

RECROSS-EXAMINATION

1
2 **BY MR. JOHNSON:**

3 Q. And, Officer, you said you could have been
4 mistaken because of the language problem, but he
5 actually was able to give you quite a bit of
6 information, was he not?

7 A. Yes, sir, he was.

8 Q. And, obviously, I think what you're saying,
9 people can make mistakes in times of stress in terms of
10 making identifications?

11 A. Yes, sir.

12 MR. JOHNSON: Pass the witness, Your Honor.

13 THE COURT: Ms. Flader.

14 MS. FLADER: I'll call Officer Peak.

15 THE COURT: You may step down, sir.

16 MS. FLADER: Judge, may this witness -- I'm
17 sorry. Before he leaves, may this witness be excused?

18 THE COURT: You're on-call, sir. You can
19 go.

20 THE BAILIFF: The witness has been sworn.

21 THE COURT: All right. Ms. Flader.

22 MS. FLADER: Thank you, Judge.

23 **SCOTT PEAK,**

24 having been first duly sworn, testified as follows:

25 **DIRECT EXAMINATION**

1 **BY MS. FLADER:**

2 Q. Would you please introduce yourself to the
3 ladies and gentlemen of the jury?

4 A. Yes, ma'am. It's almost -- it's still morning.
5 Good morning. I'm Scott Peak. I work for
6 HPD. I'm currently on day shift.

7 Q. If you wouldn't mind just pulling that
8 microphone down.

9 A. (Witness complies).

10 Q. There you go.

11 Can you tell us, how long have you been
12 with the Houston Police Department?

13 A. I've been a police officer for four years
14 August, this August.

15 Q. How did you become a police officer?

16 A. After -- after teaching and coaching for 10
17 years in the public schools, I finally got the support
18 of my wife that I was waiting on for a long time and
19 became a police officer.

20 Q. She preferred you being a teacher than a police
21 officer?

22 A. Initially. Initially.

23 Q. And did you just apply with HPD or how did you
24 get -- get into the department?

25 A. Applied, went through the academy -- well, went

1 through the interview process, six-month academy, and
2 then another six months of training on the streets.

3 Q. Can you tell the ladies and gentlemen of the
4 jury what your academy is like, what it consists of?

5 A. The academy is full class -- for me, a full
6 class of approximately 53 cadets training in the early
7 morning hours till basically whenever they tell you
8 you're done, but, you know, a good eight hours of
9 training for six months, physical training, books
10 training, the whole gamut.

11 Q. Do you learn the law and the procedures of your
12 department?

13 A. Yes, ma'am.

14 Q. And after you get through the academy, you said
15 you do six months more of training. What is that?

16 A. Basically, you're on the program -- is the term
17 we use, but six months of training with an FTO officer.
18 So, the expert officer who's qualified to train us, he
19 will be assigned a cadet and you'll have three weeks
20 training night shift -- well, my order was three weeks
21 training day shift, three weeks training evening shift,
22 three more weeks of training night shift, then there's
23 an evaluation, two weeks of evaluation, and there's
24 different things that happen in between. It ends up
25 being six months of training. So, basically, we end up

1 being trained for a full year.

2 Q. Where are you currently assigned?

3 A. Currently Greenspoint. So, HPD north. And day
4 shift.

5 Q. Do you have a partner?

6 A. Currently, no.

7 Q. I want to talk to you about September 12th,
8 2011. Do you recall that date?

9 A. Yes. Yes, ma'am.

10 Q. And were you on duty on that day?

11 A. I was.

12 Q. What shift were you working?

13 A. That would be night shift north, Acres Homes
14 area.

15 Q. Can you tell the -- at that time, what was your
16 general area where you were assigned?

17 A. We were -- our unit was 76-B-10 unit, which
18 was -- it was a special unit that could roam the hot
19 areas. So, we could go to multiple beats. The beats
20 means different areas of -- all of north. So, we -- we
21 had a little more technology in our car so we could --
22 we could roam a little bit further and -- but,
23 generally, Acres Homes, which is north of 610 and south
24 of the Belt, if that helps.

