

REPORTER'S RECORD

VOLUME 4 OF 10 VOLUMES

TRIAL COURT CAUSE NO. 1404917 FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS

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CHRISTOPHER A. PRINE
Clerk

BRITTINI KRESSIN) IN THE DISTRICT COURT
)
 Appellant)
)
)
)
 VS.) HARRIS COUNTY, TEXAS
)
)
)
 THE STATE OF TEXAS)
)
 Appellee) 351ST JUDICIAL DISTRICT

GUILT-INNOCENCE PROCEEDINGS

On the 7th day of October, 2015, the following
 proceedings came on to be heard in the above-entitled
 and numbered cause before the Honorable Terry Flenniken,
 Judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by computer-aided
 transcription/stenograph shorthand.

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(GUILT-INNOCENCE PROCEEDINGS)

OCTOBER 7, 2015

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1 (Open court, defendant present, no jury.)

2 THE COURT: All right. Court's back on the
3 record in Cause No. 1404917. The Court will continue
4 the hearing that was commenced yesterday afternoon.

5 You may come forward, Officer.

6 Mr. Aslett, you may proceed when you're
7 ready.

8 MR. ASLETT: Thank you.

9 **OFFICER SALVADOR CORRAL,**
10 having been called as a witness and being first duly
11 sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **CONT'D BY MR. ASLETT:**

14 Q. Officer Corral, when we last left off
15 yesterday, I believe we were about to talk about the
16 walk-and-turn test.

17 A. Yes, sir.

18 Q. So was the next field sobriety test that you
19 asked the defendant to perform the walk-and-turn test?

20 A. Yes, sir, it was.

21 Q. Tell us what the walk-and-turn test is and how
22 it's scored.

23 A. The walk-and-turn test is the second of the
24 divided attention and standardized field sobriety tests.
25 The walk-and-turn test is a test that divides attention.

1 There are two stages to it, an instructional stage and a
2 walking stage. And in those stages, as the individual
3 is explained and demonstrated the tests, they are then
4 required to remember and do the tests on their own.

5 Q. Now, prior to performing the walk-and-turn test
6 on the defendant, did you explain the test to her?

7 A. Yes, I did.

8 Q. Did you demonstrate it for her?

9 A. Yes, I did.

10 Q. Did she indicate that she understood your
11 instructions?

12 A. Yes, sir.

13 Q. What did you observe when you saw the defendant
14 do the walk-and-turn test?

15 A. If I can see the report to refresh my memory on
16 the clues.

17 Q. It's not a problem.

18 MR. ASLETT: May I approach the witness?

19 THE COURT: You may.

20 (Prosecutor tenders document to witness.)

21 A. Thank you, sir.

22 Q. (By Mr. Aslett) Okay. Officer Corral, if you
23 could tell us what clues you observed when you saw the
24 defendant perform the walk-and-turn test.

25 A. Yes, sir. The first clue in the instructional

1 stage that was observed was she could not keep balance.
2 So as she's asked and required to stand in an
3 instructional position, which divided attention then
4 begins, I saw her unable to follow that instruction by
5 not keeping balance standing in that instructional
6 stage.

7 Q. Okay. What clues did you observe as she
8 started walking?

9 A. In the second stage, the walking second stage,
10 the clues that were observed by me were she stepped off
11 line, she used her arms for balance, she stopped
12 walking, she missed heel-to-toe, and made an improper
13 turn.

14 Q. And did she also take the wrong number of
15 steps?

16 A. I do not have it marked here, no, sir.

17 Q. Okay. In total, how many clues did you observe
18 out of the eight total clues on the walk-and-turn?

19 A. A total of six out of eight clues, sir.

20 Q. What is a failing score on the walk-and-turn?

21 A. The way it's scored, I guess, would be the
22 word, is the minimum of two clues observed.

23 Q. And did you take the six out of eight clues on
24 the walk-and-turn test as an additional sign of
25 intoxication?

1 A. Yes, sir.

2 Q. What test did you ask the defendant to perform
3 next?

4 A. The last of the divided attention of the
5 standardized tests was the one-leg stand.

6 Q. Tell us what the one-leg stand is and how it is
7 scored.

8 A. In the one-leg stand, there are two stages,
9 again dividing attention. The first stage, the
10 instruction stage, where all she's told is how to stand
11 and to pay attention to the instruction. In the second
12 portion of the stage of that test, there's the balance
13 and counting stage. In that stage, she was explained to
14 leave her arms down, raise her feet approximately
15 6 inches off the ground with her foot parallel to the
16 ground, looking at her toe.

17 Q. And did you demonstrate this test for the
18 defendant?

19 A. Yes, sir.

20 Q. Did she state she understood?

21 A. Yes, sir.

22 Q. What did you observe when she performed the
23 walk-and-turn -- I'm sorry - the one-leg stand test?

24 A. On the one-leg stand, I observed one observable
25 clue.

1 Q. And is that a passing score for the one-leg
2 stand?

3 A. In that one test, yes, sir.

4 Q. Were there any nonstandardized things that you
5 asked the defendant to do to determine if she was
6 intoxicated?

7 A. I did ask her if she could recite her alphabet.

8 Q. From A to Z?

9 A. Yes, sir, A to Z.

10 Q. And was she able to correctly recite her
11 alphabet?

12 A. No, sir.

13 Q. Okay. After you asked the defendant to recite
14 her alphabet, what did you do next?

15 A. At this time, after the standardized tests and
16 the secondary alphabet test was done, at this time I
17 then read her what is the DIC-24.

18 Q. And what's DIC-24?

19 A. The statutory warning that entails driving
20 privileges in the state of Texas.

21 Q. And is this form what explains to the defendant
22 that if they refuse a consent for blood, a blood sample,
23 then that refusal could be used against them at their
24 trial?

25 A. Yes, sir.

1 Q. Now, that night did you film your interactions
2 with the defendant?

3 A. Yes, sir, I did.

4 Q. What device did you use to film it?

5 A. The video camera recording device in my patrol
6 vehicle.

7 Q. Is that a device that's supposed to record both
8 audio and video?

9 A. Yes, sir.

10 Q. Okay. Did you review the video of your
11 interactions of the defendant that night after it
12 occurred?

13 A. Yes, sir.

14 Q. What, if anything, did you notice about the
15 video when you watched it?

16 A. The video was accurate. The audio was not
17 working.

18 Q. Okay. Do you know why the audio was not
19 working?

20 A. No, sir.

21 Q. Had you had audio problems with your equipment
22 before?

23 A. Yes, I have.

24 Q. Did you believe those problems had been fixed
25 prior to you going on duty that night?

1 A. Yes, sir.

2 Q. Okay. Have you reviewed that video prior to
3 trial?

4 A. Yes, sir.

5 Q. And in reviewing it, does what appears on the
6 video match up with what you wrote down in your report
7 as far as her scores on the various field sobriety
8 tests?

9 A. Yes, sir.

10 MR. ASLETT: Your Honor, may I approach the
11 witness?

12 THE COURT: You may.

13 Q. (By Mr. Aslett) Officer Corral, I am showing
14 you now what I've marked as State's Exhibit 49. If you
15 could tell the Court what this is (indicating).

16 A. Yes. A scene video.

17 Q. And is this the scene video of your
18 interactions with the defendant that night?

19 A. Yes, sir.

20 Q. Does it fairly and accurately depict your
21 interactions with the defendant on October 15th, 2013?

22 A. Yes, sir.

23 Q. State's Exhibit 50. Could you tell us what
24 this is (indicating)?

25 A. Yes, sir. This is the DPS copy of the DIC-24.

1 Q. And is this your signature here at the bottom
2 (indicating)?

3 A. Yes, sir, it is.

4 Q. And is it a fair and accurate copy of the
5 DIC-24 that you read the defendant on that night?

6 A. Yes, sir.

7 Q. And did the defendant refuse consent for both a
8 breath and a blood specimen?

9 A. Yes, sir.

10 Q. And is that refusal for both breath and blood
11 noted on this DIC-24 form?

12 A. Yes, sir.

13 Q. After the defendant refused to give blood, what
14 did you do next?

15 A. After the defendant refused, at this time I
16 then contacted the district attorney's office and give
17 the D.A.'s office information regarding the refusals.

18 Q. Did you swear out an affidavit for a search
19 warrant?

20 A. Yes, sir, I did.

21 Q. I'm showing you, for the purposes of this
22 hearing, what I've marked as State's Exhibit 104. If
23 you could identify this for the Court (indicating).

24 A. Yes, sir. This is going to be the affidavit
25 for the search warrant.

1 Q. Okay. And does this search warrant affidavit
2 basically lay out the same facts that you've testified
3 to here today?

4 A. Yes, sir.

5 Q. Okay. Including the facts about the crash that
6 you learned from Officer Flores?

7 A. Yes, sir.

8 Q. Okay. And after you filled out that affidavit,
9 was a search warrant signed?

10 A. Yes, sir.

11 Q. Okay. I'm showing you State's No. 51. If you
12 could identify this for the Court (indicating).

13 A. This is going to be the signature and the
14 search warrant that was signed by Judge Villareal.

15 Q. Does that fairly and accurately -- is that a
16 fair and accurate copy of the search warrant that you
17 received after filling out that affidavit?

18 A. Yes, sir.

19 Q. Okay. What did you do after you obtained the
20 affidavit -- I'm sorry -- after you obtained the search
21 warrant for the defendant's blood?

22 A. At that time, she was taken to Memorial Hermann
23 Hospital for a blood draw.

24 MR. ASLETT: Your Honor, State would offer
25 into evidence, for the purposes of this hearing, State's

1 Exhibits 49, 50, 51, and 104. I'll tender to defense
2 counsel for inspection.

3 **(State's Exhibit Nos. 49 through 51, 104**
4 **Offered)**

5 MR. RAMIREZ: We're going to do this
6 twice?

7 MR. ASLETT: I'm not going to introduce the
8 affidavit in front of the jury, but for the purposes of
9 the hearing, I have to prove --

10 THE COURT: Do y'all want this little
11 discussion on the record?

12 MR. RAMIREZ: I'm sorry.

13 Judge, I was just inquiring. We've got a
14 couple duplicate documents that are listed under
15 different exhibit numbers, and I was asking for some
16 clarification whether or not he was going to admit
17 either of those duplicates.

18 THE COURT: Okay. What is the confusion?

19 MR. RAMIREZ: On Exhibit No. 51 --

20 THE COURT: Okay.

21 MR. RAMIREZ: -- these two pages are also
22 part of Exhibit 104.

23 MR. ASLETT: I can detach the search
24 warrant from Exhibit 104. That's my mistake.

25 Okay. Now it's just the affidavit.

1 THE COURT: All right. With that, are
2 there any objections to State's 45, 50, 51, and 104 for
3 the limited purpose of this hearing?

4 MR. RAMIREZ: Just -- no objection to 49
5 and 104, and 51.

6 THE COURT: What about State's 50, any
7 objection?

8 MR. RAMIREZ: Oh, no objection.

9 THE COURT: All right. State's 49, State's
10 50, 51, and 104 are admitted for the limited purpose of
11 this hearing, but not before the jury at this time.

12 **(State's Exhibit Nos. 49 through 51 and 104**
13 **Admitted For Hearing Purposes Only)**

14 Q. (By Mr. Aslett) Officer Corral, after you
15 obtained the blood warrant, where did you take the
16 defendant to have her blood drawn?

17 A. Memorial Hermann Hospital.

18 Q. And who did you have draw the blood at the
19 hospital?

20 A. The nurse that was working that morning was
21 going to be Nurse Rains, R-a-i-n-s.

22 Q. Okay. And did you watch Nurse Rains take some
23 blood samples from the defendant?

24 A. Yes.

25 Q. Do you recall how that was done?

1 A. Yes. There were actually two samples taken.
2 One was an exigent blood draw that was done at 4:31 a.m.
3 And then 30 minutes later, the search warrant was
4 executed at 5:04 a.m.

5 Q. Now, at the time of both blood draws, 4:31 and
6 5:04, were those done after the warrant was signed at
7 4:14?

8 A. Yes, sir.

9 Q. So if I'm understanding correctly, both blood
10 draws were done after you had already received the
11 warrant?

12 A. Yes, sir.

13 Q. Do you know why there was a 30-minute gap
14 between drawing blood from one arm and the other one?

15 A. Yes. The purpose that the district attorney
16 and I that night discussed was we took the first blood
17 draw and then do the second one 30 minutes later to show
18 metabolization in the system.

19 Q. And by "metabolization," do you mean to find
20 out whether the alcohol content is going up or going
21 down?

22 A. Yes, sir.

23 Q. Okay. Now, prior -- did you provide the blood
24 tubes to Nurse Rains for the blood draw to be done?

25 A. Yes, sir.

1 Q. And prior to giving him those tubes, did you
2 verify that they were not expired?

3 A. Yes, sir.

4 Q. Did you verify that there was anticoagulant
5 powder in the bottom of both vials?

6 A. Yes, sir.

7 Q. After Nurse Rains drew the blood, did he give
8 it back to you?

9 A. Yes, sir.

10 Q. Where did you take the blood to after you
11 received custody of it?

12 A. After I received custody, I sealed the boxes it
13 comes in, and I took it to the HPD -- to the property
14 room.

15 MR. ASLETT: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 Q. (By Mr. Aslett) Officer Corral, I'm going to
19 show you what I've marked as State's Exhibits 52 through
20 57. If you could tell the Court what these are
21 (indicating).

22 A. Yes. 52 is going to be the envelope that we
23 put the blood vials in. 53 is going to be the evidence
24 tape that I sealed it with, with my initials. 54 is
25 going to be the time of the blood draws packaged in each

1 of their little box, envelope, whatever you want to call
2 it. 55 are going to be the blood draws with the time,
3 my signature, as well as the nurse's information, the
4 dates and times. 56 is going to be the same blood vials
5 only with the visible name and times from the nurse that
6 drew the blood. And 57 is the same vials, only with my
7 initials on it and the nurse's initials.

8 Q. Okay. And do these photographs fairly and
9 accurately depict the evidence envelopes and the blood
10 vials that you obtained from the defendant on
11 October 15th, 2013?

12 A. Yes, sir.

13 MR. ASLETT: Your Honor, at this time,
14 State offers into evidence, for the purposes of this
15 hearing, State's Exhibits 52 through 57.

16 **(State's Exhibit Nos. 52 through 57**
17 **Offered)**

18 MR. RAMIREZ: No objection, Your Honor, for
19 the purposes of this hearing.

20 THE COURT: State's 52 through 57 are
21 admitted for the limited purpose of this hearing.

22 **(State's Exhibit Nos. 52 through 57**
23 **Admitted For Hearing Purposes Only)**

24 Q. (By Mr. Aslett) Officer Corral, after you
25 dropped the blood off at the lab, did you have any

1 further involvement with this case?

2 A. No, sir.

3 MR. ASLETT: Your Honor, for the purposes
4 of saving time, I'm not going to go ahead and publish
5 the video at this time, unless the Court feels it's
6 necessary, and I'll go ahead and pass the witness.

7 THE COURT: Any questions?

8 MR. RAMIREZ: Yes, Judge.

9 **CROSS-EXAMINATION**

10 **BY MR. RAMIREZ:**

11 Q. Officer Corral, you and I briefly met this
12 morning?

13 A. Yes, sir.

14 Q. My name is Enrique Ramirez, and I represent
15 Ms. Kressin in this matter. I have a few questions for
16 you regarding your testimony and what occurred on that
17 evening.

18 What time do you recall arriving to the
19 scene?

20 A. To the scene? I know it was shortly after
21 midnight because I remember -- I was asleep at home
22 while I was in bed and I remember when I got the call, I
23 remember it was right about midnight because it probably
24 took me about 20 to 30 minutes to get to the scene.

25 Q. And what time was it -- was your last -- what

1 time was it when you completed your complete -- when you
2 did your last duty for this investigation?

3 A. Oh, maybe 8:00, 9:00 a.m.

4 Q. And so all your testimony is from that
5 timeframe between midnight until about 8:00 or 9:00 in
6 the morning?

7 A. I want to say 8:00 or 9:00. Whatever time I
8 dropped her off at the southeast jail was the last time
9 that I dealt with her.

10 Q. Now, when you got to the scene, you -- when you
11 arrived at the scene, did you have the opportunity to
12 inspect her vehicle?

13 A. No, sir. When I arrived on scene, Vehicular
14 Crimes, which does the crash reports, they were on the
15 scene doing the crash information. I just dealt with
16 the person that was driving the vehicle who was
17 determined later to be at fault.

18 Q. Okay. And so I guess my question is: On your
19 report you indicated here that there was no alcohol
20 found in the vehicle?

21 A. Yes, sir.

22 Q. And so is it your testimony that there was no
23 alcohol found in the vehicle?

24 A. I put no alcohol, but I did not go toward the
25 vehicle where it was at, where the crash was.

1 Q. So is this entry, then, an accurate entry?

2 A. For my purpose of the report, yes, sir.

3 Q. And you didn't find any alcoholic containers in
4 her vehicle, did you?

5 A. I didn't look in her vehicle, sir.

6 Q. And so after -- and once you arrived there --
7 well, once you arrived there, you knew there was a
8 fatality involved in this accident, did you not?

9 A. Yes, sir.

10 Q. Okay. And because it's a fatality, you
11 understand that everything needs to be done properly.
12 Is that a fair statement?

13 A. Sure.

14 Q. Everything needs to be done with the utmost
15 care that there are no mistakes done in the
16 investigation. Is that a true statement?

17 A. I agree with that, yes, sir.

18 Q. And, obviously, you've got some experience.
19 How long have you been on the force?

20 A. With the Houston Police Department, six years.
21 Prior to that, since 1999.

22 Q. And what agency were you apart of before
23 this -- before Houston?

24 A. The Grants Police Department in Grants, New
25 Mexico.

1 Q. Okay, sir. And so you understand, particularly
2 with the line of work that you do, that it's very
3 important that all this be done accurately?

4 A. Yes, sir.

5 Q. And so now you're at the scene. You've made
6 contact with my client, and you've taken custody of her,
7 if you will, or you've taken control of her, right?

8 A. Yes, sir.

9 Q. And she wasn't free to leave at that point, was
10 she?

11 A. No, sir.

12 Q. After the accident and she was secured there by
13 your agency, she had no -- she had no ability to leave
14 the scene of the accident, did she?

15 A. She was there when I got there. I don't -- due
16 to investigation, I guess, no.

17 Q. And so from that point, eventually you ended up
18 at the -- what appears to be a gas station where you
19 conducted your examination of her -- or did the field
20 sobriety testing; is that correct?

21 A. Yes, sir, that's correct.

22 Q. And while there, you checked your equipment
23 before you started your investigation, did you not?

24 A. I'm not able to check my audio until after
25 recordings are done.

1 Q. Well, when was the last time you had used your
2 audio?

3 A. Maybe a couple nights before.

4 Q. And you hadn't had the opportunity to check it?

5 A. I downloaded videos; they recorded. This one
6 didn't, along with others. So it's a system that -- if
7 you want me to explain, I can explain; but I was not
8 able to check my equipment before the recording.

9 Q. Okay. And at what point did you realize that
10 your audio was not working?

11 A. That morning after I had dropped her off at the
12 southeast jail, because I remember speaking to another
13 officer, saying: Hey, my recording -- the audio did not
14 work last night.

15 Q. What time would you believe that to be?

16 A. The officer I spoke to came on at 6:00 or
17 7:00 a.m. So probably about 7:00, 8:00 a.m.

18 Q. And you said you took her to the southeast?

19 A. Yes, sir.

20 Q. Okay. Now, that was after you had gotten the
21 blood; is that correct?

22 A. That was after the blood draw, booking
23 information, report, you name it. After everything.

24 Q. Now, when you originally -- after you finished
25 your field sobriety testing, you put her in your car?

1 A. Yes, sir.

2 Q. Did you handcuff her?

3 A. Yes, sir.

4 Q. And you took her to which station at that
5 point?

6 A. At that time, we went to central intox, which
7 is downtown.

8 Q. So you went to central intox?

9 A. Yes, sir.

10 Q. Which location is that?

11 A. 61 Riesner.

12 Q. All right. And the drive from the location of
13 the accident to 61 Riesner is what, maybe ten minutes?

14 A. Maybe.

15 Q. Ten to fifteen minutes?

16 A. Yes, sir.

17 Q. And that would include putting her in the car,
18 driving over there, traffic, traffic lights, and
19 arriving at the station, taking her out of your vehicle,
20 and taking her into the central intox part of your
21 facility. Is that a fair statement?

22 A. Yes, sir.

23 Q. Fifteen minutes or so?

24 A. (Moving head up and down.)

25 Q. Now, once you get her inside there, where do

1 you actually physically put her?

2 A. There's two holding cells. There's a holding
3 cell for females and a holding cell for males. She was
4 placed in the female holding cell, which is within
5 eyeshot of the computers where I do my report.

6 Q. All right, sir.

7 A. Correct.

8 Q. What floor is the holding cell on?

9 A. First floor.

10 Q. First floor.

11 A. You walk in a door, down a hallway.

12 Q. Okay. And then it was at that point that you
13 began starting your -- is that when you called the
14 district attorney's office?

15 A. I actually called the district attorney's
16 office from the scene.

17 Q. Okay. And so once you arrived over there, the
18 purpose -- is it fair to say that you began your process
19 of preparing your documentation to request a warrant?

20 A. Yes, sir.

21 Q. And is that why you went to the terminals?

22 A. Do you mean the computers?

23 Q. Yes, sir.

24 A. Yeah, it's -- like I said, it's a few feet away
25 from the holding cell.

1 Q. Okay. And so you prepare your documentation
2 starting with, I trust, a blank affidavit?

3 A. Yes, sir.

4 Q. And then you fill it in. Is that -- does it
5 have boilerplate language in it where you fill in or do
6 you draft the entire thing?

7 A. No. In these cases, we draft it because no one
8 shows -- may show the same clues, the same -- the
9 vehicles are different. So in this case, it was not a
10 fill-in-the-blank template.

11 Q. Okay. So you began that form from the very
12 beginning --

13 MR. RAMIREZ: If I may, Judge, request from
14 the prosecutor the certified copy of the affidavit?

15 (Prosecutor tenders document to
16 Mr. Ramirez.)

17 MR. RAMIREZ: Thank you.

18 Q. (By Mr. Ramirez) All right, sir. So your
19 testimony this morning is that from this point --

20 MR. RAMIREZ: May I approach the witness,
21 Judge, briefly?

22 THE COURT: You may. But before you do,
23 any objection to the Court going off the record for a
24 moment?

25 MR. RAMIREZ: No objection by the defense,

1 Judge.

2 THE COURT: All right. Court's off the
3 record.

4 (Discussion off the record.)

5 (Brief recess.)

6 (Open court, defendant present, no jury.)

7 THE COURT: Court's back on the record in
8 Cause No. 1409417.

9 Mr. Ramirez, you may proceed. I believe
10 you had requested to approach the witness. You may do
11 so.

12 MR. RAMIREZ: Yes, Judge. May I grab this
13 exhibit?

14 Thank you.

15 Q. (By Mr. Ramirez) All right. Officer Corral, I
16 asked you a moment ago whether or not you recalled this
17 document here (indicating).

18 A. Yes, sir.

19 Q. You saw it a moment ago. And you're telling
20 this Court that you prepared this document from the
21 beginning to the end, which is two pages long; is that
22 correct?

23 A. The -- may I clarify?

24 Q. Sure.

25 A. Okay. So the State of Texas, Harris County,

1 that is the portion that I don't -- I don't write that,
2 and the spacing billets, what-have-you. But the -- down
3 here in the narrative of the affidavit, that is the
4 portion that I do.

5 Q. Okay. So a moment ago when you testified that
6 there was not a template, there actually is a template
7 that you follow; and then you just insert the language
8 that you need in order to prepare an affidavit?

9 A. Yes, sir.

10 Q. Okay. Now, I noticed on the second page of
11 this document -- and I'll approach you again -- there's
12 a signature there by somebody who either -- who observed
13 you signing it or -- who is that person?

14 A. You're talking about right here (indicating)?

15 Q. That's correct.

16 A. That would be officer George Roman.

17 Q. George Roman. And was he on duty that day with
18 you?

19 A. He was at intox that night working.

20 Q. All right, sir. So you had him witness your
21 signature. Is that what it is?

22 A. He witnessed the affidavit and, I guess,
23 confirmed it, yes, sir.

24 Q. Okay. What oath did he give you, sir?

25 A. What do you mean "oath"?

1 Q. What oath did he recite to you in order for you
2 to swear to this document?

3 A. No. Him signing that is witnessing that I'm
4 doing the warrant. I then take the warrant in front of
5 the judge.

6 Q. Okay. So he didn't swear you in to your
7 signature on this document; he just observed you signing
8 it?

9 A. Yes, sir.

10 Q. Okay. And so where it says here, if I may,
11 that it was sworn and subscribed before him, that would
12 be incorrect?

13 A. No, sir, because while I -- when I do the
14 warrant, he is witnessing that I made a warrant. And
15 it's not falsifying a document. He's just witnessing
16 that I made the affidavit according to what was going
17 on.

18 Q. I understand that, Officer. But my question is
19 really, is where it says "sworn and subscribed to before
20 me," and then it's signed by Officer Roman, that would
21 be incorrect?

22 A. I guess I'm not understanding the question.
23 His signature that I did the warrant is why his
24 signature is there.

25 Q. I understand that that's what your belief is,

1 that he was -- he just witnessed you signing the
2 document. But my question to you is, is that he didn't
3 swear you in to this document, did he?

4 A. No.

5 Q. He didn't ask you to raise your hand --

6 A. No. No, sir.

7 Q. -- and recite the language that's necessary for
8 a document to be sworn to --

9 A. No, sir.

10 Q. -- did he?

11 Okay. And so when it says that he did
12 this, that would be incorrect because he did not do that
13 to you, do he?

14 A. I don't agree with that. He's witnessing that
15 I'm not falsifying a document.

16 Q. And I'm not suggesting that you're falsifying a
17 document.

18 A. Sure.

19 Q. I'm simply asking you whether or not this
20 language here in this affidavit, which is a legal
21 document at this point, that says that he observed you
22 swear and subscribing this document, I'm just
23 establishing that that's incorrect because he didn't
24 swear you in, did he?

25 A. He did not swear me in, no.

1 Q. Okay. And you can see, also, Officer, here
2 that -- I'm going to hand you the exhibit one more time.
3 And what date is listed on there?

4 A. November 4th, 2013. You're talking about the
5 judge's date?

6 Q. No. I'm talking about where it says "sworn and
7 subscribed to me." What's the date on that?

8 A. October 15th.

9 Q. And what year?

10 A. 2012.

11 Q. And what was the date that you had this thing
12 sworn to?

13 A. This was 2000 -- I don't have the front page --
14 13. Hold on. I'm sorry. I got it right here.
15 October 13th, 2015.

16 Q. October 13th, 2015?

17 A. Yes, sir -- 15th, 2013. I'm sorry. I got it
18 backwards. October 15th, 2013.

19 Q. Okay. And so when Officer Roman signed this
20 document witnessing this, and perhaps even indicating
21 that he observed you swear to this, the date that's
22 listed on the affidavit is one year before the incident
23 that you were investigating?

24 A. Can I see the bottom part again? You say one
25 year?

1 The 2012, the year, the '12 to '13 is --
2 would indicate a year, yeah.

3 Q. Right. So the date on this document is
4 dated -- on the affidavit is dated one year before it
5 actually -- the accident actually happened. Wouldn't
6 you agree with me?

7 A. I agree with that.

8 Q. And you agree with me that -- that you weren't
9 given an oath and that he only observed you signing this
10 document, right?

11 A. Yes, sir.

12 Q. Now, let me ask you something. After you
13 prepared this affidavit, you present that to a judge,
14 correct --

15 A. Yes, sir.

16 Q. -- for his review?

17 A. Yes, sir.

18 Q. And where did you take that document to?

19 A. Right across the street from central intox to
20 the municipal court.

21 Q. Okay. And did you fax it over there or did you
22 walk it over there?

23 A. I walked it over.

24 Q. Okay. And would you say that walk is maybe a
25 few minutes?

1 A. A few -- maybe five minutes.

2 Q. Maybe five minutes.

3 And you walked it in. And the judge -- you
4 presented the affidavit with the blank search warrant to
5 that judge?

6 A. I presented him that document unsigned by a
7 judge.

8 Q. Meaning just the affidavit?

9 A. Those two together.

10 Q. These two pages (indicating)?

11 A. Yes, sir.

12 Q. You presented this -- okay. And then the
13 judge -- let me ask you: Where is the original one of
14 these?

15 A. You'd have to ask Mr. Aslett. I don't know
16 where the original is.

17 Q. Okay. Let me ask you, since we're on that.
18 Your duty -- after you get the affidavit and the warrant
19 together and they're both signed, what did you do with
20 that warrant?

