

1 previously sworn.

2 MR. WHITE: Your Honor, if I may?

3 THE COURT: You may, what?

4 MR. WHITE: Actually, Your Honor, the motion I
5 was referring to was the motion based on probable cause, not
6 Daubert.

7 THE COURT: Okay. So, you don't want a Daubert
8 hearing with this --

9 MR. WHITE: We need one on him, also.

10 THE COURT: Let's do that now while he's here.
11 Okay?

12 MR. WHITE: No problem.

13 THE COURT: Is it "Sergeant" or "Officer"?

14 THE WITNESS: Sergeant now.

15 THE COURT: Sergeant.

16 THE WITNESS: As of January 17th.

17 THE COURT: You may proceed.

18 **SERGEANT PONDER,**

19 after having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MS. BUSS:**

22 Q. Sergeant, how are you employed?

23 A. Houston Police Department.

24 Q. And what is your rank with the Houston Police
25 Department?

1 A. Sergeant.

2 Q. How long have you been employed with the Houston
3 Police Department?

4 A. About 15 years.

5 Q. Can you explain a little bit about the processes that
6 you had to go through to become first a police officer and
7 then a sergeant with HPD?

8 A. To be a police officer, you have fit the minimum
9 qualifications: You have to have either prior military or
10 16 hours of college, have a good credit score, not be, you
11 know, convicted of a Class B Misdemeanor or above, be of good
12 character, standard, stuff like that.

13 Q. Do you go through a training academy?

14 A. Yes, ma'am.

15 Q. What types of things do you learn at the training
16 academy?

17 A. Everything, Penal Code. We go over the Penal Code.
18 We go over the Code of Criminal Procedures. We go over every
19 division, how they basically operator as far as homicide,
20 robbery, burglary, theft. We do -- that's all the academic
21 stuff that we do. We do, of course, physical stuff as far as
22 hand tactics, how to properly place handcuffs on people, how
23 to properly do traffic stops. Basic, physical activity, too,
24 exercise, running, stuff like that.

25 Q. Do you have to pass the police academy in order to be

1 hired by HPD?

2 A. Yes, you do.

3 Q. Is there a state agency that actually tests people to
4 determine whether or not they qualify as peace officers in
5 the State of Texas?

6 A. Yes. It's called TCLEOSE.

7 Q. And did you take that test?

8 A. Yes, ma'am.

9 Q. Did you pass it?

10 A. Yes, ma'am.

11 Q. Now, once you are TCLEOSE certified, what do you need
12 to do to maintain that TCLEOSE certification?

13 A. The State of Texas requires you to do a minimum -- the
14 State requires minimum of 20 hours of training a year. But
15 HPD, they regulate that we have 40. But the State mandates
16 you got 20 hours of continuous hours a year. But with HPD,
17 we do 40 hours.

18 Q. During your time with HPD, have you continually been
19 certified by TCLEOSE?

20 A. Yes, ma'am.

21 Q. Have you met all the State requirements to be
22 certified?

23 A. Yes, ma'am.

24 Q. If you have to give us a ballpark figure of how many
25 hours of training you think you've had in the areas of law

1 enforcement, what would that number be?

2 A. Oh, God, over 2,000.

3 Q. And that you would just be general areas of law
4 enforcement?

5 A. Correct.

6 Q. How about specifically dealing with identifying or
7 gang specific law enforcement?

8 A. Gang stuff, probably a little over 100, maybe.

9 Q. Just dealing specifically with that area?

10 A. Yes.

11 Q. Over 100 hours?

12 A. Yes, ma'am.

13 Q. Now, that's just your training. Let's talk about
14 your experience. What's your current assignment with HPD?

15 A. I'm currently assigned to the Midwest Patrol Station.

16 Q. And have you been in patrol before?

17 A. Yes.

18 Q. Have you been assigned to any specialized division or
19 unit?

20 A. Yes, I have.

21 Q. What units have you been assigned to?

22 A. The majority of my career, I was assigned to a DG,
23 original gang unit.

24 Q. And what is that unit's focus?

25 A. Anything gang-related. We stop people on the street

1 to identify them as gang members, following up on any type of
2 gang cases, review a case, a burglary case, a robbery case.
3 We also do -- we get complaints from apartment managers, like
4 a specific gang issue at her complex. We'll contact the
5 apartment manager. We'll kind of -- we'll take care of the
6 problem.

7 One local school is having a problem with gangs.
8 We'll go talk to the principal and then address the issues.
9 And try to handle it the best we can. We'll assist any other
10 division concern that they have as far as a gang issue, like
11 a gang unit got assigned to a robbery division or a homicide
12 division, we'll go in and assist them on that on that.
13 Pretty much anything gang-related.

14 Q. Are you familiar with the various gangs that operate
15 in Houston?

16 A. Yes, ma'am.

17 Q. How about in Harris County, Texas?

18 A. Yes, ma'am.

19 Q. Have you dealt with gangs on few or many occasions?

20 A. Many.

21 Q. Have you dealt with members of the 52 Hoovers-Crips?

22 A. Yes, I have.

23 Q. Are you familiar with that gang?

24 A. Yes, ma'am.

25 Q. Are you familiar with tattoos that come with

1 identifying members of that gang?

2 A. Yes, ma'am.

3 Q. Are you familiar with the colors that they commonly
4 identify with?

5 A. Yes, ma'am.

6 Q. Are you familiar with the terminology, acronyms and
7 hand signals that they commonly use?

8 A. Yes, ma'am.

9 Q. How are you so familiar with them?

10 A. Just basically working the streets and stop and
11 talking to guys on the streets and talking overall to the
12 individual, these gang members before. And basically, my
13 best experience is talking to the gang members themselves and
14 learning from them, you know, and figuring out what means
15 what.

16 Q. So, in addition to that 100 hours that you have in
17 law enforcement, you're telling us that your best education
18 actually comes from education gang members give you on the
19 street?