25 Q. And what were your hours?

1 A. At that time, 10:00 p.m. to 6:00 a.m.

2 Q. You said hot areas. Can you tell the jury what
3 a hot area is?

4 A. Hot spots or hot areas would be areas that have
5 higher crime activity. So, the sergeant, at the
6 beginning of the shift, might say: You-all need to --
7 we've been having a lot of burglaries, you know, on
8 Antoine and Tidwell, so you-all need to keep your eyes
9 out over there. And, so we'll roam that area more,
10 we'll drive through that area more. Or, because we had
11 a little bit more technology, we may help other officers
12 who have less of the technology in their police cars.
13 We had a few more -- we had a little bit better patrol
14 car, basically, than some of the other officers.

15 Q. So, what kinds of things did you have in your
16 patrol car that aren't the standard-issued items in
17 patrol cars?

18 A. Not everybody has a LoJack device, which it's a
19 little piece of equipment that sits up near our ceiling
20 in our patrol car that can -- similar to like OnStar.
21 Our LoJack device will be scanning the area and it can
22 receive LoJack hits. In other words, a car may be set
23 up with LoJack and if the car is stolen or if the car
24 is -- it's similar to OnStar -- that LoJack can be
25 activated in that vehicle, my police car, all of a

1 sudden, tells me there's a LoJack in the area. We also
2 had AFIS equipment, which is technology that can I.D.
3 somebody by their fingerprints, whereas not all of the
4 police cars will have that.

5 Q. Can you tell the jury -- you said that the
6 LoJack will activate. Can you tell them in the patrol
7 car what it looks like and what it sounds like when
8 you're getting a LoJack hit?

9 A. Sure. Basically, it's -- the volume is always
10 too loud, first of all. There's no way for us to
11 control the volume, but a female robotic type voice will
12 just blurt out: LoJack reply code. And it starts
13 giving you a code, about five or six-digit code, and --
14 some letters and some numbers.

15 As soon as we get that, we will tell our
16 dispatcher: I'm getting a LoJack hit reply code this,
17 this, this, this. She then is able to enter that LoJack
18 code and it comes back to a vehicle, a vehicle with a
19 plate and VIN number and description. I can also enter
20 it -- enter that same LoJack code into my computer in
21 the police car and it will start bringing back a car's
22 info, license plate, et cetera.

23 Q. What is the purpose of notifying dispatch and
24 putting it into your computer?

25 A. So we can find out a license plate, so we can

1 find out the vehicle description, so she can -- usually
2 she, she or he -- the dispatcher can over the air put
3 out the vehicle description of this vehicle that we're
4 all supposed to be looking for that has a LoJack hit.

5 Q. When you say we all are supposed to be looking
6 for, who are you referring to?

7 A. Other police officers in their patrol cars in
8 that area. So, north -- basically, north units, they
9 would hear what we -- our LoJack hit through the
10 dispatcher.

11 Q. In your training and experience when you get --
12 if you were not the officer that has that LoJack in your
13 car, when you hear it over the dispatch, what is your
14 responsibility?

15 A. If -- for the unit that doesn't have the
16 LoJack, they -- they will now have the license plate
17 given to them by the dispatcher that she got from the
18 LoJack, initial LoJack. So, now they -- they have a
19 vehicle description, a license plate. They're looking
20 as well for the vehicle, whatever the LoJack hits on.

21 Q. And as the -- as you're patrolling looking for
22 this car that you've gotten the LoJack alert on, what is
23 the continuing information that you're getting from the
24 device?

25 A. Basically, on this device that sits up kind of

1 above where your rearview mirror would be, but a little
2 further towards you, it's got like a north, south, east,
3 west circular area where there's an arrow that points.
4 It may point straight up, which is like 12:00 o'clock.
5 And if I'm driving and I've got an arrow pointing
6 straight up, that's telling me to go straight, this
7 LoJack hit is straight. If I've got a arrow that's
8 pointed to 3 o'clock or east, it's telling me that car
9 is east of you right now. And in addition to that, it
10 gives me a number code. It's beeping. Every beep gives
11 me a new arrow and every beep gives me a number, one
12 through twenty-five. If I've got a one, it's way off,
13 it's probably about to fade away into the midst. If
14 I've got a 15, it's pretty close. If I've got 19, it's
15 real close.

16 So, it's similar to like when you're a kid
17 and you play you're getting warmer, you're getting
18 warmer, you're getting warmer. Because it's literally
19 telling you that you're getting -- and the beeps get
20 faster. So, we're tracking this.

