am.

4 Q. And you said -- what did you observe?

5 A. I observed Mr. Penton place an unknown object
6 between the front seat and the center console of the
7 vehicle.

8 Q. Okay. And, I mean, did you -- did you see where it
9 came from? Like --

10 A. From him -- his persons.

11 Q. Okay. Like, from a pocket? From a shirt?

12 A. From between his waist -- at his waistline. Could
13 have been his pocket, could have been in his waistband. I'm
14 not sure of that, ma'am.

15 Q. Okay. But you saw him reaching with his hands to
16 his body and then putting it --

17 A. Yes, ma'am.

18 Q. Okay. So after you see this, what do you do?

19 A. I drew my sidearm and I placed it in the direction
20 of Mr. Penton and I said, Let me see your hands, let me see
21 your hands, at which time he proceeded to pull something
22 else out and place it between the center console. That's
23 when my partner was able to get control of Mr. Penton and
24 place him in restraints.

25 Q. While this is going on, is the defendant saying

1 anything?

2 A. He was yelling the whole time we were talking to
3 him.

4 Q. Okay.

5 A. Or trying to restrain him.

6 Q. What was he saying? I know he's yelling but --

7 A. That we were the man and we were going to rob him,
8 supposibly (sic).

9 Q. Okay. What about the driver? What's his demeanor
10 like?

11 A. The driver was very calm. He followed
12 instructions. He did not pose a threat to me at any point.

13 Q. Okay. No threats were made?

14 A. No, ma'am.

15 Q. Very compliant?

16 A. Yes.

17 Q. Okay. Why is it that you also pulled your duty
18 weapon when you saw the defendant --

19 A. Because I didn't know what he was doing at the
20 time.

21 Q. Where on his body or where at his body did you
22 point your firearm?

23 A. Either in the neck or the -- neck or the head.

24 Q. Okay. Why -- I mean, how were you --

25 A. My partner -- a car has front windows. As a law

1 enforcement officer, you're accountable for anything you do.
2 You're accountable for your bullets. If I was to have to do
3 something, I would have to be accountable for the bullet
4 coming out of my gun. My partner was positioned in the
5 passenger side window, so I knew if I had to take action, I
6 needed to be accountable for the bullet that I was going to
7 have to, you know, put down range.

8 Q. Okay. So, how were you positioned in order to, I
9 guess, follow that protocol?

10 A. I had the driver of the vehicle forced back with my
11 left hand, I had my pistol through the window towards the --
12 Mr. Penton's left side.

13 Q. Okay. What happens after that?

14 A. My partner, Deputy Santos, is able to take control
15 of Mr. Penton, placed him in restraints, I took the driver
16 and place him in restraints, Deputy Santos brought Penton
17 back to the marked patrol car, I pat-searched the driver and
18 placed him outside between my marked patrol vehicle and the
19 vehicle they were operating.

20 Q. So he's -- this Edward Davis, he's standing?

21 A. Yes, ma'am, he is.

22 Q. In between the two cars?

23 A. Yes, ma'am.

24 Q. So he wasn't put in the patrol car?

25 A. No, ma'am.

1 Q. And why is it that you put him also in handcuffs?

2 A. For officer safety.

3 Q. Okay. When you patted him down, did you find any
4 drugs or any contraband on Edward Davis?

5 A. No, ma'am.

6 Q. Okay. And did you assist in searching the car at
7 all?

8 A. No, ma'am, I did not.

9 Q. Okay. And let me go back. Did you talk to Edward
10 Davis at all?

11 A. Yes, ma'am, I did.

12 Q. Okay. When you're talking to him, I mean, is it
13 typical that you try to get consent from someone to search?

14 A. Yes, ma'am, it is.

15 Q. Okay. Why did you -- or did you ask for consent to
16 search in this case?

17 A. The reason for -- because they threw -- or
18 Mr. Penton threw something into the center console between
19 the center console and the front seat.