20 A. Absolutely.

21 Q. How many hours do you think you've spent being
22 educated by various gang members on the streets?

23 A. Oh, I couldn't give -- I couldn't guess.

24 Q. Would it be more or less than the classroom hours?

25 A. Oh, God, more. I mean 10 to 20,000 more.

1 Q. Do you ever teach other officers about how to
2 identify gang members?

3 A. Yes, I do.

4 Q. Do you give other officers updates on gang activity
5 in the Houston areas?

6 A. Yes, I do.

7 Q. Do you do that on few or many occasions?

8 A. It various. But in the past four or five yes, I would
9 say many.

10 Q. Have you ever testified as an expert on gangs or gang
11 activities before?

12 A. Yes, I have.

13 Q. Have you done that on few or on many occasions?

14 A. Many.

15 MS. BUESS: Your Honor, I pass this witness.

16 THE COURT: You have may inquire.

17 MR. WHITE: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. WHITE:**

20 Q. Officer Ponder -- I'm sorry.

21 A. That's okay.

22 Q. Sergeant Ponder, what characteristics do you use in
23 order to determine whether or not a person is in a gang or
24 not?

25 A. Well, the State of Texas and the Criminal Code of

1 Procedure lays out the State criteria for you to be
2 considered a gang member. If you fit two of those criteria,
3 you can technically classify someone as a gang member.
4 That's one way of doing it. That's our technical way of
5 doing it. The truth of the matter is, that you can just --
6 you can listen to them, talk on the street, seeing the colors
7 they wear. That's pretty much it.

8 Q. Can a person determine from a one-time occurrence
9 whether or not a person is a gang member?

10 A. Yes, sir.

11 Q. Now, in your experience, I believe you've said you've
12 had many interactions with the 52 Hoovers-Crips?

13 A. Yes.

14 Q. What do you consider many?

15 A. Umm.

16 Q. Multiple? Hundreds?

17 A. I mean, I know more about 59 Bounty Hunters, Bloods,
18 Crips, Hilltop Bloods, Treetop Bloods. In Houston, for many
19 years, like in '02 to '07, big gangs are going to be Bloods.
20 So, I do encounter a lot of Bloods gangs than 5-Deuce
21 Hoovers-Crips, but I do encounter a lot.

22 MR. WHITE: No further questions for this
23 witness, Your Honor.

24 THE COURT: Anything else?

25 MS. BUESS: Your Honor, I believe the witness is

1 qualified as an expert in gangs and identifying gang members.

2 THE COURT: Mr. White?

3 MR. WHITE: Your Honor, we have an opposition to
4 him testifying --

5 THE COURT: Very well. This witness will be
6 allowed to testify, and as I said before, in that narrow band
7 of inquiry with regard to identification of possible gang
8 membership. Okay?

9 MS. BUESS: And, Judge, just to clarify, he does
10 have knowledge as far as the history of the gang, the origin
11 of the gang and as it spread to Houston, and as he just
12 testified regarding the time line for what's been going on in
13 Houston. So --

14 THE COURT: Okay. As well.

15 MS. BUESS: Thank you, Judge.

16 THE COURT: Very well. Anything else?

17 Now, you can be excused and we're going to take
18 a little break. But you had another matter you wanted to
19 bring up?

20 MR. WHITE: Yes, Your Honor. I filed a Motion
21 to Suppress based on probable cause of the officer.

22 THE COURT: All right. I'll hear your argument.

23 MR. WHITE: Yes, Your Honor. Now or after the
24 break?

25 THE COURT: So, we can do that now. Do we feel

1 like there's enough testimony in the record to make the
2 argument?

3 MR. WHITE: Yes, Your Honor.

4 THE COURT: All right.

5 **MOTION TO SUPPRESS**

6 MR. WHITE: Basically, from Officer Ferzenni's
7 testimony as well as from Officer Revus's testimony, I
8 believe there's conflicting testimony to as to whether my
9 client actually committed a traffic violation.

10 Officer Ferzenni said that he never saw Mr.
11 Washington's vehicle actually swerve, said his reason being
12 was because he was more focused on what was going on inside
13 of the vehicle as opposed to things that were going on
14 around.

15 Officer Revus would have you believe that my
16 client did swerve, not only once, but twice. And the reason
17 why he noticed it is because that's what he was assigned to
18 do, as well as watch what was going on inside of the vehicle.

19 According to Officer Ferzenni, there were really
20 no vehicles around, nobody really had to take evasive action.

21 Officer Revus stated that on the first swerve,
22 at least two vehicles had to take evasive action. Didn't
23 actually say how many vehicles had to take evasive action on
24 the second swerve.

25 My client's opinion -- I sorry. My client

1 stated that he saw --

2 THE COURT: He hasn't stated anything.

3 MR. WHITE: I apologize, Your Honor.

4 They never stated as to why no citation was
5 issued. Also, swerving in itself out of the lane as far as
6 the distance into the lane, didn't state how far into the
7 lane he swerved or whether or not he swerved because of the
8 road conditions or something else, Your Honor.

9 THE COURT: How about the changing lanes without
10 a signal?

11 MR. WHITE: He never actually completed -- never
12 actually changed lanes completely, Your Honor.

13 According to the testimony that's been given,
14 Your Honor, he said he swerved into the lane and immediately
15 got back over is what Officer Ferzenni says.

16 Now, I believe that Officer Revus did state that
17 half the vehicle had actually entered the other lane.
18 However, no one else saw anything to that effect but Officer
19 Revus.

20 And I would like to believe that if there were
21 other vehicles around that he would have been pulled over
22 because of an auto collision at the first swerve, not the
23 second if he was halfway into the other lane.

24 And so, with that, Your Honor, we ask that no
25 probable cause be found for the stop and no probable cause be

1 found for the incident to the arrest -- or the incident to
2 the stop.

3 THE COURT: Ms. Buess?

4 MS. BUSS: The State's position is that there
5 is no conflicting the testimony from the witnesses.

6 Officer Ferzenni testified that he observed the
7 Defendant swerve out of his lane on two occasions crossing
8 over into the right-hand lane. He could not testify as to
9 whether or not there were any other vehicles present, because
10 as he explained numerous times, he was concerned about the
11 individuals that were inside the Defendant's vehicle. That's
12 where the focus of his attention was.

13 That testimony does not conflict with Officer
14 Revus' testimony. That in addition of observing the
15 Defendant again veer out of his lane on two separate
16 occasions, that he being on the passenger's side, closest to
17 that right-hand lane, also observed two vehicles that were in
18 that right-hand lane had to apply their breaks in order to
19 avoid a collision with the Defendant when he came over into
20 the center lane without signaling.

