

Trial on Merits
September 30, 2014

1 (Jury enters courtroom)

2 THE COURT: You may be seated, guys.
3 Y'all can come in and sit down. We stand -- or they
4 stand until you sit down.

5 Now you can be seated.

6 Welcome back, guys. I hope y'all had a
7 great evening and good morning. So let's jump right
8 into this and see how far we can push it.

9 So, State, call your next witness.

10 MS. LITTLE: Your Honor, the State calls
11 Deputy Ogletree.

12 THE COURT: Okay.

13 Speak clearly into the microphone.

14 State, you may begin.

15 MS. LITTLE: Thank you, Your Honor.

16 **DEPUTY JOHNNY OGLETREE,**

17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 BY MS. LITTLE:

20 Q. Deputy Ogletree, could you please introduce
21 yourself to the jury?

22 A. Yes, ma'am. I'm Deputy Ogletree with the
23 Harris County Sheriff's Office. I'm a District 5 patrol
24 deputy on night shift.

25 Q. And just pull that microphone down a little bit

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1 closer to you. You speak a little bit quiet.

2 What are your duties as a -- do you work
3 for the Harris County Sheriff's Office?

4 A. Yes, ma'am.

5 Q. And what are your duties as a deputy?

6 A. Main duty of a deputy is to patrol the area
7 that I'm assigned to on my eight-hour shift, from
8 11:00 P to 7:00 A, answer any dispatch calls.

9 Q. And what is a dispatch call?

10 A. It's when someone dials 911 for our help for
11 any incident -- maybe an accident, an assault, a
12 disturbance -- and dispatch will radio us in to go
13 answer the call for service.

14 Q. Do you have any specialized training pertaining
15 to intoxicated drivers?

16 A. Yes, ma'am.

17 Q. What kind of training do you have?

18 A. Training on field sobriety tests: Checking for
19 HGN and the walk-and-turn. We're -- we have to learn
20 that.

21 Q. Okay. Are you certified?

22 A. Yes, ma'am.

23 Q. And as part of your certification, do you go
24 through classroom and field training?

25 A. Yes, ma'am.

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1 Q. What does the classroom training entail?

2 A. It entails basically going through each step:
3 Making contact with an intoxicated person, checking
4 their -- when you do field sobriety, you check their
5 eyes for horizontal gaze and nystagmus. You're checking
6 the eyes, if they're dilated. You also do the one-leg
7 stand or the walk-and-turn, check their balance, their
8 speech.

9 Q. And you practice this on actual intoxicated
10 individuals --

11 A. Yes, ma'am.

12 Q. -- correct?

13 A. Yes, ma'am. We're required to.

14 Q. And what about the field training? What does
15 that entail?

16 A. Field training, if you -- for instance, you're
17 riding with a field training officer or a DWI special
18 unit. You ride along with them and you do a lot of DWI
19 calls and they walk you through all of the procedures.

20 Q. Has all of this training improved your ability
21 to identify intoxicated drivers?

22 A. Yes, ma'am.

23 Q. What are some classic signs of intoxication
24 that you look for as a deputy?

25 A. Well, first thing is going to be the odor of

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1 alcohol coming from the person's breath, or a person of
2 the vehicle. You check for their eyes -- glassy eyes;
3 bloodshot, red eyes -- their speech impediment is
4 slurred, can they stand up on their own, hold their
5 balance, things like that.

6 Q. And when you come across someone who is
7 displaying some of these signs of intoxication, what are
8 you trained to do?

9 A. You're trained to administer the field sobriety
10 tests on them.

11 Q. And why are you doing that?

12 A. To check to make sure that -- whether they're
13 intoxicated or not.

14 Q. To make sure they're safe to drive?

15 A. Well, that, too. Safe to drive for themselves
16 and others.

17 Q. I'd like to direct your attention to
18 December 29th, 2012. Were you on duty that day?

19 A. Yes, ma'am.

20 Q. What area were you patrolling?

21 A. The Northwest 1 area of District 5. That's
22 near the Beltway and 290 Freeway.

23 Q. And what shift were you working?

24 A. Night shift, 11:00 P to 7:00 A.

25 Q. Okay. While you were on duty, did you come

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1 into contact with somebody by the name of Nomathemba
2 Sitawisha?

3 A. Yes, I did.

4 Q. Do you see her in the courtroom today?

5 A. Yes, ma'am.

6 Q. Can you please identify her by an article of
7 clothing that she's wearing?

8 A. Blue shirt, sweater.

9 MS. LITTLE: Your Honor, may the record
10 reflect that the witness has identified the defendant.

11 THE COURT: Let the record reflect the
12 witness identified the defendant.

13 You may continue.

14 Q. (By Ms. Little) How did you first come into
15 contact with the defendant on December 29th of 2012?

16 A. Well, I was dispatched out to a accident call.

17 Q. Okay.

18 A. Near the Beltway and 290 Freeway.

19 Q. And that means you received a 911 --

20 A. 911 call from a witness who witnessed the
21 accident.

22 Q. Do you hear the 911 calls?

23 A. Yes, ma'am.

24 Q. You hear the 911 calls, or you hear the
25 dispatch?

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1 A. Well, I hear the dispatch. I don't hear the
2 calls.

3 Q. And what did the dispatch in this particular
4 case say?

5 A. She just said, Unknown major, minor accident;
6 possibly intoxicated person near the Beltway and 290 and
7 possibly ran over a light pole.

8 Q. When you were on your way to the scene, did you
9 happen to drive past the accident scene?

10 A. Yes, ma'am. I went directly under the overpass
11 of 290 and the Beltway, where I observed the direction
12 pole knocked on the ground, also glass in the middle of
13 the roadway.

14 Q. I'm showing you what's been marked as State's
15 Exhibit 4.

16 THE COURT: If you can push the bottom
17 left corner of the screen, Officer.

18 THE WITNESS: Sir?

19 THE COURT: Push the bottom left corner.

20 THE WITNESS: (Complies).

21 Q. (By Ms. Little) I'm showing you what's been
22 marked as State's Exhibit 4, Deputy. Is this the
23 accident scene that you drove through?

24 A. Yes, ma'am.

25 Q. Can you please explain to the jury, using

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1 State's Exhibit 4, what you observed?

2 A. All right. Coming south, and I observed --
3 this is what I drew of the accident.

4 Q. You can actually -- if you use your finger, you
5 can draw on that screen to show them where you were
6 coming from.

7 A. Okay. I'm coming this direction, coming south;
8 and then I turned left, went east on the 290 feeder
9 road, and there was a parking lot right here where the
10 defendant was parked in. But as I was coming through, I
11 observed the direction pole knocked on the ground right
12 here and numerous pieces of glass, looked like from a
13 windshield, all in the middle of the roadway.