20 Q. Okay.

21 A. Making a furtive movement, trying to hide
22 something, which later we discovered was methamphetamines.

23 Q. Okay. So, did you ask that of the driver, Edward
24 Davis, for consent?

25 A. The driver, yes.

1 Q. Okay. Why did you ask Edward Davis?

2 A. Because operating -- owner/operator of the vehicle
3 that we stopped.

4 Q. Okay. And did you get consent to search the car?

5 A. I did, ma'am.

6 Q. Okay. Once the car is searched, do you find
7 anything?

8 A. Deputy Santos searched the car.

9 MR. AYERS: Your Honor, I'm going to have to
10 object. He said he didn't search the car.

11 THE COURT: Sustained. The answer was a
12 yes-or-no response, please.

13 A. No, ma'am.

14 Q. (BY MS. STABE) Where are you standing whenever --

15 A. I'm standing outside my marked patrol vehicle,
16 placed between my marked patrol vehicle and the vehicle
17 which we stopped, watching my patrol vehicle, Mr. Davis and
18 my partner.

19 Q. Why are you in that position?

20 A. Officer safety.

21 Q. Okay. So at any time did you go back into the
22 patrol car and sit and hang out in the car?

23 A. No, ma'am.

24 Q. And also during this time, you said Edward Davis is
25 still out --

1 A. Yes, ma'am.

2 Q. -- in between the two cars?

3 A. Yes, ma'am.

4 Q. Do you know what was found in the car?

5 A. 30 grams of methamphetamine.

6 Q. Okay. Did you yourself collect that?

7 A. I collected --

8 Q. That evidence?

9 A. Deputy Santos collected it at the scene and I
10 placed the evidence into the evidence lockers at the
11 Wallisville substation upon filing charges.

12 Q. Let's go back real quick. At any time did you have
13 any conversations with the defendant yourself?

14 A. No, ma'am.

15 Q. Okay. Were you present when he made any statements
16 to Deputy Santos?

17 A. No, ma'am.

18 Q. Okay. So, you know, any statements that the
19 defendant made to Deputy Santos, you were not involved in
20 that interaction?

21 A. Yes, ma'am.

22 Q. Okay.

23 MS. STABE: May I approach the witness, Your
24 Honor?

25 THE COURT: You may.

1 Q. (BY MS. STABE) Did you bring something with you
2 today?

3 A. I did, ma'am.

4 Q. Okay. So, I'm going to mark this as State's
5 Exhibit No. 3. And without going into yet what the contents
6 are, how do you recognize State's Exhibit No. 3?

7 A. This property tag has my name and my ID number on
8 it from the report dated on the day that we arrested Forest
9 Penton.

10 Q. Okay. And is there anything else, any other
11 identifying marks on State's Exhibit No. 3 that you
12 recognize?

13 A. My first initial is on all the seals, which is
14 policy for us to do when we're submitting evidence to the
15 laboratory.

16 Q. Okay. And so, what then would be State's Exhibit
17 No. 3?

18 A. It would be 30 grams of methamphetamine.

19 Q. Okay.

20 A. Crystal-like substance.

21 Q. Okay. So, but I mean, you didn't test this
22 yourself, right? A chemist tested it?

23 A. We field-tested it on the scene, which tested for
24 the presence of a methamphetamine, and then we submit it to
25 the Harris County laboratory for further testing.

1 Q. Okay. So you're not a scientist. You can't
2 testify to what actually the substance is?

3 A. No, ma'am.

4 Q. But did you get a look at the substance?

5 A. I did.

6 Q. Did it appear to be methamphetamine, based on your
7 training and experience?

8 A. It does, ma'am.

9 Q. Okay. Can we open State's Exhibit 3?

10 A. You can open it.

11 Q. Okay. So we're looking at the contents of State's
12 Exhibit No. 3. Do you recognize those contents?

13 A. Yes, ma'am.

14 Q. Okay. Is this the same evidence that you and
15 Deputy Santos collected on the scene and that you tagged
16 into the property room?

17 A. It is, ma'am.

18 Q. And from the time that you tagged it into the
19 property room -- sorry. From the time you collected it to
20 the time you tagged it in the property room, was it tampered
21 with in any way?

22 A. No, ma'am.

23 Q. And then did you actually --

24 A. It was collected and --

25 Q. Okay. Whenever you picked this up from the

1 property room, you were the person that brought it here to
2 court today?

3 A. Yes, ma'am.

4 Q. And had it been tampered with or has it been
5 tampered with in any way from the time you picked it up till
6 you brought it to court?

7 A. It hasn't been tampered with. It has been tested.

8 Q. Okay.

9 A. As you can see by the medical examiner's label and
10 the initials.

11 Q. Okay.

12 THE COURT: Could you approach for just a
13 moment, please?

14 (At the bench, on the record.)