21 Clearly, based on the Officers' testimony, which
22 is not contradiction at this point, there is failure to
23 maintain a single lane in a manner that is unsafe, according
24 to the officers' testimony, and there's also the possibility
25 of reasonable suspicion exhibiting for a stop for failing to

1 signal a lane change.

2 That's all the State has to offer at this point.

3 THE COURT: I give you a brief reply.

4 MR. WHITE: Yes, Your Honor.

5 There is conflicting statements. No. 1, again,
6 Your Honor, Officer Revus said he was focused on the inside
7 of the vehicle and that his partner was focused on the
8 driving of my client at the time.

9 Officer Ferzenni states -- I'm sorry. Officer
10 Revus states that he focused on inside of the vehicle, any
11 movement, as well as the actual driving conditions.

12 I would believe that both officers would be able
13 to tell if there was another vehicle around. Whether or not
14 they were focused on the inside of the vehicle, Your Honor, I
15 do believe that is an impediment to this case of whether or
16 not cars had to take evasive action.

17 Officer Ferzenni did not believe any cars had to
18 take any evasive action at all. In fact, doesn't believe
19 that there were any cars around at all based on his own
20 testimony.

21 Officer Revus thinks at least two vehicles had
22 to take evasive action by hitting their brakes because of my
23 client veering over into somebody else's lane.

24 Officer Ferzenni testified also that when he
25 veered over, he immediately got back into his lane and that's

1 the reason why they didn't stop him the first time because it
2 was a slight veer into the lane and right back over into his
3 lane.

4 Officer Revus would have you to believe that
5 half his vehicle was in the other lane, which will cause him
6 to have to signal, and then he got back into his lane. So,
7 as far as there being no contradictory statements, Your
8 Honor, that's not true.

9 THE COURT: Motion to Suppress is denied.

10 MR. WHITE: Yes, Your Honor.

11 THE COURT: So, meet back in here in about
12 10 minutes. Okay?

13 (Brief recess.)

14 THE BAILIFF: All rise for the jury.

15 (Jury enters the courtroom.)

16 THE COURT: Thank you. Please be seated.
17 You're still under oath, sir. You may proceed.

18 **SERGEANT CLINT PONDER,**

19 after having been first duly sworn, testifies as follows:

20 **DIRECT EXAMINATION**

21 **BY MS. BUSS:**

22 Q. Sergeant, can you introduce yourself to the jury.

23 A. My name is Sergeant Clint Ponder.

24 Q. And how are you employed?

25 A. With the Houston Police Department.

1 Q. And how long have you worked with the Houston Police
2 Department?

3 A. 15 years.

4 Q. And what is your current assignment with the Houston
5 Police Department?

6 A. I'm currently assigned to the ^ and I'm a Patrol
7 Sergeant.

8 Q. What is your assignment prior to your current
9 assignment?

10 A. Before my career, I worked on the Southwest Divisional
11 Gang Unit.

12 Q. What type of training do you have to have just in
13 order to be a Houston Police Officer?

14 A. The type of training.

15 Q. Yes.

16 A. You've got to graduate and pass our basic police
17 academy, which is six months of academics before any physical
18 exercise. That's your basic academy there.

19 And then throughout your career, the State
20 certifies that you have to do at least 2 hours of, you know,
21 police training every year. But within HPD, we do 40 hours a
22 year. So, every year, you have to do a minimum of 40 hours
23 of police officer training to stay active as a police
24 officer.

25 Q. So, talking in general, just your law enforcement

1 training, over your 15 years, how many hours of law
2 enforcement training do you think you have?

3 A. I'd say a couple thousands.

4 Q. Now, when you were in the Gang Division, did you have
5 any special training that qualified you to be in that
6 division?

7 A. Yes. Like I said, just gang-related classes and my
8 training and experience on the street.

9 Q. So, again, just sticking with the class training
10 experience, how many hours of just dealing with gangs have
11 you had?

12 A. I'd say over 100.

13 Q. And you said that some of your experience comes from
14 the street. How does your street training --

15 MR. WHITE: Objection, Your Honor. That's
16 leading. He never said anything about his experience coming
17 from the street.

18 THE COURT: Wait a second. I don't want any
19 arguing objections in here, Counsel. Just say it -- object
20 and your basic foundation.

21 That's overruled.

22 Q. (BY MS. BUESS) How does your street experience
23 compare to your classroom experience?

24 A. My street experience is much more valuable than my
25 classroom experience because that's where you learn things on

1 the streets. And that's how I learned, self-taught or just
2 from talking to gang members on the streets and learning from
3 them learning their tattoos and symbols or terminology, what
4 they say, what it means. That's really where you learn a lot
5 of the stuff.

6 Q. How long did you spend in the Gang Division with HPD?

7 A. Oh, probably about 10 years.

8 Q. When you first started in that division other than
9 your classroom training, how did you start to learn about
10 gangs and gangs members?

11 MR. WHITE: Objection, Your Honor, relevance.

12 THE COURT: Overruled.

13 A. I learned just by stopping and talking to people on
14 the streets. If I see somebody wearing a particular color I
15 thought was a possible gang member, I stop and make
16 conversation with them and ask them about their color,
17 tattoos and ask them about certain terminology and just
18 talking to them on the streets.

19 Q. (BY MS. BUESS) Were the people that you met
20 cooperative with you?

21 A. Most of the time, yes.

22 Q. Did gang members actually explain their tattoos and
23 their colors?

24 A. Yes. Most of them are very proud.

25 Q. And over the course of 10 years, did you learn about

1 few or many gangs in the Houston area?

2 A. Many.

3 Q. Did you ever learn about the 5-Deuce Hoovers-Crips?

4 A. Yes, I did.

5 Q. How did you learn about 52 Hoovers-Crips?

6 A. Just seeing the graffiti on the streets and talking --
7 talking to actual 52 Hoovers-Crips gang members and reading
8 all the reports of crimes they were involved in.

9 Q. What is your function with the Gang Division with
10 HPD?

11 A. Well, what I did was I worked out of -- we worked out
12 of the Fondren Division. Two years ago, we got a new a
13 station called the Southwestern Division. But it's called
14 the Fondren division, which is part of Southwest Houston.
15 Anything that's gang-related that happens in that area, I
16 would take care of it. Anywhere from stopping and talking to
17 gang members on the streets, to identifying them, anywhere
18 from following them, anything that's gang-related from
19 burglary to robbery to a simple graffiti case. Also, U.S.
20 Citizen of simple investigation. Also, if we had a gang
21 homicide, you would assist homicide investigators on
22 identifying who it was. Anywhere, also, too, if the school
23 principals have issues or problems at their school with gang
24 members, I would go to their school and address their issues.