14 Q. Have you responded to many accidents as a
15 deputy?

16 A. Countless. Yes, ma'am.

17 Q. And did this look like an accident had just
18 occurred to you?

19 A. Yes, ma'am.

20 Q. When you came up on the defendant's vehicle,
21 what did you observe?

22 A. I observed the vehicle to still be running, the
23 back taillights were on, the front lights were on, I
24 observed the right side front-end back tires both to be
25 flat, the windshield to be smashed in, and front right

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1 damage to the front bumper, which coincided with this
2 accident.

3 Q. And the location that you found the vehicle at,
4 is that in Harris County?

5 A. Yes, ma'am.

6 Q. And was it in a public place?

7 A. Yes, ma'am.

8 Q. How did you get into contact with the
9 defendant?

10 A. After I passed through where the scene
11 happened, the accident, about a hundred feet from that
12 intersection is a parking lot where I observed her
13 vehicle parked, like, a red, two-door vehicle.

14 Pulled in behind her and walked up to the
15 car. Immediately, I smelled an odor of alcohol coming
16 from her person; the glassy, bloodshot eyes; tried to
17 ask her what happened; and she just went 99 to a
18 hundred: Belligerent, uncooperative, cussing at me,
19 yelling. You know, like I did something to her. That's
20 how I initially made contact with her.

21 Q. Okay. I'm showing you what's been marked as
22 State's Exhibit 3.

23 THE COURT: Push the bottom left.

24 THE WITNESS: (Complies).

25 Q. (By Ms. Little) Are these the red, glassy eyes

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1 that you're talking about?

2 A. Yes, ma'am.

3 Q. When you made contact with her, was she in the
4 driver's seat?

5 A. Yes, ma'am.

6 Q. And you said the vehicle was running?

7 A. Yes, ma'am.

8 Q. Did you say anything to her?

9 A. Yes. When I first came up to the window, I
10 said, Ma'am, hello.

11 I identified myself as Deputy Ogletree
12 with the Harris County Sheriff's Office, and I asked her
13 what happened. When I said that, initially, that's when
14 all the cussing and belligerent attitude happened; and
15 it was downhill from there.

16 Q. And she was still in the vehicle --

17 A. Still inside the vehicle.

18 THE COURT: Guys.

19 MS. LITTLE: Yes, Judge.

20 THE COURT: Don't talk over each other.

21 Q. (By Ms. Little) Just make sure I finish what
22 I'm saying, and I'll let you finish what you're saying
23 so we don't talk at the same time.

24 A. Okay. I'm sorry.

25 Q. Did you -- and you asked her to step out of the

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1 vehicle, correct?

2 A. Yes, ma'am.

3 Q. Did she step out of the vehicle?

4 A. Not at first; but after back and forth talking,
5 she finally stepped out of the vehicle. I told her I'm
6 going to administer field sobriety test on her. When
7 she stepped out, she couldn't hold her balance, rocking
8 back and forth, had to lean on the driver's side door of
9 the vehicle to hold her balance.

10 I asked her numerous times, I'm going to
11 administer the field sobriety, explained it to her. She
12 refused, refused, uncooperative. At that time I just
13 handcuffed her and placed her in the back of my patrol
14 car. Then I took the keys out of the ignition and
15 turned the vehicle off.

16 Q. Okay. And you said that she was being
17 belligerent. How would you describe belligerent?

18 A. Just cussing. You know, just, I didn't do
19 anything, F you, get out of my face, you don't know what
20 you're talking about.

21 Didn't want to hear anything I had to say.

22 Q. Did she say anything about the accident that
23 she had been in?

24 A. She claimed that she didn't -- she wasn't in an
25 accident, that she wasn't driving. But it was clear

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1 that she was driving.

2 Q. Okay. And it's clear that she was in an
3 accident?

4 A. Yes, ma'am.

5 THE DEFENDANT: Objection, Your Honor.
6 There's no way to determine that an accident had
7 actually taken place and that was why my vehicle was in
8 that position.

9 THE COURT: I'll let him state his
10 professional opinion.

11 Sustained, and reword.

12 Q. (By Ms. Little) Officer, in your professional
13 opinion, had this vehicle been in an accident?

14 A. Yes, ma'am.

15 Q. Had it been in an accident a hundred yards
16 away, where it hit --

17 THE DEFENDANT: Objection, Your Honor,
18 there's no way to determine where an accident had
19 occurred with my vehicle involved.

20 THE COURT: Sustained. Reword.

21 MS. LITTLE: Your Honor, in his
22 professional opinion, he's worked accidents numerous
23 times. He can state in his opinion whether he believed
24 that vehicle to have been in an accident at that scene.

25 THE COURT: Then link it up.

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1 MS. LITTLE: I believe that's what I was
2 doing, Your Honor.

3 THE COURT: Well, not if you just said
4 that if -- how does he know it was involved in that
5 accident?

6 Q. (By Ms. Little) Deputy, how do you know that
7 that vehicle was involved in that accident?

8 A. Because the damage to the vehicle matched the
9 damage in the intersection. Everything interlinked, in
10 my professional opinion.

11 Q. Okay. And what was it that interlinked?

12 A. Well, for one, the front-end damage on the
13 right -- front right side is where it had a dent that
14 looked like it struck a pole. And then the windshield
15 on the same right side of the windshield was shattered
16 like a pole or metal object just hit the windshield.
17 And the front right and back right tires were flat,
18 coinciding with she hit the curb and drove on the curb
19 to strike the vehicle -- the metal pole.

20 THE DEFENDANT: Objection, Your Honor.
21 The witness cannot say how my car hit anything. In his
22 professional opinion, there's no way that he could say
23 that my car hit anything.

24 THE COURT: Overruled.

25 THE DEFENDANT: And what that was.

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1 THE COURT: Overruled.

2 Q. (By Ms. Little) Did you have anything else to
3 add, Deputy?

4 A. Then after that -- there was another unit on
5 duty on the scene just before I arrived, Jersey Village
6 officer, who spoke with two witnesses that were driving
7 behind the defendant and stated they observed exactly
8 what I said happened with the accident.

9 Q. The parking lot that she was parked in, was her
10 vehicle the only vehicle in that parking lot?

11 A. Besides my patrol car and the Jersey Village
12 deputy and, I believe, one of the witnesses, yeah. She
13 was the only vehicle in the parking lot by herself.

14 Q. Okay. Officer, based on your training and
15 experience, on December 29th, 2012, do you believe that
16 the defendant had lost her mental faculties?

17 A. Would you say it again?

18 Q. In your experience and training, do you believe
19 that on December 29th, 2012, the defendant had lost the
20 normal use of her mental faculties?

21 A. Yes, ma'am.

22 Q. Do you believe that she had lost the normal use
23 of her physical faculties?

24 A. Yes, ma'am.

25 Q. Do you believe that she was intoxicated?

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1 A. Absolutely.