21 Did I answer your question?

22 Q. Yes.

23 A. Okay.

24 Q. All right. So, that night you get a LoJack
25 hit. And what's the information you get about the car

1 that you're looking for that the LoJack hit has been
2 announced?

3 A. Our LoJack hit is going to be on, most of the
4 time, a stolen -- this vehicle has been stolen. So,
5 we're immediately thinking we've got a stolen vehicle
6 and we're trying to get warmer and warmer and warmer and
7 find this.

8 Q. Okay. And so, did you get the make, model, and
9 license plate number of that vehicle?

10 A. Yes, ma'am.

11 Q. And what was that?

12 A. I don't have that memorized here. Let me see.
13 I know it was a white Honda. Sorry. And the plate
14 was -- sorry about that. A white Honda -- white Honda
15 four-door. It's an Accord. And the plate is -- was
16 942, Lincoln, Henry, X-ray, which would be LHX.

17 Q. And were you able to locate that vehicle that
18 night?

19 A. Yes, ma'am.

20 Q. Okay. Were you the only patrol car that was
21 trying to locate that Honda Accord?

22 A. No, ma'am.

23 Q. How many -- how many patrol vehicles were
24 trying to find it?

25 A. There were, I would guesstimate, five.

1 Initially five and then even more, so...

2 Q. Where were you when you first saw the Honda
3 Accord?

4 A. When I first saw the vehicle, we were
5 southbound on Airline coming up to Rittenhouse at a
6 stoplight. We had just heard from a female unit, who I
7 believe was traveling northbound on Airline, who was
8 also looking for it. She said she had spotted it. So,
9 we knew it was on Airline. We saw it at the stoplight
10 at Rittenhouse.

11 Q. When you saw the vehicle, did you have your
12 lights and sirens on?

13 A. Yes, ma'am.

14 Q. Why did you have them on?

15 A. Because of -- we're after a stolen vehicle and
16 it was moving. As it approached the light, there are
17 two units ahead of us as well southbound on Airline,
18 so -- and they also already have their lights on, so...

19 Q. Okay. So, multiple cars with their lights and
20 sirens on are sort of converging onto this white Honda
21 Accord. Is that right?

22 A. That's right.

23 Q. Okay. What did the white Honda Accord do at
24 that intersection of Rittenhouse and Airline?

25 A. At Rittenhouse and Airline, the vehicle turned

1 right, which would be west. So, it's going west from
2 Airline. There's a little bit of traffic. As the
3 officers are -- my initial thought -- as an officer, my
4 initial thought was, I wonder if they're about to take
5 off. So, it's going west. So, me and my partner drive
6 through a parking lot at that intersection, northwest
7 intersection, and basically cut through and get right
8 behind the white Honda Accord.

9 Q. And did you do that?

10 A. We did do that.

11 Q. And what happened when you got right behind the
12 white Honda Accord?

13 A. We followed it. It did not take off. I would
14 say we followed it approximately 100 yards and it
15 stopped.

16 Q. Did you get out of your vehicle and approach
17 the white Honda Accord?

18 A. We -- we conducted a felony stop.

19 Q. Can you tell the jury what that is?

20 A. A felony stop is a -- it's how we've been
21 trained to stop a vehicle that may be involved in a
22 felony. So, we have certain -- a certain way to do it.
23 It's usually a two-vehicle stop where -- for example, in
24 this one, we were right behind the Honda. We get on the
25 air telling the dispatcher, we're about to make a felony

1 stop. I've got another unit behind me. That other unit
2 behind me knows what to do. We're going to pull up kind
3 of at angles behind the back left and the back right of
4 the vehicle that's being stopped.

5 Does that make sense?

6 We want to -- we want two vehicles. We
7 prefer with a felony stop two vehicles at an angle on
8 each side. That's basically how we stopped it. It was
9 a little bit tight on our side because we had a ditch
10 along the north side of the road, but, basically, two
11 vehicles behind it at a certain distance. We hope for
12 about a car-and-a-half distance behind. And then we
13 start giving verbals over the intercom, or if you have
14 to, you're yelling, basically, telling the person in the
15 vehicle, the possible suspect, what to do.