25 An apartment manager who is having issues or

1 problems at her apartment complex, I would go and talk to her
2 and find out what the issue was and try to take care of it.
3 So, pretty much anything gang-related.

4 Q. Have you ever actually come to court and testified as
5 an expert on gangs before?

6 A. Yes, I have.

7 Q. Have you done that on few or many occasions?

8 A. Many.

9 Q. Now, getting back to the 52 Hoovers-Crips, are you
10 aware of their history?

11 A. Yeah, basically.

12 Q. Are you aware of their origin?

13 A. Yes.

14 Q. Can you explain that briefly to the jury?

15 MR. WHITE: Objection, Your Honor, relevance.

16 THE COURT: Overruled.

17 A. Well, I mean, it's really either -- they're criminal
18 street gangs really their history is what you kind read on
19 the Internet. The history from talking to other gang members
20 and all I know, it all started in the mid '70s in Los
21 Angeles. And --

22 MR. WHITE: Objection, Your Honor, hearsay.

23 He's basing it on other gang members --

24 THE COURT: Overruled.

25 MR. WHITE: -- who are not present for

1 cross-examination.

2 THE COURT: Overruled.

3 Q. (BY MS. BUESS) What happens --

4 A. Histories of the gangs --

5 Q. I'm sorry. What --

6 A. The history of the gang is really hard to determine,
7 but the general knowledge is that they're all based out of
8 Los Angeles in the mid to late '70s and the gang exists
9 today.

10 Q. Are you aware of how it migrated to Houston?

11 A. Well, I believe through the prison system and then at
12 least looking through Internet. A guy looks up on the
13 Internet and see the tattoos and what the tattoos mean and
14 things like that here. There's a lot of this passing through
15 prisons.

16 Q. And as far as a time line for when we started seeing
17 5-Deuce Hoovers-Crips in Houston, when did that happen?

18 A. Oh, I'd say it started probably like early -- really,
19 really a lot in the early 2000, way late, late '90s. Because
20 when I first came on in '97, in '98 we hit the streets, we
21 had a lot of what is called hybrid gangs. Everybody claimed
22 their street, their neighborhood, Braeswood, Airport,
23 Belltfort, whatever.

24 And then it wasn't until I got on 2000, 2001, I
25 started seeing everybody intergrade and, you know, take on a

1 name of these national gangs of the 59 Bounty Hunters or the
2 52 Hoovers-Crips or whatever. And that's when you started
3 seeing a lot of it. I mean, I'm not sure it was around
4 before. But I really started seeing it around 2000.

5 Q. And is that when you first started seeing the numbers
6 "5" "2"?

7 A. Yes.

8 Q. And the name "Hoovers-Crips"?

9 A. Yes.

10 Q. Was that the first that you had seen the blue for the
11 Bloods -- or -- I'm sorry -- the blue for the Crips?

12 A. Yes.

13 Q. Were there any Bloods gangs that were in Houston
14 prior to that?

15 A. Yes.

16 Q. And, Officer, if you know, based on your experience
17 with the Gang Division, had the Hoovers-Crips been involved
18 in any criminal activities here in the Houston area?

19 A. Yes, they have.

20 MR. WHITE: Objection, Your Honor, relevance.

21 THE COURT: Overruled.

22 A. Yes, they have.

23 Q. (BY MS. BUESS) What activities specifically are you
24 aware of that they have been linked to?

25 A. Pretty much all types of crimes. Anywhere from theft

1 to burglary to robbery to drug possession, drug delivery,
2 homicides.

3 Q. And how do you know that they've been involved in all
4 of these different crimes?

5 A. Because I've either arrested gang members for those
6 crimes or read reports where they've been involved in those
7 crimes.

8 Q. And do they engage in criminal activity on few or
9 many occasions?

10 A. Every individual is different. I mean, who's to say?
11 I can't really give you a number on that.

12 Q. If we talk about the gang rather than individual,
13 does the gang engage in criminal activity regularly?

14 A. Yes.

15 Q. Now, you said individuals may not. Could you explain
16 that to the jury?

17 A. I mean, it's just like anything else. You're a gang
18 member -- there's obviously the different levels of gang
19 members. I mean, you are who you are. You may commit a lot
20 of crimes and you're a gang member. And you may commit few
21 crimes and you're a gang member.

22 Just like if you're a police officer, you may be
23 a good police officer, you may be a bad police officer or one
24 that likes to work, one that doesn't like to work or -- so,
25 there's different levels of involvement. It's a mindset, I

1 guess.

2 Q. Are there any strict guidelines of who can be a
3 member and who can't be a member of the 52 Hoovers-Crips?

4 A. It depends on who you ask. There's not a set rule.
5 There's not -- there's all kinds of different ways people say
6 they got in the gang. They got blessed in the gang. They
7 got jumped in the gang. They got crypt in the gang or they
8 were born. Their mother and father were gang members, so
9 they are, too. They are born into the gang from Day One.
10 So, there's different ways people want to interpret it.

11 Q. How about disqualifiers? Anything that would
12 disqualify you from being a member of the 52 Hoovers-Crips?

13 A. I can't think of one.

14 Q. Would having a full-time job disqualify you from
15 being a member of the 52 Hoovers-Crips?

16 A. No.

17 Q. Have you encountered gang members before who have
18 full-time jobs?

19 A. Yes.

20 Q. Have you encountered them on few or many occasions?

21 A. I've encountered more than a few, but I couldn't tell
22 you how many worked full-time. It's not really a question I
23 can really ask, you know, how often do they work. I really
24 couldn't answer the question accurately.

25 Q. Now, how about gang members paying taxes? Is there

1 anything about paying taxes --

2 A. No.

3 Q. -- that would disqualify you from being a gang
4 member?

5 A. Paying taxes would be routine.

6 Q. What about a criminal record. Is there any
7 requirement that you're aware of that you have to have a
8 lengthy criminal history in order to be a member of a gang?

9 A. No, there's no requirement.

10 Q. How about having no criminal history? How would
11 affect your ability to be in a gang?

12 A. It doesn't affect it at all.

13 Q. And how do you know that?

14 A. I've seen -- I've met many, many guys before wearing
15 the colors and claim to be a gang member and they have no
16 criminal record.