2 MS. LITTLE: Your Honor, State passes this
3 witness.

4 THE COURT: Defense?

5 THE DEFENDANT: Thank you. Yes.

6 **CROSS-EXAMINATION**

7 BY THE DEFENDANT:

8 Q. Officer, had a witness by the name of Natasha
9 Wilson told you that, along with everything else she
10 said, that a --

11 MS. LITTLE: Objection.

12 Q. (By The Defendant) -- woman had sustained --

13 MS. LITTLE: Objection, hearsay.

14 THE COURT: Sustained.

15 Q. (By The Defendant) Were you told by a
16 witness --

17 MS. LITTLE: Objection, hearsay.

18 THE COURT: Sustained.

19 Q. (By The Defendant) Were you ever made aware
20 that a person had had a possible head injury that was
21 involved in this incident?

22 A. No.

23 Q. What type of car were you looking for that
24 night?

25 A. What kind of car was I looking for that night?

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Cross-Examination by the Defendant

1 The two-door, red vehicle.

2 Q. Were you -- how did you know to look for a
3 two-door, red vehicle?

4 A. Because it came through the radio on the way to
5 the call.

6 Q. Who said, first, that it was a two-door, red
7 vehicle?

8 A. The dispatch.

9 Q. And you specifically remember them saying,
10 There's a two-door, red vehicle, and describing the
11 vehicle in that way?

12 A. Yes, ma'am. Over the radio, once we get
13 there -- I mean, on the way there.

14 Q. Officer, the report that you submitted that has
15 your name on it, would you have been the person to write
16 or type that out?

17 A. I did the accident report. I didn't do the
18 narrative.

19 Q. There's an incident report with some statements
20 made by you with lots of blanks filled in with your name
21 attached to it. Would this have been your wording?

22 A. If my name is on it, then, yeah.

23 Q. Yes. So this is yours. Can you please tell us
24 why you referred to the vehicle as a --

25 MS. LITTLE: Objection. She's testifying

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1 from something not in evidence, Your Honor.

2 THE COURT: Sustained.

3 Q. (By The Defendant) How did you describe the
4 vehicle that you listed here on your -- your incident
5 report?

6 A. I described it as a two-door, red Toyota
7 Celica.

8 Q. Okay. When you were on the scene with my car,
9 what was the car that I was sitting in?

10 A. The two-door, red Toyota Celica.

11 Q. Was it not -- are you absolutely positive that
12 I was sitting in a two-door, red Toyota Celica and that
13 was the model?

14 A. Yes.

15 Q. 100 percent certainty?

16 A. Yes.

17 Q. Okay. Now, would it surprise you if I were to
18 say that my vehicle is in fact a two-door, red Toyota
19 Solara?

20 A. Would that do what?

21 Q. Would that surprise you if I were to tell you
22 the vehicle that I own that I was sitting in that
23 evening, the only vehicle that I own is a two-door, red
24 Toyota Solara?

25 A. Okay. Yes, that would surprise me.

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Cross-Examination by the Defendant

1 Q. That would surprise you?

2 A. Uh-huh.

3 Q. The person you arrested, were they sitting in a
4 Toyota Celica?

5 A. Well, I didn't arrest anybody that night.

6 Q. The person you were looking for, were they
7 suspected to be out in a two-door Toyota Celica?

8 A. Yes.

9 Q. Now, how did you make the connection that the
10 incident that the person in this two-door Toyota Celica
11 was involved in was also the person that was sitting in
12 a two-door Toyota Solara? How did you make that
13 connection?

14 A. I'm not understanding that question.

15 Q. You were told by dispatch that you were looking
16 for a two-door Toyota Celica; is that correct?

17 A. Correct.

18 Q. Okay. That had been involved in a traffic
19 incident, hitting a small pole; is that correct?

20 A. Correct.

21 Q. And --

22 A. And when I arrived on scene, the only vehicle
23 in the parking lot was a two-door, red Toyota vehicle.

24 Q. So, Officer, was that good enough?

25 A. Yes, it --

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Cross-Examination by the Defendant

1 Q. Whatever you found was good enough?

2 A. Yes, it was, especially when I saw the damage
3 on the vehicle that matched the accident that I just
4 drove through a few seconds before I arrived on scene.

5 Q. Officer, what happened to the person driving
6 the two-door Toyota Celica? Did you ever find the
7 person driving the two-door Toyota Celica whom dispatch
8 told you to go look for?

9 A. Yes, that was you.

10 Q. Are you saying here to everyone that I was at
11 some point driving a two-door Toyota Celica?

12 A. Yes.

13 Q. And I was also sitting in and had been
14 previously driving a two-door Toyota Solara, which was
15 the vehicle that was towed?

16 A. Say the question again.

17 Q. Are you also saying that not only am I the
18 individual that was driving the two-door Toyota Celica
19 that was seen hitting this small pole at that
20 intersection, which dispatch told you to look for, and I
21 was also the individual that was sitting in the two-door
22 Toyota Solara, which was towed that evening?

23 A. Yes.

24 Q. I was in two separate cars that evening,
25 Officer?

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Cross-Examination by the Defendant

1 A. You was in one car that evening.

2 Q. Which car was I in?

3 A. The two-door Toyota Celica.

4 Q. Was I ever in a two-door Toyota Solara at any
5 time this evening?

6 A. No.

7 Q. What -- do you have any knowledge of the model
8 of car that was towed from the scene?

9 A. The Toyota --

10 Q. Excuse me. I'm sorry. You did say there was
11 only one car in the lot; is that correct?

12 A. Correct.

13 Q. Are you aware of the model of the car that was
14 towed from the scene?

15 A. A Toyota Celica.

16 Q. A Toyota Celica was towed from the scene?

17 A. The vehicle you were in was the two-door, red
18 Toyota Celica with the damage on it matching the
19 accident I just drove through.

20 Q. Okay. What was the license plate of this
21 Toyota Celica that you --

22 A. I do not know the license plate.

23 Q. And no Toyota Solara exists, as far as in
24 terms --

25 A. Not --

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Cross-Examination by the Defendant

1 Q. -- of this trial?

2 A. Not to my knowledge, it doesn't.

3 Q. It does not?

4 A. Huh-uh.

5 Q. So, Officer, would it surprise you if I -- if
6 documentation shows you that the car that was towed from
7 the scene was a two-door, red Toyota Solara? Would that
8 surprise you, Officer?

9 A. Maybe.

10 Q. Is there any way that that could be the case?
11 Would the tow company have false documents if it says
12 that the vehicle towed from the scene on December 29th
13 was in fact a Toyota Solara and not a Celica? Would it
14 surprise -- would that surprise you? Would that be a
15 false document from the tow company?

16 MS. LITTLE: Objection, Your Honor.
17 Compound question, confusing.

18 Q. (By Ms. Sitawisha) Officer, if the tow
19 company's records show that the vehicle towed on that
20 evening was, in fact, a Toyota Solara and that is the
21 only vehicle towed from the scene, would that be
22 surprising to you?