16 Q. Okay. What did you tell them to do on this
17 traffic stop?

18 A. We would be telling them: We need to see your
19 hands out the windows, first of all. So, we -- we
20 already have seen that there's two possible suspects in
21 this vehicle. So, we're emphasizing we need to see both
22 of your hands out the windows, windows down, hands out
23 the windows. We would tell the driver to take the keys
24 out, either drop them on the ground or put them on top
25 of the car.

1 We would most likely start with the driver
2 and tell him to -- we're giving him verbals to slowly
3 step out of the vehicle, viewing his hands the whole
4 time. We'd ask him to grab the back of his shirt, lift
5 his shirt up. He's now standing outside of his vehicle.
6 We'd have him with his shirt pulled up. Spin around --
7 not spin, but turn around slowly so we can see. We're
8 looking for guns. We would then back him up slowly to
9 us and his hands are still behind his head or up and
10 then detain him. Start the process with the other
11 possible suspect.

12 Q. And after you did that, did you then try to
13 contact the deputy that had initially made the report of
14 the stolen vehicle?

15 A. Yes. I don't -- I don't remember exactly
16 who -- I think the dispatcher did it. A lot of times,
17 we'll listen to Harris County. We'll have someone
18 listening --

19 MR. JOHNSON: I'm going to object to
20 nonresponsive.

21 THE COURT: Sustained.

22 Q. (By Ms. Flader) Was that individual that
23 initially made the report, was he contacted?

24 A. Yes, ma'am.

25 Q. And did he make the scene where you had that

1 white Honda Accord stopped?

2 A. Yes, ma'am.

3 Q. You said that there were two individuals in the
4 car. Do you remember the general description of those
5 two individuals?

6 A. I remember one individual was a black male.
7 One individual was a Hispanic male.

8 Q. Okay. And after you called that deputy to come
9 to the scene -- you've seen that deputy in court today,
10 correct?

11 A. Yes, ma'am.

12 Q. And that's the deputy that was called to the
13 scene of the traffic stop; is that correct?

14 A. That's correct.

15 Q. Did you hand the investigation over to him?

16 A. Yes, ma'am.

17 Q. Okay. Did you ever try to interview either of
18 the suspects that were in the car?

19 A. No, ma'am.

20 Q. Okay. Were you able to identify -- was it the
21 black male or the Hispanic male that was driving the
22 car?

23 A. I remember the black male was the driver. I
24 remember -- my memory is that he had a white shirt on.

25 Q. Okay. And when you stopped the car, do you

1 remember exactly what time it was?

2 A. I remember approximately it being around 11:45,
3 2345 p.m.

4 Q. And that was on September 12th, 2011?

5 A. 12th, yes, ma'am.

6 MS. FLADER: I pass the witness.

7 THE COURT: Okay. Mr. Johnson.

8 MR. JOHNSON: May I proceed, Judge?

9 Thank you.

10 **CROSS-EXAMINATION**

11 **BY MR. JOHNSON:**

12 Q. Well, a LoJack sounds like a lot of fun. Am I
13 right about that?

14 A. It can be fun, yes, sir.

15 Q. Do you remember about how long you actually --
16 it took from the time you initially got the signal on
17 your LoJack to you actually found the car?

18 A. I would estimate about five minutes.

19 Q. And that thing doesn't tell you whether the car
20 is moving or stopping or anything like that, it just
21 kind of keeps moving you in the direction of the car.
22 Am I right about that?

23 A. Correct. Except that you can figure it out
24 sometimes. If a car -- if you're sitting on the side of
25 a service road on 45 and you get a LoJack, you've got

1 one, and then you get nineteen and then one, and you've
2 got no more LoJack, we know it just zipped by.

3 Q. It's moving fast?

4 A. Yes, sir.

5 Q. Look at the board over your right shoulder. Is
6 this -- can you -- if that line across the middle is
7 Little York and where you stopped the car is the little
8 mark on the bottom left side -- are you with me?

9 A. Yes, sir.

10 Q. -- is that -- is that pretty much the area that
11 you patrol?

12 A. West -- west of 40 -- sorry. West of the
13 Hardy.

14 Q. Hardy is the road that goes right up the
15 middle?

16 A. That's correct.

17 Q. Kind of the big yellow mark?

18 A. That's correct.

19 Q. Okay. So, you're west of that?

20 A. Yes, sir.

21 Q. Am I right in assuming that you have a LoJack
22 in your car because this is an area where stolen cars
23 tend to show up fairly regularly?