15 THE COURT: I'm probably just not hearing well
16 but are you sometimes calling Santos Sanchez?

17 MS. STABE: I didn't think that I did.

18 THE COURT: Okay. The court reporter doesn't
19 think so. I just heard it wrong.

20 (End of discussion at the bench.)

21 Q. (BY MS. STABE) And would you mind reading for the
22 jury -- on the bag that's contained in State's Exhibit No.
23 3, are there some identifying numbers on that bag?

24 A. Yes, ma'am, there's a Harris County case number.

25 Q. Okay. What is that?

1 A. It's HC1350706.

2 Q. Is that also present on the tag that you put on the
3 bag?

4 A. Yes, ma'am.

5 Q. Okay. And so, what is the case number that's on
6 that bag?

7 A. 1350706.

8 Q. Is there any other number or laboratory case number
9 on the bag?

10 A. There's a Harris County medical examiner's
11 laboratory number.

12 Q. What is that?

13 A. IFS13-03995.

14 Q. Do you see that number also present on the evidence
15 here, State's Exhibit No. 3?

16 A. Yes, ma'am, it's the Harris County forensic lab
17 number, IFS13-03995.

18 Q. Okay. And so, that's present on both the actual
19 evidence --

20 A. Yes, ma'am.

21 Q. -- and on the bag that they were located in?

22 A. Yes, ma'am.

23 Q. Okay. Why is that number important?

24 A. Our Harris County case number is the same case
25 number that we submit our laboratory evidence to. And on

1 theirs, it's the number that they use to do a substance test
2 to give you a --

3 Q. To give the result?

4 A. Yes, ma'am.

5 Q. Okay. So those are both unique numbers that
6 identify both the case and then the unique lab number that
7 links the substance with this case?

8 A. Yes, ma'am.

9 Q. Okay. So after this evidence was collected and
10 tagged, did you have any other role that you played in this
11 case or investigation?

12 A. No, ma'am.

13 MS. STABE: I'll pass the witness, Your Honor.

14 MR. AYERS: A few questions, Judge.

15 **CROSS-EXAMINATION**

16 Q. (BY MR. AYERS) It's Deputy O'Brien; is that
17 correct?

18 A. Yes, sir.

19 Q. Deputy O'Brien, referring back to April 16th, 2013,
20 I think you had testified on direct that you guys, you and
21 Deputy Santos, right?

22 A. Yes, sir.

23 Q. You guys have been partners for a long time. Four
24 years?

25 A. Yes, sir.

1 Q. You work together every day?

2 A. Yes, sir.

3 Q. That you guys were in uniform in a marked unit
4 sitting in a certain location, right?

5 A. Yes.

6 Q. You received a tip to be on the lookout for a
7 certain car, right?

8 A. Yes, sir.

9 Q. And the description, license plate number even?

10 A. Yes, sir.

11 Q. Right? And that car, luck of the draw, just drives
12 right in front of you, right?

13 A. It wasn't the luck of the draw. The FBI was
14 probably watching it.

15 Q. All right. But they had tipped you off to stop
16 this car, right?

17 A. Yes.

18 Q. But they didn't have any probable cause. They said
19 you have to come up with your own, right?

20 A. Yes.

21 Q. So as you testified, maybe you follow them, you
22 wait for a traffic stop, you wait for them to commit a
23 traffic violation, you pull them over, that's your probable
24 cause to stop them, right?

25 A. Right.

1 Q. In this case you didn't actually have to wait very
2 long, right?

3 A. That's right.

4 Q. Because you're saying that they ran a red light
5 right in front of you?

6 A. Yes.

7 Q. So, pretty much all but immediate, from the time
8 you saw them, you were able to develop your PC and stop them
9 for running a red light?

10 A. Yes, sir.

11 Q. And certainly you were dealing with the driver of
12 the car, correct?

13 A. Yes, sir.

14 Q. And he was never issued any citations or anything
15 like that, correct?

16 A. No, sir.

17 Q. Never arrested?

18 A. No, sir.

19 Q. Never charged with anything?

20 A. No, sir.

21 Q. Was released at the scene with the car?

22 A. Yes, sir.

23 Q. And you certainly know you guys have the ability at
24 the scene to determine who owns the car, right?

25 A. Yes, sir.

1 Q. That was not Forest Penton's car. It was the
2 driver's car, correct?

3 A. Yes.

4 Q. He owned the car. All right. Now, oh, by the way,
5 on the traffic stop in your cars you have video cameras. Do
6 you have any video of them running the red light and the
7 traffic stop and all that?