23 A. Yes.

24 Q. Would you, in fact, say that their report, the
25 tow company's report, would have to be false?

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Cross-Examination by the Defendant

1 THE COURT: Why don't you show it to him,
2 to let him refresh his memory?

3 THE DEFENDANT: I sure will.

4 Well, I would like to actually present
5 pictures of my vehicle and the vehicle that dispatch
6 actually sent him out to look for, the model, the
7 difference in models, I wanted to present that.

8 But I'd like to call this witness later --

9 MS. LITTLE: Your Honor, may we approach,
10 please?

11 THE COURT: Please.

12 (At the Bench, on the record)

13 MS. LITTLE: You don't recall witnesses --

14 THE COURT: Hold on. Go get Danny.

15 THE BAILIFF: All rise for the jury.

16 (Jury exits courtroom)

17 THE COURT: You are trying to impeach the
18 witness, but you're doing it the wrong way.

19 THE DEFENDANT: Okay.

20 THE COURT: And I can't tell you how to do
21 it.

22 THE DEFENDANT: Right.

23 THE COURT: And if you don't do it the
24 right way, then you can't do it.

25 THE DEFENDANT: Okay.

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1 THE COURT: And so there's -- but I can't
2 give you any legal advice in regards to this issue.
3 Okay? And so for you to be able to show one form or
4 another, you have to produce it and put it in the right
5 way.

6 THE DEFENDANT: Put it in evidence, right,
7 I understand.

8 MS. LITTLE: And, Your Honor, also, I
9 think we need to make this clear that she needs to ask
10 the questions that she's going to ask of these officers
11 right now. Not wait until her case in chief and recall
12 all of these people. That's what cross-examination is
13 for.

14 THE COURT: No, you can't do that.

15 MS. LITTLE: And I think that's what she's
16 planning on doing so we need to make that clear, that
17 she gets her questions out now, she puts all her
18 evidence in with him now, not -- we're not bringing all
19 these officers back for her in case in chief.

20 THE COURT: It doesn't work that way.

21 THE DEFENDANT: Well --

22 THE COURT: And then -- because it changes
23 tremendously on the way you get to ask the question when
24 you put your case in chief on. And I guarantee you
25 what: You're going to be shut down all the time by

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1 leading, because that's all you do on your sentences --
2 or on your questions. And so -- and that's where it
3 reverts to when you put on your case in chief.

4 But I can't give you legal advice. And
5 all I can say is: If you don't do it the right way --
6 and I know what you're trying to do, but I can't help
7 you.

8 THE DEFENDANT: But what I can do is I can
9 go ahead and put his report that he submitted --

10 THE COURT: No, you can't --

11 THE DEFENDANT: I can't --

12 THE COURT: The police report will never
13 be admitted into evidence. Never. It's all hearsay.

14 THE DEFENDANT: Okay. So is there any way
15 that I can at least call this one witness back?

16 THE COURT: What?

17 MS. LITTLE: For what?

18 THE DEFENDANT: Well, now that you've
19 asked me to show him the document from --

20 THE COURT: He can look at it to refresh
21 his memory.

22 THE DEFENDANT: Right.

23 THE COURT: Okay? And that's all he can
24 do.

25 THE DEFENDANT: Yes.

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1 THE COURT: He can look at it; and you
2 say, Is your memory refreshed. And if it does and his
3 testimony does change, then he has a right to explain.
4 Okay?

5 THE DEFENDANT: Yes.

6 THE COURT: This is not a surprise deal of
7 saying, Oh, look.

8 Okay? You know? Now, the only time that
9 something can come, like that, in is if he totally
10 denies saying, I never wrote that in my own report. And
11 now that would be something different. Okay?

12 THE DEFENDANT: Yes. And then --

13 THE COURT: But if it refreshes his memory
14 and he does remember it that way, then he can explain,
15 Okay. I remember, yes, I guess it was this.

16 THE DEFENDANT: Can --

17 THE COURT: You know --

18 THE DEFENDANT: Can the officer step out
19 while we continue?

20 THE COURT: That -- we're done.

21 THE DEFENDANT: Okay. So that's -- as far
22 as the tow report, I can't produce that, get ahold of
23 that and produce that?

24 THE COURT: Get ahold of what?

25 THE DEFENDANT: The tow -- the actual tow

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1 report.

2 THE COURT: Do you have -- have you
3 already subpoenaed them?

4 THE DEFENDANT: I have not.

5 THE COURT: Well, I'm not going to stop
6 the trial and wait on the trial for any witnesses.

7 THE DEFENDANT: Well --

8 MS. LITTLE: And --

9 THE DEFENDANT: -- just the document --

10 MS. LITTLE: And --

11 THE COURT: The document --

12 THE DEFENDANT: Is that something I can
13 put into evidence --

14 THE COURT: No.

15 THE DEFENDANT: -- just the report?

16 THE COURT: How are you going to prove it
17 up? Who's going to prove it up?

18 THE DEFENDANT: Well, it would've been at
19 the --

20 THE COURT: No.

21 THE DEFENDANT: -- officer's direction
22 for --

23 THE COURT: No, no, no, no, no.

24 THE DEFENDANT: -- it to have been towed.

25 THE COURT: Who did it? Who did it?

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1 THE DEFENDANT: Well, the tow company
2 would have.

3 THE COURT: Then you have to prove it up
4 through them and you have to prove it up through a
5 business records affidavit or through somebody who can
6 testify directly to it. So --

7 THE DEFENDANT: So are you going to put a
8 stop to any more of this line of questioning?

9 THE COURT: I'm going to put a stop --
10 I'll put a stop to -- in regards to what you're doing.
11 Again, to impeach somebody, you have to let them look at
12 the document --

13 THE DEFENDANT: Right.

14 THE COURT: -- to refresh the memory. The
15 officer can sit up here with his police report in hand
16 if he wants, because he can use that because that's his.

17 THE DEFENDANT: Yes.

18 THE COURT: Okay? And he can refresh his
19 memory from that. But if you want to show it to him to
20 refresh his memory, then it will be out and explained.

21 THE DEFENDANT: Okay. So most -- more --
22 most appropriately, wait until the end to --

23 THE COURT: It's not "wait until the end."
24 It's when you are saying, Are you sure, then show it to
25 him and ask him to refresh his memory.

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1 THE DEFENDANT: Okay.