21 A. The original that morning was brought to the
22 Harris County District Attorney. And on the -- I
23 believe it's the second floor, there was a folder on the
24 wall where we would put the original warrants.

25 Q. And did you do that?

1 A. I believe so.

2 Q. Believe so?

3 A. Yeah. Actually, I did because I had to come up
4 here to do additional paperwork.

5 Q. All right. And so then -- and so then you
6 approached --

7 MR. RAMIREZ: Judge, may I also request
8 from the prosecutor the warrant itself?

9 (Prosecutor tenders document to
10 Mr. Ramirez.)

11 Q. (By Mr. Ramirez) And so you presented this
12 affidavit to the judge and then the judge reviewed it
13 and at some point signed the search warrant for you,
14 right?

15 A. Correct.

16 Q. Okay. And before I move on to the warrant
17 itself, did you notice on this affidavit that you have
18 some duplicate language?

19 A. As far as?

20 Q. Can you read here at this paragraph where your
21 narrative here is and then this paragraph here? Would
22 you agree with me that that's duplicate language
23 (indicating)?

24 A. What do you mean by "duplicate language"?

25 Q. You've got it in there twice.

1 A. Okay.

2 Q. Do you see that?

3 A. Are you talking about this and this
4 (indicating)?

5 Q. Yes.

6 A. Okay, yes.

7 Q. Yeah. So you put the same thing in there two
8 times, right?

9 A. Yes, sir.

10 Q. So now we have an additional amount of language
11 that didn't need to be in this document?

12 A. No. That portion has to do with -- when the
13 judge reads that warrant, that paragraph that has the
14 duplicate language is specific to just that portion of
15 the language.

16 Q. Did you put the date on the affidavit?

17 A. As far as which part?

18 Q. The October 15th, 2012.

19 A. No, sir.

20 Q. You didn't type that in there --

21 A. No, sir.

22 Q. -- as part of your -- who would have typed that
23 in there?

24 A. Well, the way that template works -- or should
25 work, I guess, when you fill it in, it auto-fills

1 certain areas once you start writing the narrative
2 portion of that affidavit.

3 Q. Did you review it before you signed it?

4 A. I didn't see that date on it, no, sir.

5 Q. You didn't verify that all the documentation,
6 including the date, that you were presenting to the
7 Court was accurate?

8 A. No. I did review the narrative.

9 Q. But the entire document, Officer?

10 A. Yes, sir.

11 Q. All right. Now, you went over there and you
12 talked to -- and you presented your affidavit witnessed
13 and signed to the judge at the municipal courts, right?

14 A. Yes, sir.

15 Q. Okay. And he reviewed it and he signed your
16 document, right?

17 A. Yes, sir.

18 Q. And let me hand you what's been marked, for the
19 purposes of this hearing, State's Exhibit No. 51. Can
20 you tell me or tell this Court what date that was signed
21 (indicating)?

22 A. October 15th, 2013.

23 Q. And is that the search warrant itself?

24 A. This is -- yes, sir.

25 Q. And you -- the judge wrote in the time as

1 required by statute --

2 A. Yes, sir.

3 Q. -- is that right?

4 A. Yes, sir.

5 Q. And he also stamped it, as required, right?

6 A. Yes, sir.

7 Q. Can you tell this Court what time the judge
8 signed it?

9 A. 4:14 a.m.

10 Q. Okay. Now, I'm going to ask you -- I'm going
11 to hand you back State's Exhibit No. 104, which is the
12 affidavit. Now, can you tell this Court what time -- on
13 the second page there where your signature is, what time
14 you put down that it was signed?

15 A. 4:16 a.m.

16 Q. So -- I'll take that back.

17 So Officer, so at 4:14 in the morning, that
18 morning, the judge signs the search warrant; is that
19 correct?

20 A. Correct, sir.

21 Q. Your affidavit is signed after the Judge signed
22 the warrant according to the times on these two
23 documents, correct?

24 A. According to the time on there, yes, but that
25 was not correct.

1 Q. Right.

2 A. Yeah.

3 Q. But that's exactly what this affidavit says, is
4 4:16 in the morning, correct?

5 A. Yes, sir.

6 Q. And your search warrant says 4:14 in the
7 morning --

8 A. Yes, sir.

9 Q. -- does it not?

10 A. Yes, sir.

11 Q. And you would agree with me that 4:16 in the
12 morning is after 4:14 in the morning, right?

13 A. Yes, sir.

14 Q. So that being the case, then you had an
15 affidavit that was signed after the warrant. According
16 to the four corners of these two documents, that's
17 exactly what's happened, isn't it?

18 A. According to that, yes, sir.

19 Q. After you -- after you got this search warrant
20 signed, what did you do then?

21 A. After the warrant was signed, I then went back
22 across the street where Ms. Kressin was, and that's when
23 I took her to Memorial Hermann.

24 THE COURT: Say that again. That's when
25 what?

1 THE WITNESS: That's when I took her to
2 Memorial Hermann Hospital.

3 Q. (By Mr. Ramirez) It took you five minutes to
4 get back over to -- three minutes, five minutes to get
5 back over to Ms. Kressin?

6 A. Maybe, yeah.

7 Q. And you took the original warrant with you?

8 A. Yes, sir.

9 Q. Okay. So at that point, you had custody of the
10 original warrant and affidavit and proceeded over to
11 take my client over to Memorial Hermann to have the
12 blood draw?

13 A. Yes, sir.

14 Q. All right. And you drove from -- so you went
15 back, had to gather your things, put her in the -- take
16 her out of the female holding cell; is that right?

17 A. Yes, sir.

18 Q. Handcuffed her?

19 A. Yes, sir.

20 Q. Walk her to your patrol unit?

21 A. Yes, sir.

22 Q. Put her in the backseat and drive over to the
23 hospital?

24 A. Yes, sir.

25 Q. What is the distance to the hospital? Maybe

1 15 miles, maybe?

2 A. No, I don't even think it's that. Five miles,
3 seven miles. I don't think it would be 15.

4 Q. And what route did you take?

5 A. We leave central intox over by Lubbock, get
6 onto the Pierce elevated to 288 South, exit MacGregor,
7 down to Memorial Hospital across from the zoo.

8 Q. Okay. Would you agree with me that takes maybe
9 a 20-minute drive?

10 A. No, I don't agree with that. Ten minutes,
11 maybe, with no traffic.

12 Q. No traffic. Ten, fifteen minutes. Maybe no
13 more than 15?

14 A. No more than 15.

15 Q. Okay. And then where do you park?

16 A. Right in front of the emergency room, emergency
17 room doors.

18 Q. And then you had to take Ms. Kressin out?

19 A. Yes.

20 Q. Walk her into the hospital?

21 A. Yes, sir.

22 Q. And find your location where you needed to have
23 the warrant -- search warrant executed?

24 A. Actually, it's -- right as you walk into the
25 doors, to the right is the triage area. So we didn't

1 really have to walk into the back of the hospital. It
2 was right into the entrance.

3 MR. RAMIREZ: Pass the witness, Judge.

4 THE COURT: Anything further?

5 MR. ASLETT: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MR. ASLETT:**

8 Q. Officer Corral, now, obviously people make
9 mistakes, right?

10 A. Yes, sir.

11 Q. There's no real dispute that this crash
12 occurred on October 15th, 2013, is there?

13 A. No, sir.

14 Q. So obviously that 2012, that's just a mistake
15 from the computer that automatically filled this in?

16 A. Yes, sir.

17 Q. Okay. The 4:16 a.m. time, was that from your
18 watch or where does that time come from?

19 A. The officer that witnesses that looks at his
20 watch.

21 Q. Okay.

22 A. And -- I'm sorry.

23 Q. Okay. So it would have been from Officer
24 Roman's watch?

25 A. Yes, sir.

1 Q. And you didn't verify that his watch was synced
2 up with yours, did you?

3 A. No, sir.

4 Q. Or that it was synced up with the clock in the
5 courtroom with Judge Villareal, right?

6 A. No, sir.

7 Q. For all you know, his watch could have been
8 running ten minutes fast or ten minutes slow?

9 A. Yes, sir.

10 Q. Okay. When you presented the affidavit and the
11 blank search warrant to Judge Villareal, did Judge
12 Villareal swear you to the affidavit?

13 A. Yes, sir.

14 Q. Okay. And is that standard practice for judges
15 in the municipal courthouse to -- while you're standing
16 in front of them, to personally swear that the contents
17 of the affidavit are true and correct to the best of
18 your knowledge?

19 A. Yes, sir.

20 Q. You did that in this case?

21 A. Yes, sir.

22 Q. Okay. So Judge Villareal swore you, just not
23 the other officer?

24 A. Yes, sir.

25 Q. Okay. And the "sworn to and subscribed,"

1 that's just generic template language that appears in
2 this affidavit?

3 A. Yes, sir.

4 Q. And you didn't present a blank search warrant
5 with no affidavit to Judge Villareal, did you?

6 A. No, sir.

7 Q. Okay. Have you presented warrants to Judge
8 Villareal before?

9 A. Many times.

10 Q. Have you ever known him to sign a blank search
11 warrant with no affidavit?

12 A. No, sir.

13 Q. In your experience in front of Judge Villareal,
14 have you had times where you've had to go back and
15 correct mistakes that Judge Villareal found in the
16 affidavit?

17 A. Many times.

18 Q. Okay. But that wasn't the case in this case,
19 was it?

20 A. No, sir.

21 Q. Okay. Now, when Judge Villareal signed it and
22 indicated that it's 4:14, where did he get that time
23 from?

24 A. Judge Villareal -- we deal with him many times.
25 He looks up at the clock in the courtroom.

1 Q. And I imagine you probably went to Court 8 in
2 the municipal courtroom?

3 A. Yes, sir.

4 Q. That's down in the basement?

5 A. Yes, sir.

6 Q. Big clock on the wall at the far side of the
7 courtroom?

8 A. Yes, sir.

9 Q. Okay. I assume you didn't check to verify if
10 that clock was synced up with your watch, right?

11 A. No, sir.

12 Q. Or with Officer Roman's watch, right?

13 A. No, sir.

14 Q. All right. So for all you know, the clock on
15 the courtroom could have been five minutes fast, five
16 minutes slow?

17 A. Correct, sir.

18 Q. All right. But you definitely got this warrant
19 after you had filled out the affidavit and had it sworn
20 to, correct?

21 A. Yes, sir.

22 Q. Okay. Now, we're talking about Memorial
23 Hermann Hospital in the Medical Center?

24 A. Yes, sir.

25 Q. Okay. At the time you're driving her to the

1 hospital, it's October 15th at sometime after 4:00 in
2 the morning?

3 A. Yes, sir.

4 Q. I believe that was in the middle of the week.
5 This wasn't during a weekend, right?

6 A. Yes, sir.

7 THE COURT: One moment.

8 Could you hand those documents up?

9 (Prosecutor tenders documents.)

10 THE COURT: Thank you.

11 You may continue.

12 Q. (By Mr. Aslett) Officer Corral, is there any
13 real traffic on 288 at 4:00 in the morning going towards
14 the Medical Center during a weekday?

15 A. No, sir.

16 Q. Okay. Were you able to get to the hospital
17 fairly quickly?

18 A. Absolutely.

19 Q. All right. Now, you mentioned that the blood
20 was drawn in the triage area?

21 A. Yes, sir.

22 Q. Just so the record is clear, where is the
23 triage area?

24 A. As you enter into the emergency room doors,
25 once you pass -- you won't even get past the first set

1 of doors. Once you walk in the initial sliding doors,
2 to the right there's two separate rooms. That is the
3 triage area.

4 Q. Did Nurse Rains do the blood draw right there
5 in that triage area?

6 A. Yes, sir.

7 Q. Were you able to get a nurse pretty quickly to
8 do that blood draw?

9 A. He was standing -- I recall him standing there
10 just waiting for something.

11 Q. And to your knowledge, was the hospital that
12 busy at 4:30 in the morning on a weeknight?

13 A. No, sir, it was not.

14 Q. The blood draw times that we see written on the
15 evidence envelopes of 4:31 and 5:04 in the morning, do
16 you know who wrote down those times?

17 A. I did, sir.

18 Q. Okay. And was that from your watch?

19 A. That was from my phone. When the blood is
20 drawn, I will call out the time out loud.

21 Q. What kind of phone did you have that evening?

22 A. An iPhone.

23 Q. Okay. So it's an iPhone that's hooked up to
24 anatomic clock somewhere in Colorado, right?

25 A. Something like that.

1 Q. All right. So those times are synced between
2 all iPhones, or at least should be, right?

3 A. Should be.

4 Q. So do you feel pretty confident that the time
5 from your iPhone that you wrote down as far as the blood
6 collection times was accurate?

7 A. Absolutely.

8 Q. Okay. And you used your iPhone for both the
9 4:31 and 5:04 notations of the blood draws?

10 A. Yes, sir.

11 Q. Whereas these other two times, where we have
12 the blood draw warrant and the blood draw affidavit,
13 were from physical watches, correct?

14 A. Yes, sir.

15 Q. Thank you, Officer Corral.

16 MR. ASLETT: I pass the witness.

17 THE COURT: Anything further?

18 MR. RAMIREZ: Just one question, Judge.

19 **RECROSS-EXAMINATION**

20 **BY MR. RAMIREZ:**

21 Q. Officer Corral, you didn't request any other
22 warrants that night, did you?

23 A. No, sir.

24 Q. That was the only warrant you requested?

25 A. Yes, sir.

1 Q. And you got two blood draws from that one
2 warrant; is that --

3 A. No, sir. As I stipulated earlier, I did an
4 exigent blood draw. And then 30 minutes later, the
5 actual warrant was executed.

6 Q. Did the search warrant give you the authority
7 to take an exigent blood draw?

8 A. No, sir. Texas Penal Code allowed me to take
9 the exigent circumstance blood draw.

10 MR. RAMIREZ: That's all I have, Judge,
11 from this witness.

12 THE COURT: All right. Anything further?

13 MR. ASLETT: No, Your Honor.

14 THE COURT: Officer, you may step down.

15 He is going to be one of your witnesses in
16 the trial of the case, of course?

17 MR. ASLETT: He is, Your Honor.

18 THE COURT: All right.

19 You may step down and wait outside, if you
20 don't mind.

21 You may call your next.

22 MR. ASLETT: Your Honor, State calls
23 Officer Derrick Hall.

24 (Witness sworn.)

25 THE COURT: You may proceed.

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OFFICER DERRICK HALL,

having been called as a witness and being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ASLETT:

Q. Sir, would you please state your name for the record?

A. Derrick Hall.

Q. What do you do for a living, Mr. Hall?

A. Police officer, Houston Police Department.

Q. How long have you been a police officer with the Houston Police Department?

A. Almost ten years, about nine-and-a-half years.

Q. What's your current assignment with HPD?

A. I'm a patrol sergeant, Northeast Division.

Q. Is that the same assignment you had back in October, 2013?

A. No.

Q. What assignment did you have back then?

A. I was assigned to Vehicular Crimes Division. I was an investigator.

Q. For the purpose of this hearing, I will just get right to it. Back on October 15th, 2013, were you on duty?

A. Yes.

1 Q. Do you recall what time you came on shift that
2 day?

3 A. About 6:00 o'clock, 6:00 a.m.

4 Q. Okay. When you came on shift, did you have a
5 conversation with Officer Sal Corral about an
6 intoxication manslaughter investigation he had done?

7 A. I did, yes.

8 Q. What was the nature of the conversation you had
9 with Officer Corral?

10 A. There was --

11 MR. RAMIREZ: Judge, I'm going to object to
12 hearsay.

13 THE COURT: It's overruled.

14 You may proceed.

15 A. There was a fatal car crash that occurred
16 during that night prior to me getting to work. And I
17 was sitting in the office and Officer Corral had come
18 into the office -- and Officer Corral had come into the
19 office and mentioned that he was working a fatal case
20 and just kind of telling me a little bit about it. And
21 eventually he had mentioned that he had did sobriety
22 tests, had a conversation with the defendant, and then
23 he made me aware that possibly that his audio -- the
24 video worked, but not the audio of his recording.

25 Q. (By Mr. Aslett) Once you learned that the audio

1 wasn't working, did that concern you?

2 A. Absolutely.

3 Q. Why?

4 A. Because part of my job is to obviously get as
5 much evidence and information as we possibly can in
6 every case. And knowing that there was a possibility
7 that the video -- I mean the audio version -- the audio
8 portion did not work, I wanted to make sure that we were
9 able to get that recording.

10 Q. Okay. And what did you do next?

11 A. Pretty much packed my stuff up and drove to
12 southeast jail to go talk with the defendant to
13 reinterview her on a working recorder.

14 Q. And do you see the defendant that you
15 interviewed here in the courtroom today?

16 A. I do.

17 Q. Would you please point her out and describe an
18 article of clothing she's wearing?

19 A. The young lady sitting next to her attorney
20 with the black and white dress with an overlay.

21 MR. ASLETT: Your Honor, may the record
22 reflect that the witness has identified the defendant?

23 THE COURT: The record will so reflect.

24 Q. (By Mr. Aslett) Now, did you bring some
25 recording equipment so you could record the interview

1 with the defendant?

2 A. I did. I brought a video camera.

3 Q. Did that video camera record both video and
4 audio?

5 A. Yes.

6 Q. Okay. Did you set it up and, in fact, record
7 your interview with the defendant?

8 A. I did.

9 Q. Now, prior to you talking with the defendant,
10 did you read her her Miranda and statutory warnings?

11 A. I did.

12 Q. Okay. Just so we're clear, where exactly in
13 the southeast jail did this interview take place?

14 A. It was -- I'm going to say it's maybe a
15 holding, detention-type area. It looks more like an
16 area where if someone had an attorney, or something,
17 they would be able to speak and talk in private.

18 Q. And when Ms. Kressin was brought down to this
19 room, was she in handcuffs?

20 A. No.

21 Q. Did you inform her, prior to interviewing her,
22 that she had the right to remain silent?

23 A. I did.

24 Q. And not make any statement at all?

25 A. I did.

1 Q. And that any statement that she made could be
2 used against her at her trial?

3 A. I did.

4 Q. Did she indicate she understood those rights?

5 A. She said she did.

6 Q. Did you inform her she had the right to have a
7 lawyer present to advise her prior to and during any
8 questioning?

9 A. That I did.

10 Q. Did she indicate she understood that?

11 A. Yes.

12 Q. Did you tell her if she was unable to employ a
13 lawyer, she had the right to have one appointed to her
14 to advise her prior to and during any questioning?

15 A. I did.

16 Q. Did she indicate she understood that right?

17 A. Yes.

18 Q. And finally, did you tell her she had the right
19 to terminate that interview at any time?

20 A. Yes.

21 Q. And did she indicate that she understood that
22 right?

23 A. She said she did.

24 Q. And then did you ask her if she would agree to
25 voluntarily waive her rights and speak with you?

1 A. Yes.

2 MR. ASLETT: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 Q. (By Mr. Aslett) Officer Hall, I'm showing you
6 what I've marked as State's Exhibit 58. Please tell the
7 Court what this is (indicating).

8 A. It's a DVD marked with her name and docket
9 number, I assume, that says "jail interview."

10 Q. Okay. And did we watch this video together
11 prior to your testimony here today?

12 A. Yes, sir, we did.

13 Q. Does this fairly and accurately depict your
14 interview with the defendant at the southeast jail on
15 the morning of October 15th?

16 A. Yes, sir.

17 MR. ASLETT: Your Honor, for the purposes
18 of this hearing State offers into evidence State's 58.

19 **(State's Exhibit No. 58 Offered)**

20 MR. RAMIREZ: No objection, Your Honor.

21 THE COURT: Did you say 58?

22 MR. ASLETT: 58, Your Honor.

23 THE COURT: State's 58 is admitted.

24 **(State's Exhibit No. 58 Admitted For**
25 **Hearing Purposes Only)**

1 MR. ASLETT: Permission to publish, Your
2 Honor?

3 THE COURT: You may.

4 And State's 58 is admitted for the purpose
5 of this hearing. Is that the request?

6 MR. RAMIREZ: Yes, Your Honor.

7 MR. ASLETT: Yes, Your Honor.

8 THE COURT: All right.

9 (State's Exhibit No. 58 published.)

10 MR. ASLETT: Judge, I'm going to go ahead
11 and stop it there since we've just heard the warnings.

12 I pass the witness, Your Honor.

13 THE COURT: Any questions?

14 MR. RAMIREZ: Yes. Just briefly, Judge.

15 **CROSS-EXAMINATION**

16 **BY MR. RAMIREZ:**

17 Q. Officer, so if I understand what you're
18 testifying to, it's that you would not have conducted
19 this interview but for the audio failure or the lack
20 thereof recording -- audio-recording by Officer Corral?

21 A. Yes.

22 Q. In your experience in this type of case, would
23 not there be a subsequent interview?

24 A. There should be, yes.

25 Q. And so you had the one that he conducted at the

1 scene, correct --

2 A. Yes.

3 Q. -- where he claims that there was no audio.

4 And then you have a subsequent one, more thorough, by

5 somebody in your department. That would be a fair

6 procedure, would it not?

7 A. Repeat that question again.

8 Q. Yeah. I mean, after they do the scene

9 interviews on these types of cases, wouldn't there be a

10 subsequent interview?

11 A. There would be an attempt to make a subsequent

12 interview. Should be, yes.

13 Q. But that's not what you were doing. You only

14 did this because of what Officer Corral told you?

15 A. Yes.

16 Q. And who else would have conducted that

17 additional interview?

18 A. I don't know. Probably the primary

19 investigator.

20 Q. Do you know if that was done?

21 A. I don't.

22 Q. And what was Ms. Kressin's condition mentally

23 and emotionally at the time that you were speaking with

24 her?

25 A. As what you saw on the video. She just

1 appeared to maybe be a little concerned about why she
2 was there and maybe a little scared.

3 Q. Do you think she was still in shock?

4 A. She may have been. I don't know.

5 Q. You've interviewed people before in these types
6 of situations, have you not?

7 A. Absolutely.

8 Q. And you're able, with your experience, to make
9 a determination as to -- have an idea what their
10 condition is mentally at that point, right?

11 A. Pretty much -- sometimes yes, sometimes no. I
12 mean, it's hard to determine what people are thinking,
13 obviously, unless they tell you.

14 Q. Do you think she was being truthful with you?

15 A. I have no reason to doubt a lot of -- no reason
16 to doubt a lot of things that she was saying.

17 Q. Okay. Later on in the interview, there's
18 some -- some -- she's inquiring as to -- or strike that.

19 Later on in the interview, there's some
20 conversation about there having been a death in this
21 accident. Do you recall that?

22 A. Sure.

23 Q. Yeah. And when she referenced that and you
24 referenced that, how does her emotion turn at that
25 point?

1 MR. ASLETT: Your Honor, I have to object
2 to the relevance, the line of this questioning.

3 THE COURT: What is the relevance?

4 MR. RAMIREZ: Judge, the relevance is that
5 there are some statements on this video later on that
6 were made to Officer Hall; and we think that those
7 statements, because of her mental state at that moment,
8 should not be admitted because they're not -- they're
9 not really -- she's not really answering those questions
10 in her right state of mind. She's very upset and very
11 emotional at that time.

12 So the relevance is, is that we're asking
13 that those statements not be admitted because they don't
14 reflect her being lucid, really. She's very emotional.
15 And so that's why I was asking those questions
16 whether --

17 THE COURT: All right. You may continue.

18 Q. (By Mr. Ramirez) So again, you may answer that
19 question.

20 A. I forgot what the question was.

21 Q. When you start talking about the death that was
22 involved in this case, how did her emotions change?
23 What change did you detect?

24 A. She appeared to be upset.

25 Q. And did she even not say to you that: I wish

1 it had been me instead of her? Do you recall that?

2 A. I'd have to watch the video, but if you're
3 saying that she said that based on what you saw on the
4 video, I'll give you that.

5 Q. Did you not watch the entire thing this
6 morning?

7 A. I did.

8 Q. You just don't recall that?

9 A. I just don't recall that at this point.

10 Q. Do you think she had remorse at that point?

11 A. I don't know what she thought.

12 MR. RAMIREZ: Pass the witness, Judge.

13 THE COURT: Anything further?

14 MR. ASLETT: No, Your Honor.

15 THE COURT: Officer, you may step down and
16 wait to be recalled.

17 THE WITNESS: Yes, sir.

18 THE COURT: You may call your next.

19 MR. ASLETT: Your Honor, may we approach?

20 THE COURT: You may.

21 Court's off the record.

22 (At the Bench, off the record.)

23 (Open court, defendant present, no jury.)

24 THE COURT: Court's back on the record in
25 Cause No. 1404917.

1 Does either side have any additional
2 evidence to present on the motion to suppress the blood
3 draw?

4 MR. ASLETT: Nothing with respect to the
5 warrant and the statements, Judge. We do have two
6 additional witnesses in regards to the blood results and
7 the retrograde extrapolation; but I think during our
8 off-the-record conversation, we agreed we could take
9 care of that at a later time.

10 THE COURT: All right. Do you have
11 anything further on this issue, Mr. Ramirez, at this
12 time?

13 MR. RAMIREZ: Not at this time, Your Honor,
14 I do not.

15 THE COURT: All right. Any argument from
16 either side?

17 **STATE'S ARGUMENT**

18 MR. ASLETT: Your Honor, State's argument
19 is that the blood draw was done pursuant to a warrant,
20 both the 4:30 and the 5:04 blood draws. Officer Corral
21 testified that although the affidavit was witnessed by
22 another peace officer, it was not sworn to that peace
23 officer, but it was sworn in front of Judge Villareal.
24 The case law is pretty clear that clerk's errors or
25 ministerial errors such as an incorrect year, when it's

1 obvious it couldn't have been a year before, or slight
2 differences in the minutes and times due two differences
3 between watches don't -- aren't fatal to the warrant.

4 Additionally, this case occurred post the
5 Supreme Court's decision in *McNeely v. Missouri* but
6 prior to Texas courts starting to apply that law. So
7 the blood draw would have also been valid under the
8 exigency -- under the mandatory blood-draw law which
9 allowed Officer Corral to get a blood sample from a
10 defendant who is suspected to be an at-fault driver and
11 intoxicated and that intoxication resulted in a death.

12 So I think under either theory, under the
13 mandatory blood law in effect at that time, as well as
14 the valid sworn-to affidavit and search warrant, that
15 the blood draw should come in.

16 With respect to the statements, you could
17 see plainly on the video that Ms. Kressin was read all
18 of the proper warnings, she agreed to waive those, and
19 there was nothing on the face of that interview, at
20 least the initial part -- and if the Court wants to look
21 at the rest, you're certainly welcome to -- that
22 indicated that there was any sort of incapacity with
23 regards to her mental state that would have prevented
24 her from voluntarily waiving her rights.

25 So the State urges that the motion be

1 denied with respect to the statement and to the blood
2 draw.

3 THE COURT: Mr. Ramirez?

4 **DEFENSE ARGUMENT**

5 MR. RAMIREZ: Yes, Judge.

6 With respect to the statement, Judge, I
7 think the officer testified very clearly that she was
8 not free to leave, and, therefore, under arrest at the
9 time that those statements were made. Those statements
10 were supposedly recorded. We don't know what happened
11 to the recording, but I believe they are inadmissible
12 not as -- because she was in custody and was being
13 interrogated, custodial interrogation. And under 38.23,
14 they should not be admissible.

15 THE COURT: You're talking about the
16 statements made --

17 MR. RAMIREZ: To Officer Corral.

18 THE COURT: The original statement out on
19 the side of the freeway --

20 MR. RAMIREZ: Correct.

21 THE COURT: -- up in the service station
22 parking lot. That's the statement?

23 MR. RAMIREZ: Yes, Judge.

24 And then with respect to the search
25 warrant, Judge, I draw your attention to Article

1 18.01(b) where it says: No search warrant shall be
2 issued for any purpose in this state unless sufficient
3 facts are first presented to satisfy the issue and
4 magistrate that probable cause does, in fact, exist for
5 the issuance. A sworn affidavit stating forth
6 substantial facts establishing probable cause shall be
7 filed in every instant in which a search warrant is
8 requested.