8 A. Our video camera doesn't work in that car, no, sir.

9 Q. Hasn't worked for four years?

10 A. Yes, sir.

11 Q. So you never have any video of anything you do in
12 your job?

13 A. No, sir.

14 Q. Okay. Now, oh, and before you testified today, I
15 assume you had an opportunity to talk to Deputy Santos?

16 A. We talk every day. We're partners.

17 Q. Of course. And y'all talk about testifying in this
18 case and what happened, right?

19 A. Yes.

20 Q. And certainly you and Deputy Santos together have
21 an opportunity to sit down with the prosecutor before you
22 testified, correct?

23 A. We did.

24 Q. And go over the offense report, right?

25 A. We did.

1 Q. And I think she even showed you -- brought you up a
2 copy, correct?

3 A. Yes, sir.

4 Q. Now this report that you have in front of you, did
5 you write it or did Deputy Santos write it?

6 A. Deputy Santos wrote it.

7 Q. He wrote it. Did you write any supplement to it?

8 A. I think I did a supplement to the --

9 Q. Sorry?

10 A. I think I did a supplement to the evidence being
11 placed into a evidence locker.

12 Q. All right. Do you have a copy of that in front of
13 you?

14 A. I don't.

15 Q. Does the DA have a copy of the supplement that you
16 wrote?

17 A. I don't know, sir.

18 MR. AYERS: Your Honor, I'd ask to have a copy
19 of his report that he wrote for cross-examination.

20 THE COURT: If it exists.

21 MS. STABE: It's just the first page of the --

22 THE COURT: It's just the first page what?

23 MS. STABE: It's just the --

24 (Ms. Stabe and Mr. Ayers whispering.)

25 THE COURT: Are you talking about a submission

1 sheet?

2 MS. STABE: Yeah, it's just the first --

3 THE WITNESS: And if you --

4 MR. AYERS: Oh, let me clear that up then.

5 May I approach the witness, Judge?

6 THE COURT: You may.

7 Q. (BY MR. AYERS) So when you say you wrote an
8 offense report, all you're talking about is page 1 and 2?

9 A. Yes, sir.

10 Q. And there's -- this is the report you wrote after
11 the fact, correct?

12 A. Yes, sir.

13 Q. And then the rest of it, page 1 through 3 attached,
14 that's the part that Deputy Santos wrote?

15 A. It is.

16 Q. All right. And you've had an opportunity to read
17 both of those before you testified, right?

18 A. I did.

19 Q. All right. And when you write an offense report,
20 y'all are trained, of course, it's important that you put
21 all the important details in there, right?

22 A. It is.

23 Q. About what happened at the scene, correct?

24 A. It is.

25 Q. So that when you're called to testify a year later,

1 you can remember what happened, right?

2 A. Yes.

3 Q. Because you've done a lot of cases, you and Deputy
4 Santos, since then, right?

5 A. Right.

6 Q. All right. Now, the part you wrote, it's just
7 basically addresses and dates that you placed something in
8 an evidence locker, there's really nothing in there, right?

9 A. Right.

10 Q. Certainly nowhere in the report you wrote do you
11 mention anything about seeing Mr. Penton do anything,
12 correct?

13 A. That's right.

14 Q. So this whole thing you just told the jury about
15 the: I saw him through the window hiding this and all this
16 stuff, that's nowhere in this offense report.

17 A. It's nowhere in that offense report.

18 Q. You didn't write anything about it?

19 A. No, sir.

20 Q. And Deputy Santos, in his reports that you've read
21 and talked to him about, mentions nothing about that?

22 MS. STABE: Objection, Your Honor, to improper
23 impeachment.

24 THE COURT: Sustained.

25 Q. (BY MR. AYERS) Well, let me ask you, have you read

1 Deputy Santos' report in preparation to testify today?

2 A. I have read his report.

3 Q. And you and he and the prosecutor sat down and you
4 went through this report, didn't you?

5 A. We did.

6 Q. All of it?

7 A. We did.

8 Q. Not just the first two pages you wrote?

9 A. True.

10 Q. So you're familiar with what's in there?

11 A. Yes.

12 Q. And you used that information in the report,
13 including what Deputy Santos wrote, to refresh your memory,
14 correct?

15 A. Yes.

16 Q. All right. Now, since you used it to refresh your
17 memory, was there anything you refreshed your memory of,
18 anything, anywhere in all those pages, about you seeing
19 Forest Penton hide anything?