2 THE COURT: And then he can explain if he
3 did it or not.

4 THE DEFENDANT: Yes, Judge.

5 THE COURT: Okay?

6 THE DEFENDANT: Yes.

7 THE COURT: All right.

8 Bring them back in.

9 THE BAILIFF: All rise for the jury.

10 (Jury enters courtroom)

11 THE COURT: You may be seated.

12 You may continue.

13 **CROSS-EXAMINATION (CONTINUED)**

14 BY THE DEFENDANT:

15 Q. Officer, you briefly discussed earlier your
16 training for investigating DWI field incidents; is that
17 correct?

18 A. Correct.

19 Q. How many days was that training?

20 A. How many days was it? The training is every
21 day, really.

22 Q. Formal training to which you were evaluated on,
23 how many days did that last?

24 A. About 90 days, plus.

25 Q. During that 90-day training, were you at any

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1 point in time offered different scenarios as far as how
2 to distinguish between a person that is absolutely
3 intoxicated due to alcohol versus other factors that may
4 contribute to that?

5 A. Yes.

6 Q. Can you discuss with us any other factors or
7 medical conditions that you were taught or told during
8 your evaluation?

9 A. Rephrase the question. I'm confused.

10 Q. Can you discuss with us any medical conditions
11 or physical conditions that you were taught could be a
12 factor in determining someone's physical state?

13 MS. LITTLE: Objection, Your Honor. He's
14 not a doctor. He's a police officer.

15 THE COURT: I understand. But overruled
16 on the part that -- in regards to how he distinguishes
17 between alcohol and something else. I'll let him --

18 A. Well, the way I distinguish that is when I make
19 the first contact and all I smell is alcohol and then
20 everything else is kind of thrown out the door at that
21 time. When I approached you, that's the very first
22 thing I smelled and noticed was alcohol.

23 Q. (By The Defendant) What type of alcohol,
24 Officer?

25 A. I don't know was it vodka or whiskey. All I

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1 know is it was alcohol.

2 Q. Could it have been beer or wine or mouthwash or
3 cough syrup?

4 A. No. It was alcohol.

5 Q. I'll state that again. Could it have been beer
6 or wine or mouthwash or cough syrup?

7 A. Cough syrup doesn't smell like alcohol.

8 Q. So none of the four items that I mentioned, it
9 was definitely not that?

10 MS. LITTLE: Objection, Your Honor, asked
11 and answered.

12 THE COURT: Sustained. Reword it.

13 Q. (By The Defendant) To the best of your
14 knowledge, it was neither beer nor wine nor mouthwash
15 nor cough syrup; is that correct?

16 MS. LITTLE: Objection, Your Honor,
17 compound question. She should ask them one at a time.

18 THE COURT: Sustained.

19 Q. (By The Defendant) Was it beer that you
20 smelled?

21 A. I don't know was it beer or was it wine or was
22 it vodka or was it whiskey. I know it was alcohol.

23 Q. Was there any mouthwash that you smelled?

24 A. No.

25 Q. How do you know that -- how do you know the

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1 distinct difference between Listerine mouthwash with a
2 high alcohol content and some other alcohol that --

3 A. Because Listerine doesn't smell like alcohol,
4 drinking alcohol.

5 Q. Okay. What -- what is the base component of
6 drinking alcohol versus mouthwash, like Listerine?

7 A. I don't know the base component. I don't make
8 neither product, but I know what it smells like.

9 Q. What does mouthwash smell -- what does
10 Listerine mouthwash smell like to you, in your opinion?

11 A. I don't know. They have different flavors. I
12 don't know.

13 Q. How about just --

14 A. It doesn't smell like alcohol. Drinking
15 alcohol, it doesn't.

16 Q. What does -- okay. And you are saying that you
17 smelled alcohol and it could be any number of versions
18 of alcohol that exist in the world; is that true and
19 correct?

20 A. No.

21 Q. Okay.

22 A. Because we're not talking about rubbing
23 alcohol. We're talking about drinking alcohol. Liquor
24 store, bar, we're talking about alcohol that gets you
25 intoxicated.

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1 Q. Okay. So you've drawn the connection that it
2 was any alcohol that is sold on the market as an
3 alcoholic beverage; but you have not a clue what it
4 actually was, what type it was? You're just saying it's
5 an alcohol-based beverage that's sold --

6 A. No, ma'am. I do not know the difference
7 between Budweiser and Bud Light when it comes to --
8 which you're smelling, which one it is. I know that
9 it's alcohol.

10 Q. Do you --

11 A. Drinking alcohol has a distinct smell. You
12 know what it is.

13 Q. Do you know the difference -- well, do you know
14 the difference in smell with Budweiser and, let's say, a
15 bottle of wine?

16 MS. LITTLE: Objection, Your Honor. Asked
17 and answered multiple times.

18 THE COURT: Overruled.

19 A. Say it again.

20 Q. (By The Defendant) Do you know the difference
21 between Budweiser and a bottle of wine --

22 A. It depends.

23 Q. -- in smell?

24 A. It depends.

25 Q. On what?

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1 one shot of vodka or vodka in itself? Look, we've
2 talked about this --

3 THE DEFENDANT: Yes. Okay.

4 THE COURT: -- everybody understands, so
5 let's please move on.

6 THE DEFENDANT: Move on. Okay. Yes.

7 Q. (By The Defendant) Are you ever the actual
8 arresting officer in DWI incidents like these?

9 A. Occasionally.

10 Q. How often are you the actual arresting officer?

11 A. It depends if I'm the primary officer on the
12 call.

13 Q. In the last three years, in any DWI incident
14 that you've been involved in, how many times were you
15 the arresting officer, approximately?

16 A. Maybe 25, 30, maybe.

17 Q. So, Officer, this night, you were made aware
18 that there was a small pole damaged -- you drew that
19 photograph that we looked at earlier; is that correct?

20 A. Correct.

21 Q. And --

22 THE DEFENDANT: I'd like to place the
23 photograph up again, Your Honor.

24 THE COURT: Put the one that's in
25 evidence.

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1 Q. (By The Defendant) Officer, please describe the
2 conditions on the road that night and the weather.

3 A. Well, it was nighttime. The weather was rather
4 cool. I believe I had a jacket on. It was not rainy,
5 it was not snowy, the roads were not slick. They were
6 dry. That's what I remember.

7 Q. Would it at all surprise you if any other
8 officer involved in -- I'll start again.

9 THE DEFENDANT: I'll start again, Judge.

10 Q. (By The Defendant) Is it possible that on
11 December 29th, 2012, the weather was partly cloudy?

12 A. No, I don't remember the weather being cloudy
13 or foggy.

14 Q. Is there any possibility that the road --

15 THE COURT: Okay. First of all, what does
16 partly cloudy have to do with the weather condition
17 itself?

18 THE DEFENDANT: I was just going
19 forward --

20 THE COURT: I'm confused. He just -- he
21 just described what the ground and the thing -- what
22 does partly cloudy have to do with it?