9 THE COURT: What did you say, 18 what?

10 MR. RAMIREZ: It's Article 18.01(b).

11 And, Judge, I have a --

12 THE COURT: Go ahead.

13 MR. RAMIREZ: Judge, if we -- the evidence
14 was very clear that there was a mistake on the date, one
15 year before. There is a mistake on the -- obviously,
16 the date being the year before. There's a mistake on
17 the time. There's a mistake on who swore to it and how
18 they swore to it. Officer Roman signed that document
19 indicating that it was sworn and subscribed before him.
20 And so that turns out to be incorrect because, as
21 Officer Corral testified, he wasn't placed under oath by
22 Officer Roman.

23 We also have a discrepancy in the times.
24 The affidavit time is two minutes after the warrant is
25 signed. And, Judge, we know that basic law says that we

1 look to the four corners of the documents. And all that
2 testimony regarding whether or not, you know, Judge
3 Villareal or Officer Roman's watches and clocks were not
4 synchronized, I think we have to look under the -- we
5 have to look at the four corners of the documents that
6 are being challenged.

7 In this case, the only thing that should be
8 considered would be the two documents. And, clearly,
9 one was signed after the other, placing the affidavit
10 second. It is no different than putting the cart before
11 the horse or signing a waiver of divorce without there
12 being a properly filed waiver of citation on file or
13 having somebody plead guilty before they were even
14 arraigned. The law is very clear. This should be a
15 strict construction of the -- of the -- a strict
16 constitutional construction of the statute as required
17 by our laws.

18 And if there had been exigent circumstances
19 at that point, as argued by the State, that there may
20 have been -- that may have been another way that they
21 could have gotten it. After McNeely, they have to show
22 what those exigent circumstances were. This officer
23 didn't feel like there were exigent circumstances, it
24 appears, because he went to secure the warrant. You
25 can't make those types of mistakes in these types of

1 cases. It has to be done properly. And it was not done
2 properly by this officer. And our laws are pretty clear
3 about that.

4 And for the proposition that we look solely
5 to the four corners of the documents, I'll cite McLane
6 at 337, 268 {sic} as -- where it specifically says you
7 have to look at the four corners of the document.

8 I'd ask the Court to suppress the
9 statements made by -- allegedly made by my client to
10 Officer Corral out at the scene and I'd respectfully
11 also request that the blood warrant and anything that
12 follows from that warrant be suppressed because it was
13 done incorrectly. And for all practical purposes, there
14 was no probable cause for the judge to consider if the
15 affidavit was signed after the search warrant.

16 Thank you, Your Honor.

17 THE COURT: All right. The Court finds
18 that the affidavit does set forth substantial facts
19 establishing probable cause and that the substantive
20 language contained in the affidavit correctly reflects
21 the date at issue.

22 The Court further finds that the jurat
23 containing the incorrect date was a mistake since the
24 body of the affidavit correctly reflects the date.

25 The Court further finds that the affidavit

1 has been properly sworn to by a peace officer. The
2 motion to suppress is denied.

3 The motion to suppress as to the statement
4 made by the defendant in the police car or at or near
5 the police car on the side of the road in the service
6 station prior to being taken down to the station, that
7 that motion to suppress is denied.

8 Anything further?

9 MR. ASLETT: Your Honor, if we may just
10 have on the record a finding that the affidavit was
11 sworn to in front of Judge Villareal?

12 THE COURT: The Court finds that the
13 affidavit was also sworn to in front of the magistrate.

14 Anything further?

15 MR. ASLETT: Nothing from the State at this
16 time, Your Honor.

17 THE COURT: All right. That concludes this
18 hearing. Here are these exhibits (indicating).

19 (Brief recess.)

20 (Open court, defendant and jury present.)

21 THE COURT: You may be seated.

22 Good morning.

23 JURORS: Good morning (in unison).

24 THE COURT: You may call your next.

25 MR. ASLETT: Your Honor, State calls

1 Officer Sal Corral.

2 THE COURT: You may proceed.

3 MR. ASLETT: Thank you.

4 OFFICER SALVADOR CORRAL,

5 having been called as a witness and being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ASLETT:

9 Q. Sir, would you please tell the jury your name?

10 A. Yes, my name is Salvador Corral.

11 Q. What do you do for a living, Officer Corral?

12 A. I'm a police officer with the Houston Police
13 Department. I'm currently assigned to the Traffic
14 Enforcement Division.

15 Q. How long have you been with HPD?

16 A. With the Houston Police Department, I've been
17 on since August of 2008.

18 Q. And you said that your current assignment is
19 with traffic enforcement. What do you do in that
20 assignment?

21 A. In the Traffic Enforcement Division, I'm on the
22 DWI Task Force.

23 Q. And were you also a member of the Traffic
24 Enforcement Division and on the DWI Task Force back in
25 October of 2013?

1 A. Yes, I was.

2 Q. Have you had any other law enforcement jobs
3 prior to working at HPD starting in 2008?

4 A. Yes, sir. I was a police officer in the state
5 of New Mexico since 1999 until I came to the State --
6 I'm sorry -- City of Houston.

7 Q. Now, you mentioned you're on the DWI Task
8 Force. What sort of training have you received that
9 qualifies you to be a member of the DWI Task Force?

10 A. To be a member of the DWI Task Force, we take
11 training in standardized field sobriety testing, as well
12 as in another area called drug recognition expert and in
13 intoxilyzer operator school, as well as warrant classes
14 and stuff like that.

15 Q. Let's break that down a little bit and talk
16 about this standardized field sobriety test training.
17 Is that something you get classroom instruction in?

18 A. It's two things. It's classroom instruction
19 and then what we refer to as -- it's what they call a
20 wet lab. So it's also a practical test on actual
21 people.

22 Q. And actual people who consume different amounts
23 of alcohol so they can see if you're correctly
24 identifying the people who are intoxicated?

25 A. That's correct.

1 Q. Are you also -- are standardized field sobriety
2 tests referred to in your line of work as SFSTs?

3 A. Yes, they are.

4 Q. Are you also an SFST instructor?

5 A. Yes, sir. I've been an SFST instructor for
6 five years with HPD, but prior to that, for six years
7 where I used to be a police officer at.

8 Q. In New Mexico?

9 A. Yes, sir.

10 Q. Are you currently certified to perform
11 standardized field sobriety tests?

12 A. Yes, I am.

13 Q. And were you also certified to perform those
14 tests back in October of 2013?

15 A. Yes, sir, I was.

16 Q. You also mentioned that you are a drug
17 recognition expert. Tell the jury what that is.

18 A. Yes. The drug recognition expert program
19 consists of training on identifying impaired drivers on
20 either over-the-counter medications, prescription
21 medications, or street-illegal drugs.

22 Q. What kind of training do you have to go through
23 to become a drug recognition expert?

24 A. It is similar to the standardized field
25 sobriety testing. It entails classroom work for a

1 couple of weeks, and then you go into practicals, which
2 we'll go to a county jail and assess different people on
3 different drugs and do testing on them as well.

4 Q. Is drug recognition testing something that
5 takes a lot longer and is more complicated than just the
6 regular field sobriety tests?

7 A. Absolutely.

8 Q. Are you required to identify different classes
9 of drugs that someone may be on, whether it's a
10 stimulant or a depressant?

11 A. Yes, sir.

12 Q. Okay. And including other drugs such as PCP
13 and -- are you trained to identify those drugs?

14 A. Yes. There are seven categories of drugs that
15 we are trained to identify someone that would be under
16 the influence of.

17 Q. About how many officers, to your knowledge,
18 with the Houston Police Department are certified drug
19 recognition experts?

20 A. On the Houston Police Department, there are
21 currently, I believe, 16 of us.

22 Q. And do you recall about how many officers there
23 are on the entire force?

24 A. There is upwards of 5,000.

25 Q. You also mentioned that you were an intoxilyzer

1 operator. What is that?

2 A. The intoxilyzer operator is a certification
3 that we obtain to give a breath sample -- or I should
4 say have someone give a breath sample and how to read
5 those results on that sample.

6 Q. And so you're qualified to run the intoxilyzer
7 instrument that a person blows into?

8 A. Yes, sir.

9 Q. Okay. And just so the jury understands, are
10 the intoxilyzer instruments that the Houston Police
11 Department uses large ones that are not brought to the
12 scene of the crash?

13 A. That's correct.

14 Q. Okay. So do you have any method on the scene
15 of getting a breath sample?

16 A. No, sir.

17 Q. Okay. During the course of your law
18 enforcement career, have you come into contact with
19 intoxicated people?

20 A. Yes, I have.

21 Q. On few or many occasions?

22 A. Many occasions.

23 Q. Have you made DWI arrests?

24 A. Yes, I have.

25 Q. On few or many occasions?

1 A. Many occasions.

2 Q. Have you responded to the scenes of fatal
3 alcohol-involved crashes?

4 A. Yes, sir.

5 Q. On few or many occasions?

6 A. Many occasions.

7 Q. Okay. When you come into contact with someone,
8 whether it's for a DWI or for a fatal crash and you
9 perform the field sobriety tests on them, do you arrest
10 everybody you come into contact with?

11 A. No, sir.

12 Q. Have you, over the course of your career,
13 administered field sobriety tests and had suspects pass
14 them?

15 A. Yes, sir.

16 Q. What do you do in that circumstance?

17 A. If someone passes a field sobriety test?

18 Q. That's correct.

19 A. What we do is -- I'm a citywide unit, so I have
20 no jurisdiction in the city of Houston. So we go out,
21 we stop moving and nonmoving traffic violations. Upon
22 stopping that vehicle, if there's a sign of
23 intoxication, which is different from a clue of
24 intoxication, then we'll go further into investigation
25 to make sure that those traffic violations were not due

1 to some type of intoxication. So when we do these
2 tests, if someone passes, we'll write them a ticket for
3 a violation or not, if they're cooperative, and then get
4 them on their way.

5 Q. So not everybody you come into contact with who
6 has been involved in a fatal crash gets arrested and
7 charged with intoxication manslaughter?

8 A. No, sir.

9 Q. Okay. Because sometimes accidents just do
10 happen and people aren't drinking alcohol?

11 A. That's correct.

12 Q. Okay. Just so we're clear on this, you don't
13 patrol regularly. You are called out when somebody has
14 already been stopped and suspected of DWI?

15 A. The way it works is, we're -- again, I'm a
16 citywide unit. So we have the ability to drive out and
17 stop our own traffic violations, whatever the violation
18 may be, moving or nonmoving. If we find someone on our
19 own while we're driving, then we will do our own test.
20 We don't have the assistance of anybody else.

21 We also receive calls from patrol that do
22 not have the amount of training that we do on the task
23 force to go to a location and verify or dispel that
24 someone a patrol officer may believe to be intoxicated.

25 Q. Let me ask you, have you testified before as an

1 expert in the area of DWI investigation and standardized
2 field sobriety tests?

3 A. Yes, I have, sir.

4 Q. On few or many occasions?

5 A. Many occasions.

6 Q. Okay. I want to get right to this case. Back
7 on October 15th, 2013, were you supposed to be on duty
8 that day?

9 A. No, sir. That evening I was off, at home.

10 Q. Did you receive a call in the early morning
11 hours of October 15th, 2013 while you were at home?

12 A. Yes, I did.

13 Q. Were you asleep at the time?

14 A. I was getting ready to go to sleep.

15 Q. What was the nature of the call you received?

16 A. The nature of the call I was called to was, a
17 supervisor called me and said: Hey, we're --

18 MR. RAMIREZ: Objection, Judge. I'm going
19 to object. He's talking about what his supervisor said.
20 That would be hearsay.

21 THE COURT: Sustained.

22 Q. (By Mr. Aslett) I'll ask it a different way.
23 Did you receive a call in regards to a fatal crash?

24 A. Yes, I did.

25 Q. Okay. Do you recall the location of that

1 crash?

2 A. Yes, sir.

3 Q. What was the location?

4 A. Katy Freeway by Washington Avenue.

5 Q. And is Katy Freeway also known as I-10?

6 A. I-10, yes, sir.

7 Q. Is that a public roadway?

8 A. Yes, it is.

9 Q. Is that entire portion of I-10 from 610 all the
10 way going into downtown in Harris County, Texas?

11 A. Yes, it is.

12 Q. What did you do once you learned that there had
13 been this fatal crash at this location?

14 A. Got out of bed, got dressed, got in my patrol
15 car, and came out to the scene.

16 Q. Do you recall about what time you arrived at
17 the scene?

18 A. If I can refresh my memory with the report, but
19 I believe I arrived right about 12:20, 12:30 a.m.,
20 somewhere around there.

21 MR. ASLETT: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 Q. (By Mr. Aslett) Officer Corral, I'm going to go
25 ahead and give you a copy of your report. As needed,

1 you can, of course, refresh your memory from that
2 (indicating).

3 A. Sir, I have -- the front the page, I do not
4 have. I'm sorry.

5 Q. You need the front page. I apologize for that.

6 Okay. So, approximately 12:25?

7 A. Yes, sir. The time I have indicated here is
8 12:14 A. So right about the time, I remember.

9 Q. What did you do once you arrived at the scene?

10 A. Initially when we get called out to an
11 investigation of this nature, first we find the driver
12 who is at fault in the crash. And then upon arriving, I
13 learned who the driver of the at-fault vehicle was, and
14 that's when I began to speak to her.

15 Q. Now, the person who was pointed to you as the
16 driver of the at-fault vehicle, do you see her in the
17 courtroom today?

18 A. Yes, I do.

19 Q. Can you point her out and describe an article
20 of clothing?

21 A. Yes. She'll be sitting at that desk right
22 there wearing kind of a black sweater with a black and
23 white shirt (indicating).

24 MR. ASLETT: Your Honor, may the record
25 reflect the witness has identified the defendant?

1 THE COURT: The record will so reflect.

2 Q. (By Mr. Aslett) Where was the defendant when
3 you first came into contact with her?

4 A. When I arrived on scene, she was sitting in an
5 SUV.

6 Q. Was she unhandcuffed?

7 A. Yes, she was.

8 Q. Was there anybody else in that SUV with her?

9 A. No, sir.

10 Q. Okay. What did you do?

11 A. At this time, I then, as part of the
12 investigation, introduced myself and then I asked for
13 her information. At this point, I'm verifying who she
14 is. And upon getting a driver's license and a Social
15 Security card is when I identified her as Brittini
16 Kressin.

17 Q. And did you write down what her driver's
18 license number was?

19 A. Yes, all of that information.

20 Q. What was her driver's license number?

21 A. Texas -- oh, wait, that's the wrong one --
22 01551781.

23 Q. Okay. Upon speaking with her, was she seated
24 in the SUV as you're speaking with her through the door?

25 A. No. I actually got her to come stand out of

1 the door.

2 Q. Okay. Next to the SUV?

3 A. Yes, sir.

4 Q. As you were sitting there talking with her, did
5 you make any observations about her, any smells that may
6 have been coming from her?

7 A. Yes. As I spoke to her, I noticed the odor of
8 alcoholic beverage coming from her. And as she smoke --
9 as she spoke, I could smell it emitting from her breath,
10 as well as initial observations of bloodshot, droopy
11 eyes. And I was able to indicate a slur. And because
12 of the way she would answer a couple of questions, some
13 words were clear, some words were not as clear. So I
14 was able to indicate slurred speech.

15 Q. With regard to the smell of alcohol, would you
16 describe it as a slight, a moderate, or a strong odor of
17 alcohol?

18 A. A strong odor. Enough for me to smell it.

19 Q. Was this something that was apparent upon you
20 first coming into contact with her or did it take some
21 time before you notice it?

22 A. Not just standing next to her, but when she
23 began to speak.

24 Q. Okay. What did you do next after you started
25 getting the basic information about the defendant's

1 identity on the side of the vehicle?

2 A. At this time, the freeway was closed down
3 because of the crash. So what I did was I moved us away
4 from the crash location. So we moved off onto the
5 service road, which would be the inbound service road on
6 the Katy Freeway. And I believe it was a gas station
7 right at TC Jester or -- yeah. There's a little gas
8 station there.

9 Q. And what did you do once you arrived at the gas
10 station?

11 A. Once I arrived at the gas station, at this
12 point due to the signs of intoxication that I smelled
13 when I first came into contact with her, then I began a
14 DWI investigation.

15 Q. Now, just so we're clear, why not just do the
16 field sobriety tests right there on the shoulder?

17 A. Well, we're on a freeway. And with the
18 potential of maybe a car coming through a barrier, I
19 don't want to do tests and here comes another car on the
20 freeway and we'd have to move out of the way.

21 Q. So you moved to the gas station both for her
22 safety and your safety?

23 A. Absolutely.

24 Q. Okay. Now, let's talk about the DWI
25 investigation that you conducted. How does that begin?

1 Did you just launch right into the tests?

2 A. No. Actually, as I already identified her, of
3 course, with the signs of intoxication that I noted, I
4 then began to ask her questions regarding the signs of
5 intoxication; where she was coming from, where she was
6 going, and so forth.

7 Q. As you were talking with her, what was her
8 emotional state?

9 A. She kind of seemed intoxicated. She was kind
10 of incoherent as to what was going on at the time.

11 Q. During your conversation with her, did you ask
12 her if she had been drinking?

13 A. Yes, I did.

14 Q. What did she say?

15 MR. RAMIREZ: Objection, Judge. I'm going
16 to restate my objection based on my previously filed
17 motion.

18 THE COURT: All right. The record will so
19 reflect the Court has considered the objection. The
20 objection is overruled.

21 You may proceed.

22 A. When I asked her if she had been drinking, she
23 told me she had drank three drinks.

24 Q. (By Mr. Aslett) Did she say where she had those
25 three drinks?

1 A. She told me she was drinking at a place called
2 Anvil on Westheimer.

3 Q. And did she indicate the type of drinks that
4 she had?

5 A. She did. She told me she had a cocktail and a
6 shot.

7 Q. And you said three drinks, so did she
8 specify --

9 A. Two cocktails and a shot. I'm sorry.

10 Q. Okay. Did she go into any details besides just
11 saying "cocktails"?

12 A. She said a cocktail and she said she didn't
13 know what kind. When I asked her what kind of shot, she
14 said a shot of Ferret.

15 Q. Had you ever heard of that before, Ferret?

16 A. No, sir.

17 Q. Okay. Did she say around what time she had had
18 these three drinks?

19 A. Yes. In part of the investigation, I asked
20 first -- what time was the first drink and last drink.
21 The first time she indicated 4:30 p.m. and the last
22 drink being at 5:00 p.m.

23 Q. So we're talking about seven hours before the
24 crash?

25 A. Correct.

1 Q. What did she say she did after leaving Anvil
2 around 5:00 p.m.?

3 A. She said she was going to meet a friend at
4 Spaghetti Warehouse, and she said she went home to
5 change and then went to Spaghetti Warehouse. And that's
6 where she was waiting.

7 Q. Do you know what kind of establishment
8 Spaghetti Warehouse is?

9 A. A restaurant.

10 Q. Where is it located?

11 A. I know there's the one downtown. I couldn't
12 tell you the street, but it's downtown.

13 Q. Within walking distance of this courthouse?

14 A. Yes, sir. Maybe a few blocks away.

15 Q. Okay. Did she say about what time she arrived
16 at the Spaghetti Warehouse?

17 A. She did. She said she was there about
18 7:30 p.m.

19 Q. What did she say she did after she got to
20 Spaghetti Warehouse at 7:30 p.m.?

21 A. I asked her if -- what she did between then.
22 She said she didn't know. And I asked her if she can
23 clear up for me a four-hour gap from 7:30 until right
24 about 11:30 or 12:00 when the crash happened, when I got
25 the call at home. So I indicated to her there's a

1 four-and-a-half, four-hour gap, do you remember what was
2 going on in that four-hour gap. And she told me she --

3 MR. RAMIREZ: Objection, Judge. I'm going
4 to restate my objection.

5 Can we approach just for a second? Can we
6 approach, Judge?

7 THE COURT: You may.

8 (At the Bench, on the record.)

9 THE COURT: Do you want this on the record?

10 MR. RAMIREZ: Just for housekeeping, can I
11 just have a running objection on this line of
12 questioning, a running objection --

13 THE COURT: You may have a running
14 objection.

15 MR. RAMIREZ: -- on any testimony that this
16 officer is testifying to regarding her statements while
17 she was in custody with him?

18 THE COURT: You may have a running
19 objection on that issue with this witness.

20 MR. RAMIREZ: Thank you, Judge.

21 (Open court, defendant and jury present.)

22 Q. (By Mr. Aslett) Officer Corral, was she able to
23 account for the gap in time between 7:30 when she said
24 she arrived at Spaghetti Warehouse to the time of the
25 crash around midnight?

1 A. She said she was asleep.

2 Q. Did she say where she was asleep?

3 A. In the parking lot of Spaghetti Warehouse.

4 Q. Did she tell you why she had fallen asleep in
5 the parking lot?

6 A. Because she was drinking.

7 Q. What did she say happened after that?

8 A. After that, I asked her if she recalled going
9 the wrong way on the Katy Freeway, and she said she
10 didn't. She also made the comment that she didn't know
11 why she was on that freeway because the friend she was
12 waiting for did not live in that area.

13 Q. Did she have any memory of the crash
14 whatsoever?

15 A. None at all.

16 Q. Just so the record is clear, she was talking to
17 you and mentioned several times she had been at
18 Spaghetti Warehouse?

19 A. Yes, sir.

20 Q. During her conversation with you that night,
21 did she ever mention she was at another restaurant
22 called Spaghetti Western?

23 A. Not at all.

24 Q. So she was very clear it was Spaghetti
25 Warehouse?

1 A. Yes, sir.

2 Q. And you said that the shot she had was a shot
3 of "Ferret"?

4 A. Her word, yes, sir.

5 Q. She did not tell you that she had had a shot of
6 "Fernet"?

7 A. No.

8 Q. During the time that you're talking with her,
9 is she in handcuffs?

10 A. No, sir.

11 Q. Is she detained or is she under arrest?

12 A. She's detained at this time.

13 Q. And does the arrest portion come later after
14 you've done your field sobriety tests?

15 A. Yes, sir.

16 Q. Okay. Let's talk about the standardized field
17 sobriety tests that you performed on the defendant. If
18 you could, just tell the jury what exactly is the field
19 sobriety tests, standardized field sobriety tests?

20 A. Sure. The field sobriety tests are a battery
21 of tests that are used to check someone's -- or see what
22 somebody's divided attention may be. So the battery of
23 tests that are given are divided attention and correlate
24 with driving in the aspect of, as you're driving a
25 vehicle, your attention is on the road driving, but then

1 you're also doing secondary issues, such as changing a
2 radio station.

3 Example: This morning I was driving.
4 There was a lady putting on makeup as she was driving --

5 MR. RAMIREZ: Objection, Judge. It's not
6 relevant what a lady on the freeway was doing this
7 morning.

8 THE COURT: Sustained.

9 Q. (By Mr. Aslett) Are these tests designed to
10 determine somebody's ability to do two things at once?

11 A. Yes, divided attention.

12 Q. Okay. And is that something that intoxicated
13 people have difficulty doing, two different things at
14 the same time?

15 A. Yes.

16 Q. Okay. Now, during your training and learning
17 about the standardized field sobriety tests, do you also
18 learn about the history of standardized field sobriety
19 tests?

20 A. Yes, sir.

21 Q. Okay. And are these battery of tests tested or
22 developed by scientists?

23 A. Yes, sir.

24 Q. To your knowledge, have they been validated
25 with numerous scientific studies?

1 THE COURT: One moment.

2 MR. RAMIREZ: Objection, Judge. He's
3 asking him to testify about other studies that this
4 officer has no personal knowledge of. He hasn't proved
5 him up as an expert in field sobriety testing.

6 THE COURT: The objection is sustained.

7 MR. RAMIREZ: Thank you, Judge.

8 Q. (By Mr. Aslett) Are these the very same tests
9 that you also used in New Mexico?

10 A. Yes, sir.

11 Q. And to your knowledge, are these the same tests
12 that are used by agencies all across the country?

13 A. Absolutely.

14 Q. Now, have you had the results of these tests on
15 previous occasions confirmed by later blood or breath
16 tests?

17 A. Yes, sir.

18 Q. And has that happened on few or many occasions?

19 A. Many occasions.

20 Q. All right. Now, prior to asking the defendant
21 to perform any field sobriety tests, did you ask her if
22 she had any medical problems that would prevent her from
23 doing any of them?

24 A. Yes, I did.

25 Q. What did she say?

1 A. She said she had no -- nothing wrong with her.

2 Q. Did you ask her if she had been taking any
3 medication that might affect her doing the tests?

4 A. Yes, I did.

5 Q. What did she say?

6 A. She said she took nothing.

7 Q. All right. Did you ask her if she had any
8 injuries to her from the crash that would prevent her
9 from doing the tests?

10 A. Yes, I did.

11 Q. Did she -- what did she say?

12 A. She didn't have any problems.

13 Q. And while you were standing there talking to
14 her, did she, from outward appearances, appear to be
15 injured at all?

16 A. No, not at all.

17 Q. Okay. Did you ask her if she wore glasses or
18 contacts?

19 A. Yes, I did.

20 Q. Why do you ask that question?

21 A. When we do the first of the battery of tests,
22 which is called HGN, I want to make sure that she
23 doesn't have a glass eye or something that would affect
24 the horizontal gaze nystagmus. Or if she has glasses,
25 we ask them to take it off. That way we can see the eye

1 as it moves from left to right. It's not a vision test.
2 It's just so that we can see the eye movements that
3 we're looking for.

4 Q. Let's talk about the first test that you
5 performed. What is the first standardized field
6 sobriety test that you did?

7 A. The first of the tests is called what -- is
8 called the horizontal gaze nystagmus.

9 Q. And is the horizontal gaze nystagmus test also
10 referred to, in your line of work, as the HGN test?

11 A. Absolutely.

12 Q. What is nystagmus?

13 A. Nystagmus is an involuntary jerking of the
14 eye --

15 MR. RAMIREZ: Objection, Judge. I don't
16 think he's qualified to answer what that is. He's not a
17 doctor. He's not been proven up as a medical doctor or
18 an ophthalmologist.

19 THE COURT: Your objection is overruled.

20 Q. (By Mr. Aslett) What is nystagmus?

21 A. Nystagmus means an involuntary jerking of the
22 eye.

23 Q. Now, is nystagmus something that we all
24 naturally have?

25 A. Yes, sir.

1 Q. Okay. Is nystagmus something that is visible
2 in a normal person?

3 A. No.

4 Q. Does the nystagmus or jerking of the eye become
5 visible when somebody has been drinking alcohol?

6 A. Yes, sir.

7 Q. Tell us sort of what you do during the
8 horizontal gaze nystagmus test and how that test is
9 scored.

10 A. The horizontal gaze nystagmus is broke up into
11 several passes. What we do is we'll ask someone, of
12 course, the precursor questions to qualify them to do
13 it. We'll check, as I indicated before, equal pupil
14 size. An unequal pupil size would indicate a head
15 injury. That was not an issue in this case. Again --

16 MR. RAMIREZ: Judge, I'm going to object to
17 narrative.

18 THE COURT: Sustained.

19 Q. (By Mr. Aslett) I'll go ahead and break it up,
20 Officer Corral.

21 Prior to doing the HGN test, did you check
22 to see if the defendant had equal pupil size?

23 A. Yes, I did.

24 Q. Why do you check that?

25 A. Again, the equal pupil size -- equal pupil size

1 would indicate head trauma.

2 Q. Did she have equal pupil size?

3 A. Yes, she did.

4 Q. Did that rule out any sort of head trauma?

5 A. Yes, sir.

6 Q. Did you also check to see that her pupils
7 tracked your pen light equally?

8 A. Yes, I did.

9 Q. Why do you check for that?

10 A. As I indicated before, to make sure that
11 there's not a glass eye in one of the eyes.

12 Q. And did her pupils track the stimulus equally?

13 A. Yes, sir.

14 Q. Okay. And after making sure that she was able
15 to perform the test by checking for those two things,
16 did you actually start to perform the HGN?