20 A. No. The only thing --

21 *MS. STABE:* Your Honor, I object, still
22 improper impeachment.

23 *THE COURT:* I'm sorry. Just a moment.

24 Anything in those pages what?

25 *MR. AYERS:* Is there anything in those pages

1 about Deputy O'Brien seeing Forest Penton hiding anything or
2 trying to conceal anything.

3 MS. STABE: And I'm objecting --

4 THE COURT: The objection's sustained.

5 Q. (BY MR. AYERS) So your testimony to the jury,
6 though, is that you're standing there with your gun -- you
7 draw your gun when all this starts?

8 A. I did.

9 Q. And that you and Deputy Santos both have guns
10 pointed at Forest Penton?

11 A. We do.

12 Q. And that even though you're yelling at him,
13 pointing guns at him, telling him not to do stuff, you're
14 saying you saw him twice put something in the --

15 A. This was prior to pulling my gun out I saw him do
16 that.

17 Q. All right.

18 A. If you're making a furtive movement --

19 Q. Uh-huh.

20 A. -- that's a threat towards me.

21 Q. All right.

22 A. I'm a police officer.

23 Q. I understand you're a police officer.

24 A. Okay. So --

25 Q. Hold on. We're going to do this this way.

1 A. Okay. Go ahead.

2 Q. I'm going to ask questions and you're going to
3 answer them and if you want, the prosecutor can ask you more
4 questions. How about that?

5 A. That would be great.

6 Q. Tell you what. How about this? Your testimony on
7 direct when the prosecutor was asking you questions was that
8 you at some point pulled your weapon and pointed it at
9 Mr. Penton, correct?

10 A. I did.

11 Q. Now are you saying that was before or after you saw
12 him putting his hand by the seat?

13 A. After.

14 Q. After. Now did you also testify that before that
15 you saw him again put his hand in his pocket and pull
16 something out?

17 A. He did.

18 Q. Twice, right?

19 A. Twice.

20 Q. The first time, then you pull your gun and you're
21 saying the second time was after you pulled your gun, right?

22 A. Yes.

23 Q. So you're saying that while you had your gun on
24 him, he again goes into his pocket and pulls something out.
25 That's your testimony?

1 A. He does.

2 Q. And at the same time that that's happening, Deputy
3 Santos, on the other side of the car, also has his gun on
4 the defendant, Mr. Penton; is that correct?

5 A. Yes.

6 Q. Okay. And you're saying that you saw this first
7 object -- you didn't know what it was or you saw what it
8 was?

9 A. I did not know what it was.

10 Q. All right. The second object, did you see what
11 that was?

12 A. No, sir.

13 Q. So in neither case did you see, like, a baggie or
14 plastic baggie. You thought it might be a weapon, right?

15 A. Yes, sir.

16 Q. Which is why you drew your gun because you
17 perceived a threat, right?

18 A. Yes, sir.

19 Q. Certainly a plastic baggie wouldn't be a threat,
20 right?

21 A. I don't know because I didn't know what the object
22 was.

23 Q. I understand. My question was would a plastic
24 baggie be a threat to you? Would somebody --

25 A. I didn't know what the object was.

1 Q. I'll stipulate that you've now said twice you
2 didn't know what the object was. I'm asking you -- so
3 you're telling me --

4 A. A plastic bag would not be a threat.

5 Q. Okay. That's my question. If you saw a plastic
6 bag --

7 A. If I saw a plastic bag.

8 Q. She has to write down everything we say, so could
9 you wait until I ask a question before you blurt out an
10 answer? Would that be okay?

11 A. Sure.

12 Q. Okay. Let's make her job easier. So, if you saw a
13 plastic bag, you wouldn't have pulled a gun. That wouldn't
14 have been a threat, right?

15 A. If I saw a plastic bag.

16 Q. So the answer's yes.

17 A. Yes.

18 Q. So, whatever it was you perceived when you pulled
19 the gun was you thought there was a threat?

20 A. Yes.

21 Q. Now at some point later, you were given a plastic
22 bag, one or two?

23 A. I think there's two in the envelope.

24 Q. So there's two things in the envelope. Do you
25 remember being given two things?

1 A. Yes, sir.

2 Q. All right. And that was given to you by Deputy
3 Santos?

4 A. Yes, sir.

5 Q. And you're saying you didn't search the car; he
6 did.

7 A. Yes, sir.

8 Q. So whatever he found in the car, he gave you?

9 A. Yes, sir.

10 Q. And you tagged it as evidence?

11 A. Yes, sir.

12 Q. And that's what you've identified in the envelope,
13 correct?

14 A. Yes, sir.

15 Q. Now, when you make a stop like this, you got a tip
16 and you guys pull this person over and it's getting on dusk.
17 It's rainy, right?