23 THE DEFENDANT: Well, it's really one of
24 the first weather conditions. I was going into the
25 last.

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Cross-Examination by the Defendant

1 THE COURT: Okay. All right. Well,
2 continue.

3 Q. (By The Defendant) Is there any possibility
4 that the roadways were wet at any point in that evening?

5 A. No.

6 Q. No? In perhaps the last three years, reports
7 having to do with DWI, approximately what percentage of
8 reports have you listed or checked off the box marked
9 for odor of alcohol?

10 MS. LITTLE: Objection, Your Honor.
11 That's outside the scope of this case.

12 THE COURT: Sustained. Has nothing to do
13 with this case.

14 Q. (By The Defendant) How often in your
15 involvement with DWI incidents do you -- do you state
16 that there is an odor of alcohol, in your own
17 estimation?

18 MS. LITTLE: Objection, Your Honor --

19 THE COURT: Sustained.

20 THE DEFENDANT: Okay.

21 Q. (By The Defendant) Did you have a conversation
22 with me at any point this evening -- the evening of
23 December 29th, 2012?

24 A. Yes.

25 Q. And how was my speech?

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1 A. Loud. Couldn't really make out your words; but
2 cussing, yelling, and slurred and all over the place.

3 Q. Can you say any statements that I said to you?

4 THE WITNESS: Can I?

5 THE COURT: Yeah. We're all grownups
6 here.

7 A. Fuck you, Officer, you ain't shit. Call my
8 lawyer. As a matter of fact, call Quanell X.

9 I remember that because that stuck out
10 like a condom in church. I remember that.

11 And then everything else was just cussing,
12 cussing, cussing.

13 THE COURT: Well, you can say the words.

14 A. Well, I don't remember pertaining -- what order
15 they came in after that, you know. Just uncooperative.

16 Ma'am, can you do this? Ma'am, calm down.
17 I was respectful to you the whole time. I never cursed
18 at you back. I don't know you from Adam, you know. At
19 the end of the day, I'm there to make sure you're okay
20 and make sure anybody else involved is okay, trying to
21 figure out what's going on. But you went from 99 to a
22 hundred on me like I stole your lunch money or
23 something, you know -- your combative attitude with me,
24 which led me to handcuff you, put you in the backseat of
25 my patrol car.

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1 Q. (By The Defendant) Okay. Now, you're saying
2 that this was my behavior. What was the first thing you
3 asked me that I responded to, that I replied to?

4 A. Say it again.

5 Q. What was the first thing you asked me that I
6 had to give you an answer for?

7 A. I believe the first thing I said to you was,
8 Ma'am, what happened?

9 I don't remember what you said after that
10 because it was all whatever, until you made that
11 statement about fuck me and call Quanell X.

12 Q. Okay. So you're saying that you asked me what
13 happened and, immediately, I went into some kind of
14 rage? Is that what you're saying?

15 A. That's correct.

16 Q. Okay.

17 A. Because I was sober that night.

18 Q. Okay.

19 A. So I remember everything that happened. You
20 were intoxicated. I was sober. So my memory -- you
21 know, I'm able to remember everything about that night
22 better than you can.

23 Q. Okay. So -- in the best of your judgment, not
24 being able to distinguish any one beverage from the
25 other, you just went ahead and made the analysis and

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Cross-Examination by the Defendant

1 decided that I was intoxicated from an alcoholic
2 beverage? That's correct?

3 A. Correct.

4 Q. Did you offer any medical attention?

5 A. Did I offer any medical attention?

6 Q. Yes.

7 A. No. I'm not a medic.

8 Q. Did you offer to call for any medical
9 attention?

10 A. Yes, I did. We have to.

11 Q. Okay. Did you say to me at any time --

12 A. Do you need an ambulance.

13 And you didn't say yes, you just kept
14 cussing me out.

15 Q. Did I say no?

16 A. You didn't say yes. You started cussing me
17 out.

18 Q. Did you notice me with any kind of a head
19 injury?

20 A. No, I did not. And if you had one, you weren't
21 concerned about that. Because not one time did you say,
22 Officer, my head hurts. Yes, I do need one.

23 If my head hurt and somebody asked me if I
24 need medical attention, first thing I would say is, Yes,
25 I may need EMS to come out and check on me.

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1 But you didn't say that.

2 Q. Officer, you said you heard the entire dispatch
3 911 call; is that correct?

4 MS. LITTLE: Misstatement, Your Honor.

5 THE COURT: No. No, that's not what he
6 said.

7 Q. (By The Defendant) What did you say in regards
8 to how much of the 911 call you heard?

9 THE COURT: He didn't hear it. He got
10 called by dispatch.

11 Q. (By The Defendant) Did dispatch ever tell you
12 that there was possibly someone out there with a head
13 injury?

14 THE COURT: Already asked and answered.

15 THE DEFENDANT: Okay.

16 Q. (By The Defendant) Did you ever go back to this
17 scene here and do some sort of -- what kind of
18 investigative work did you do on that scene?

19 A. Investigative work.

20 Q. What did you look at, what did you document --

21 A. I looked at the roadways, the glass on the
22 roadway, I looked at the pole, the damage to the pole --

23 Q. Go ahead and put your finger there, Officer.

24 A. I looked at the tire marks from your vehicle
25 that went over the curb, hit the pole, came back, the

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1 black tire marks headed over this way into this parking
2 lot where you eventually stopped and parked.

3 Q. Okay. So the Toyota Celica that went up on the
4 curb here, you're saying that it -- that Toyota Celica
5 hit a pole and then --

6 A. It ran up on the curb on the right side; so the
7 front right tire, which -- that you flattened and then
8 your right rear tire was flattened. Then you struck the
9 pole, which showed the damage to your front right
10 bumper, from the pole striking it. The pole landed on
11 your windshield, which shattered your windshield; and
12 you came across and went back east and parked in this
13 parking lot.

14 Q. Okay, Officer. You said there was damage to --
15 besides a flat tire, at least one flat tire, you
16 mentioned there was damage to a front bumper. What kind
17 of front bumper was that?

18 A. (No response).

19 Q. What did it look like? Was it a rubber front
20 bumper? What kind of front bumper was damaged from
21 striking --

22 A. The front bumper to your vehicle.

23 MS. LITTLE: Objection, Your Honor,
24 relevance.

25 THE COURT: I'll let him answer if he can

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Cross-Examination by the Defendant

1 remember.

2 A. I don't recall was it rubber, was it iron. It
3 was a regular car front bumper.

4 Q. (By The Defendant) Well, Officer, you've been
5 very specific about several events and you're saying
6 that you remember there being bumper damage, but you
7 have no idea what type of bumper was damaged; is that
8 correct?

9 A. The type of bumper was the bumper on your
10 vehicle. The type, what do you mean? You mean what it
11 was made out of?