17 A. Yes, I did.

18 Q. Tell us the first of the three parts of the
19 HGN.

20 A. The first clue of the HGN is what we call the
21 lack of smooth pursuit.

22 Q. What does that mean?

23 A. Breaking that down is we're looking for --
24 smooth pursuit would be an even, smooth tracking. The
25 lack of the smooth pursuit would be an indication of

1 that involuntary jerk as you move the stimulus left to
2 right.

3 Q. So in a normal person it's going to be smooth,
4 but in an intoxicated person it's going to be jerking?

5 A. Right. Absolutely.

6 Q. Do you check for that jerking in each eye?

7 A. Each eye, yes.

8 Q. Do you do one pass or do you do multiple
9 passes?

10 A. Multiple passes.

11 Q. Why do you do multiple passes?

12 A. When we do it, we're checking each eye. So one
13 pass for one eye, a second pass to check the other eye.

14 Q. And do you do any sort of double-checking to
15 make sure that you didn't make a mistake on your first
16 pass or second pass?

17 A. If you need to do multiple passes more than
18 that, you are able to; but once you see it and confirm
19 it, a minimum of two pass is required.

20 Q. When you see it, is it something that's pretty
21 obvious?

22 A. Yes.

23 Q. Okay. Did you check for lack of smooth pursuit
24 in both of the defendant's eyes?

25 A. Yes, I did.

1 Q. What did you find?

2 A. I saw the lack of smooth pursuit in both eyes.

3 Q. Okay. And is that considered -- what is called
4 a clue of the test?

5 A. Yes, it is.

6 Q. Did you find one clue in each eye for the first
7 third of the test?

8 A. Yes, I did.

9 Q. What's the second part of the horizontal gaze
10 nystagmus?

11 A. The second part of the HGN is what we call
12 distinct and sustained nystagmus at maximum deviation.

13 Q. What is distinct and sustained nystagmus at
14 maximum deviation?

15 A. Breaking it down, "distinct" meaning obvious;
16 "sustained" meaning continuous. So when we move that
17 stimulus out to maximum deviation -- and what we mean by
18 that is when you move the eye to the corner and there is
19 no more white on the side of the eye, that would be
20 maximum deviation.

21 So when we move it out and it's distinct,
22 obvious, and sustained, continuous, we make sure that
23 it's continuous for four seconds.

24 Q. So you're looking for a jerking of the eye
25 while it's stationary for four seconds?

1 A. Yes.

2 MR. RAMIREZ: Objection, leading, Judge.

3 THE COURT: Sustained.

4 Q. (By Mr. Aslett) And do you look for that
5 distinct and sustained nystagmus in each eye?

6 A. Yes.

7 Q. Okay. Why do you hold the stimulus for four
8 seconds?

9 A. It's to confirm the involuntary jerk.

10 Q. Did you check the defendant's eyes for distinct
11 and sustained nystagmus at maximum deviation?

12 A. Yes, I did.

13 Q. What did you find?

14 A. I found that in both eyes she had that clue.

15 Q. Were those two additional clues in addition to
16 the two clues you previously said?

17 A. Yes, sir.

18 Q. What was the third and final part of the
19 horizontal gaze nystagmus?

20 A. The final part of the HGN is what we call onset
21 of nystagmus prior to 45 degrees.

22 Q. What is onset of nystagmus prior to 45 degrees?

23 A. "Onset" would be the beginning. So what we do
24 is we move that stimulus slowly from the center of the
25 face to where you don't see white anymore in the eye.

1 And if you move that stimulus slow enough, you'll be
2 able to see the onset of the involuntary jerk. So
3 you'll see it jerk before it gets all the way to the
4 end.

5 Q. Did you check for onset of nystagmus before 45
6 degrees in both of the defendant's eyes?

7 A. Yes, I did.

8 Q. What did you find?

9 A. I found that there was onset prior to 45.

10 Q. Were those additional clues to the ones you'd
11 previously found?

12 A. Yes.

13 Q. So in total, how many clues did you find?

14 A. Six clues total.

15 Q. What's the maximum number of clues you can find
16 on this test?

17 A. Six clues.

18 Q. What is a failing score on the HGN?

19 A. You need a minimum of four clues.

20 Q. So this was above what would be a failing
21 score?

22 A. Yes, sir.

23 Q. Did you also check for vertical nystagmus?

24 A. Yes, I did.

25 Q. What is vertical nystagmus?

1 A. Vertical nystagmus is -- "vertical," going up.
2 So you'll see involuntary -- you'll move the stimulus
3 up. And when they look up, you'll see an involuntary
4 jerk up and down.

5 Q. What does vertical nystagmus indicate to you?

6 A. That someone has had a high dose, normally
7 above what they're used to consuming.

8 Q. Do you normally find vertical nystagmus in the
9 suspects that you test?

10 A. Not all the time.

11 Q. So would you say it is less common than not to
12 find vertical nystagmus?

13 A. Yes.

14 Q. When you tested the defendant for vertical
15 nystagmus, what did you see?

16 A. I saw the involuntary jerk as the eyes gazed
17 up.

18 Q. In both eyes?

19 A. In both eyes.

20 Q. Now, Officer Corral, do you think that it would
21 help the jury in understanding the HGN test if they saw
22 a chart of how it was scored?

23 A. Yes, sir.

24 Q. Do you also think it would help the jury
25 understand this if they saw examples of eyes with and

1 eyes without horizontal gaze nystagmus?

2 A. Absolutely.

3 MR. ASLETT: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 Q. (By Mr. Aslett) Officer Corral, I'm showing you
7 what I've marked as State's Exhibit 46. If you could
8 tell the jury generally what this is (indicating).

9 A. Yes. It's a chart and it has the three
10 standard clues that we look for. And it has left eye
11 and right eye.

12 Q. And does this chart fairly and accurately
13 depict how the test is scored and what you're looking
14 for?

15 A. Yes, sir.

16 Q. Does it also reflect these six clues that you
17 found on the defendant that night?

18 A. Yes, sir.

19 Q. State's Exhibit 47. If you could tell the jury
20 what this is (indicating).

21 A. Yes. This is a video that shows an example of
22 what the HGN would look like.

23 Q. Now, are there two sets of eyes on this video?

24 A. Yes, there are.

25 Q. Does one set of eyes have no clues on the HGN

1 test?

2 A. Yes, sir.

3 Q. Does the other set of eyes have six clues on
4 it?

5 A. Yes, sir.

6 Q. Just to be clear, are any of the eyes on this
7 video the defendant's eyes?

8 A. No, they are not.

9 Q. So this would just be an example?

10 A. Just an example.

11 MR. ASLETT: Your Honor, at this time,
12 State would offer for demonstrative purposes only
13 State's Exhibits 46 and 47.

14 **(State's Exhibit Nos. 46 and 47 Offered)**

15 MR. RAMIREZ: Can I ask this officer a
16 question, Judge?

17 THE COURT: You may.

18 **VOIR DIRE EXAMINATION**

19 **BY MR. RAMIREZ:**

20 Q. Officer, State's Exhibit No. 47, did you record
21 that?

22 A. I did not record it.

23 Q. Do you know who recorded it?

24 A. I believe it was an officer in Wisconsin making
25 a video called "The Truth is in the Eyes."

1 Q. And is that officer here today to --

2 A. No, sir, he's not.

3 Q. So you didn't prepare this, you don't know
4 anything about the preparation of this, about how it was
5 prepared, anything like that, do you?

6 A. No, sir.

7 Q. Did you prepare State's Exhibit No. 46?

8 A. No, I did not.

9 Q. Do you know who prepared it?

10 A. No, sir.

11 MR. RAMIREZ: I'm going to object, Judge.
12 I don't think the proper predicate has been laid for
13 these two documents.

14 THE COURT: Sustained.

15 MR. ASLETT: Your Honor, if I may respond.
16 These are only being offered for demonstrative purposes,
17 as examples of what HGN looks like and doesn't look
18 like. We're not tying them to any particular person or
19 anything. It would be no different than if he were just
20 to draw it on a blackboard. I don't think it's a
21 predicate for a demonstrative that the witness actually
22 has to create the document.

23 THE COURT: Hand up State's 46.

24 (Prosecutor tenders documents to the Court)

25 THE COURT: What does this show?

1 MR. ASLETT: It's just a demonstrative of
2 what the components are and how they're scored.

3 THE COURT: All right. State may use
4 State's Exhibit 46 for demonstrative purposes, but it's
5 not admitted into evidence.

6 The objection is sustained as to State's
7 47.

8 MR. ASLETT: Permission to publish State's
9 46, Your Honor?

10 THE COURT: You may.

11 (State's Exhibit No. 46 published.)

12 **DIRECT EXAMINATION**

13 **CONT'D BY MR. ASLETT:**

14 Q. If you could, Officer Corral, just explain to
15 us what we're looking at here, the chart in State's
16 Exhibit 46 (indicating).

17 A. Yes, sir. You'll see the first clue, which is
18 indicated -- when I'm looking at it, it will be to my
19 left, lack of smooth pursuit, which would be down right
20 here (indicating). That is going to be the first clue
21 as we do the first two passes on somebody we're testing.

22 The "X" would mark that indication that
23 that could be present in that eye. And then the "X" in
24 the right eye would indicate that it's present in the
25 right eye, indicating a total of two clues, one in each

1 eye. The second would be the -- what we look for in the
2 second clue, which is a distinct and sustained nystagmus
3 at maximum deviation. We have, in each eye, indicating
4 that that clue was present for a total of four clues.

5 The final series of tests would be onset of
6 nystagmus prior to 45, with the "X" indicating it is
7 present in that left or right eye, or both.

8 Q. Now, Officer Corral, are these involuntary
9 jerks of the eye something that you can only see when
10 you're right in front of the defendant?

11 MR. RAMIREZ: Objection, Judge. He's
12 leading his witness.

13 THE COURT: Sustained.

14 Q. (By Mr. Aslett) How close do you have to be to
15 somebody to be able to notice the involuntary jerking?

16 A. Just standing in front of them.

17 Q. That night did you have any ability to record
18 the nystagmus in the defendant's eyes?

19 A. No, I did not.

20 Q. What was the only means out there that night
21 that you had to record what was going on?

22 A. The documentation on my report.

23 Q. And did you also have a dash cam video?

24 A. Yes, I did.

25 Q. Did you use your dash cam video to record your

1 interactions with the defendant that night?

2 A. Yes, sir, I did.

3 Q. Is your dash cam video right up in front of the
4 defendant, or are you doing these tests some distance
5 away?

6 A. Yeah, we do the tests a distance away just
7 because I can't get someone on the hood of my car to do
8 certain tests. It's got to be from a distance enough to
9 record their whole body as they do the tests.

10 Q. So would the nystagmus be visible from the
11 perspective of your dash cam in your patrol car?

12 A. No, not from that far.

13 Q. After you did the horizontal gaze nystagmus
14 test, what was the next test that you did?

15 A. The second test in the battery of tests is
16 called the walk-and-turn.

17 Q. Tell us what the walk-and-turn is and how it is
18 scored.

19 A. The walk-and-turn is the second test in the
20 divided attention tests. So that walk-and-turn is --
21 it's broke up into two stages, one stage being the
22 instructional stage where I will have the person stand
23 in a specific manner, and then the second stage being
24 the walking stage when I then tell them to do the test
25 after I've explained it and demonstrated it to them.

1 Q. Prior to asking that defendant to do the
2 walk-and-turn test, did you explain the walk-and-turn to
3 her?

4 A. Yes, sir.

5 Q. Did you actually demonstrate it to her?

6 A. Yes, I did.

7 Q. Did she indicate that she understood your
8 instructions?

9 A. Yes.

10 Q. Tell us exactly what you asked the defendant to
11 do for the walk-and-turn test?

12 A. What I'll have them do is I'll have them stand
13 with their feet together, arms down to the side. Then I
14 will ask them to put their right foot in front of their
15 foot, touching the heel to the toe. What I'll tell them
16 to do -- this is where divided attention begins. So
17 they will stand in that manner as I explain the rest of
18 the test.

19 Q. Are there some clues that you look for before
20 the defendant even starts to walk?

21 A. Yes, sir.

22 Q. How many clues do you look for before the
23 defendant even starts to walk?

24 A. In the instruction stage, there are two visible
25 clues.

1 Q. What are those two clues?

2 A. Starts early, starts too soon, or can't keep
3 their balance.

4 Q. Would starting too soon mean starting before
5 you told them to begin?

6 A. Yes, sir.

7 Q. Okay. And what counts as not being able to
8 keep balance?

9 A. Just stepping off the line and then trying to
10 readjust themselves.

11 Q. Okay. What do you ask them to do when you say
12 to begin the test?

13 A. Well, before I tell them to begin, I will then
14 explain the walking portion of the instruction. I will
15 then tell them to step with their left foot first. As
16 in the HGN, you always start with the standard of the
17 left. So their left foot first will be counted one.
18 And I will explain to them to take nine heel-to-toe
19 steps, touching heel to toe, looking down at their feet
20 with theirs arms down to their side.

21 I explain that when they reach the number
22 nine, to leave that left foot on the ground and take
23 small steps to turn around and come back as they begin
24 again touching heel to toe, arms down looking at their
25 feet.

1 Q. How many clues are you looking for on the
2 walking portion of the walk-and-turn test?

3 A. There are six visible clues.

4 Q. What are those clues?

5 A. The clues that we have are steps off line, uses
6 arms for balance, stops walking, misses heel to toe,
7 takes wrong number of steps, and an improper turn.

8 Q. What counts as using your arms to balance?

9 A. Raising the arms more than 6 inches off to the
10 side.

11 Q. What would count as an improper turn?

12 A. Anything other than what is explained.

13 Q. So in total, about how many clues are there
14 potentially on the walk-and-turn test?

15 A. Eight clues.

16 Q. What is a failing score on the walk-and-turn
17 test?

18 A. Minimum of two clues.

19 Q. And did the defendant perform the walk-and-turn
20 test?

21 A. Yes, she did.

22 Q. How many clues did you observe on the defendant
23 on the walk-and-turn test?

24 A. Six clues.

25 Q. What were those clues?

1 voir dire?

2 THE COURT: You may.

3 VOIR DIRE EXAMINATION

4 BY MR. RAMIREZ:

5 Q. Did you prepare this document?

6 A. No, sir, I didn't.

7 Q. Do you know who prepared it?

8 A. I believe Mr. Aslett.

9 Q. Do you know that or are you just guessing?

10 A. I'm guessing.

11 Q. So you didn't see anybody prepare this?

12 A. No, sir.

13 Q. And with respect to --

14 MR. RAMIREZ: I'm going to object, Judge.

15 The proper predicate hasn't been laid on this.

16 THE COURT: Are you just asking to use this
17 for demonstrative purposes?

18 MR. ASLETT: That's correct, Your Honor.

19 THE COURT: All right. The objection is
20 overruled. The request will be granted.

21 (State's Exhibit No. 48 Admitted For
22 Demonstrative Purposes Only)

23 MR. ASLETT: Permission to publish, Your
24 Honor?

25 THE COURT: You may.

DIRECT EXAMINATION

1
2 **CONT'D BY MR. ASLETT:**

3 Q. Officer Corral, tell us again what we're
4 looking at here in State's Exhibit No. 48.

5 A. Yes, sir. Again, the clue which would be
6 indicated on the left column, these two clues would be
7 the clue that would be observed in the instruction stage
8 of the walk-and-turn.

9 In this case, only one is marked, which is
10 can't keep balance. In the walking stage of this test
11 is where these other clues would be visible. The "X" on
12 the right would be the clues that were observed.

13 MR. RAMIREZ: I understood this exhibit was
14 used for the purpose of demonstrating the types of tests
15 that were done, not that they were reflective of what my
16 client -- that he testified to what my client had
17 performed on these examinations. Did I misunderstand
18 that?

19 THE COURT: What is the objection?

20 MR. RAMIREZ: The objection is that I
21 understand that this State's Exhibit No. 48 was admitted
22 for demonstrative purposes, but it has evidence of
23 what --

24 THE COURT: For what purpose are you
25 offering its use?

1 MR. ASLETT: Judge, this is just to speed
2 things up so I don't have to have Officer Corral write
3 stuff on a piece of paper to illustrate what was on it.
4 It's just showing how the walk-and-turn test is scored
5 using these eight clues and what clues he observed and
6 did not observe, just visually illustrating it in an
7 easier manner for the jury.

8 THE COURT: But is it directed towards this
9 specific individual?

10 MR. ASLETT: Yes, Your Honor, the six clues
11 that he found.

12 THE COURT: All right. The objection is
13 sustained.

14 Q. (By Mr. Aslett) Okay. What was the third field
15 sobriety test you performed on the defendant?

16 A. The final test -- the final divided attention
17 test, which is the one-leg stand.

18 Q. Tell us what the one-leg stand is and how it's
19 scored.

20 A. The one-leg stand, again, there are two
21 portions, one being the instructional stage, the second
22 being a balance and counting stage. In this stage, a
23 person is directed to stand with their feet together,
24 arms down to the side. And all they are required to do
25 is pay attention, nothing else. The test is then

1 explained and demonstrated, and then the question is if
2 they understand after the explanation.

3 Q. Did you explain the one-leg stand test?

4 A. Yes, I did.

5 Q. And did you demonstrate it?

6 A. Yes, I did.

7 Q. Did she indicate she understood your
8 instructions?

9 A. Yes, she did.

10 Q. Tell us what you asked the defendant to do.

11 A. I asked her to stand with her feet together,
12 arms down to her side. I asked her to raise the foot of
13 her choice, raise that foot approximately 6 inches off
14 the ground with the toe pointing forward parallel with
15 the ground, not bend the knee, but keep it straight,
16 looking down and count out loud one-1,000, two-1,000,
17 three-1,000, until I told her to stop.

18 Q. What clues are you looking for on the one-leg
19 stand?

20 A. There are four clues. The clues are puts foot
21 down, uses arms for balance, sways, and hops.

22 Q. And what is a failing score on the one-leg
23 stand?

24 A. A minimum of two clues.

25 Q. How many clues did you observe on the

1 defendant?

2 A. In this instance, one.

3 Q. What was that clue?

4 A. The clue that was documented was a sway.

5 Q. In fairness to the defendant, did she pass the
6 one-leg stand?

7 A. This one test, yes.

8 Q. After you administered the one-leg stand test,
9 did you give the defendant any other tests to determine
10 her intoxication?

11 A. Actually, indicating the slurred speech, I
12 asked her if she could recite her alphabet. She said
13 she could, so I asked her to do so.

14 Q. Did you ask her to recite a certain portion or
15 from A to Z?

16 A. I always do it in the same manner with
17 everyone. I ask them to say it from A to Z. If they
18 choose to sing it, they can. If not, they don't have
19 to.

20 Q. Was she able to say her alphabet correctly?

21 A. No, she didn't.

22 Q. Tell us how she messed up.

23 A. She said the letters out of sequence. And
24 after certain letters, she paused.

25 Q. Now, Officer Corral, after you asked her to say

1 her alphabet, what did you do next?

2 A. At this time with the battery of tests
3 completed, as well as a secondary alphabet test, I
4 determined at this time that she was intoxicated.

5 Q. Did you place her under arrest at that time?

6 A. At this time, I did.

7 Q. What did you do after you placed her under
8 arrest?

9 A. I read her what we call the statutory warning,
10 also known as the DIC-24.

11 Q. Is this a form that you have to read to
12 everybody that you arrest for a DWI or intoxication?

13 A. Yes, sir.

14 Q. In essence, what does the form say?

15 A. The form stipulates the driving privileges if
16 someone gives a sample or refuses or is over a certain
17 amount or under a certain amount and for how long that
18 license may be suspended for.

19 Q. And when we're talking about giving a sample,
20 are we talking about giving consent for a breath sample
21 or blood sample?

22 A. Yes.

23 Q. Does the form that you personally read to them
24 also explain that if they refuse to give a sample, that
25 that refusal can be used against them as evidence of

1 their guilt?

2 A. Yes.

3 Q. Okay. Did you read the DIC-24 form to the
4 defendant?

5 A. Yes, I did.

6 Q. And did you ask her for a sample of her breath?

7 A. Yes, I did.

8 Q. What did she say?

9 A. She said no.

10 Q. Did you ask her for a sample of her blood?

11 A. Yes, I did.

12 Q. What did she say?

13 A. She said no.

14 Q. Okay. Now, Officer Corral, when you do your
15 DWI investigations, do you make sure those are recorded?

16 A. Yes, sir.

17 Q. What device do you use to record?

18 A. We have an in-vehicle camera that's mounted
19 onto a dashboard.

20 Q. How does that camera operate?

21 A. It operates two ways. Once the lights are
22 turned on in my patrol car, that camera will, on its
23 own, turn on and begin recording and you'll have to
24 manually stop it. Or without turning on lights, I can
25 hit "record" and it will start recording. And, again,

1 manually you have to stop it.

2 Q. Prior to you beginning your DWI investigation
3 with the defendant, did you start up the camera?

4 A. Yes, I did.

5 Q. Is that camera supposed to record both video
6 and audio?

7 A. Yes, sir.

8 Q. How do you record audio?

9 A. The audio is -- it's what we call a lapel mic.
10 So it will be a separate mic that fits inside your front
11 pocket.

12 Q. And if there turns out to be some problem with
13 that lapel mic, like a dead battery or a bad connection,
14 is any audio going to be recorded?

15 A. No, sir.

16 Q. Did you record your interactions with the
17 defendant via your dash cam that night?

18 A. Yes, I did.

19 Q. Okay. After your investigation was complete,
20 did you go back and review the video footage?

21 A. Yes, I did.

22 Q. About what time do you recall doing that?

23 A. 7:00, 8:00 in the morning.

24 Q. And what did you discover when you started to
25 review your footage?

1 A. The audio did not record.

2 Q. Do we know why the audio did not record?

3 A. No, sir.

4 Q. Had you had problems with the audio in your
5 patrol car before?

6 A. Yes, I have.

7 Q. Did you believe that those problems had been
8 fixed?

9 A. Yes, sir.

10 Q. Was there any way for you to check whether the
11 audio was operating correctly before doing your
12 interview?

13 A. No, sir.

14 Q. Okay.

15 MR. ASLETT: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 Q. (By Mr. Aslett) Officer Corral, I'm showing you
19 what I've marked as State's Exhibit 49. If you could
20 tell the jury what this is (indicating).

21 A. This is going to be the scene video that was
22 recorded from that morning.

23 Q. Does it fairly and accurately depict your DWI
24 investigation with the defendant on October 15th, 2013?

25 A. Yes, sir.

1 Q. And is there any audio on this video?

2 A. No, sir.

3 Q. State's Exhibit No. 50, please tell the jury
4 what this is (indicating).

5 A. Yes. This is going to be what is the DIC-24,
6 the statutory warning regarding driving privileges if
7 there's a refusal.

8 Q. This is a fair and accurate copy of the form
9 you read to the defendant that night?

10 A. Yes, sir.

11 Q. And is this your name and signature that we see
12 here at the bottom (indicating)?

13 A. Yes, it is.

14 MR. ASLETT: Your Honor, at this time, the
15 State would offer into evidence State's Exhibits 49 and
16 50.

17 **(State's Exhibit Nos. 49 and 50 Offered)**

18 MR. RAMIREZ: May I ask this officer a
19 question -- take him on voir dire, Your Honor?

20 THE COURT: You may.

21 MR. RAMIREZ: Thank you.

22 **VOIR DIRE EXAMINATION**

23 **BY MR. RAMIREZ:**

24 Q. Officer Corral, did you -- you testified a
25 moment ago that the -- that the equipment was not

1 working properly; is that right?

2 A. I found out later that the audio did not work.

3 Q. Right. At some point later, you found out that
4 the audio wasn't working. So your equipment was not
5 working properly. Is that a fair statement?

6 A. I don't agree with that. It recorded.

7 Q. Did it record the audio?

8 A. Not the audio.

9 Q. So it wasn't working properly, was it?

10 A. The audio didn't record.

11 Q. Is that not the same as it not working
12 properly?

13 A. I thought you were going to finish the
14 question. I'm sorry.

15 Q. You can answer that.

16 A. Okay. When I hit "record," it recorded the
17 visual, but the audio did not.

18 Q. Let me ask you: How is it supposed to work?

19 A. When you hit -- again, when the lights turn on,
20 everything will record. If I hit "record" manually,
21 everything records. That lapel mic we put in our
22 pocket, usually a little green light turns on to say
23 that it is on. That doesn't necessarily mean that the
24 audio is recording.

25 Q. Okay. And it didn't do that in this case, did

1 it? It didn't record everything, did it?

2 A. Not the audio.

3 MR. RAMIREZ: So, Judge, I'm going to
4 object that the proper predicate hasn't been laid. The
5 equipment was not working properly. And I'm going to
6 object that it's inadmissible because of improper
7 predicate and because the equipment wasn't working
8 properly. He testified it wasn't working properly.

9 THE COURT: The objection is overruled.
10 State's 49 and State's 50 are admitted.

11 **(State's Exhibit Nos. 49 and 50 Admitted)**

12 MR. ASLETT: Permission to publish, Your
13 Honor?

14 THE COURT: You may.

15 **DIRECT EXAMINATION**

16 **CONT'D BY MR. ASLETT:**

17 Q. Officer Corral, before I put this video up, do
18 you, prior to finalizing your report, re-watch the video
19 to make sure that you took down all the clues
20 accurately?

21 A. Yes.

22 Q. Did you do that in this case?

23 A. Yes, sir.

24 Q. Did you find, after reviewing this video, that
25 you had recorded all the clues we talked about

1 correctly?

2 A. Yes, sir.

3 THE COURT: Tell you what, before you start
4 it, ladies and gentlemen, at this time you're going to
5 be given a brief break. Remember the admonitions. Do
6 not discuss this case with anyone, including amongst
7 yourselves. With that, report to the jury room.

8 THE BAILIFF: All rise for the jury.

9 (Open court, defendant present, no jury.)

10 THE COURT: You may be seated.

11 Officer, you may step down.

12 THE WITNESS: Yes, sir.

13 (Recess.)

14 (Open court, defendant and jury present.)

15 THE COURT: You may be seated.

16 I apologize for keeping y'all back there
17 and the disjointed way that we seem to be proceeding,
18 but every time y'all go back there, I have to address
19 other cases, and there's just no way around it, in order
20 to move the docket along. So I know you'll appreciate
21 that and understand it.

22 Anyway, it's expected that this afternoon
23 that the other cases will be finished and things
24 hopefully will move along a little faster.

25 I do have a question for you, though, while

1 I'm thinking about it. Is there any of you who cannot
2 stay a little bit later today if we need to? And I'm
3 thinking maybe around 6:00-ish. Could y'all do that if
4 we need to?

5 JURORS: (Moving heads up and down.)

6 THE COURT: All right. You may proceed.

7 MR. ASLETT: Thank you, Your Honor.

8 For the record, I'm going to go ahead and
9 publish State's Exhibit 49.

10 Q. (By Mr. Aslett) And Officer Corral, if you
11 could explain to us what we're looking at as this video
12 plays.

13 (State's Exhibit No. 49 published.)

14 A. Yes, sir. What we have here is -- this is
15 going to be the front dashboard camera. The first
16 camera facing traffic would be the primary camera on the
17 dashboard. The bottom right-hand corner is a camera we
18 have in the backseat of the patrol vehicle.

19 THE COURT: One moment.

20 Would you make sure that that camera person
21 knows not to film the jury? He can film anything else
22 but the jury.

23 THE BAILIFF: Yes, sir, Your Honor.

24 THE COURT: You may continue.

25 (State's Exhibit No. 49 published.)

1 Q. (By Mr. Aslett) Okay. Officer Corral, what are
2 you doing right now?

3 A. At this time, you'll see I pulled a little
4 notepad out of my pocket. This is where I explained
5 earlier the investigation into the questions regarding
6 the odor of alcohol, bloodshot eyes, signs of
7 intoxication that I saw earlier. So at this time, she's
8 explaining to me, of course, what I asked; where she was
9 coming from, where she was going, the time, the
10 sequences of what she can recall or cannot recall.

11 Q. And it may be easier to see on the side
12 monitors here, but this square thing that appears in the
13 background, what's this (indicating)?

14 A. That's a red and white sign that says "Wrong
15 Way."

16 Q. The time and date that we see in the upper
17 left-hand corner here, is that something automatically
18 recorded by the dash cam system?