24 A. I don't -- I -- could be. It could be. I
25 think everybody wants a LoJack in their car, though.

1 Q. I mean, it's not like you've got one because
2 you're in a particularly crime-ridden area or is your
3 area a fairly heavy crime area?

4 A. It is a heavy crime area. The LoJacks are
5 spread out, though, throughout all the -- the areas,
6 northeast, southwest.

7 Q. All over Houston?

8 A. Correct. They'll be -- they'll be like hot
9 spot units in different areas of Houston.

10 Q. So, are they -- do they tend to be
11 concentrated, though, in the areas where there's more
12 stolen cars generally?

13 A. It's changing a little bit. Like right now,
14 I'm at Greenspoint. I've got a shop -- I've got a
15 police car that has a LoJack and it's an older one that
16 I'm very surprised it has LoJack, so it could be, but in
17 some cases, it's not, is what it seems like to me.

18 Q. And have you had occasions to locate many or
19 few stolen cars?

20 A. Four years on -- it depends on how you look at
21 it. For four years, I would say an average amount for
22 me, night shift.

23 Q. Is it your experience, if you know -- I mean,
24 do stolen cars tend to get passed around in some
25 neighborhoods?

1 MS. FLADER: Judge, I'm going to object to
2 relevance.

3 THE COURT: Sustained.

4 Q. (By Mr. Johnson) Is it possible that a car
5 could get passed around, traded for drugs, things like
6 that?

7 MS. FLADER: Judge, I would object to
8 relevance.

9 THE COURT: Sustained.

10 Q. (By Mr. Johnson) When you pulled in behind the
11 car that you say Mr. Harmon was driving, did he try to
12 take any kind of evasive action?

13 A. No, sir.

14 Q. Did he try to run from you?

15 A. No, sir.

16 Q. Did he give you any problems at the time of the
17 arrest?

18 A. No, sir.

19 Q. Did you ever find any money in the car or on
20 Mr. Harmon?

21 A. No, sir.

22 Q. Is there -- did you find a driver's license
23 that belonged to Mr. Phan in the car or on Mr. Harmon?

24 A. I wasn't the officer that made contact with
25 him, so I can't answer that. It may -- something else

1 may have been found, but I didn't.

2 Q. But the question was: Did you find anything?

3 A. No, sir.

4 Q. I don't believe you did a -- you prepared an
5 offense report in this case, did you?

6 A. No, sir.

7 Q. What is it you've been referring to up there?

8 A. This would be an incident report from Harris
9 County.

10 Q. It's just the sheriff's department offense
11 report?

12 A. Yes, sir.

13 Q. Any notes by you or anything like that?

14 A. I have written down about four little notes.

15 Q. Did you look at those to kind of refresh your
16 memory for your testimony today?

17 A. I can tell you what I wrote, if you want.

18 Q. That's all right.

19 MR. JOHNSON: I would like to look at that
20 document, though, Judge, if it's all right.

21 THE COURT: Okay.

22 MR. JOHNSON: May I approach?

23 THE COURT: Yes.

24 Q. (By Mr. Johnson) Let me just take a look.

25 A. (Witness complies).

1 Q. Okay. Thank you.

2 A. Okay.

3 Q. And I think you said Mr. Harmon had on a white
4 shirt when you saw him?

5 A. That's what I remember, is the driver had a
6 white shirt, black male. The Hispanic male was in the
7 passenger seat. I don't remember what he was wearing.

8 Q. Was Mr. Harmon the larger of the two?

9 A. Yes, sir.

10 MR. JOHNSON: Pass the witness, Your Honor.

11 MS. FLADER: No more questions, Judge.

12 THE COURT: You may step down, sir.

13 Call your next witness.

14 MS. FLADER: State calls Loi Phan.

15 Judge, may this witness be excused?

16 THE COURT: Yes, sir. You're on-call.

17 Ladies and gentlemen of the jury, the next
18 witness will be testifying with the aid of a translator,
19 an interpreter. The interpreters are hired by the
20 courts, basically, to make sure they're neutral. They
21 have to meet requirements in order to be qualified to do
22 interpretation. I don't know that any of you in the
23 jury box speak Vietnamese, but should that be the case,
24 the rule is that the evidence is what the interpreter
25 says. So, you're not to do your own private