12 Q. Correct. Yes?

13 A. I don't know what it was made out of.

14 Q. What did it look like it was made out of?

15 THE COURT: Already asked and answered.
16 He says he doesn't remember. Go on.

17 Q. (By The Defendant) But you absolutely noticed
18 all of this on that Toyota Celica that night, and that's
19 the car that you --

20 MS. LITTLE: Asked --

21 THE DEFENDANT: Withdrawn.

22 MS. LITTLE: -- and answered.

23 THE DEFENDANT: Withdrawn.

24 Q. (By The Defendant) What did you notice here
25 next to the curb, Officer? Did you notice anything out

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Cross-Examination by the Defendant

1 of the ordinary here next to the curb that would in any
2 way obstruct someone's driving?

3 A. Well, after the accident, a lot of glass on the
4 ground with a -- with other people's cars coming through
5 there.

6 Q. So where did -- can you point to where you
7 noticing all this glass?

8 A. (Complies).

9 Q. Okay. How much glass did you notice? Did it
10 appear to be a windshield that had been smashed out
11 completely, or were there just small shards? How much
12 glass did you notice?

13 A. Shatters of pieces of glass on the ground. I
14 don't know -- it was a good amount.

15 Q. Uh-huh. Okay, Officer, I want to draw your
16 attention to your graphic here once again. You show
17 this vehicle heading one way and going slightly up onto
18 the curb and onto the street. About how many seconds do
19 you think that would've had to have occurred, according
20 to your own graphic?

21 A. That can happen in a matter of maybe five
22 seconds, depending on how fast you were driving.

23 Q. Okay. So in about five seconds, you're
24 saying -- from your graphic, we're to understand that a
25 car was heading along the street and veered off --

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Cross-Examination by the Defendant

1 possibly to avoid some sort of obstruction, we don't
2 know -- but back onto the road --

3 MS. LITTLE: Objection, Your Honor. The
4 defendant is testifying.

5 THE COURT: You can't put stuff that's not
6 in evidence. So just ask your plain question. And he
7 already answered five seconds. We got it. Proceed.

8 Q. (By The Defendant) Officer, who made you aware
9 that that was the actual course that that vehicle took
10 that evening?

11 A. The witnesses --

12 Q. Okay.

13 A. -- from the call.

14 Q. What did the witnesses say to you about that
15 particular intersection?

16 MS. LITTLE: Objection --

17 THE COURT: Sustained.

18 MS. LITTLE: -- hearsay.

19 Q. (By The Defendant) But from what witnesses told
20 you, this was the graphic that you produced, as from
21 what you gathered from witnesses?

22 A. And what I gathered from myself from going to
23 the actual crash site and seeing it for myself.

24 Q. So are you saying that you actually saw a car
25 do any of this?

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1 A. No. I wasn't there at the time of the
2 accident.

3 Q. So do you have any personal knowledge that any
4 of what happened here is actually how it occurred?

5 A. From what I heard from the witnesses and what I
6 saw from my own eyes as the damage.

7 Q. After -- after the fact, Officer? Is that what
8 you're saying?

9 A. Yes, after the accident happened. I was called
10 to the scene. I wasn't there. There were witnesses
11 there that observed the accident. When I got to the
12 scene, I observed the damage from what the witnesses
13 said happened. Everything matched up.

14 Q. Okay. So what did you actually see besides the
15 shards of glass -- you say you saw a damaged pole and
16 shards of glass in the street. Did you see anything
17 else about that intersection that was concerning?

18 MS. LITTLE: Objection. Asked and
19 answered, Your Honor.

20 THE COURT: Sustained.

21 Q. (By The Defendant) Now, the dent that you said
22 you saw on the vehicle that I was sitting in, how did
23 you determine that to be a dent from a small pole?

24 MS. LITTLE: Objection, asked and
25 answered.

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Cross-Examination by the Defendant

1 THE COURT: He already said he saw the
2 pole and linked them up.

3 THE DEFENDANT: Okay.

4 THE COURT: It's his opinion. That's it.

5 THE DEFENDANT: Okay.

6 THE COURT: Proceed.

7 THE DEFENDANT: All right.

8 Q. (By The Defendant) Okay, Officer. Did you say
9 that you were able to conduct any type of nystagmus
10 tests or not?

11 A. No. You refused.

12 Q. And what happened once you say that you placed
13 me in your patrol vehicle?

14 A. What happened? I put you in the back of my
15 patrol vehicle, a specialized dei wee -- DWI unit, came
16 out and took over the scene.

17 Q. By taking over the scene, what does that mean?

18 A. That means he became the primary deputy on
19 scene.

20 Q. And what happens when that takes place?

21 A. He's the primary deputy.

22 Q. What does he do; what do you do?

23 A. He takes control of the scene.

24 Q. How so?

25 A. By taking primary. He was under your custody

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1 at that time.

2 Q. I'm sorry? Rephrase.

3 A. He was in your custody at that time.

4 THE COURT: No. The other way around.

5 THE WITNESS: Oh, yeah.

6 Q. (By The Defendant) Now, what are you saying?

7 A. He said he had put you in custody at that time.

8 Q. Okay. So --

9 A. And placed you in the back of his patrol car.

10 Q. Okay. All right. And --

11 A. About maybe two minutes after I placed you in
12 mine.

13 Q. Okay. And what was my demeanor at that time
14 when the second officer took over and placed me in his
15 patrol car?

16 A. The same demeanor.

17 Q. And what was that?

18 A. Fussy, combative, uncooperative.

19 Q. Now, were you -- did you remain there -- once
20 this officer came on scene and became primary, did you
21 remain there with him for his safety until he left?

22 A. Yes.

23 Q. Okay.

24 THE DEFENDANT: Your Honor, may I now go
25 ahead and play the -- put the -- not at this time?

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Cross-Examination by the Defendant

1 THE COURT: (Shakes head negatively).

2

3 THE DEFENDANT: If the officer was there
4 at the beginning of this, it's pertinent to the question
5 I want to ask him.

6 THE COURT: (Shakes head negatively).

7 THE DEFENDANT: No?

8 Okay. I pass for the time being.

9 MS. LITTLE: Just a brief redirect, Your
10 Honor.

11 THE COURT: Okay.

12 **REDIRECT EXAMINATION**

13 BY MS. LITTLE:

14 Q. I'm showing you what's been marked as State's
15 Exhibit 3, the defendant's booking photo from this
16 night. Does she have any injuries, Officer?

17 A. I'm sorry, say that again.

18 Q. Looking at State's Exhibit 3 -- this is her
19 booking photo from December 29th, 2012 -- does she have
20 any injuries on her head?