19 A. Yes, sir.

20 Q. And are you taking notes of what she's telling
21 you right now?

22 A. Yes, sir. You'll see in my hand I'm holding
23 something, which is a notepad. Again, just
24 documenting --

25 MR. RAMIREZ: Objection, Judge. Leading.

1 THE COURT: It's sustained.

2 Q. (By Mr. Aslett) Okay. What are you doing now?

3 A. At this point is where I'm going to begin what
4 is -- as I explained earlier, the HGN. I've asked her
5 to stand with her feet together, arms down to the side.
6 And she then listens to me explain what I'm going to do
7 with my stimulus. As I explained, I'm going to move it
8 from left to right, and I want her to follow with her
9 eyes only, not moving her head.

10 There's a part where you see her shake her
11 head. As I'm holding the stimulus, I'm asking her --

12 MR. RAMIREZ: Objection, Judge. That's --
13 that -- there wasn't a question.

14 THE COURT: Nonresponsive?

15 MR. RAMIREZ: Nonresponsive.

16 THE COURT: Sustained.

17 You may ask your next.

18 Q. (By Mr. Aslett) What are you doing right now,
19 Officer Corral?

20 A. You'll see her shake her head "no." At this
21 time I'm holding that stimulus. And you'll see her
22 shake her head. I'm checking her for equal pupils. I'm
23 asking if she has injuries. She shakes her head "no."
24 So that's where those questions come into play before I
25 start moving the stimulus from left to right.

1 Q. And was she able to stand completely still
2 while you were doing all of this?

3 A. No. One of the signs that I indicated was a --
4 what I described as a pronounced sway. So as she stands
5 still, you'll see her sway back and forth, in a
6 back-and-forth circular motion.

7 Q. Did you take this to be an additional sign of
8 intoxication?

9 A. Yes, sir.

10 Q. Officer Corral, do we know why this video was
11 in black and white as opposed to color?

12 A. No, sir. It's just -- the video -- I'm
13 recording it and that's how it recorded it.

14 Q. Does it record black and white at nighttime?

15 A. No, sir.

16 Q. What are you checking for now?

17 A. Here you'll see what I described earlier as
18 vertical nystagmus. It's the up-and-down checking to
19 see the involuntary jerk up and down.

20 Q. Okay. Tell us what you're doing here.

21 A. Yes. What I'll do now is I'm using that line
22 that was on the -- in that parking lot. I let her use
23 that line as an indicator on how to step and when to
24 step in the next test, which is the walk-and-turn. I'll
25 have her stand up in what I described earlier as the

1 instructional position. And you'll see her stand there.
2 She'll use her arms, she'll step off. That's when I see
3 the clues in the instruction stage, but at this time I
4 get her to stand in the manner that I explained. And
5 then I will now -- now I'm giving the instruction and
6 will demonstrate the walk-and-turn.

7 Q. Was the defendant wearing flat shoes?

8 A. Yes, they were flats.

9 Q. Would you have asked her to perform the test if
10 she were in high heels?

11 A. No. I would have asked her to take them off.

12 And at this time, you'll see my motions.
13 I'm just giving instructions to use the line properly.

14 Now you see me walking. I'm counting --

15 MR. RAMIREZ: Objection, Judge.

16 THE COURT: Sustained.

17 Q. (By Mr. Aslett) Officer Corral, if you could
18 explain what you're doing now.

19 A. You'll see me taking the steps, and I'm
20 explaining the proper way to take the turn, also
21 explaining the counting out loud and the manner to
22 count, one, two, three, all the way to nine.

23 Q. And if you could point out the clues you
24 observe as we watch the defendant perform this
25 walk-and-turn test.

1 A. Sure. As you can see here, she's having
2 trouble standing on the line in that position. Now she
3 raises her arms. She's stepping off the line. She's
4 missing heel-to-toe. You'll see the turn. Turns
5 around. She loses balance and stops, and then she
6 continues stepping off the line missing heel-to-toe, and
7 then stops.

8 Q. Tell us what you're doing now.

9 A. Now is where I give the instruction for the
10 one-leg stand.

11 Q. Tell us what we're looking at here.

12 A. Here you're seeing her do the one-leg stand. I
13 explained it and told her what to do. And I'm watching
14 her as I'm looking at my clock timing it.

15 Q. Can you tell us what you're doing here?

16 A. Yes. At this time, I'm now reading her what I
17 explained was the statutory warning, the DIC-24,
18 regarding refusals or cooperation and driving
19 privileges.

20 Q. What's going on there?

21 A. You'll see me ask her if she'll give me a
22 sample -- she says no -- of breath. And then I ask for
23 a sample of blood, and she says no again.

24 MR. ASLETT: Your Honor, may I approach the
25 witness?

1 THE COURT: You may.

2 Q. (By Mr. Aslett) Officer Corral, I'm going to
3 show you again State's Exhibit 50, which has already
4 been admitted into evidence as this DIC-24 form. I
5 don't want you to read the whole thing, but if you would
6 please read to the jury the first three paragraphs.

7 A. You are under arrest for an offense arising out
8 of the acts alleged to have been committed while you
9 were operating a motor vehicle in a public place or a
10 watercraft while intoxicated or an offense under Section
11 106.041, Alcoholic Beverage Code.

12 You will be asked to give a specimen of
13 your breath and/or blood. The specimen will be analyzed
14 to determine the alcohol concentration or the presence
15 of a controlled substance, drug, dangerous drug, or
16 other substance in your body. If you refuse to give a
17 specimen, the refusal may be admissible in a subsequent
18 prosecution. Your license, permit, or privilege to
19 operate a motor vehicle will be suspended or denied for
20 not less than 180 days whether or not you are
21 subsequently prosecuted for this offense.

22 If you refuse to submit to the taking of a
23 specimen, the officer may apply for a warrant
24 authorizing a specimen to be taken from you.

25 Q. What did you do after you handcuffed the

1 defendant and placed her in the back of the patrol car?

2 A. At this time, she was then -- well, placed
3 under arrest and I took her to central intox, which is
4 at 61 Riesner.

5 Q. Roughly, where is 61 Riesner?

6 A. 1400 Lubbock, right where the municipal court
7 is, it's the street right behind it.

8 Q. Why did you take her down there?

9 A. That's where we have our processing center for
10 the paperwork and DWI arrests, as well as in this case
11 the ability to draft a warrant.

12 Q. And is the municipal court building where the
13 judges are located to sign these warrants?

14 A. Yes.

15 Q. While you were at central intox, did you swear
16 to an affidavit giving the probable cause for your
17 arrest?

18 A. Yes, I did.

19 Q. Okay. Did you bring that affidavit in front of
20 a judge?

21 A. Yes, I did.

22 Q. Did you swear that everything in that affidavit
23 was true and correct, to the best of your knowledge?

24 A. Yes, I did.

25 Q. Okay. And did the Judge ultimately sign that

1 warrant?

2 A. Yes, he did.

3 MR. ASLETT: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 Q. (By Mr. Aslett) Officer Corral, I'm showing you
7 what I've marked as State's 51. If you could tell the
8 jury what this is (indicating).

9 A. This is the signature of the judge on the
10 warrant.

11 Q. Okay. And on the second page, is this the
12 warrant returned?

13 A. Yes, it is.

14 Q. What's a warrant return?

15 A. The warrant return is me returning that warrant
16 to the court showing that I executed that search
17 warrant.

18 Q. Did you fill that out after you had the
19 defendant's blood drawn?

20 A. After, yes, sir.

21 Q. Is this a fair and accurate copy of the search
22 warrant that you obtained for the defendant's blood
23 samples on October 15th, 2013?

24 A. Yes, sir.

25 MR. ASLETT: Your Honor, State offers into

1 evidence State's Exhibit 51.

2 **(State's Exhibit No. 51 Offered)**

3 MR. RAMIREZ: No objection.

4 THE COURT: Admitted.

5 **(State's Exhibit No. 51 Admitted)**

6 MR. ASLETT: Permission to publish, Your
7 Honor?

8 THE COURT: You may.

9 Q. (By Mr. Aslett) Okay. Officer Corral, I'm
10 going to zoom in on different portions of this. Do we
11 have the defendant's name here on the warrant
12 (indicating)?

13 A. Yes, sir.

14 Q. Including the driver's license number that you
15 testified to earlier?

16 A. Yes, sir.

17 Q. And do we see the signature of the judge down
18 here (indicating)?

19 A. Yes, sir.

20 Q. And is that time that the warrant was signed
21 roughly accurate, according to your memory?

22 A. Yes, sir.

23 Q. After the warrant was signed at 4:14 a.m., what
24 did you do next?

25 A. After the warrant is signed, now it's time to

1 execute the warrant. So I took her from central intox,
2 which is, again, right by the municipal court, and took
3 her to Memorial Hermann Hospital right by where the zoo
4 is at.

5 Q. What did you do once you arrived at the
6 hospital?

7 A. Once we arrived at the hospital, immediately
8 walked into the emergency room area of the hospital.
9 And when I walked in, approached one of the nurses that
10 was triaging people that night and presented them with
11 the search warrant for the blood draw.

12 Q. Now, as this was about 4:00 o'clock in the
13 morning, did you have any traffic problems getting to
14 the hospital?

15 A. No, not at all.

16 Q. Did you have any problems quickly finding a
17 nurse to do the blood draw?

18 A. No, not at all.

19 Q. Which nurse did you ultimately get to do the
20 blood draw?

21 A. RN Rains, I believe, is how you pronounce his
22 name.

23 Q. Okay. Where was this blood draw done in the
24 hospital?

25 A. It's in the triage area as you walk in.

1 Q. Now, the blood draw tubes that are used for the
2 blood draws, is this something that you provide to the
3 nurse?

4 A. Yes, sir.

5 Q. Okay. Do you keep them in your patrol car?

6 A. No.

7 Q. Okay. Where do you get them?

8 A. We have a lockbox. They're under lock and key
9 in a box at central intox. So when we need one, we have
10 to put in a combination or use the key -- there's two
11 boxes -- and then you get them out.

12 Q. Did you do that prior to bringing the defendant
13 to the hospital?

14 A. Yes, I did.

15 Q. Okay. Did you provide Nurse Rains with four
16 gray-top blood tubes?

17 A. Yes, I did.

18 Q. Prior to providing him those blood tubes, did
19 you verify that they were not expired?

20 A. Yes, I did.

21 Q. Did you verify that there was anticoagulant
22 powder at the bottom of each vial?

23 A. Yes, I did.

24 Q. And did you hand four blood vials over to Nurse
25 Rains?

1 A. Yes, sir.

2 MR. RAMIREZ: Objection, Judge. He's
3 leading his witness. I'm going to object.

4 THE COURT: Sustained.

5 Q. (By Mr. Aslett) How many blood vials did you
6 hand over to Nurse Rains?

7 A. Four.

8 Q. Okay. And did you personally witness him draw
9 the blood from the defendant?

10 A. Yes, I did.

11 Q. Tell us how he did that.

12 A. They use a tourniquet on the arm and they
13 feel -- he felt for the vein. Upon finding the vein, he
14 then used Betadine, wiped it, cleaned the injection
15 site. Once he cleaned it with the Betadine, then he
16 then drew the blood using -- I believe he used a
17 butterfly needle.

18 Q. What arm was the blood drawn from first?

19 A. The first one, I believe, was from the left
20 arm.

21 Q. And what time was blood drawn from the
22 defendant's left arm?

23 A. At 4:31 a.m.

24 Q. How did you know that it was drawn at 4:31 a.m.

25 A. Because when he drew the blood, I say the

1 time -- with all of my blood draws, I say the time out
2 loud so everybody hears it.

3 Q. Okay. Where do you get that time?

4 A. I use my phone.

5 Q. Okay. And when you received the blood -- how
6 many vials did he draw from defendant's left arm?

7 A. Two.

8 Q. Did he hand those vials back to you?

9 A. Yes, he did.

10 Q. What did you do after you receive those vials
11 back?

12 A. Once he inverted the tubes, I get the vials,
13 and then I initial it, get his initial, put the stickers
14 on, and then seal them.

15 Q. You mentioned the nurse inverts the blood, the
16 tubes.

17 A. Yes.

18 Q. What's the purpose of that?

19 A. The purpose of the invert is so that the
20 anticoagulant mixes with the blood.

21 Q. Okay. Do you recall approximately how many
22 times the nurse did that?

23 A. About ten.

24 Q. All right. Did the nurse draw another sample
25 from the defendant's right arm?

1 A. Yes, sir.

2 Q. What time was the blood drawn from the
3 defendant's right arm?

4 A. The second sample was taken at 5:04 a.m.

5 Q. What's the purpose of the roughly 30 minutes
6 time difference between the blood draw from the left and
7 the right arm?

8 A. Try to get a general indicator if the
9 metabolism --

10 MR. RAMIREZ: Objection, Judge. I'm going
11 to object to him to testifying as to this subject. I
12 don't think he's been qualified as a --

13 THE COURT: The objection is sustained.

14 Q. (By Mr. Aslett) Officer Corral, during your
15 training in investigating alcohol-related crashes, did
16 you learn about how alcohol is metabolized in the human
17 body?

18 A. Yes, sir.

19 Q. What is your understanding generally -- without
20 going into the scientific detail -- about what happens
21 to a person's alcohol level when they've consumed
22 alcohol and then stopped drinking?

23 A. The body metabolizes --

24 MR. RAMIREZ: Judge, may I take this
25 witness on voir dire?

1 THE COURT: You may.

2 VOIR DIRE EXAMINATION

3 BY MR. RAMIREZ:

4 Q. Been to medical school?

5 A. No, sir.

6 Q. What training did you receive in this -- in the
7 subject that you're getting ready to testify to?

8 A. Had an intoxication manslaughter conference in
9 Galveston, Texas last year. It was a four-day
10 conference that had to do with metabolization of blood,
11 different procedures in blood draw and timeframes of
12 metabolization.

13 Q. And had you participated in that course at the
14 time that this case -- on October 15th of 2013?

15 A. No, sir.

16 Q. And so at that time, you really didn't know
17 anything about that subject, did you?

18 A. That's not correct.

19 Q. You hadn't participated in this course, though,
20 right?

21 A. In that particular course, no, but others.

22 Q. And now having taken that course, you don't
23 consider yourself to be an expert in that field of
24 metabolization, do you?

25 A. I'm going to say yes because I have knowledge

1 of it.

2 Q. Well, you have knowledge of it, but you're not
3 an expert in that field, are you?

4 A. Not in that --

5 Q. You're not recognized by anybody as an expert
6 in that field, are you?

7 A. Not in that field, no.

8 Q. Right. And you don't go around the country
9 testifying as to what blood does or what blood doesn't
10 do, right?

11 A. Not testifying.

12 Q. And there's other people that actually can
13 testify about that, that are experts in that field that
14 could probably -- that will testify on those issues.
15 Wouldn't you agree with me?

16 A. I agree.

17 Q. You're not one of those guys, are you?

18 A. No.

19 MR. RAMIREZ: Objection, Judge. I don't
20 think this witness is qualified to testify about that
21 subject.

22 THE COURT: Sustained.

23 **DIRECT EXAMINATION**

24 **CONT'D BY MR. ASLETT:**

25 Q. Let me ask it a different way, Officer Corral.

1 Prior to October 15th, 2013, did you attend any courses
2 generally discussing alcohol metabolism?

3 A. Yes, sir.

4 Q. And without going into specifics, if you have
5 two blood draws done at different times, is that
6 something that an analyst who's trained can use later to
7 determine if somebody is on the upswing or downswing as
8 far as the alcohol that was consumed?

9 A. Yes.

10 Q. When you received the 5:04 blood vials from the
11 nurse, did he invert those as well prior to giving them
12 to you?

13 A. Yes, sir.

14 Q. About how many times?

15 A. About ten times.

16 Q. And when you took custody of those four vials,
17 what did you do next?

18 A. Took custody, again did the same thing as the
19 previous two blood vials; initial them, had the nurse
20 initial them, then sealed them in an envelope.

21 Q. What did you do after the blood draw was
22 complete and you had taken custody of all four vials?

23 A. Once that was complete, returned back to 61
24 Riesner, and then later on took them to the property
25 room.

1 Q. Where is the property room?

2 A. The property room was over off of -- right
3 behind 1400 Lubbock. Artesian, I think. One of those
4 streets.

5 Q. And from there, are the vials then transported
6 to the Houston Institute of Forensic Science Center lab?

7 A. That's correct.

8 MR. ASLETT: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 Q. (By Mr. Aslett) Officer Corral, I'm showing you
12 what I've marked as State's Exhibits 52 and 57. Could
13 you please tell the jury what these are pictures of
14 (indicating)?

15 A. Yes, sir. 52 is going to be the blood envelope
16 that we insert the blood packet into. 53 is the
17 backside of the envelope where I sealed it with evidence
18 tape and initialed it twice. 54 are going to be the
19 individual envelopes, two tubes in one, two tubes in the
20 other, and under the time that those two tubes were --
21 the blood draw was done, along with the case number on
22 top.

23 55 being the name, date, time of blood
24 draws with the person's name on it as the stickers are
25 on the tubes. 56, it's the same tubes, just kind of

1 tipped a little to where you can see the writing on the
2 paper. In this picture, it's the same tube, but as
3 they're canted, you can see the incident number with the
4 nurse's name, the name, date of birth, and my name. And
5 then the tubes again canted a little more with my
6 signature, with the nurse's signature, and expiration
7 dates.

8 Q. Do State's Exhibit 52 through 57 fairly and
9 accurately depict the evidence envelopes and blood tubes
10 that you obtained from the defendant on October 15th,
11 2013?

12 A. Yes, sir, they do.

13 MR. ASLETT: Your Honor, at this time State
14 offers into evidence State's Exhibits 52 through 57.

15 **(State's Exhibit Nos. 52 through 57**
16 **Offered)**

17 THE COURT: What were they marked again?

18 MR. ASLETT: 52 to 57, Your Honor.

19 THE COURT: While Mr. Ramirez is reviewing
20 them, the exhibits that were marked 49 and 50, what are
21 those exhibits?

22 MR. ASLETT: 49 is the scene video, Judge,
23 and 50 is the DIC-24.

24 THE COURT: Okay.

25 MR. RAMIREZ: No objection, Your Honor.

1 THE COURT: State's 52 through 57 are
2 admitted.

3 (State's Exhibit Nos. 52 through 57
4 Admitted)

5 MR. ASLETT: Permission to publish?

6 THE COURT: You may.

7 Q. (By Mr. Aslett) Okay. Officer Corral, let's go
8 through these one by one. I'll zoom in on State's
9 Exhibit 52. Okay. If you could generally tell us what
10 we're looking at here (indicating).

11 A. Yes, sir. This is the envelope that the
12 smaller envelopes are put in. Again, the State of
13 Texas, the offense, the address, 5600 Katy Freeway, the
14 date and time, and what is in that envelope.

15 Q. Do we see the defendant's name at the top of
16 this envelope?

17 A. Yes, sir.

18 Q. Is this your signature where it says "officer's
19 signature"?

20 A. Yes, it is.

21 Q. State's Exhibit 53 (indicating).

22 A. This is the back of that same envelope. After
23 the tubes were placed in this, the evidence tape that I
24 put on that to seal it and initialed where I sealed it.

25 Q. What is the purpose of putting your initials

1 over the evidence tape?

2 A. To show that it doesn't get tampered with.

3 Q. This "S.C." there, are those your initials?

4 A. Yes, sir, they are.

5 Q. State's Exhibit 54 (indicating).

6 A. These are the smaller envelopes that were
7 placed into the bigger envelope. The one on the left
8 with the number 0431 being the time of the first blood
9 draw, 4:31 a.m. The number on the right with the number
10 0504 indicating the time of the second blood draw, 0504.

11 Q. State's Exhibit 55 (indicating).

12 A. These are the four blood vials that were
13 submitted. On the top right-hand corner, you'll see the
14 times 4:31 and 5:04, as well as the dates on top with
15 the defendant's name on it as well.

16 Q. State's Exhibit 56 (indicating).

17 A. These are the same blood vials just canted a
18 little more where you can see the nurse's name, my name,
19 and the date of birth.

20 Q. Finally, State's Exhibit 57 (indicating).

21 A. They are the same blood vials, just canted
22 more, with my initials, the nurse's initials, and the
23 expiration dates visible on those blood vials.

24 Q. Do we see what the expiration dates were on
25 these vials?

1 A. Yes, sir.

2 Q. What were they?

3 A. I think that's a 3. March of 2015.

4 Q. Just a couple more questions, Officer Corral.

5 Based on your training and experience, did
6 you form an opinion that night as to whether the
7 defendant had lost the normal use of her mental or
8 physical faculties?

9 A. Yes, sir.

10 Q. What was that expert opinion?

11 A. That she had lost the use of normal -- lost
12 normal use of her mental and physical faculties due to
13 intoxication.

14 Q. And on what did you base that opinion?

15 A. Basing it on the totality of all the
16 information gathered, the vehicle going the wrong way on
17 the freeway, slurred speech, the admission of alcohol,
18 different types, shots, cocktails, the inability to
19 recollect a certain timeframe, telling me that she had
20 fallen asleep for four hours because she thought it was
21 because of drinking, the inability to do these
22 standardized field sobriety tests, not able to divide
23 attention. All of that together, the crash itself, led
24 me to believe that due to intoxication was what caused
25 this.

1 Q. Thank you, Officer Corral.

2 MR. ASLETT: I pass the witness, Your
3 Honor.

4 THE COURT: Any questions?

5 MR. RAMIREZ: Yes, Judge.

6 **CROSS-EXAMINATION**

7 **BY MR. RAMIREZ:**

8 Q. Officer Corral, my name is Enrique Ramirez. I
9 believe we met earlier this morning.

10 A. Yes, sir.

11 Q. I have some questions regarding your
12 observations and your role in this accident.

13 A. Yes, sir.

14 Q. Now, you understand -- would you agree with me,
15 that it is imperative, imperative, that everything be
16 done properly in this case?

17 A. Yes, sir.

18 Q. And that would be from the investigation that
19 would be conducted by all the officers on the scene to
20 the point that you took over and everything that you
21 did?

22 A. I can only respond for the investigation
23 portion that I did.

24 Q. My question is whether or not you agree with me
25 it's imperative that all that be done properly.

1 A. Sure.

2 Q. And you don't have any qualms with that, do
3 you?

4 A. No, sir.

5 Q. All right. So let me ask you: You arrive
6 there at what time?

7 A. 0414. So it was 12:14 a.m.

8 Q. What time did you receive the call?

9 A. Had to have been right before midnight. I
10 remember I was getting ready to go to sleep.

11 Q. Now, looking at the reports, they all indicate
12 that the accident took place at 12:09?

13 A. Okay.

14 Q. Do you think that you might be mistaken about
15 the time that you got the call?

16 A. I know that I got it right before midnight,
17 right at midnight, and I know the time I have here is
18 the arrival time.

19 Q. If other evidence in this case indicates that
20 it happened after midnight, would you disagree with
21 that?

22 A. No. Like I said, it was right about midnight.

23 Q. And so you may have gotten the call after
24 midnight, would you not?

25 A. Again, right around midnight. I was getting

1 ready to go to sleep.

2 Q. Could have been after midnight?

3 A. Could have been after midnight.

4 Q. And so how far of a distance do you live from
5 the location where this accident took place?

6 A. I live about 25 miles away.

7 Q. So you live about 25 miles away. And if you
8 got the call at midnight, or after midnight as the
9 accident report indicates, you would had to have driven
10 from your home -- would had to have gotten dressed in
11 uniform, I trust, and then driven to the site of the
12 accident for you to conduct your portion of this
13 investigation, right?

14 A. That's correct.

15 Q. And 25 miles away, is it fair to say it takes
16 you 25 minutes to get there?

17 A. Not with lights and sirens, sir.

18 Q. And how long -- did you have your patrol unit
19 with you at your home?

20 A. Yes, sir. On the on-call -- for on-call for
21 fatalities, we take our patrol cars home.

22 Q. Okay. And, again, you didn't prepare the
23 accident report in this case, did you?

24 A. No, sir.

25 Q. Just your portion of it?

1 A. Just my portion, yes, sir.

2 Q. All right. And if the accident report
3 indicates that the accident occurred at 12:09, you
4 wouldn't have any disagreement with that, would you?

5 A. No, sir.

6 Q. Okay. So you may have actually gotten to the
7 scene later than that, than 12:14?

8 A. Probably so.

9 Q. Yeah. And so that -- now, you get there and
10 was it your role to determine -- to look at her vehicle?

11 A. No, sir.

12 Q. Did you have an opportunity to look in there?
13 Did you look for any evidence of intoxication in her
14 vehicle, such as cans or bottles or anything like that?

15 A. That portion of where her vehicle was was
16 closed off due to Vehicular Crimes doing their
17 investigation.

18 Q. Okay. And I noticed there's -- when you were
19 conducting your -- preparing your report, do you recall
20 what you indicated whether or not there was any alcohol
21 found in her vehicle?

22 A. I have here -- let me refresh my memory looking
23 at it.

24 Okay. Yes. I have indicated here that no.

25 Q. No alcohol?

1 A. No, sir.

2 Q. All right. Did you place her in the back --
3 did you place her in your patrol car?

4 A. Yes, sir, to get off the freeway.

5 Q. Did you handcuff her when you put her in the
6 back of your patrol car?

7 A. No, sir.

8 Q. Now, the purpose of you going to another
9 location, I believe you testified, was to get her off
10 the freeway because you were concerned of maybe another
11 vehicle coming and striking you there on the freeway.
12 Is that --

13 A. Yes, sir.

14 THE COURT: Would this be a good place to
15 stop?

16 MR. RAMIREZ: Sure, Judge.

17 THE COURT: Ladies and gentlemen, at this
18 time you're going to be given a lunch break. Remember
19 the admonitions previously given. Do not discuss this
20 case amongst yourselves or with anyone else.

21 Report to the jury room.

22 THE BAILIFF: All rise for the jury.

23 (Open court, defendant present, no jury.)

24 THE COURT: You may be seated.

25 Any objection to going off the record?

1 MR. ASLETT: No objection.

2 MR. RAMIREZ: No objection.

3 THE COURT: Court's off the record.

4 (Discussion off the record.)

5 (Lunch recess.)

6 (Open court, defendant and jury present.)

7 THE COURT: You may be seated.

8 You may proceed.

9 MR. RAMIREZ: Thank you, Your Honor.

10 Q. (By Mr. Ramirez) Now, Officer, earlier you
11 testified -- I think we were at a point where you had
12 gotten over to the location where you conducted the
13 field sobriety testing.

14 A. Yes, sir.

15 Q. And you first testified that you interviewed
16 her?

17 A. Yes, sir.

18 Q. And then you started conducting your field
19 sobriety testing; is that right?

20 A. Yes, sir.

21 Q. Okay. Now, you had never met Ms. Kressin
22 before, had you?

23 A. No, sir.

24 Q. You have no knowledge of what her normal --
25 normal conditions, whether they be physical or mental,

1 do you -- did you?

2 A. No, sir.

3 Q. And you would agree with me that this was a
4 pretty severe accident, would you not?

5 A. Yes, sir.

6 Q. In fact --

7 MR. RAMIREZ: May I approach the exhibits,
8 Judge?

9 THE COURT: You may.

10 Q. (By Mr. Ramirez) In fact, let me show you
11 what's marked as State's Exhibit No. 4. Do you recall
12 this vehicle as the one that she was driving
13 (indicating)?

14 A. Yes, sir.

15 Q. All right. That's a pretty serious accident;
16 wouldn't you agree with me?

17 A. Yes, sir.

18 Q. And you can probably agree with me that
19 somebody involved in that serious of an accident,
20 regardless of fault, is probably in a shocking state of
21 mind. Wouldn't you agree with me?

22 MR. ASLETT: Objection, speculation.

23 THE COURT: Sustained.

24 You may rephrase the question.

25 MR. RAMIREZ: Sure.

1 Q. (By Mr. Ramirez) Do you think that somebody
2 that's -- do you have an opinion with your experience
3 that people that are involved in accidents are shaken
4 up?

5 A. In my opinion, in this case she was not shaken
6 up.

7 Q. It's your opinion that she was not shaken up?

8 A. Yes, sir.

9 Q. Okay. And so -- but do you agree with me that
10 there are some circumstances where people are shaken up
11 in serious accidents?