17 Q. And, Officer, you seem to -- or I'm sorry. Sergeant,
18 you seem to be basing a lot of your testimony on what gang
19 members have told you. How important is that information
20 that you're getting directly from those gang members?

21 A. Well, that's from the source. That would be the most
22 accurate information is from them telling me.

23 Q. And what from you have learned, what are the primary
24 colors associated with the 52 Hoovers-Crips?

25 A. Here in Houston, it's strictly blue.

1 Q. Is orange ever associated with the 52 Hoovers-Crips?

2 A. Yes, it is. But typically here in Houston, the
3 predominant color they use is blue.

4 Q. And have you ever met the Defendant in this case
5 before?

6 A. No. I met him a couple of hours ago, but not before
7 today.

8 Q. When you refer to the Defendant, can you do me a
9 favor, and point him out and tell us an article of clothing
10 that he's wearing?

11 A. Sitting at the Defendant table, wearing a long-sleeved
12 orange shirt.

13 MS. BUESS: May the record reflect that the
14 witness has identified the Defendant?

15 THE COURT: Yes.

16 MS. BUESS: May I approach the Witness?

17 THE COURT: You may.

18 Q. (BY MS. BUESS) Officer, I'm going show you -- or I'm
19 sorry, Sergeant. I will eventually get it right.

20 Sergeant, I'm going to show you what's been
21 marked as State's Exhibit Nos. 16 through No. 23. Could you
22 take a look at those for me, please.

23 A. (Witness complies.) Yeah.

24 Q. Do you recognize those?

25 A. Yes.

1 Q. Are you actually the person who took these
2 photographs?

3 A. Yes, I did.

4 Q. Can you tell us whether these photographs fairly and
5 accurately depict the tattoos that the Defendant currently
6 has on his body, as of this morning?

7 A. They are the tattoos. It's an accurate description.

8 Q. And when were these photographs taken?

9 A. Today at about 11:00 a.m.

10 MS. BUESS: Your Honor, at this time, I would
11 offer into evidence, State's Exhibit Nos. 16 through 23 and
12 tender to opposing Counsel.

13 MR. WHITE: No objection, Your Honor.

14 THE COURT: Admitted. Maybe published to the
15 jury.

16 Q. (BY MS. BUESS) Sergeant, are you familiar with the
17 tattoos that various gangs use to identify themselves?

18 A. Yes, ma'am.

19 Q. How about the tattoos that are used by the 52
20 Hoovers-Crips?

21 A. I am.

22 Q. And let's start with State's Exhibit No. 16. Looking
23 at State's Exhibit No. 16, Do you see any tattoos here that
24 you would associate with the 52 Hoovers-Crips?

25 A. The pair of dice on the left side of his chest show

1 the numbers "5" and "2."

2 Q. And looking at State's Exhibit No. 17, is that a
3 close-up of tattoo that you were just discussing?

4 A. Yes, it is.

5 Q. And what's the significance of the "5" and "2" on the
6 dice?

7 A. I believe it's a street in Los Angeles.

8 Q. And specifically, the "5" "2," is that a number
9 that's associated with a gang?

10 A. Yes.

11 Q. Now, officer -- or I'm sorry -- Sergeant, what, if
12 any, significance do all of these dollar signs have?

13 A. In general, it's nothing specific for 52
14 Hoovers-Crips. And up top -- it's hard to see at the top the
15 "MOB." "MOB" means "Money Over Bitches." It's a typical
16 tattoo --

17 MR. WHITE: Objection, Your Honor, relevance.

18 THE COURT: Overruled.

19 A. It's a tattoo that I see quite often on gang members,
20 not specifically 52 Hoovers-Crips. But what is specific is
21 when you write the "MOB," the "O" is crossed out and the "B"
22 is crossed out and you can't -- it's kind of hard to see
23 there's a small "X" in it. And the "O," I don't know the
24 significance of. But the "B" specifically -- can you see the
25 "Crips"? They're not allowed to use the letter "B." So,

1 whenever they do write the letter "B," they usually put an
2 "X" in it or break it or turn it upside down. In this
3 instance, they put an "X" in it.

4 Q. And how about the "O" in the "MOB"?

5 A. Same difference. I see it a lot, but I don't know the
6 significance of the "O," though. But I do definitely know
7 the "B."

8 Q. Does "O" also appear in writing of "Bloods"?

9 A. Yes. Obviously, you spell out "Bloods," you would see
10 the "O" in there. Yes.

11 Q. And are you aware of the history between various ^
12 Crips sets and Bloods sets?

13 A. Yes.

14 Q. Could you explain that to the jury?

15 MR. WHITE: Objection, Your Honor, relevance.

16 THE COURT: Overruled.

17 A. Just various states, the Bloods and the Crips started,
18 you know, in Los Angeles as rival gang members and rival
19 gangs. Bloods are red rag and Crips are blue rag. And just
20 typically in Houston, I believe Bloods sets are 59 Bounty
21 Hunters, 59 Piru and Treetop Bloods and Hilltop Bloods. And
22 there's all kinds of different Bloods sets. There's -- I
23 call them the Big 3, the majority we have in Houston.

24 In Crips, it makes it a little more easier.

25 It's pretty much if you see 5-Deuce Hoovers-Crips Gang and

1 Rolling 60 Crips. There's different ones, but those are the
2 pretty much the bigger ones number-wise. Gang member rival
3 and red rag and blue rag and that's about it.

4 Q. (BY MS. BUESS) And looking at State's Exhibit No.
5 17, is that just a close-up of the "M-O-B" acronym that we've
6 been you discussing?

7 A. Yes.

8 Q. What does that refer to?

9 A. "Money Over Bitches."

10 Q. Is that a slogan that you commonly see in gang
11 tattoos?

12 A. Yes.

13 Q. And looking at State's Exhibit No. 19, what gang
14 tattoos can we see exhibited in State's Exhibit No. 19?

15 A. There's a lot of tattoos here in the abdomen. In the
16 stomach here, there's a big "5" and "2." And inside the "5"
17 and "2," you have "HCC," which stands for Hoovers-Crips
18 Criminal.