21 A. No, sir -- no, ma'am, not that I can see.

22 Q. Did you observe any injuries on that night?

23 A. No, I didn't.

24 Q. The crack in the windshield, did you determine
25 that to be caused by a pole?

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Redirect Examination by Ms. Casey Little

1 A. Yes, ma'am.

2 Q. And not by --

3 THE DEFENDANT: Objection, Your Honor.

4 There's no way this officer can testify as to what hurt
5 my car in any way.

6 THE COURT: He can give his personal
7 opinion. The jury can believe it or not and give the
8 weight as such.

9 You may continue.

10 Q. (By Ms. Little) And, Officer, do you remember
11 what side of the windshield was cracked?

12 A. The right side.

13 Q. Is that the passenger's side?

14 A. Yes, ma'am.

15 MS. LITTLE: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q. (By Ms. Little) Officer, I'm showing you your
19 call slip from that night; and I have a highlighted
20 portion that I'd like you to just read silently to
21 yourself.

22 A. (Complies).

23 Q. Officer, now that you have read that call slip,
24 what type of vehicle were you dispatched to?

25 A. A two-door, red sports vehicle with black tint.

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Redirect Examination by Ms. Casey Little

1 Q. And you were never given a actual make or
2 model --

3 A. Make or model.

4 Q. -- correct?

5 A. Correct.

6 Q. And when you arrived on scene, did you find a
7 red sports car with black tinted windows?

8 A. Yes, ma'am.

9 THE DEFENDANT: Objection, Your Honor.
10 There's no way to determine sports car versus any
11 other --

12 THE COURT: Overruled.

13 THE DEFENDANT: -- passenger car.

14 MS. LITTLE: Pass the witness, Your Honor.

15 THE COURT: Defense?

16 THE DEFENDANT: I'll redirect [sic].

17 **RECROSS-EXAMINATION**

18 BY THE DEFENDANT:

19 Q. So we have the photo here. What time of the
20 morning was it that you had this interaction with me,
21 approximately?

22 A. I can't recall right now.

23 Q. Okay. Do you have any -- you cannot recall.
24 Okay. But it was quite late at night; do you agree?

25 A. Or very early in the morning.

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Recross-Examination by the Defendant

1 Q. Either late at night or very early in the
2 morning, however we want to state that. But do you have
3 any knowledge of how long I had been sitting stranded in
4 my vehicle at that time?

5 A. I would say a matter of no more than ten
6 minutes.

7 Q. Okay. Do you have any direct -- do you have
8 anything to connect that ten minutes to the length of
9 time I was in my vehicle, with a certainty?

10 A. Say it again.

11 Q. How -- how are you certain that I was in my
12 vehicle ten minutes versus two hours?

13 A. Because when I dispatched -- when the witnesses
14 called 911 and I'm dispatched to the call, it would tell
15 me -- the slip would tell me how long it took me to get
16 to the call. So that's how we know how long you were
17 sitting in your vehicle. What time the witnesses called
18 it in, and what time I arrived there.

19 Q. But you were -- but, Officer, you were
20 dispatched to look for a Toyota Celica, not simply a red
21 sports car; is that not true?

22 MS. LITTLE: Objection, misstatement of
23 the evidence. We just clarified that on redirect, Your
24 Honor.

25 THE COURT: Sustained.

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Recross-Examination by the Defendant

1 Q. (By The Defendant) Officer, is there anything
2 else in this case that perhaps you need your memory
3 refreshed about that we haven't gone over?

4 A. No.

5 Q. Officer, are you now 100 percent certain that
6 you did not see me in a Toyota Celica?

7 THE COURT: That -- then show him what
8 you're talking about. See if it refreshes his memory.

9 THE DEFENDANT: Well, I only have the
10 incident report.

11 THE COURT: Then let him look at --

12 THE DEFENDANT: May I approach?

13 THE COURT: Yes. And see if it refreshes
14 his memory.

15 Q. (By The Defendant) Officer, it's highlighted.

16 THE COURT: But the question is: Did he
17 write that report?

18 THE DEFENDANT: And he can hold on to it
19 for the time being.

20 THE COURT: My question is: Did he --

21 THE DEFENDANT: Did you write that?

22 THE COURT: Did you write that report?

23 THE WITNESS: No, ma'am.

24 I mean, no, sir, not this one. I did the
25 accident report. This is the arrest --

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Recross-Examination by the Defendant

1 THE COURT: Okay. All he can refresh his
2 memory from is the accident report of what he did.
3 Okay? If you've got a copy of the accident report, then
4 show it to him.

5 THE DEFENDANT: May I point out something
6 and ask a brief question?

7 THE COURT: No. You can't point it out to
8 him because it's not his report.

9 Q. (By The Defendant) Officer, is there a reason
10 why your name --

11 THE COURT: You can't --

12 THE DEFENDANT: Okay. Okay.

13 THE COURT: That's hearsay. Do you have
14 the copy of the accident report?

15 THE DEFENDANT: I do. But that would
16 be --

17 THE COURT: Then show it to him.

18 THE DEFENDANT: That would be his report;
19 but, yes, I do.

20 THE COURT: If that's his report. That's
21 what he said. He did the accident report.

22 THE DEFENDANT: One moment, please, Your
23 Honor.

24 Your Honor, would I be able to show him in
25 the --

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Recross-Examination by the Defendant

1 MS. LITTLE: May we approach, Your Honor?

2 THE COURT: Yes. He can only refresh his
3 memory off of something that he actually produced.

4 THE DEFENDANT: Okay. That's fine.

5 (At the Bench, on the record)

6 MS. LITTLE: There is no accident report,
7 Your Honor.

8 THE COURT: Then --

9 MS. LITTLE: The only report was done by a
10 different deputy.

11 THE COURT: -- there you go.

12 MS. LITTLE: There's nothing to refresh
13 his memory, period.

14 THE COURT: That's it.

15 MS. LITTLE: Okay. Thank you.

16 THE DEFENDANT: So there's nothing I can
17 do about an accident report because he doesn't have one
18 here?

19 THE COURT: If he doesn't --

20 MS. LITTLE: There is no accident report,
21 period. The only thing that he did in this case was to
22 draw this diagram we've already put up.

23 THE COURT: And that is the only thing he
24 can refresh his memory from.

25 THE DEFENDANT: Yes.

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Recross-Examination by the Defendant

1 THE COURT: Of what he actually -- if he
2 had notes, anything else -- if not, he has to go
3 strictly by memory.

4 THE DEFENDANT: One question, then: What
5 about a statement he's made to the primary officer that
6 took over right then and there?

7 MS. LITTLE: No, Judge. It's hearsay --

8 THE COURT: It's hearsay.

9 MS. LITTLE: -- and it's in the primary
10 officer's report.

11 THE COURT: It's hearsay. And, you know,
12 the primary is the one that you're going to have to ask
13 about the vehicle.

14 MS. LITTLE: Thank you, Judge.

15 THE COURT: All right.

16 (In open court)

17 THE COURT: Anything else from this
18 officer?

19 THE DEFENDANT: I pass for the time being,
20 Your Honor.

21 THE COURT: State?

22 MS. LITTLE: Your Honor, the State is
23 finished. May this witness be excused?

24 THE COURT: You are. You're excused, and
25 be on call.