12 A. Yes.

13 Q. But you just don't believe that she was shaken
14 up in this --

15 A. No, sir. I asked her questions, she answered.

16 Q. Okay. And you believe that -- and you believe
17 that she was normal then, right?

18 A. As far as?

19 Q. You believed she was normal -- if she's not
20 shaken up, do you believe she was normal then?

21 A. Are you asking before I did my investigation or
22 as I arrived? I don't understand. When are you asking?
23 At what point?

24 Q. Okay. After you made contact with Ms. Kressin,
25 you made -- you just stated -- you just told us about

1 your opinion that you thought that she was not shaken
2 up.

3 A. Yes, sir.

4 Q. Okay. Do you then believe, if she wasn't
5 shaken up, that she was normal, what you would consider
6 to be normal?

7 A. I believe that she knows what was going on at
8 the time.

9 Q. Well, that's not my question, though. My
10 question is: Do you have an opinion as to whether she
11 was normal if she was not shaken up?

12 A. Sir, I would not be able to determine that
13 until I started asking more questions.

14 Q. And after you did that, did you make that
15 determination that she was normal?

16 A. No, sir.

17 Q. Okay. With respect -- now, with respect to her
18 physical abilities, we understand that in an accident
19 like this, sir, you could have some physical limitations
20 as a result of the accident. Would you agree with me?

21 A. In a crash this severe, yes, sir.

22 Q. And your testimony earlier was that she had
23 none of those; is that right?

24 A. No physical ailments.

25 Q. Yes.

1 A. That's correct.

2 Q. Okay. And now you've testified that you don't
3 believe she had any mental stresses or shocks or
4 anything like that, do you?

5 A. As a result of the crash, no.

6 Q. Okay. All right. And so then you take her
7 over there -- so you made that determination before you
8 started conducting your field sobriety tests?

9 A. Yes, sir.

10 Q. Okay. And the first one I believe you
11 testified to was the HGN, right?

12 A. Yes, sir.

13 Q. And you've been trained on this?

14 A. Yes, I have.

15 Q. And you understand it has to be done properly,
16 right?

17 A. Yes.

18 Q. And you would not deviate from the proper
19 instructions or the proper showing of how she should
20 follow your instruction, right?

21 A. No, sir.

22 Q. Okay. And so you believe that you instructed
23 her properly and you believe that she understood your
24 instructions --

25 A. Yes, sir.

1 Q. -- is that fair?

2 Okay. Now, tell me what you believe would
3 happen when you're using your pen -- isn't it true that
4 if you move your pen too fast that it could affect the
5 outcome of the examination that you're performing?

6 A. If I move it too fast, yes.

7 Q. And if you move it too slow, it also can affect
8 the outcome of the examination. Wouldn't you agree with
9 me?

10 A. Not too slow, no.

11 Q. Not too slow. You agree with me that fatigue
12 also affects the performance on the HGN?

13 A. I do not agree with that.

14 Q. You do not agree with that.

15 Now, are you familiar with the National
16 Highway Traffic Safety Administration?

17 A. Yes, sir.

18 Q. And do you know what they say about the fatigue
19 factor?

20 A. Are you asking specifically about fatigue
21 nystagmus?

22 Q. Yes.

23 A. Okay. Yes, I do know what that says.

24 Q. And does that affect the nystagmus?

25 A. The fatigue nystagmus -- may I answer in

1 narrative?

2 Q. I'm sorry?

3 A. May I answer in narrative and describe -- or
4 explain the fatigue nystagmus?

5 Q. Well --

6 THE COURT: If you would, Officer, just try
7 to answer his questions.

8 THE WITNESS: Okay.

9 THE COURT: He'll certainly ask another
10 question.

11 THE WITNESS: Sure.

12 A. The question again, sir? I'm sorry.

13 Q. (By Mr. Ramirez) With respect to the fatigue
14 nystagmus and the NHTSA, what is it that you understand
15 about that?

16 A. Fatigue nystagmus, if I were to hold a stimulus
17 out for a duration of more than 30 seconds, the small
18 muscles in the eyes would then become fatigued and the
19 eye would start to involuntary jerk. The fatigue
20 nystagmus does not have to do with someone feeling
21 tired.

22 Q. So it's your opinion that somebody who's been
23 up maybe all day long working, or doing whatever it is
24 they've done throughout the day, and now it's, you know,
25 2:09 in the morning, that that length of time and that

1 trauma that they've experienced would -- and fatigue
2 that they may have had at that time would not affect the
3 HGN?

4 A. No, sir.

5 Q. Okay. And wouldn't you agree with me that
6 doing it roadside is different than doing it in a
7 clinical environment?

8 A. No, sir.

9 Q. So you believe that doing it on the roadside in
10 the middle of the night with lights would be the same as
11 it's done inside a clinical study, right?

12 A. They're called field sobriety tests because
13 they are designed to be done in the field. Same as
14 driving conditions.

15 Q. Well, the field sobriety -- wouldn't you agree
16 with me that the field sobriety tests, they can be done
17 out in the field, but they can also be done inside a
18 room, for example?

19 A. Yes, sir.

20 Q. Right? You agree with that, right?

21 A. Yes, sir.

22 Q. As a matter of fact, let me ask you this
23 question: How long would it have taken you to get her
24 from the roadside over to the police station?

25 A. No more than ten minutes.

1 Q. No more than ten minutes. And let me ask you
2 this: At the police station, central intoxication as
3 you called it, they have rooms where you can actually
4 record you conducting those examinations, do they not?

5 A. Yes, they do.

6 Q. And you could have taken her there to do that,
7 could you not have?

8 A. Yes, sir.

9 Q. But you chose not to?

10 A. That's correct.

11 Q. You chose to do it out there at the gas
12 station, right?

13 A. That's correct.

14 Q. And what harm would it have done you to take
15 her to a more -- an environment where we could at least
16 make sure that we could see the examinations that you
17 were conducting?

18 A. Oh, you are able to see the examination, sir.
19 I have the recorder in my car.

20 Q. And speaking of the recorder, you testified
21 earlier that you had been having a problem with that
22 equipment, weren't you?

23 A. Yes, sir.

24 Q. And you testified that you had it -- that you
25 had it serviced?

1 A. Yes, sir.

2 Q. And where did you have it serviced at, sir?

3 A. Where we have the service for our patrol
4 vehicles. Typically, the lapel mic is down at -- I
5 believe it's the Artesian address over by 1400 Lubbock.

6 Q. So earlier when you testified that you did not
7 know what the problem was with the audio recording, but
8 now you're saying that it was the audio mic -- it was
9 the audio mic that was not operating correctly?

10 A. The camera recorded, but the audio did not
11 record.

12 Q. Okay. So earlier when you testified that you
13 didn't know what the problem was with it, that wasn't
14 correct, was it, because now you're telling us that it
15 was the mic?

16 A. No. What I said earlier was that not until
17 after I reviewed the video that the mic -- I found out
18 the mic did not record, the audio portion.

19 Q. The audio portion, correct.

20 You don't recall testifying about why it
21 was not working?

22 A. No, sir. I don't know why it wasn't working.

23 Q. But now you're saying it was the mic?

24 A. Well, yes. There's no audio, so obviously the
25 mic did not record.

1 Q. Okay. Now, before you got in your patrol car
2 that night, could you have tested that equipment to make
3 sure it was working?

4 A. Actually, no, sir.

5 Q. You couldn't have turned it on?

6 A. Well, I got the call half asleep, got dressed,
7 and went to the scene.

8 Q. And before you started conducting those
9 examinations, could you not have at least turned it on
10 knowing, of course, that you had been having some
11 problems with it, to make sure that it was working?
12 Could you have done that?

13 A. Fair to say. Yes, I could have.

14 Q. But you chose not to do that, right?

15 A. I did not know it was not working to test it.

16 Q. But you did know that it was -- that you had
17 been having problems with it?

18 A. I had had problems in the past, yes.

19 Q. Okay. And with this type of an investigation,
20 as serious as it is, do you think maybe now it might
21 have been a good idea to try that?

22 A. Hindsight 20/20, yes.

23 Q. But you knew at the time it needed to be done
24 correctly, right?

25 A. Yes, sir.

1 Q. And now that we don't have that audio --
2 according to you it wasn't recorded -- by not having
3 that, we don't have the benefit -- this jury does not
4 have the benefit of hearing that testimony that you
5 claim that she gave you.

6 A. Well, I'm testifying to what I documented in my
7 notes and transferred into my report.

8 Q. I understand that.

9 A. Yeah.

10 Q. But we don't have her saying those statements,
11 do we?

12 A. In fairness, no, you don't have those
13 statements.

14 Q. Right. And by not making sure that that was
15 being recorded, you've denied the State, you've denied
16 my client, me, this Court, and most importantly the
17 jury, from hearing those statements, haven't you?

18 MR. ASLETT: Your Honor, argumentative and
19 asked and answered.

20 THE COURT: The witness may answer if he
21 knows the answer.

22 A. I don't agree with that.

23 Q. (By Mr. Ramirez) Now, I asked this earlier.
24 Have you been to medical school, sir?

25 A. No, sir, I haven't.

1 Q. Are you an ophthalmologist?

2 A. No, I'm not.

3 Q. Optometrist?

4 A. No, sir.

5 Q. Have you had any formal studies on the --
6 conducted any formal studies on eye movement with
7 respect to humans?

8 A. No, sir.

9 Q. And you mentioned earlier that you are a drug
10 recognition expert --

11 A. Yes, sir.

12 Q. -- is that right?

13 Now, I just want to clarify. You're not an
14 expert that goes around and testifies on these types of
15 matters in other jurisdictions, do you?

16 A. No, sir.

17 Q. That title is given to you because of the
18 police department that you work in, that's the job title
19 that you do. Is that --

20 A. That's not correct.

21 Q. Okay. But you're not recognized through our
22 legal community as an expert that goes out and testifies
23 in different cases about -- you know, across the nation
24 about drug recognition, are you?

25 A. No, sir.

1 Q. You only use that here in the city of Houston
2 as your job title as a police officer; is that right?

3 A. That's not correct either, sir.

4 Q. And what is correct?

5 A. The drug recognition expert is a
6 nationally-known program that I have studied in Phoenix,
7 Arizona; Los Angeles, California; here in the city of
8 Houston; and Albuquerque, New Mexico. So it's a drug
9 recognition expert program that is recognized by the
10 International Chiefs of Police in the law enforcement
11 community in the United States.

12 Q. But you don't go around the country testifying
13 for pay for other jurisdictions or for other cases, do
14 you?

15 A. I have not testified, that's correct.

16 Q. You only do it here, right?

17 A. In Harris County, yes, sir.

18 Q. All right. Back to the HGN. What is the
19 percentage of error that that type of examination has in
20 your studies?

21 A. Are you asking for statistics?

22 Q. I'm asking you for the percentage of error that
23 that examination has.

24 A. Oh. There's a misinterpretation in that
25 percentage that's giving that doesn't account for --

1 Q. Well -- I'm sorry. Go ahead.

2 A. Okay. There's a percentage given in the HGN
3 when the studies were done for alcohol. Now that
4 percentage doesn't account for people that did drugs
5 that also cause HGN.

6 Q. Okay. My question to you is: What is the
7 percentage of error for the HGN test?

8 A. There is no percentage of error, sir.

9 Q. So it's 100 percent?

10 A. Yes, sir.

11 Q. It's your testimony that it's 100 percent?

12 A. Yes, sir.

13 Q. Do you have a study that supports that?

14 A. The study that I know and the study that I
15 teach to cadets and other training officers is the
16 National Highway Traffic Safety Administration of the
17 HGN done at a breath-alcohol content of .10 and even
18 less at a .08. That .08 -- it is 93 percent with the
19 remaining percentage. Again, not that it's inaccurate,
20 just the wrong arrest decision was made or did not
21 account for the drugs that also cause HGN.

22 Q. And do you have that study with you by any
23 chance?

24 A. No, sir. It would be in the NHTSA manual, but
25 I taught the class last week so I know.

1 Q. Yes, sir, but -- and you didn't perform that
2 scientific examination, did you --

3 A. No, sir.

4 Q. -- for NHTSA?

5 A. No, sir.

6 Q. This is just something that you've read about,
7 right?

8 A. This is something that's been done, yes.

9 Q. And what percentage of false positives would --
10 is your understanding of the HGN?

11 A. The NHTSA manual does not specify on
12 false-positives. So there is no percentage for that.

13 Q. So you wouldn't agree with me if I said it's
14 got a 50 to 60 percent false-positives, right?

15 A. I don't agree with that and I've never seen
16 that.

17 Q. What other causes -- you testified earlier that
18 we all have some type of nystagmus. What other things
19 could affect the nystagmus in a person?

20 A. Well, it's not so much that it's something that
21 affects the nystagmus. There are different types of
22 nystagmus. And when you see the nystagmus, it's just --
23 if there is an intoxicant in the system, now it has
24 slowed down those muscle movements to be visible to the
25 naked eye.

1 Q. So you would agree with me that eye strain
2 would affect nystagmus, right? "Yes" or "no"?

3 A. I can't answer with a "yes" or "no," but I do
4 not agree with that.

5 Q. Okay. You don't agree with me that fatigue
6 affects nystagmus in somebody's eye, right?

7 A. Correct, fatigue does not.

8 Q. How about caffeine?

9 A. It would have to be an overdose of caffeine.

10 Q. How about previous injury to the eye, do you
11 agree with me -- it's "yes" or "no." Do you agree that
12 that affects nystagmus?

13 A. An injury to the eye?

14 Q. Yeah, a previous injury to the eye.

15 A. Yes.

16 Q. Yeah, that does.

17 What about -- how about an ear infection,
18 do you think that affects -- "yes" or "no," does that
19 affect nystagmus?

20 A. I don't agree with that, no.

21 Q. And what about epilepsy or syphilis or measles,
22 do any of those types of illnesses -- is it your
23 opinion, "yes" or "no," does it affect nystagmus?

24 A. Which one do you want me to answer? You
25 mentioned three.

1 Q. All three of them.

2 A. Name them again.

3 Q. I said syphilis, I said measles, and I said
4 epilepsy.

5 A. I don't agree on those three, no.

6 Q. But if other studies have found that those
7 things do affect nystagmus, you wouldn't agree with
8 that, would you?

9 A. I don't agree because I've not read those
10 studies.

11 Q. Now, you also conducted the one-leg stand; is
12 that right?

13 A. Yes, sir.

14 Q. And the one-leg stand -- your testimony was
15 that she did good on the one-leg stand; is that right?

16 A. She showed one clue of impairment.

17 Q. And I think the question was -- or the response
18 was that she did okay on that test, right, and you
19 didn't count that against her?

20 A. I counted -- I designated -- I count the clues
21 I observed, not the clues I do not observe.

22 Q. And then you also did the -- the walk-the-line?

23 A. Walk-and-turn.

24 Q. Yeah, walk-the-line, walk-and-turn?

25 A. Yes.

1 Q. Now, you had her stand in the beginning
2 position and you testified -- or I don't remember if you
3 testified to this, but you had her stand in the
4 beginning position for maybe over a minute, did you not?

5 A. I'd have to go back and see how long she stood
6 or attempted to stand in the instructional position.

7 Q. Yeah. And she stood there and listened to your
8 instructions and you understood -- you believed that she
9 was control -- she understood your instructions?

10 A. Yes, she said she did.

11 Q. And you believed that by doing so, she could
12 perform the testing that you've asked her to do
13 accurately; is that right?

14 A. Correct.

15 Q. And so when she listened to your instructions,
16 you believed she understood you, and was in control of
17 her mental faculties when she was listening to your
18 instructions, right?

19 A. Yes, sir, that's -- yes.

20 Q. And then -- and then you're looking for how
21 many different -- just give me the number of clues that
22 you're looking for when you have her walking the line.

23 A. Okay.

24 Q. Just the number.

25 A. Of the total clues or in that section of the

1 walk-and-turn?

2 Q. In that section of the walk-and-turn.

3 A. In the walking stage section of the
4 walk-and-turn, there are six clues.

5 Q. And those you're looking at all at the same;
6 time, you're looking for those at the same time?

7 A. Yes, sir.

8 Q. And you expect them -- you expect somebody to
9 do 100 percent on those. Is that like pass the test,
10 like you were talking about failing and --

11 A. There's more to that. It's not a pass-or-fail
12 test.

13 Q. Well, when the prosecutor asked you whether she
14 failed, you said she did fail.

15 A. She showed clues of impairment.

16 Q. But he asked you if she failed and you said
17 that she did.

18 A. She showed clues of impairment.

19 Q. Is that the same as a failure to you?

20 A. If you interpret it as a fail, then, yes.

21 Q. Well, this wasn't my question. I'm just trying
22 to understand.

23 A. Sure, sure. That's safe to say.

24 Q. Okay. So it's a failure. So there is a
25 pass-fail on it?

1 A. Yes, that's safe to say.

2 Q. So a moment ago when you said there was not a
3 pass-fail, that was incorrect because now you've
4 testified that there is a pass-fail?

5 A. That's safe to say. I'll agree with that.

6 Q. And you still don't think that having been
7 involved in this serious impact affected her
8 walk-and-turn testing that you performed on her, do you?

9 A. That's correct.

10 Q. Now, you have my client pretty far away from
11 the camera and you testified that you couldn't record
12 the HGN close enough because it was a dash cam, correct?

13 A. That's correct.

14 Q. Now, had you taken her to the police station to
15 do that part of the -- of your examination, do you
16 believe that would have allowed the jury to see what you
17 were seeing more clearer than what you can on your dash
18 cam video?

19 A. No, I do not agree with that.

20 Q. So you don't agree that -- how far away was she
21 from the vehicle?

22 A. Ten feet, fifteen feet.

23 Q. Okay. And you don't agree that being in a
24 room that -- the room that you have at the Houston
25 Police Department, where the cameras are maybe 5 feet or

1 so away from the people, would have given the jury a
2 better observation of what you were seeing?

3 A. No, they wouldn't have.

4 Q. So then, now you're at the police station and
5 you go and where do you place her when you get to the
6 police station?

7 A. As you walk into 61 Riesner, there's a female
8 holding cell. And you walk right down the hallway, and
9 there's a place with a bench for her to sit.

10 Q. And you placed her there while you began your
11 process of requesting a warrant. Is that a fair
12 statement?

13 A. That's correct.

14 Q. And you started preparing your affidavit. And
15 do you have the affidavit and the warrant with you, sir?

16 A. No, I do not.

17 Q. Did you bring those with you today?

18 A. I don't have it up here with me right now.

19 Q. Did you bring those with you?

20 A. No, sir, I didn't.

21 Q. Okay. Now, did you prepare this affidavit
22 here, sir?

23 A. A portion of the language, yes.

24 Q. I'm sorry?

25 A. In the narrative section, yes.

1 Q. Okay. And so this document is somewhat of a
2 template and you fill in the gaps to prepare the
3 application for a search warrant; is that correct?

4 A. Correct.

5 Q. Okay. And so is it fair to say that -- is it
6 fair to say that the darker text on this document is the
7 actual text that you inserted into the affidavit?

8 A. The narrative portion?

9 Q. Yes, sir.

10 A. Yes, sir.

11 Q. And the other things like names and --

12 A. Yes.

13 Q. Okay.

14 MR. RAMIREZ: Judge, I'm trying to recall
15 whether this 104 has been --

16 THE COURT: Is what?

17 MR. ASLETT: Your Honor, it --

18 MR. RAMIREZ: It's State's 104.

19 MR. ASLETT: -- hasn't -- in every case
20 I've been involved, the affidavit to a search warrant is
21 considered hearsay.

22 THE COURT: One moment.

23 What is it you're asking, whether or not
24 it's been admitted into evidence?

25 MR. RAMIREZ: Correct, correct.

1 Court.)

2 (At the Bench, on the record.)

3 THE COURT: What's the objection?

4 MR. ASLETT: Hearsay, Your Honor.

5 THE COURT: What's the exception if it's
6 hearsay?

7 MR. RAMIREZ: Judge, it's his document, he
8 prepared it. How can it be hearsay?

9 MR. ASLETT: Then we'll introduce the
10 offense report.

11 THE COURT: One moment. One moment.
12 What's the exception?

13 MR. RAMIREZ: I don't think it's hearsay.
14 It's an affidavit that he prepared.

15 THE COURT: For what purposes did he --

16 MR. RAMIREZ: For the -- the credibility of
17 the officer and the date and timing.

18 THE COURT: You may use it to try and
19 impeach him. You certainly may use it in that manner,
20 but if you can alert the Court as to some exception to
21 hearsay, the Court will certainly entertain.

22 (Open court, defendant and jury present.)

23 THE COURT: The objection is sustained.

24 Q. (By Mr. Ramirez) Do you remember preparing the
25 affidavit?

1 A. Yes, sir.

2 Q. You've had an opportunity to look at this
3 document, correct?

4 A. Yes, sir.

5 Q. And do you recall what date you put on this
6 affidavit?

7 A. I'd have to look at it. I think there was a --

8 Q. Would it help you if I have you look at it to
9 refresh your memory?

10 A. Yes.

11 (Defense attorney tenders exhibit to
12 witness.)

13 A. Now do you want me to say the date?

14 Q. (By Mr. Ramirez) The date that it was signed.

15 A. Okay. The date that it was signed was on
16 October 15th, 2013.

17 Q. Okay. Do you recall what date was listed on
18 the affidavit, the second page?

19 A. On the second page is October 15th, 2012.

20 Q. 2012. One year before this accident; is that
21 right?

22 A. Yes, sir.

23 Q. Okay. Now, let me ask you as well if you can
24 tell me, do you remember -- does part of the process to
25 get this affidavit before a magistrate require it to be

1 witnessed and signed by somebody else?

2 A. Yes, sir.

3 Q. And do you remember who that was?

4 A. Yes, sir.

5 Q. And who was that?

6 A. Officer George Roman.

7 Q. Okay. And is Officer Roman here?

8 A. No, sir, he's not.

9 Q. All right. And he witnessed you sign this
10 document, right?

11 A. Correct, sir.

12 Q. Now, do you recall the language, that which he
13 signed off on, where it -- beginning here, do you
14 remember that language now (indicating)?

15 A. Yes, sir.

16 Q. Okay. Can you tell the jury what it says?

17 A. Do you want me to read it to them?

18 Q. You can -- if you want to, or do you want to
19 just --

20 A. Okay. It says: Sworn to and subscribed before
21 me on this October 15th, 2012.

22 Q. And what time?

23 A. 4:16 a.m.

24 Q. Okay. And did he swear you in to this
25 document?

1 A. No, sir.

2 Q. Did he give you any kind of oath before you
3 signed this document before him?

4 A. No, sir.

5 Q. And so based on your testimony, it says it was
6 sworn and subscribed to by him. That's, in fact, not
7 accurate, right?

8 A. That he swore me? No.

9 Q. Correct.

10 Okay. Now, I'm going to hand you what's
11 marked and placed into evidence as the search warrant.
12 Can you tell me who signed that (indicating)?

13 A. Judge Villareal.

14 Q. Okay. And what date did Judge Villareal sign
15 that?

16 A. October 15th, 2013.

17 Q. Okay. Now, that date is one year after the
18 date that's listed on the affidavit, correct?

19 A. Correct.

20 Q. Okay. And what time, by the way, did Judge
21 Villareal sign it?

22 A. 4:14 a.m.

23 Q. Okay. Now, looking at this document and your
24 testimony regarding the affidavit, it appears that the
25 affidavit was signed after the warrant was signed.

1 Looking at these -- at State's Exhibit 51, the order,
2 and your testimony regarding the affidavit, it appears
3 that the warrant was signed before the affidavit to
4 support the warrant.

5 A. The warrant was signed on the 15th with the
6 2013. The affidavit is the 2012.

7 Q. Yes, sir.

8 A. So the warrant was signed at the day that it
9 happened. Did I misunderstand you?

10 Q. I think so. The warrant is signed at 4:14 in
11 the morning, is it not?

12 A. Yes, sir.

13 Q. And your testimony a moment ago, your
14 recollection was that the affidavit was signed two
15 minutes later at 4:16 in the morning, correct?

16 A. It's documented like that, yes, sir.

17 Q. Yes, sir. And that would -- wouldn't you agree
18 with me that it's backwards, that your understanding of
19 getting affidavits and search warrants, that the
20 affidavit is prepared first and presented to a
21 magistrate requesting a warrant. Is that your
22 understanding of the procedure?

23 A. That's correct.

24 Q. But in this case, your testimony of this
25 document that's already been put in evidence indicates

1 that it was not done in that order, correct?

2 A. The way it's documented, correct.

3 Q. And if it was done like that, then that would
4 have been a mistake, right?

5 A. Correct.

6 Q. And so you -- and I trust it was -- if you
7 recall, it was Officer Roman that put the time on that
8 affidavit because he was the one that was witnessing you
9 sign it. Even though he hadn't given you an oath, he
10 was the one who witnessed you sign it, correct?

11 A. Correct.

12 Q. I mean, you didn't put that time down there,
13 did you?

14 A. No, sir.

15 Q. He also knows the procedures for obtaining an
16 affidavit to support a warrant. Would you agree?

17 A. Correct. Sorry.

18 Q. And so he understands the importance of time in
19 these -- and procedure in this process. Wouldn't you
20 agree with me?

21 A. Correct.

22 Q. And so do you, right?

23 A. Correct.

24 Q. And when you got that affidavit and you walked
25 it over there to get it signed -- which I trust that's

1 what you did, right? You walked it over to the
2 municipal court next door to get it signed by the judge,
3 right?

4 A. Yes, I did.

5 Q. And it took you at least a few minutes, you
6 know, three minutes to walk over there, perhaps.

7 A. Yes.

8 Q. Is that a fair statement --

9 A. Yes.

10 Q. -- on an estimate of time?

11 And then you got to the courtroom and you
12 had to present it to the court, right?

13 A. Yes.

14 Q. And that took maybe what, another minute or
15 two?

16 A. Yes.

17 Q. At least?

18 A. Yes.

19 Q. And so that puts you -- if Officer Roman signed
20 that at 4:16, that puts you about 4:20, five minutes --
21 you know, 4:21, another five minutes.

22 A. Safe to say.

23 Q. Yeah. But yet, for some reason the judge
24 documented the official time at 4:14.

25 A. Correct.

1 Q. Did you take the opportunity to review the
2 affidavit before you presented it to the court?

3 A. Yes, sir.

4 Q. And did you notice the error in the time?

5 A. When Officer Roman wrote down the time, I
6 didn't see what time he wrote down.

7 Q. Let me ask you something. You're very clear
8 about -- on direct examination that you're keeping time
9 with your phone because -- like, for example, you
10 testified when you were at the hospital that you state
11 the time that certain things are occurring.

12 A. Correct.

13 Q. And isn't that just as important for this
14 affidavit?

15 A. Again, I didn't write the time down. Officer
16 Roman did.

17 Q. Well, but you would have been standing right
18 there. Is that a fair statement?

19 A. Sure.

20 Q. And were you not observing what he was doing?

21 A. I saw him sign the paper.

22 Q. And before you walked over there to present it
23 to the judge, did you take -- at least take a second to
24 look at it to make sure it was in proper form?

25 A. The affidavit itself, the four corners, was

1 correct.

2 Q. At that time, right?

3 A. Yes, sir.

4 Q. So it was 4:16 in the morning when he signed it
5 if you believe it was correct, right?

6 A. If Officer Roman wrote 4:14, then that -- or
7 4:16, then that was the time.

8 Q. And then you go over there to the judge and
9 then he signed it and you take the time to also look at
10 your phone to see what the official time was when the
11 judge signed it?

12 A. That's not correct.

13 Q. I'm asking you if you did?

14 A. I'm telling you it's not correct. No, I
15 didn't.

16 Q. You did not?

17 A. No, sir.

18 Q. All right. And then you took that -- that
19 warrant and you drove down -- you walked back over there
20 to the police department, got my client out of the area
21 that you had her. Did you handcuff her?

22 A. Yes, sir.

23 Q. Did you walk her to your patrol car?

24 A. Yes, sir.

25 Q. And then you drove over to Memorial Hermann; is

1 that right?