19 MR. WHITE: Objection, Your Honor, again,
20 speculation. He doesn't know what the acronym stands for.

21 THE COURT: Overruled.

22 Q. (BY MS. BUESS) And, Sergeant, how do you know that
23 "HCC" stands for Hoovers-Crips Criminal?

24 A. I've seen them before. I don't see it as often.
25 Usually I'll see "HGC" or "HCG," for Hoovers Gangster Crips

1 or Hoovers-Crips Gangster. But in this instance, I really
2 can't say for sure. But I would say the majority of the
3 time, it does mean Hoovers-Crips -- Hoovers-Crips Criminal.

4 Q. And, Sergeant, do you see lettering along the side
5 here and here?

6 A. Yes.

7 Q. And what, if anything, do those acronyms stand for?

8 A. The one over here, the "EBK" --

9 MR. WHITE: Objection, grounds for speculation.
10 He can't state what the acronyms stands for, Your Honor --

11 THE COURT: Overruled.

12 MR. WHITE: -- he's got the one guy.

13 THE COURT: Overruled. You can
14 cross-examination him later.

15 MR. WHITE: Thank you, Your Honor.

16 Q. (BY MS. BUESS) And State's Exhibit No. 20, is that
17 the close-up of the "BK" we were talking about?

18 A. Yeah, this is a "BK." "BK" is a more common tattoo.
19 It stands for "Bloods Killer" "Killa" -- I'm sorry.

20 K-I-L-L-A. Typically, rival gangs -- what they're doing
21 here, is they're disrespecting Bloods and putting the "K" on
22 the end. Rival gangs will do that all the time. They'll put
23 the "K" on the end of whatever gang they are trying to
24 disrespect. So, it stands for "Bloods Killa," is
25 disrespecting Bloods gangs members.

1 Q. How would that classify being a member of a Crips
2 set?

3 A. It's just a little common tattoo. It's one of their
4 rivals and that's what they're putting on their bodies and
5 just showing, you know, their hatred or disrespect for them.

6 Q. And how about looking at State's Exhibit No. 21.
7 What can we see here?

8 A. This is an "EBK," which stands for "Everybody Killa."
9 And this is not used specific to 52 Hoovers-Crips, but it's
10 specific to gangs in general. You'll see this a lot.
11 Basically, they're just disrespecting gangs, everybody.

12 And here, too, the -- the "EK," they didn't do
13 it. But here in the "EBK," they did it. Again with the "B,"
14 he wrote the "X" and -- there's an "X" in it. So, every time
15 they use the "B," they put the "X" in it. So, "EBK,"
16 "Everybody Killa."

17 Q. Let's move onto State's No. 22. What are we looking
18 at here?

19 A. It's a large tattoo on his back.

20 Q. And what, if any, gang tattoos can you see in this
21 photo?

22 A. In the middle -- I think a close-up of it is easier to
23 see -- it's the Astro's Star with an "H" in front of it.
24 He's showing he's from Houston, from H-Town, whatever that is
25 commonly referred to.

1 Q. Let's look at State's Exhibit No. 23. Is that a
2 close-up --

3 A. Yes.

4 Q. -- of the area you're talking about?

5 A. Yes, it's a close-up. Like I said, it's a big Astro
6 star with the "H." And what they're doing, is a five-point
7 star -- and not really to get too much into gangs.

8 In Illinois in the late 1970s, two nations were
9 created: A Folk Nation and People Nation. A group of gangs
10 got together and created People Nation, other groups of gangs
11 got together and created Folk Nation.

12 And a five-point star is a symbol used by People
13 Nation. It's also a symbol used by a lot of gang members.

14 So, what you're doing is, you're showing --
15 putting the national star at the beginning, you're showing
16 you're from Houston and he's proud where he's from. But then
17 there's also a line also cracking the five-point star. The
18 five-point star is used by People Nation. When you see a
19 crack, it's disrespect to People Nation.

20 Since he's a Crips and Crips in Houston commonly
21 don't associate with Folk Nation symbols. But if they do, it
22 wouldn't be the six, which is a six-point star. And here it
23 is a five-point star. So, he's breaking a five-point star to
24 disrespect People Nation.

25 Q. So, what, if anything, does that tattoo indicate to

1 you about the Defendant?

2 A. It's just another gang tattoo that we -- that you'll
3 see on anybody that aligns themselves with Folk Nation.

4 Q. Sergeant, do you commonly go on the Internet or look
5 on-line to educate yourself as far as signs or symbols gangs
6 are currently using?

7 A. I do some. But, really, Houston is a little -- a lot
8 different. You've really got to see what they're doing here
9 on the streets in Houston because it can be totally different
10 than in other parts. Houston is a big melting pot, and it's
11 a little different.

12 MS. BUESS: May I approach the witness?

13 THE COURT: Yes.

14 Q. (BY MS. BUESS) Sergeant, I'm going to show you what's
15 marked as State's Exhibits 24, 25 and 26. Are you familiar
16 with these images, in general?

17 A. Yes.

18 Q. Are these images that are commonly associated with
19 Hoovers-Crips?

20 A. I would say yes.

21 Q. And how do you know that?

22 A. Based on the colors and some of the symbols here that
23 I see.

24 Q. Do they fairly and accurately represent images that
25 the Hoovers-Crips regularly use?

1 A. Yes.

2 MS. BUESS: Your Honor, at this time, I would
3 offer into evidence State's Exhibits 24, 25 and 26.

4 MR. WHITE: Your Honor, I would object to these
5 exhibits. I have no idea where these exhibits were derived
6 from, nor do I have any idea of how they're relevant to the
7 current case.

8 THE COURT: May I see those exhibits?

9 MR. WHITE: Sure.

10 (Conference at the bench, Jury present.)

11 MS. BUESS: And, Judge, the witness has
12 testified that --

13 THE COURT: Is this the kind of evidence that
14 this expert commonly relies on when he gives an opinion?

15 MS. BUESS: Yes, Judge. He's testified that he
16 does sometimes use the Internet, that he is familiar with
17 those signs and symbols, and he knows them to be associated
18 with the 5-Deuce Hoovers-Crips.

19 MR. WHITE: Your Honor, if I may, he testified
20 that he uses it but not that much. And most of his
21 information was gathered from other gang members on the
22 streets. I have no idea where these things were derived
23 from. This looks like somebody just printed it out off a
24 website.