18 A. Yes, sir.

19 Q. And I guess the two of you are working as a team
20 and you're trying to watch out for each other, right?

21 A. Yes, sir.

22 Q. So, when you walk up to the driver's side, if
23 Santos is going up in the passenger side, I mean, at that
24 point did you know there were two people in the car?

25 A. Yes, sir.

1 Q. All right. So, was that a decision y'all make in a
2 situation like that, one goes to one side, one goes to the
3 other to kind of protect each other?

4 A. Well, if I'm driving the car, I go to the driver's
5 side; passenger goes to passenger side.

6 Q. All right. And you were driving the patrol car?

7 A. I was.

8 Q. So you went to the driver's side?

9 A. I did.

10 Q. So your job was to focus on the driver, right?

11 A. Yes, sir.

12 Q. And Santos -- you were relying on your partner of
13 four years -- his job was to focus on the passenger, right?

14 A. Yes, sir.

15 Q. So he's supposed to take care of that threat;
16 you're supposed to take care of any threat from the driver,
17 right?

18 A. Right.

19 Q. Now, so, when you walked up to the car, you're
20 saying the windows were already down?

21 A. Yes, sir.

22 Q. Did the driver get out of the car or did he stay in
23 the car?

24 A. Stayed in the car.

25 Q. All right. And so, when you walked up, you start

1 interacting with the driver?

2 A. I did.

3 Q. All right. And your focus is on the driver?

4 A. Yes.

5 Q. But at some point you hear some -- what? Do you
6 hear something? What calls your attention to what's going
7 on next to --

8 A. I saw Mr. Penton place something between the seat
9 and the center console.

10 Q. All right. So, you're standing there focusing on
11 the driver, yet you see the passenger doing something or did
12 you hear --

13 MS. STABE: Objection, Your Honor, to asked
14 and answered.

15 THE COURT: Sustained.

16 Q. (BY MR. AYERS) Did you -- you never heard Deputy
17 Santos yelling, Show me your hands, show me your hands?

18 A. No, I saw Mr. Penton place something between the
19 center console --

20 Q. Did you ever hear Deputy Santos --

21 A. I can't recall.

22 Q. You don't recall Deputy Santos saying, Show me your
23 hands, show me your hands?

24 MS. STABE: Objection to the hearsay.

25 THE COURT: He's asked and answered this

1 anyway.

2 Q. (BY MR. AYERS) Do you recall Deputy Santos --

3 A. I do not recall.

4 Q. All right. Did you ever say, Show me your hands,
5 show me your hands?

6 A. Yes, I did.

7 Q. All right. So people are pulling guns, people are
8 yelling, there's a lot going on for a few seconds there
9 until it's under control, right?

10 A. Yes, sir.

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

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

13 THE COURT: You may stand down. Any objection
14 to this witness being excused?

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

17 MR. AYERS: No objection, Your Honor.

18 THE COURT: You may be excused.

19 Approach, please.

20 (At the bench, on the record.)

21 THE COURT: Tell me your chemist status.

22 MS. STABE: They're here.

23 THE COURT: They are here.

24 (End of discussion at the bench.)

25 THE COURT: We're going to take a short break,

1 ladies and gentlemen. Please go back in the jury room for a
2 couple of minutes.

3 (Jury not present.)

4 THE COURT: Y'all may be seated in the
5 courtroom.

6 (Recess.)

7 (Jury present.)

8 THE COURT: Please be seated. Call your next,
9 please.

10 MS. STABE: State calls Kyle Vircks.

11 THE COURT: Ladies and gentlemen, this witness
12 has been previously sworn in.

13 Proceed, please.

14 MS. STABE: Thank you, Your Honor.

15 **KYLE VIRCKS,**

16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 Q. (BY MS. STABE) Please introduce yourself to the
19 jury.

20 A. My name is Kyle Vircks. I'm a chemist with the
21 Harris County Institute of Forensic Sciences.

22 Q. How long have you been with the Harris County
23 Institute of Forensic Sciences?

24 A. I started my position there December of 2012.

25 Q. What department are you in there?