2 A. That's correct.

3 Q. And the drive to Memorial Hermann is
4 approximately 5, 6 miles?

5 A. About.

6 Q. Yeah. Takes you ten minutes to get there,
7 perhaps?

8 A. Maybe ten.

9 Q. Yeah, ten?

10 And so from the time that Officer Roman
11 signed the affidavit at 4:16, you still had to go to
12 municipal court, take care of the search warrant
13 signing, come back, get my client, go to Memorial
14 Hermann. And what do you estimate the time difference
15 between 4:16 and 4:31?

16 A. What is said or what do I --

17 Q. What is it?

18 A. Between 4:16 and 4:31? Fifteen minutes.

19 Q. Fifteen minutes.

20 And so you took -- once you got to Memorial
21 Hermann, you took her into the emergency room area?

22 A. That's correct.

23 Q. And that's where the blood was drawn, correct?

24 A. That's correct.

25 Q. Now, you did two blood draws?

1 A. Correct.

2 Q. And you testified earlier -- or did you testify
3 that the first -- which blood draw did you apply the
4 warrant to?

5 A. The warrant was applied to the second blood
6 draw, the one at 5:04 a.m.

7 Q. Okay. So there was no warrant for the 4:31
8 blood draw?

9 A. That's correct.

10 Q. And did the -- does the order -- I'm going to
11 show it to you. Does it give you the authority to take
12 a blood draw -- what would you call that 4:30 blood
13 draw?

14 A. The 4:30 blood draw was what we call an exigent
15 circumstance blood draw.

16 Q. Okay. Does this warrant give you the authority
17 to do an exigent circumstance blood draw?

18 A. This warrant, no.

19 Q. And so it's your testimony that you did not
20 have a warrant for the 4:30, but you had a warrant for
21 the 5:04 blood draw; is that correct?

22 A. That is correct.

23 Q. Where is the original warrant and order -- I
24 mean affidavit -- and affidavit?

25 A. I turned it in. I don't have that on my

1 person, sir.

2 Q. Do you know where it's at?

3 A. I do not, sir.

4 Q. Do you have the ability to bring it here for
5 this jury to review it and compare it to the original --
6 to the copy that's been admitted into evidence?

7 A. I don't have that. I wouldn't know where to
8 get it.

9 Q. Okay. Somebody within your access, can they
10 look for that?

11 A. Maybe someone at the D.A.'s office here.

12 Q. Do you think maybe this prosecutor can get it?

13 A. Maybe.

14 Q. Might clear up some of these questions or
15 mistakes that have been made, don't you agree?

16 A. Correct.

17 Q. After you finished -- at what point did you
18 finish your role in this investigation? What time was
19 it?

20 A. I want to say I was done after I took her to
21 the southeast jail over at Mykawa. It was probably
22 7:00, 8:00 a.m.

23 Q. All right. Now, what was the -- did you
24 ever -- did you have occasion to speak to an officer by
25 the name of Hall that morning?

1 A. Yes, sir.

2 Q. Do you remember what time that was?

3 A. You know, I believe he came in at 6:00 a.m. So
4 it had to be between 6:00 and 8:00 when I was getting
5 done and he was coming on to work.

6 Q. And that was at 61 Riesner or was that at
7 southeast?

8 A. That was already when I come back from the
9 southeast jail, Mykawa.

10 Q. So you left my client at southeast about 7:00?

11 A. Roughly.

12 Q. Okay. And so you got back -- did you go back
13 to 61 Riesner?

14 A. I didn't go to Riesner. It's the building
15 across, which I think is 62 Riesner, but it's in the
16 same area. And that's when I had to take paperwork to
17 Riesner where I encountered Officer Hall.

18 Q. And what time -- so 7:00 a.m. is the time that
19 you dropped my client off at southeast or is it the time
20 you got back to Riesner?

21 A. It was between 6:00 and 8:00 a.m. It was early
22 in the morning. I dropped her off and I didn't talk to
23 Officer Hall until I got back to Riesner. So maybe
24 8:00.

25 Q. A couple more questions.

1 So I'm understanding you correctly, then,
2 you conducted one search and seizure, one blood draw
3 without a warrant; is that right?

4 A. It's not a search -- it's an exigent blood
5 draw.

6 Q. But that was done without a warrant?

7 A. Yes, that is correct.

8 Q. There was no warrant for that, and you agree
9 with that?

10 A. That is correct.

11 Q. And you also agree that you did not have
12 consent to take that 4:30 draw without a warrant; is
13 that right?

14 A. Correct.

15 Q. As a matter of fact, you didn't have consent
16 for any blood draw. You just had the warrant for the
17 5:04 blood draw?

18 A. Correct.

19 Q. Do you ever make any mistakes?

20 A. In this case?

21 Q. In general.

22 A. Ever?

23 Q. In your role --

24 A. I have made mistakes in life, yes, sir.

25 Q. But in regard to your police duties.

1 A. I've been investigated, exonerated, you name
2 it, and I've been an officer for 15 years.

3 Q. Is that a "no"?

4 A. That's a "no."

5 Q. You don't believe your testimony in this search
6 warrant is that there's a mistake here?

7 A. It can all be explained, sir.

8 Q. You don't think there's a mistake?

9 A. I do not.

10 MR. RAMIREZ: Pass the witness.

11 THE COURT: Anything further?

12 MR. ASLETT: Briefly, Your Honor.

13 **REDIRECT EXAMINATION**

14 **BY MR. ASLETT:**

15 Q. Officer Corral, let's try to clear up some
16 stuff. The warrant that's dated October 15th, 2012,
17 that's obviously a typo, isn't it?

18 A. That's correct, sir.

19 Q. The date, is that filled in by you or is that
20 filled in by the computer?

21 A. It's an auto-fill template, which would
22 automatically -- or should automatically correct the
23 date when you type it in.

24 MR. RAMIREZ: Objection, Judge. That's
25 hearsay.

1 THE COURT: It's overruled.

2 Q. (By Mr. Aslett) And, you know, through the rest
3 of your affidavit, you refer to the date as
4 October 15th, 2013?

5 A. That is correct.

6 Q. You're not psychic, are you?

7 A. No, sir.

8 Q. Okay. Now, it's come out that Officer Roman
9 noted the time as 4:16 a.m.

10 A. Yes, sir.

11 Q. Do you know what device he used to record that
12 time?

13 A. He looked at his stopwatch.

14 Q. Okay. Is that a mechanical watch he used?

15 A. Yeah. I think it's got a digital timer.

16 Q. Okay. So you don't know if it was running
17 fast?

18 A. No, sir.

19 Q. You don't know if it was running slow?

20 A. No, sir.

21 Q. It could have been 10 or 15 minutes fast or 10
22 or 15 minutes slow, you don't know?

23 A. Don't know.

24 Q. Let's talk about the municipal courts building.
25 Where exactly is that in relation to Reisner?

1 A. Directly across the street. Not even a full
2 street. It's like a parking lot.

3 Q. Okay. It takes one or two minutes to walk
4 over?

5 A. Maybe.

6 Q. Okay. Have you appeared in front of Judge
7 Villareal before?

8 A. Yes, I have.

9 Q. And does Judge Villareal review the warrant?

10 A. Yes.

11 Q. Okay. And has Judge Villareal on past
12 occasions kicked back warrants when he's found mistakes
13 or inaccuracies --

14 MR. RAMIREZ: Objection, Judge. That calls
15 for speculation and hearsay, what Judge Villareal did.

16 THE COURT: What's the relevance?

17 MR. ASLETT: That the warrant wasn't kicked
18 back in this case, that it was reviewed and signed off
19 on.

20 THE COURT: The objection is sustained.

21 You may ask your next.

22 Q. (By Mr. Aslett) Have you known Judge Villareal
23 to require you to correct any mistakes that he catches?

24 A. Yes.

25 MR. RAMIREZ: Objection, Judge.

1 THE COURT: That objection is overruled.

2 Q. (By Mr. Aslett) And did he require you to
3 change anything in this case?

4 A. No, he did not.

5 Q. Let's talk about how Judge Villareal noted the
6 time. Do you know what device he used to note the time
7 on the search warrant?

8 A. Yes.

9 MR. RAMIREZ: Objection, Judge. That calls
10 for speculation. He's asking to see what was in the
11 judge's mind and what the judge observed.

12 THE COURT: The objection is overruled.

13 Q. (By Mr. Aslett) What device did you observe
14 Judge Villareal to use to determine the time of the
15 warrant?

16 A. When he signs a warrants, he looks at the clock
17 to the right in the courtroom that he sits in.

18 Q. Is that a mechanical clock?

19 A. Yes, sir.

20 Q. Okay. Did you check the mechanical clock in
21 reference to whatever your phone time was?

22 A. No, sir, I did not.

23 Q. Do you know if it was running fast?

24 A. No, I do not.

25 Q. Do you know if it was running slow?

1 A. No, I do not.

2 Q. Okay. What device did you use to determine the
3 time of the blood draw that you wrote on the vials?

4 A. That's when I used the time on my cell phone.

5 Q. What kind of cell phone do you have?

6 A. An iPhone.

7 Q. Okay. Do you automatically have your time set
8 up on the iPhone where it syncs wirelessly?

9 A. When I turn it on, it says the time.

10 Q. Okay. Also it says sworn to and subscribed in
11 front of Officer Roman. I understand you did not swear
12 in front of him.

13 A. No.

14 Q. Is that language boilerplate that just appears
15 in a warrant?

16 A. Correct.

17 Q. Okay. But did you swear that everything in
18 there was true and correct, to the best of your
19 knowledge, in front of Judge Villareal?

20 A. Yes, I did.

21 Q. Okay. Is that all that's really required for
22 the validity of a warrant?

23 A. Yes, sir.

24 Q. Okay. You said that you were about to go to
25 sleep that night. Did you actually ever make it to

1 sleep?

2 A. No, I did not.

3 Q. Okay. So come 4:00-something in the morning,
4 how long had you been up?

5 A. I'd probably been up about -- at that time,
6 about 14 to 16 hours.

7 Q. Okay. So fair to say that the longer you've
8 been up, the more likelihood you're going to miss things
9 when you're reviewing them, correct?

10 A. Yes, sir.

11 Q. And obviously we know you missed the year,
12 right?

13 A. Yes, sir.

14 Q. Okay. I should have covered this topic on
15 direct, and I apologize, but let's talk about the
16 mandatory blood draw statute.

17 A. Yes, sir.

18 Q. Does Texas have a mandatory blood draw statute?

19 A. Yes, it does.

20 Q. And tell the jury what the mandatory blood draw
21 statute is.

22 A. There are stipulations in the Texas Penal Code
23 where an exigent circumstance or mandatory blood draw
24 would be conducted. Those stipulations would be driving
25 while intoxicated with a child 15 years and under,

1 someone arrested for their third offense and above, the
2 third being someone that has been injured in a crash
3 involving an intoxicated driver and has serious bodily
4 injury, and the last of the stipulations, someone that
5 has reason to be -- to die or has died.

6 Q. Now, does the mandatory blood draw law
7 authorize you in the circumstances in which somebody is
8 killed as a result of a drunk driving offense to draw
9 blood without a warrant?

10 A. Yes, sir.

11 MR. RAMIREZ: Judge --

12 THE COURT: One moment, sir.

13 MR. RAMIREZ: Judge, he's really giving a
14 legal opinion. And I'm going to object --

15 THE COURT: What's the objection?

16 MR. RAMIREZ: That he's giving a legal
17 opinion --

18 THE COURT: The objection is sustained.

19 You may ask your next.

20 Q. (By Mr. Aslett) Under your understanding of the
21 mandatory blood draw law in effect at the time and now,
22 were you required to get a blood draw?

23 MR. RAMIREZ: Same objection, Your Honor.

24 It's --

25 THE COURT: The objection is sustained.

1 Q. (By Mr. Aslett) All right. Let's talk about
2 exigent circumstances. Is exigent circumstances a
3 recognized exception to the warrant --

4 MR. RAMIREZ: Objection, Judge.

5 THE COURT: It's sustained.

6 Q. (By Mr. Aslett) To your knowledge, are you
7 allowed to get warrants in emergency circumstances?

8 MR. RAMIREZ: Objection, Judge.

9 Q. (By Mr. Aslett) I mean --

10 THE COURT: One moment. One moment.

11 You may complete your question.

12 Officer, do not answer.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Go ahead.

15 Q. (By Mr. Aslett) Officer Corral, is it your
16 understanding that in certain emergency circumstances,
17 you're allowed to conduct searches without a warrant?

18 THE COURT: What is the objection?

19 MR. RAMIREZ: Objection. It's still a
20 legal conclusion.

21 THE COURT: The objection is overruled.

22 You may answer.

23 A. Yes, sir.

24 Q. (By Mr. Aslett) For example, if you're chasing
25 somebody and you're chasing them through a house, you

1 don't have to stop and get a warrant to go into that
2 house while chasing them?

3 A. No, sir.

4 MR. RAMIREZ: Object -- okay.

5 Q. (By Mr. Aslett) And are there certain
6 circumstances where waiting to get a warrant can result
7 in the destruction of evidence?

8 MR. RAMIREZ: Objection, Judge. We're
9 now --

10 THE COURT: What's the objection?

11 MR. RAMIREZ: The legal objection is he's
12 asking him a legal conclusion. And it's a leading
13 question.

14 THE COURT: Sustained.

15 You may ask your next.

16 Q. (By Mr. Aslett) On past occasions have you
17 gotten exigency blood draws in fatal crash cases?

18 A. Yes, sir.

19 Q. Okay. And on what basis?

20 A. An exigent circumstance.

21 MR. RAMIREZ: Objection, Judge.

22 THE COURT: What's the objection?

23 MR. RAMIREZ: It's a legal conclusion and
24 it's a legal opinion and it's leading.

25 THE COURT: Those objections are overruled

1 to the question.

2 You may answer.

3 Q. (By Mr. Aslett) On what basis in these kinds of
4 cases in the past have you been able to draw blood
5 without a warrant?

6 A. The exigency --

7 MR. RAMIREZ: Objection, Judge. What he's
8 done in other cases is not relevant to what he's done in
9 this case.

10 THE COURT: Sustained.

11 Q. (By Mr. Aslett) What did you believe the
12 exigent circumstances were in this case?

13 A. The metabolization --

14 MR. RAMIREZ: Objection, Judge. He's not
15 qualified to answer the question on any metabolization.
16 He's not been proven up as an expert in that area.

17 THE COURT: The objection is overruled to
18 the question.

19 You may give your answer.

20 A. The exigency would be the metabolization of the
21 intoxicant --

22 THE COURT: You've answered the question.

23 You may ask your next.

24 Q. (By Mr. Aslett) Am I correct in understanding
25 that this blood draw was done four-and-a-half to five

1 hours after the crash?

2 A. Correct.

3 Q. Okay. Now, all of that aside, given the fact
4 that you did both blood draws after you had already
5 obtained a warrant, would they have been covered by that
6 warrant because they were obtained after the warrant was
7 signed?

8 A. Yes, sir.

9 Q. Okay. So I guess it would be both a warrant
10 and exigency draw under your understanding. Am I
11 understanding you correctly?

12 A. Correct.

13 Q. Real quick, I don't want to rehash HGN, but to
14 your understanding, does epilepsy cause HGN?

15 A. No, sir.

16 Q. Did the defendant mention she had epilepsy?

17 A. No.

18 Q. To your understanding, does measles cause HGN?

19 A. No, sir.

20 Q. Did the defendant say she had measles?

21 A. No, sir.

22 Q. Same thing with syphilis. To your
23 understanding, can that cause HGN?

24 A. No, sir.

25 Q. Did the defendant say she had syphilis?

1 A. No, sir.

2 Q. Did she complain of an ear infection?

3 A. No, she did not.

4 Q. Okay. To your understanding, can an ear
5 infection alone cause HGN?

6 A. No, sir.

7 Q. And did she relate to you any medical problems
8 that she was having?

9 A. No, sir.

10 Q. Thank you, Officer Corral.

11 MR. ASLETT: Pass the witness, Your
12 Honor.

13 THE COURT: Anything further?

14 MR. RAMIREZ: Yes, Judge.

15 **RECROSS-EXAMINATION**

16 **BY MR. RAMIREZ:**

17 Q. Could you have taken -- could you have taken my
18 client directly to the hospital to get the blood drawn?

19 A. No, sir.

20 Q. With respect to your testimony on exigent
21 circumstances, what were the exigent circumstances here?

22 A. The metabolization of the intoxicant in her
23 system getting metabolized, eliminated.

24 Q. If that was an exigent circumstance, couldn't
25 you have just taken her straight to the hospital? If

1 you were of the opinion that you didn't need a warrant,
2 why did you get a warrant?

3 A. Because I was going to have to do the blood
4 warrant draw anyway.

5 Q. But if you get a warrant -- if you get a blood
6 draw based on what you erroneously believed the law to
7 be, then you wouldn't have needed the warrant, would you
8 have?

9 A. You lost me on the question.

10 Q. Your testimony is that you didn't need a
11 warrant to pull that 4:30 draw, right?

12 A. Correct.

13 Q. So why did you get a warrant if you didn't need
14 one?

15 A. Because she refused. And with the evidence of
16 the clues and signs of intoxication, I got a warrant.

17 Q. But she had already refused when you got a
18 warrant, when you did a draw without a warrant.

19 A. I don't understand what you're trying to get
20 at.

21 Q. It's not what I'm trying to get at. Answer my
22 question.

23 A. What's the question?

24 Q. My question is: When you took the 4:30 draw,
25 did you have a warrant?

1 A. No, I did not.

2 Q. And your testimony is that you did it because
3 there were exigent circumstances --

4 A. That's correct.

5 Q. -- right?

6 A. Yes, sir.

7 Q. And so it's your testimony -- you're telling
8 this jury that you didn't need a warrant to do that 4:30
9 draw, correct?

10 A. That's correct.

11 Q. So if you didn't need a warrant, why did you go
12 get one?

13 A. For a complete investigation.

14 Q. You didn't need a warrant according to you,
15 correct? Officer -- excuse me, excuse me.

16 A. Yes, sir.

17 THE COURT: One moment. One moment. Just
18 be careful to speak one at a time.

19 You may ask your question.

20 Q. (By Mr. Ramirez) Officer, I understand that we
21 may not be on the same page, but is there something
22 comical about what I'm asking you here? Because I'm
23 kind of offended.

24 A. May I explain in narrative?

25 Q. No.

1 THE COURT: You may ask your next question.

2 MR. RAMIREZ: Pass the witness.

3 THE COURT: Anything further?

4 MR. ASLETT: Nothing further from the
5 State.

6 THE COURT: Any objection to letting this
7 witness be excused?

8 MR. ASLETT: None from the State, Your
9 Honor.

10 MR. RAMIREZ: Subject to recall, Judge.

11 THE COURT: All right. Officer, you have
12 not been excused from the witness rule. Please wait
13 outside the courtroom until you're called.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: You may call your next.

16 MR. ASLETT: Your Honor, the State calls
17 Andrew Rains.

18 THE BAILIFF: The witness has not been
19 sworn.

20 THE COURT: Sir, please come forward. Just
21 come right down this way. Stop right there, if you
22 don't mind.

23 Raise your right hand to be sworn.

24 (Witness sworn.)

25 THE COURT: You may put your hand down.

1 Please come around and take the seat in the
2 witness chair.

3 Sir, these lawyers are getting ready to ask
4 you some questions. Please keep your voice up so
5 everyone can hear you. And please let them completely
6 finish their questions before you begin to answer. If
7 you're interrupted, you will be given the opportunity to
8 complete your answer unless an objection has been
9 sustained.

10 Last, if any of these lawyers stand up
11 during the testimony to address the Court, please say
12 nothing further until you're given permission to do so.
13 Thank you.

14 You may proceed.

15 MR. ASLETT: Thank you, Your Honor.

16 **ANDREW RAINS,**

17 having been called as a witness and being first duly
18 sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. ASLETT:**

21 Q. Sir, would you please tell the jury your name?

22 A. Andrew Rains.

23 Q. And Mr. Rains, what do you do for a living?

24 A. I'm a nurse at Memorial Hermann Hospital.

25 Q. Are you a registered nurse?

1 A. Yes.

2 Q. How long have you been a registered nurse?

3 A. Like since 2008.

4 Q. Where did you go to nursing school?

5 A. Creighton University in Omaha, Nebraska.

6 Q. How long have you been working at Memorial
7 Hermann?

8 A. About five-and-a-half years.

9 Q. What is your current assignment at Memorial
10 Hermann?

11 A. I'm a clinical coordinator. It's a charge
12 nurse, staff nurse.

13 Q. So in that capacity, do you supervise other
14 nurses?

15 A. Yes.

16 Q. As part of your training as a nurse, were you
17 trained on how to draw blood?

18 A. Yes.

19 Q. Okay. And have you drawn many samples of blood
20 over the course of your career as a nurse?

21 A. Yes.

22 Q. Have some of those blood draws been at the
23 request of law enforcement?

24 A. Yes, they have.

25 Q. About how many times would you say that you've

1 done a blood draw pursuant to a request from a police
2 officer?

3 A. Ten to fifteen, maybe a little more than that.
4 I'm not sure.

5 Q. And have you had to testify before in a case
6 such as this one?

7 A. No. This is my first case.

8 Q. Okay. I want to get right to it. Were you
9 working at Memorial Hermann in the Medical Center on
10 October 15th of 2013?

11 A. Yes, I was.

12 Q. Okay. What were your -- what was your shift
13 that night?

14 A. Nightshift, 7:00 to 7:00.

15 Q. In the early morning hours of October 15th,
16 2013, were you asked to perform a blood draw?

17 A. Yes, I was.

18 Q. Okay. And I know it's been awhile. Do you
19 recall independently around what time it was?

20 A. Right just before 5:00 a.m.

21 Q. Okay. And where was the blood draw conducted?

22 A. In the triage area in the ER.

23 Q. And have you drawn many blood draws since then?

24 A. Yes.

25 Q. Okay. The person that you did the blood draw

1 on that night, do you see that person in the courtroom
2 today?

3 A. Yes.

4 Q. Would you please point her out and describe an
5 article of clothing she's wearing?

6 A. Black shirt, dark-colored hair.

7 MR. ASLETT: Your Honor, would the record
8 reflect the witness has identified the defendant?

9 THE COURT: The record will so reflect.

10 Q. (By Mr. Aslett) And did the officer give you
11 some blood tubes with which to do the blood draw?

12 A. Yes, out of his pre-made kit that they bring to
13 us.

14 Q. And tell us how you did the blood draw.

15 A. First I got out a tourniquet. I put it around
16 her arm, then found an appropriate vein to use. I used
17 the left antecubital. Then I put iodine on it in a
18 circular pattern, starting from the middle out, then
19 stuck her with a needle into her arm, drew the blood,
20 rotated the -- or after I got the blood into the vials,
21 rotated the vials seven times invertly and then handed
22 it -- or initialed it and handed it to the officer.

23 Q. With respect to this defendant, did you do one
24 blood draw for each arm?

25 A. Yes, roughly about 30 minutes apart.

1 Q. Okay. Was this something that you were
2 requested to do by the officer?

3 A. Yes, it was.

4 Q. Okay. How many vials did you draw from each
5 arm?

6 A. I believe it was two from each arm.

7 Q. And after the blood was collected, did you
8 initial on the labels?

9 A. Yes, I did.

10 Q. Mr. Rains, I'm going to show you some exhibits
11 that have already been entered into evidence. State's
12 Exhibit 56. These letters "A.R.," what are these
13 (indicating)?

14 A. Those are my initials.

15 Q. State's Exhibit 57, a little bit fainter, but
16 these A.R.s as well --

17 A. Yes.

18 Q. -- these also are your initials?

19 A. Yes, they are.

20 Q. Now, was the defendant admitted to the hospital
21 or anything like that?

22 A. No. She was just brought in by the officer, I
23 drew the blood, and then they left.

24 Q. During the whole process, do you recall her
25 complaining of any medical problems or being asked to be

1 admitted to the hospital?

2 A. Not that I remember.

3 Q. Okay. And after you did the blood draws, did
4 the officer take the blood back and then leave the
5 hospital?

6 A. Yes.

7 Q. Did you have anything to do with this case
8 after that?

9 A. No.

10 Q. Thank you, Mr. Rains.

11 MR. ASLETT: I pass the witness, Your
12 Honor.

13 THE COURT: Any questions?

14 **CROSS-EXAMINATION**

15 **BY MR. RAMIREZ:**

16 Q. Mr. Rains, is part of your duty to verify a
17 warrant when you're requested to do a draw based on a
18 search warrant?

19 A. Yes, it is.

20 Q. And did you do so?

21 A. Yes.

22 Q. Okay. Where exactly are you -- were you
23 located in the hospital that night when you were asked
24 to do this testing?

25 A. I was in the triage area. I was the triage

1 nurse that night.

2 Q. Procedurally, what happens when someone comes
3 in and requests -- an officer comes in requesting a
4 blood draw like this? Do they go -- when they walk in
5 the doors, where do they go?

6 A. They typically park over by our ambulance bay,
7 and they walk down the hallway to us towards the triage
8 area.

9 Q. Okay. And the ambulance bay is outside of the
10 emergency room. Is that a fair statement?

11 A. Yes. And it's further down from the main
12 triage area. There's a hallway that links the two
13 together.

14 Q. Okay. And what would you say the distance was
15 from where he parked to where the triage area was where
16 you conducted the -- where you did the blood draws?

17 A. Maybe like a quarter block. I'm not sure of
18 the distance, but...

19 Q. And when an officer -- when they walk in
20 together like this, she's usually handcuffed -- or I
21 should ask the question this way. I'm sorry. Was my
22 client handcuffed when you first observed her?

23 A. I believe so. I really don't remember that
24 part.

25 Q. Okay. When you were drawing the blood, was

1 she -- is it fair to say that she was no longer
2 handcuffed?

3 A. Yes.

4 Q. Okay. And from the time that you were
5 requested to do this, how much time had elapsed from the
6 time that they requested this procedure to take place
7 and the time you actually started drawing the blood, you
8 know, having prepared the -- looking for the right place
9 to draw it from and prepare the area? What would you
10 say, ten minutes maybe?

11 A. Yeah. If I understand the question right, it's
12 from when she got there to when I actually started
13 drawing the blood? Probably around ten minutes.

14 Q. Now, how long does it take to draw -- how long
15 would it take -- or if you recall, how long did it take
16 to draw the draw that has 4:31 on it, how long does it
17 take to make that draw?

18 A. I mean, from once I put the tourniquet on to
19 actually drawing the blood is maybe -- I don't know --
20 30 seconds to a minute.

21 Q. A very short time?

22 A. Yes.

23 Q. Okay. And so you fill up the two vials, you
24 give them to the officer. And do you note the time?

25 A. I note the time, yes. It's based on our

1 computers at work.

2 Q. So the time is noted by you, and it's based on
3 the time that's noted by your computers there at work?

4 A. Uh-huh. And then usually verified by the
5 officer.

6 Q. And verified by the officer.

7 And then -- and then you waited, and then
8 you did a second one?

9 A. Correct.

10 Q. And so if it took you ten minutes from the time
11 the officer walked in to the time you actually drew the
12 blood at 4:31, the first draw, then that would indicate
13 that the officer would probably have gotten there about
14 4:21 or so, right, about ten minutes earlier?

15 A. Yeah, somewhere in there.

16 Q. Yeah. It takes a few minutes to set all of
17 this up and get them seated and prepared and so on and
18 so forth.

19 A. Yes.

20 Q. And let me ask you: Is it possible for -- or
21 isn't it true that it's possible that on request that
22 you could have actually been called out to the scene to
23 draw blood?

24 A. Called out to like the accident?

25 Q. Yes.

1 A. No, I can't be called out for that. I'm in the
2 hospital working.

3 Q. Is it possible for blood to be taken at the
4 scene by somebody that has the ability to do what you
5 do?

6 A. I suppose so. I don't know if HPD does that or
7 not.

8 Q. Yes, sir. I'm just asking if you think it's
9 possible. Could you, if you were called out to the
10 scene -- I understand that you weren't in this case, but
11 if you were called out, could you have drawn it there?

12 A. Yes.

13 Q. If you had been called out to the police
14 station, could you have performed what you performed
15 there as well?

16 A. Yes.

17 Q. Now, when you observed -- when you had the
18 opportunity to observe the warrant -- and I don't know
19 if you've had an opportunity to see it since then,
20 but --

21 MR. RAMIREZ: May I approach the witness,
22 Judge?

23 THE COURT: You may.

24 Q. (By Mr. Ramirez) Let me show you what's been
25 marked as State's Exhibit 41 (indicating). And I don't

1 know if you recall this document. Obviously, it's been
2 a long time. But do you look to see if you're given
3 authority to do more than one draw?