25 THE COURT: What are the exhibit numbers?

1 MS. BUESS: 24, 25 and 26.

2 THE COURT: They're admitted over objection.

3 MS. BUESS: Thank you, Judge.

4 MR. WHITE: Thank you, Your Honor.

5 MS. BUESS: Permission to publish?

6 THE COURT: Granted.

7 Q. (BY MS. BUESS) And, Sergeant, let's start with
8 State's Exhibit No. 24. What are we looking at here in
9 State's Exhibit No. 24?

10 A. It's an Astro's star with -- a blue Astro's star with
11 an "H" in front of it with -- it looks like a stop sign and
12 "Group" or "Die" written on it. It's a -- looks like work
13 done by 5-Deuce Hoovers-Crips.

14 Q. What significance, if anything, does the colors used
15 in this photograph have?

16 A. The blue and the orange are colors used by the gang.

17 Q. And that star and that "H," how similar is that to
18 the photographs or -- I'm sorry -- to the tattoo that you saw
19 on the Defendant's back?

20 A. The five-point stars are the same, a five-point star.

21 Q. And looking at State's Exhibit No. 25, what are we
22 looking at here?

23 A. To the right here, you have another Houston Astro's
24 star with an H and the dice, the 5-Deuce -- the 5-Deuce
25 through the dice. And in the large picture at the bottom,

1 "HCG," Hoovers-Crips Gangster. The "W" and the "S" is "West
2 side," I guess. And a "5" and "2," and then "2," being, you
3 know, a hand sign being down.

4 Q. And looking at State's Exhibit No. 26?

5 A. Just the colors, the orange and blue together, and
6 just the lifestyle showing the marijuana, showing the money,
7 you know, just kind of an attractiveness to the gang, "Hey,
8 you can make money and sell drugs," and, you know, the
9 coolness stature, I guess.

10 Q. Sergeant, in your experience, what happens to someone
11 who flies gang colors or has gang tattoos but is not actually
12 a member of that gang?

13 A. Well, they would be -- if you're perpetrating a gang
14 and you're not really a gang member, you can be targeted by
15 rival gangs, you can be targeted by that gang itself since
16 you're not really a gang member. And, obviously, you're
17 targeted by the police.

18 Q. Based on your experience and training, does the
19 5-Deuce Hoovers-Crips allow people to tattoo themselves with
20 "5" "2" and other gang symbols, if someone is not a member?

21 MR. WHITE: Objection, Your Honor, it's grounds
22 for speculation.

23 THE COURT: Overruled.

24 A. Anybody can get a tattoo on their own, but it's
25 definitely not smart to do that unless that's something, you

1 know, at some point you want to be a part of.

2 Q. (BY MS. BUESS) How about flying gang colors in a
3 known gang areas?

4 A. Say the whole question.

5 Q. Would flying gang colors in a gang area cause
6 problems for you, if you are not a member of that gang?

7 A. Oh, absolutely.

8 Q. How about if you go to a rival part of town with a
9 rival gang?

10 A. Yes.

11 Q. Does anyone ever retire from gangs or quit gangs?

12 A. Yeah, I'm sure they do.

13 Q. Are there actually programs that HPD runs to help
14 people get out of gangs?

15 A. HPD doesn't run it. We have a great program that goes
16 into schools and counsels and talks to kids about gangs. But
17 as far as getting them out, no. There -- we do have -- there
18 are some great programs that we have.

19 Q. Do some of those programs involve having gang tattoos
20 removed?

21 A. HPD doesn't run it. The Mayor's office does. It's
22 called the Mayor's Anti-Gang Office. They have counselors,
23 they go into schools and counsel kids and they do pay for the
24 tattoo removal.

25 Q. So, if someone wants to get out of a gang or wants to

1 have their gang tattoos removed, could they participate in
2 this program and not have to pay anything?

3 MR. WHITE: Objection, Your Honor, relevance.

4 THE COURT: Overruled.

5 A. Yes. Yes, they could.

6 Q. (BY MS. BUESS) And if someone did go through one of
7 those programs and just wanted to have his tattoos removed,
8 do you know whether or not that could be done?

9 A. I'm sure they could, but it takes some money. I mean,
10 it's just like the city offers these things. If you go
11 through some stuff and go through a few little steps, we'll
12 pay to get the tattoo removed for you.

13 Q. Or if you want to have your tattoo removed on your
14 own, can you have tattoos removed?

15 A. Yes.

16 Q. Can you change the color of your car?

17 A. Yes.

18 Q. Can you do that and go out and pay someone to paint
19 your car a different color?

20 A. Yes, you can.

21 Q. Now, looking at State's Exhibit No. 1, have you had
22 an opportunity to review the Defendant's file in the HPD Gang
23 Tracker?

24 A. Yes, I have.

25 Q. Could you explain briefly to the jury what the "HPD

1 Gang Tracker System" actually is?

2 A. Our Gang Tracker is our main database. It's how we
3 house our gang members. The State of Texas says, "If you
4 identify somebody who is a gang member, you can put it in
5 your database and hold it in your database for five years
6 unless they commit a Class B misdemeanor or above.

7 So, basically, if they don't commit a crime in
8 five years, then they can be taken out of the database. And
9 if they do commit a crime, then they have to stay in that
10 database for however long the sentence is.

11 And our Gang Tracker, our big database, it
12 houses the gang, gangs any with nicknames, tattoos, vehicles.
13 It's just basically a tool we use in law enforcement to
14 follow-up or looking up gang members.

15 Q. Who actually enters people into the Gang Tracker
16 System?

17 A. Officer themselves can do that.

18 Q. And have you done that before?

19 A. Yes, I have.

20 Q. And when you encounter people on the street who you
21 believe may be members of a gang, what do you do?

22 A. I ask them the questions I need to ask them and I make
23 notes. I take photos of them, take photos of their vehicle,
24 anything pertinent thing gang-related I can put it in the
25 system.

1 Q. Do people ever admit to you while you're in that
2 uniform that they're members of a gang?

3 A. Nine times out of ten, yes.

4 Q. And do you know why they do that?

5 A. Well, they've got those tattoos on them and they're
6 wearing the colors for a reason. It describes who they are.
7 It's not against the law to be in a gang.

8 So, there's no reason not to say it. But they
9 got tattoos and they're wearing those colors for a reason. A
10 lot of them are proud of it and tell you.

11 Q. And you said that you've reviewed the Defendant's
12 file in the HPD Gang Tracker?

13 A. Yes, ma'am.

14 Q. Do you recognize State's Exhibit No. 1?

15 A. Yeah. Those are photos that are in the Gang Tracker.

16 Q. And are these photos of the Defendant's car?

17 A. I believe so. Yes.

18 Q. Just looking at State's Exhibit No. 1, can you tell
19 whether or not this is a custom paint job?

20 MR. WHITE: Objection, Your Honor, that's
21 grounds for speculation.

22 THE COURT: She just asked if he could. Can
23 you?

24 A. It looks -- to my knowledge, yes.

25 THE COURT: Okay. Next question.

1 Q. (BY MS. BUESS) The color of the vehicle, how does
2 that tie in with the 5-Deuce Hoovers-Crips?

3 A. Blue -- blue is the color they use.

4 Q. Sergeant, in your experience, if someone wants to
5 quit a gang or leave a gang, do they have their tattoos
6 removed?

7 A. They could. Not always.

8 Q. Do they cover them up so that other people can't see
9 them?

10 A. Yes, they would cover them up. It's a little more
11 easier covering them up than getting them removed.

12 Q. Could you actually go to a tattoo artists and have
13 the tattoos altered in some way?

14 A. Yes, I see that quite often. They'll cover it up with
15 a different tattoo.

16 Q. So, someone could a tattoo removed. They could go to
17 a tattoo artist and have it changed or they can just wear
18 clothing to hide their tattoos?

19 A. Yes.

20 Q. If someone doesn't want to be associated with a gang
21 member or is no longer a member of a gang, do they typically
22 fly gang colors?

23 A. No.

24 Q. And when we talk about flying gang colors, what type
25 of activities are we talking about?

1 A. Typically, flying gang colors, specifically wearing a
2 bandana. Or a bandana is obviously a symbol used by gangs.
3 It's pretty common knowledge that gang members wear that.
4 And it's typically one item on you're right or left pocket or
5 what you claim.

6 Q. What about driving a vehicle, like the one you see in
7 State's Exhibit No. 1, that bright blue custom paint job?

8 A. It's nothing specific. I mean, it could be. Like a
9 lot of people says it's a red flag. It could be an
10 indicator, but it's nothing specific.

11 Q. And when you're trying to decide whether or not
12 someone is a gang member or not, do you look at one thing or
13 you look at everything?

14 A. I look at everything.

15 Q. And have you been able to review everything in this
16 case?

17 A. Yes, ma'am.

18 Q. And based what you have reviewed, have you formed an
19 opinion as to whether or not the Defendant is a member of a
20 criminal street gang?

21 A. Yes, I have.

22 MR. WHITE: Objection, Your Honor. She's asking
23 him for subjective opinion, Your Honor. He has no previous
24 encounters with Mr. Washington. He is basing everything on
25 speculation and from information that's been presented here

1 today, Your Honor. And none of this information -- he's
2 never talked to Mr. Washington. He never spoken to him as an
3 individual.

4 THE COURT: Well, you can ask him those
5 questions on cross-examination. That's overruled.

6 Q. (BY MS. BUESS) You can answer the question.

7 A. I believe the question was: "What gang I believe he's
8 in?"

9 Q. Yes.

10 A. I believe he's in the 5-Deuce Hoovers Crips.

11 Q. Why do you believe that?

12 A. That's just based on his tattoos.

13 Q. Do you believe that he is an active member or a
14 former member of that set?

15 A. Well, I would have no way of knowing other than us
16 being here today. So, we are here today. So, I would say he
17 is an active member.

18 Q. Let me ask you this: The shirt that the Defendant is
19 wearing, that orange shirt, is that a gang color associated
20 with the 5-Deuce Hoovers-Crips?

21 A. Yes. Orange is a color associated by the 5-Deuce
22 Hoovers-Crips. But specifically looking at that, I would say
23 no. Just based on that, I wouldn't say so.

24 Q. Fair enough. Now, based on -- have you had an
25 opportunity to review the report in this case?

1 A. Yes, ma'am.

2 Q. And looking at everything that you see in the report
3 and knowing, for example, that a blue bandanna was located
4 inside the Defendant's vehicle along with a gun, would you
5 be able to tell us whether or not you would have an opinion
6 whether or not the Defendant was in a gang on April 8th of
7 2012?

8 MR. WHITE: Objection, Your Honor. She's asking
9 him to assume facts not in evidence. Nowhere in that report
10 does it ever say that a bandana was found in the vehicle.
11 And it's not been established that a bandana was found in the
12 vehicle.

13 MS. BUESS: Judge, I can break it down a little
14 bit.

15 THE COURT: Please do that. That's sustained
16 for now.

17 MR. WHITE: Thank you, Your Honor.

18 Q. (BY MS. BUESS) Officer, someone who is not wearing a
19 shirt and showing their gang tattoos, is that consistent with
20 someone who is a former member or no longer wishes to be
21 associated with a gang?

22 MR. WHITE: Objection, Your Honor, that's
23 grounds for speculation.

24 THE COURT: Overruled. He's qualified as an
25 expert. You can cross-examine him when it's your turn.

1 A. Well, I would definitely say he's obviously not trying
2 to hide the fact that he has gang tattoos.

3 Q. (BY MS. BUESS) How about someone driving a vehicle
4 like we see in State's Exhibit No. 1? Is that someone that
5 he's trying to hide as a possible gang member?

6 A. The color of the car is really, yes, it's an
7 indicator, but it's not strong. Some officers use it as a
8 strong indicator, but I don't.

9 Q. How about someone who has a gun in their car and also
10 has a blue bandanna?

11 A. Absolutely.

12 Q. Now, why would that be such a strong indicator for
13 you?

14 A. Well, because, obviously, the bandanna. Well, on the
15 gun, you're just keeping it in your car. It doesn't mean
16 you're a gang member. It's just -- you know, you just stuck
17 it in your car. Both a gang member with a gun, yes.

18 Q. So, if we put all those factors together, would you
19 be able to make the determination if a person who matches
20 those circumstances, would be an active member of the 5-Deuce
21 Hoovers-Crips at that point in time?

22 A. I would say yes.

23 Q. Sergeant, is a blue rag the same as a blue bandanna?

24 A. Yes, it is.

25 MS. BUESS: Pass the witness.