4 A. No, we don't. I've been told to draw it.

5 Q. And so your instruction about -- about getting
6 two separate blood draws came as an instruction from
7 Officer Corral in this case?

8 A. Yes.

9 Q. What do you look for when you -- when you get
10 to see the warrant?

11 A. I look for the name of the defendant, the
12 officer, driver's license, that it has been signed by a
13 district attorney or a judge, and, you know, correct
14 dates, things of that matter.

15 MR. RAMIREZ: Pass the witness, Your Honor.

16 THE COURT: Anything further?

17 MR. ASLETT: Nothing further from the
18 State, Your Honor.

19 THE COURT: Any objection to this witness
20 being excused?

21 MR. ASLETT: None from the State.

22 MR. RAMIREZ: None from the defense.

23 THE COURT: Sir, you may step down. You're
24 free to go about your business.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Ladies and gentlemen, why don't
2 y'all take a little break. Remember the admonitions.

3 THE BAILIFF: All rise for the jury.

4 (Open court, defendant present, no jury.)

5 THE COURT: You may be seated.

6 Any objections to going off the record?

7 MR. ASLETT: No, Your Honor.

8 MR. RAMIREZ: No objection.

9 THE COURT: The Court is off the record.

10 (Brief recess.)

11 (Open court, defendant and jury present.)

12 THE COURT: You may be seated.

13 You may proceed.

14 MR. ASLETT: Thank you, Officer -- thank
15 you, Your Honor.

16 **OFFICER DERRICK HALL,**

17 having been called as a witness and being first duly
18 sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. ASLETT:**

21 Q. Officer, would you please tell the jury your
22 name?

23 A. Derrick Hall. H-a-l-l.

24 Q. And what agency do you work for, Officer Hall?

25 A. Houston PD.

1 Q. How long have you been with HPD?

2 A. Nine-and-a-half years.

3 Q. What is your current assignment within HPD?

4 A. I'm a patrol sergeant out at Northeast
5 Division.

6 Q. Back in October of 2013, what was your
7 assignment?

8 A. I was assigned to the Vehicular Crimes
9 Division, which is kind of like a fancy word for
10 accident division. I was a crash investigator.

11 Q. And during your time as a crash investigator,
12 did you investigate fatal crashes?

13 A. Many.

14 Q. Including alcohol-related fatal crashes?

15 A. Yes.

16 Q. Have you testified before in fatal crash cases?

17 A. Many, yes.

18 Q. I want to get right to it. Back on
19 October 15th, 2013, were you on duty?

20 A. I was.

21 Q. About what time did you arrive at work?

22 A. I worked day shift, about 6:00 a.m.

23 Q. And where is work for you? Where was it back
24 in --

25 A. Downtown central station by the big ferris

1 wheel next to the courthouse.

2 Q. Okay. Now, when you arrived at work, did you
3 at some point get into a conversation with Officer Sal
4 Corral?

5 A. Yes.

6 Q. Did you know Officer Corral back then?

7 A. Yes.

8 Q. Had you worked with him before?

9 A. Yes.

10 Q. Okay. And did you and Officer Corral get to
11 talking about a crash investigation that Officer Corral
12 was working?

13 A. Yes, I did.

14 Q. And during that conversation, did you learn if
15 he had had a problem with the audio on his patrol car?

16 A. I did.

17 Q. Okay. What was your reaction when you heard
18 that?

19 A. Shocked. And I knew that I needed to get to
20 the jail to complete another interview with the
21 defendant.

22 Q. Is that so you could get the defendant on
23 audio?

24 A. Yes.

25 Q. Where did you go?

1 A. Southeast jail over on Mykawa off of the South
2 Loop, 8300 Mykawa.

3 Q. Did you bring recording equipment?

4 A. I did.

5 Q. Okay. Did you conduct an interview with the
6 defendant?

7 A. I did.

8 Q. Did you record that interview?

9 A. I did.

10 Q. Did that interview get both video and audio?

11 A. It did.

12 Q. Do you recall about what time you were
13 ultimately able to interview the defendant?

14 A. Approximately about 9:00 a.m. that morning.

15 Q. So we're talking about nine hours after the
16 crash?

17 A. Yes.

18 Q. Okay. Prior to interviewing the defendant, did
19 you -- well, let me ask you this: Do you see the woman
20 that you interviewed back there in the courtroom today?

21 A. I did -- I do.

22 Q. Would you please point out an article of
23 clothing she's wearing?

24 A. She's sitting in between these two -- her
25 attorneys, wearing all black, long hair.

1 MR. ASLETT: Your Honor, may the record
2 reflect the witness has identified the defendant?

3 THE COURT: The record will so reflect.

4 Q. (By Mr. Aslett) Okay. Prior to interviewing
5 the defendant, did you read her her Miranda and
6 statutory warnings?

7 A. I did.

8 Q. We'll be more specific about that. Did you
9 tell her that she had the right to remain silent?

10 A. I did.

11 Q. And not to make any statement at all?

12 A. I did.

13 Q. And that any statement she made could be used
14 against her at her trial?

15 A. I did.

16 Q. Did you tell her she had the right to have a
17 lawyer present to advise her prior to and during any
18 questioning?

19 A. I did.

20 Q. Did you tell her that if she could not employ a
21 lawyer that she had the right to have a lawyer appointed
22 to advise her prior and during any questioning?

23 A. I did.

24 Q. Did you tell her that she had the right to
25 terminate the interview at any time?

1 A. Absolutely I did.

2 Q. And are -- do these instructions that you read
3 to her -- or warnings that you read to her appear on the
4 video?

5 A. Yes.

6 Q. Okay. Did she indicate that she understood
7 them?

8 A. She did.

9 Q. And did she agree to waive her rights and speak
10 with you?

11 A. She did.

12 Q. And was there anything about the defendant that
13 appeared to affect her ability to give valid consent to
14 talk to you?

15 A. No.

16 MR. ASLETT: May I approach the witness,
17 Your Honor?

18 THE COURT: You may.

19 Q. (By Mr. Aslett) Officer Hall, I'm showing you
20 what I've marked as State's Exhibit 58. If you could
21 tell the jury what this is (indicating).

22 A. DVD recording of a jail interview that I did
23 with the defendant.

24 Q. And have you and I watched this interview
25 together prior to trial?

1 A. We did.

2 Q. Does it fairly and accurately depict your
3 interview with the defendant around 9:00 a.m. on October
4 15th, 2013?

5 A. It does.

6 MR. ASLETT: Your Honor, at this time State
7 offers into evidence State's Exhibit 58.

8 **(State's Exhibit No. 58 Offered)**

9 (Discussion off the record.)

10 (Open court, defendant and jury present.)

11 MR. RAMIREZ: Judge, subject to my previous
12 motion that I filed --

13 THE COURT: All right. The objection is
14 overruled.

15 **(State's Exhibit No. 58 Admitted)**

16 MR. ASLETT: Permission to publish, Your
17 Honor?

18 THE COURT: You may.

19 (State's Exhibit No. 58 published.)

20 Q. (By Mr. Aslett) Okay. Officer Hall, after you
21 interviewed the defendant, did you seize her cell phone
22 and property?

23 A. I did.

24 Q. Okay. Did you make note of the model and the
25 serial number of that cell phone?

1 A. I did.

2 Q. Did you then, at a later date, swear out an
3 affidavit for a search warrant to search that phone?

4 A. I did.

5 Q. And did you do that in front of a judge?

6 A. Yes.

7 Q. And was the warrant signed by a judge?

8 A. Yes.

9 MR. ASLETT: Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 Q. (By Mr. Aslett) Officer Hall, I'm showing you
13 what I've marked State's Exhibit 59. If you could tell
14 the jury what this is (indicating).

15 A. Application for a search warrant to download
16 the information from the defendant's cell phone.

17 Q. And what do we see the date and time are that
18 the search warrant was signed?

19 A. Halloween, 10:30 a.m.

20 Q. And does this fairly and accurately depict the
21 search warrant that was issued for the defendant's cell
22 phone in this case?

23 A. Yes.

24 Q. Okay. Let's talk about Page 2. What is on the
25 back here on Page 2 (indicating)?

1 A. This is how you serve -- this is called a
2 return. Anytime you serve a search warrant, because
3 it's been issued by the Court, you have to issue just --
4 it's a form back to the Court indicating what property I
5 seized. And so that way it's recorded in court
6 documents.

7 Q. Now, did you search the phone yourself?

8 A. I did not.

9 Q. Where did you bring the phone to?

10 A. I took it to our digital forensic lab over at
11 the Secret Service building.

12 Q. Would some officer over there be the actual one
13 to have the technical expertise to download the contents
14 of the phone?

15 A. Yes.

16 Q. And on the second page, do we see your
17 signature down here at the bottom (indicating)?

18 A. That's my signature.

19 MR. ASLETT: Your Honor, at this time,
20 State offers into evidence State's Exhibit 59.

21 **(State's Exhibit No. 59 Offered)**

22 THE COURT: Did you say 59?

23 MR. ASLETT: 59, Your Honor.

24 MR. RAMIREZ: No objection to State's 59.

25 THE COURT: State's 59 is admitted.

1 **(State's Exhibit No. 59 Admitted)**

2 Q. (By Mr. Aslett) Now, Officer Hall, did you at
3 some point meet with Linda Salinas?

4 A. I did.

5 Q. And did you speak with her about what had
6 occurred at Anvil?

7 A. I interviewed her at her job, yes.

8 Q. And did you get a statement from her?

9 A. I did.

10 Q. Okay. I don't want you to mention what it is
11 because that would be hearsay, but after you turned the
12 phone over and talked with Ms. Salinas, did you do
13 anything additional in this case?

14 A. No, not that I believe.

15 Q. Thank you, Officer Hall.

16 MR. ASLETT: I pass the witness, Your
17 Honor.

18 THE COURT: Any questions?

19 MR. RAMIREZ: I have no questions of this
20 witness, Judge.

21 THE COURT: Any objection to this witness
22 being excused?

23 MR. ASLETT: None from the State, Your
24 Honor.

25 MR. RAMIREZ: No, Your Honor.

1 THE COURT: Officer, you may step down.
2 You're free to go about your business.

3 THE WITNESS: Yes, sir. Thank you.

4 THE COURT: You may call your next.

5 MR. ASLETT: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 (At the Bench, on the record.)

8 MR. ASLETT: Your Honor, the next witness
9 is the chemist who tested the blood. I think he's a
10 witness that is subject to the motion to suppress. So I
11 think before we get into his testimony, we have to
12 finish that hearing outside the presence of the jury.

13 (Open court, defendant and jury present.)

14 THE COURT: Ladies and gentlemen, please
15 step into the jury room.

16 THE BAILIFF: All rise for the jury.

17 (Open court, defendant present, no jury.)

18 THE COURT: You may be seated.

19 What witness are you about to call?

20 MR. ASLETT: Dr. Cheney.

21 THE COURT: Say it again. I'm sorry.

22 MR. ASLETT: Dr. Matthew Cheney.

23 THE COURT: And what's Dr. Cheney about to
24 testify regarding?

25 MR. ASLETT: The blood results, Your Honor.

1 THE COURT: Well, is it -- I mean, the
2 Court's already ruled on the motion to suppress based on
3 the search. So what needs to be heard now?

4 MR. ASLETT: He's not going to testify to
5 the retrograde extrapolation. He's just going to
6 testify to the blood results that he obtained and also
7 testing that was performed by another analyst earlier
8 who no longer works at the lab. And that analyst's lab
9 report, which he's reviewed as part of his testimony, is
10 something he's going to need to go into because it helps
11 explain the results he obtained.

12 But as far as retrograde extrapolation,
13 he's not going to go into any of that. It's just going
14 to be the blood results he personally obtained and this
15 analyst who is the first one to test the blood obtained.

16 THE COURT: What is he going to testify
17 that the first analyst did or reported on? What's --

18 MR. ASLETT: Well, we have chain of custody
19 affidavits on file. I also have an affidavit on file
20 from the drug testing portion. So I can put those in
21 without anybody's testimony. And I'll do that before he
22 takes the stand, but he's going to testify that in 2015,
23 he retested the blood and obtained certain results. I
24 believe a .058 and a .070, both which, of course, are --

25 THE COURT: A point what?

1 MR. ASLETT: Let me --

2 THE COURT: .058 and --

3 MR. ASLETT: Let me give you the exact
4 numbers, Judge. I don't want to misremember anything.
5 A .058 and .070.

6 THE COURT: Okay.

7 MR. ASLETT: The .070 being from the
8 later -- I'm sorry -- the earlier blood draw, and the
9 .058 being from the later blood draw, which, of course,
10 both of those are under .08. It's going to be up to the
11 retrograde extrapolation expert to say that because they
12 are drawn five hours later, it would have been higher at
13 the time.

14 Now, back in 2013, blood tested by another
15 analyst who no longer works at the lab -- she just left
16 to further her education. There's no improprieties
17 alleged. The results that she obtained back on
18 October 28th of 2013 were .81 -- I'm sorry a .081 and
19 .093, which, of course, is higher.

20 And Dr. Cheney is going to testify that the
21 reason the results are lower is because due to
22 evaporation and the natural oxidation of blood that's
23 been stored, it goes down over time. And that's what
24 you'd expect to see in blood that had been stored for
25 nearly two years.

1 Page 6. I've highlighted it. The Supreme Court
2 addressed this issue in the Williams case. I'm just
3 going to read from the highlighted portion. It says in
4 Williams: At least eight justices saw no confrontation
5 clause problem with the testifying expert providing an
6 independent evaluation of evidence that someone else
7 collected.

8 And in that case, you had an expert who
9 relied on a DNA profile that had been generated by
10 another expert and that was brought in front of the
11 court. And it says: Texas Courts agree -- and it cites
12 several cases -- no confrontation clause problem, even
13 though a testifying expert's opinions were based in part
14 on his review of an autopsy report prepared by a
15 nontestifying expert.

16 Same thing, as long as there's an
17 independent judgment -- independent conclusions, he can
18 refer to the fact that he has reviewed that earlier
19 testing to explain the results he obtained.

20 THE COURT: When do you want to put him on
21 the stand?

22 MR. ASLETT: Immediately after the motion,
23 Judge. He's my next witness.

24 THE COURT: Do you have any other witnesses
25 that you could put on?

1 anywhere. I can also call Officer Mark Wilson. He
2 works down at 1200 Travis, so he's like 15 minutes
3 away --

4 THE COURT: Okay.

5 MR. ASLETT: -- so we can go through the
6 phone evidence.

7 THE COURT: All right.

8 MR. ASLETT: So if you can give me a minute
9 to make that phone call.

10 MR. RAMIREZ: Your Honor, can I --

11 THE COURT: Yes.

12 MR. RAMIREZ: In this case -- I mean, I
13 know you'll read it, but they didn't preserve the error,
14 the defendant. So the case is predicated upon no
15 objections being made, no proper objection being made.
16 And then the Court said that the testimony about the
17 previous expert was just cumulative and minimal. There
18 was no disparity in the results of both experts. This
19 is wholly completely different results.

20 So this case is misplaced. It's -- you
21 know, for those -- and then it even ruled it's
22 harmless -- you know, it was harmless error. So this
23 case is not a good case for the proposition that the
24 confrontational clause is not violated because in this
25 case, we're making the objection, and the results of

1 both experts are not at all commentary.

2 THE COURT: And the Court is certainly
3 going to entertain any argument that both sides have on
4 this matter. And, of course, if you have any additional
5 law for the Court's consideration, it will certainly be
6 considered. But in the meantime, in the interest of
7 time, may we get this other witness in here, allow the
8 prosecutor to call the second witness on the telephone
9 so he can get headed this way? We'll get those two
10 witnesses on the witness stand today so we can get some
11 more evidence in front of the jury. And then after
12 dismissing the jury, then we can address these matters
13 and see how we need to proceed.

14 MR. ASLETT: Judge, do you want me to let
15 my two scientists go for today and come back tomorrow
16 morning?

17 THE COURT: You might want to keep
18 Mr. Cheney here since -- I mean, if he's the one -- and
19 who is the other one?

20 MR. ASLETT: Dr. Walterscheid. He's our
21 retrograde extrapolation expert.

22 THE COURT: Is there going to be any
23 challenge to Dr. Walterscheid?

24 MR. RAMIREZ: The extrapolation? Yes.

25 THE COURT: What's the challenge going to

1 be based on?

2 MR. RAMIREZ: Well, Judge, it also has to
3 do as well with the blood that Cheney is going to try to
4 introduce and this whole issue with respect to the first
5 testing that was done and now the second testing that
6 was done. So it all kind of --

7 THE COURT: Well, I mean, certainly, if
8 there's some evidence that is excluded, for whatever
9 reason, then Dr. Walterscheid certainly would not --
10 sounds like a juror may be banging at the door.

11 In any event, but is Dr. Walterscheid going
12 to need to be questioned in any regards on these issues.
13 The Court's already ruled, as you know, on the
14 suppression issues. This, of course, is a different
15 issue that's been mentioned to the Court on Dr. Cheney.

16 I mean, is there some challenge to
17 Dr. Walterscheid as to his --

18 MR. RAMIREZ: Qualifications.

19 THE COURT: Yeah, qualifications or
20 expertise.

21 MR. RAMIREZ: No.

22 THE COURT: So that's not being challenged.
23 There is no Robinson challenge?

24 MR. RAMIREZ: Right. No.

25 THE COURT: All right. Well, if there's no

1 Robinson challenge, then it sounds like Dr. Walterscheid
2 can be dismissed.

3 One moment.

4 (Discussion off the record.)

5 THE COURT: Let's do this. Let's go off
6 the record. Let me find out what the bailiff has heard,
7 and then we'll go on the record and put on the record
8 what needs to be on the record in that regard.

9 Is there any objection to going off the
10 record?

11 MR. ASLETT: No, Your Honor.

12 MR. RAMIREZ: No, Your Honor.

13 THE COURT: All right. The Court's off the
14 record.

15 (Discussion off the record.)

16 THE COURT: Ms. Velez?

17 JUROR: Yes, Your Honor.

18 THE COURT: The bailiff has brought to my
19 attention that you have expressed some concern in
20 continuing your duty on this jury. What is your
21 concern?

22 JUROR: That is correct. I felt like I
23 could be a juror that would be -- that could be -- base
24 themselves on the law. And I was in a case similar to
25 this a couple of years ago when I was 16. A man killed

1 my boyfriend. He was intoxicated. It was Halloween
2 night, and I was in the vehicle with him and he passed
3 away.

4 I went through therapy and counseling and I
5 thought I had put this behind me. I've been in the
6 legal world for a very long time. I'm a paralegal. And
7 I went through law school my first year. So I thought
8 that I could do this and base myself just on the law and
9 what's fair. And I don't think I could be fair to her
10 if I continue. I believe she doesn't deserve that.

11 THE COURT: So are you saying that because
12 of this experience that you have gone through, that this
13 experience would influence your verdict, that you would
14 not be able to set it aside?

15 JUROR: That is correct.

16 THE COURT: Are you saying that it would
17 make it more likely for you to find the defendant guilty
18 regardless of what the evidence might show?

19 JUROR: I believe I just cannot continue to
20 listen to the evidence.

21 THE COURT: Any questions, Mr. Aslett?

22 MR. ASLETT: None from the State, Your
23 Honor.

24 THE COURT: Any questions, Mr. Ramirez?

25 MR. MARTINEZ: Your Honor, may I ask

1 questions for Mr. Ramirez?

2 THE COURT: You may.

3 MR. MARTINEZ: Ma'am, I'm not going to take
4 too long of your time. I just want to ask you: The
5 sentiments you're expressing here, have you communicated
6 your experiences and those sentiments to other jury
7 members?

8 JUROR: I have not. They just asked me
9 right now if I was okay and I said I just needed to talk
10 to y'all. So they believe I'm sick or something. I
11 don't know.

12 MR. MARTINEZ: And forgive me for
13 belaboring the point --

14 THE COURT: You need to keep your voice up.
15 I can't hear you.

16 MR. MARTINEZ: Did you ever have an
17 emotional experience like you're having now in front of
18 the other jury members?

19 JUROR: No.

20 MR. MARTINEZ: Okay. So this is the first
21 time it happened?

22 JUROR: Yes. I just started feeling like
23 this when I was listening to her video.

24 MR. MARTINEZ: So you just walked out just
25 now --

1 JUROR: I didn't walk out. I waited until
2 he dismissed us --

3 MR. MARTINEZ: Oh, I see.

4 JUROR: -- and we were walking into the
5 room.

6 THE COURT: So you didn't go into the jury
7 room?

8 JUROR: No. I was waiting outside in this
9 area.

10 THE COURT: Anything else, Mr. Martinez?

11 MR. MARTINEZ: No, sir.

12 THE COURT: Mr. Aslett?

13 MR. ASLETT: Nothing from the State, Your
14 Honor.

15 THE COURT: Ma'am, you may step down.
16 Don't step back into the jury room just yet.

17 JUROR: Okay.

18 THE COURT: Can you just let her have a
19 seat back there in one of those chairs?

20 THE BAILIFF: Sure.

21 JUROR: Right. That's where I was sitting.

22 THE COURT: Thank you.

23 JUROR: Thank you.

24 (Juror exits courtroom.)

25 THE COURT: What says the State or the

1 defendant?

2 MR. ASLETT: I mean, Judge, of course,
3 jurors are required to not start making up their mind
4 after testimony has already started, but I can't
5 disagree that there's going to be a problem with a juror
6 who says she's not going to be able to listen to the
7 rest of the evidence.

8 THE COURT: Does the defendant have a
9 motion?

10 MR. RAMIREZ: Motion to dismiss that juror,
11 Judge.

12 THE COURT: All right. The motion is
13 granted.

14 Tell you what, if you will, bring her back
15 into the courtroom.

16 (Juror escorted into the courtroom.)

17 THE COURT: Ms. Velez, thank you for your
18 candor and thank you for your efforts. You're going to
19 be excused from the jury.

20 JUROR: Okay.

21 THE COURT: You are now released from all
22 of the admonitions that you were previously given.

23 JUROR: Okay.

24 THE COURT: You may now discuss this case
25 with anyone with whom you wish to speak, of course

1 except the 12 people in the jury room.

2 JUROR: I understand.

3 THE COURT: You certainly would not be
4 permitted to speak to them. If for some reason you were
5 to happen to run into any of them during the pendency of
6 this trial, I'm going to ask you not to reveal the
7 reason that you were excused from the jury.

8 JUROR: Yes, sir.

9 THE COURT: All right.

10 JUROR: Thank you.

11 THE COURT: You may step down and you're
12 free to go. I guess you know how to get down the hall
13 and get down to the elevator --

14 JUROR: I do.

15 THE COURT: -- and get your stuff out of
16 here.

17 JUROR: Yes. Thank you.

18 THE COURT: All right.

19 THE BAILIFF: Excuse me, ma'am. What kind
20 of property do you still have in the jury room?

21 JUROR: My purse.

22 THE COURT: Do you want to just go in and
23 get it for her?

24 THE BAILIFF: That's what I was about to
25 say.

1 JUROR: Thank you.

2 THE COURT: All right. Good luck to you.

3 All right. Is there any objection to going
4 off the record?

5 MR. ASLETT: No, Your Honor.

6 MR. RAMIREZ: No objection from the
7 defense.

8 THE COURT: All right. Court's off the
9 record.

10 (Discussion off the record.)

11 (Open court, defendant and jury present.)

12 THE COURT: You may be seated.

13 Ladies and gentlemen, just so that you
14 know, one of your members is no longer able to serve.

15 Ms. White?

16 JUROR: Yes, sir.

17 THE COURT: As happens sometimes, the
18 alternate is now a formal member of the jury. So I know
19 you've been listening because I've been watching you. I
20 watch all of you. So anyway, we will proceed.

21 You may call your next.

22 MR. ASLETT: Your Honor, State calls
23 Claudia Hernandez.

24 THE COURT: You may remain seated, but if
25 you would, just raise your right hand to be sworn.

1 (Witness sworn.)

2 THE COURT: You may put your hand down.

3 As you probably know, these lawyers are
4 getting ready to ask you some questions. It is
5 important for you to keep your voice up so everyone can
6 hear you. And please let them completely finish their
7 questions before you begin to answer.

8 THE WITNESS: Yes, sir.

9 THE COURT: If you are interrupted, you
10 will be given the opportunity to complete your answer,
11 unless an objection has been sustained.

12 Last, if any of these lawyers stand up
13 during your testimony to speak to the Court, please say
14 nothing further until you're given permission to do so.

15 You may reach up there and take that
16 microphone and just direct it towards your mouth. But
17 you don't need to lean into it. That will probably work
18 right there. Now you don't need to be concerned about
19 it.

20 You may proceed.

21 MR. ASLETT: Thank you, Your Honor.

22 **CLAUDIA HERNANDEZ,**
23 having been called as a witness and being first duly
24 sworn, testified as follows:

25 **DIRECT EXAMINATION**

1 **BY MR. ASLETT:**

2 Q. Ma'am, would you please tell the jury your
3 name?

4 A. Claudia Hernandez.

5 Q. How old are you, Ms. Hernandez?

6 A. Forty-one.

7 Q. And --

8 A. I'm sorry.

9 Q. It's okay. If you need to use this Kleenex...

10 Ms. Hernandez, are you currently working?

11 A. Go ahead.

12 Q. Are you currently working?

13 A. No, sir. I can't.

14 Q. Do you -- are you married?

15 A. No, not anymore.

16 Q. Did you used to be married?

17 A. Yes.

18 Q. Who was your husband?

19 A. Rodolfo Hernandez.

20 Q. How long were you-all married?

21 A. Fifteen years.

22 Q. When did you get divorced?

23 A. When I lost my daughter, I lost a lot of
24 things.

25 Q. Do you have any children?

1 A. I have three boys.

2 Q. What are their names and how old are they?

3 A. Homer, he's 26. And Julio, he's 20. And
4 Rodolfo, he's 14.

5 Q. Do any of them live at home with you?

6 A. Yes, they all do now.

7 Q. Did you also have a child named Claudia
8 Ontiveros?

9 A. Yes, I did. Yes. Sorry.

10 Q. How old was Claudia back in October of 2013?

11 A. She was 20.

12 Q. Did she live with you?

13 A. Yes, she did.

14 Q. Back in October of 2013, were you also living
15 with your husband?

16 A. Yes.

17 Q. Who else lived in the household besides you and
18 Claudia?

19 A. Her grandparents.

20 Q. Was Claudia going to school?

21 A. Yes, she was.

22 Q. Where was she going to school?

23 A. She was going to school to continue for -- to
24 go into the Navy, the Army, in the military.

25 Q. Do you know which school she was attending?

1 A. No. She just needed extra credits, so they
2 sent her somewhere to do -- to complete that.

3 Q. Was Claudia working back in October of 2013?

4 A. They had called her that day for -- she was
5 going to start the next day. The day she died, she was
6 supposed to start the next day. She had her clothes
7 laid out on her bed.

8 Q. Where was she supposed to start --

9 A. Wal-Mart.

10 Q. Was she excited about getting to start that
11 job?

12 A. Yes, she was.

13 Q. I want to talk with you about what interaction
14 you had with your daughter Claudia back on October 15th,
15 2013. Did you spend time with your daughter that day?

16 A. Every day, all the time. She was my best
17 friend.

18 Q. If you could just sort of walk us through that
19 day leading up to the last time you saw her. What
20 happened in the morning?

21 A. In the morning, I remember her going to the
22 room and saying she felt sick. She would always go to
23 me for everything. She felt really sick. So we drove
24 her to Memorial Hermann, me and my mother. And we were
25 there at the emergency room.

1 Q. Is that Memorial Hermann in the Medical Center?

2 A. Yes, sir.

3 Q. And was she checked out at the hospital?

4 A. Yeah, she was checked in and checked out.

5 Q. Did everything turn out to be okay?

6 A. Yes.

7 Q. Okay. Was she given any prescriptions or any
8 sort of medication?

9 A. Yes. It was acid reflux on her stomach. She
10 always had that problem.

11 Q. Okay. Where did you go after you went to the
12 hospital?

13 A. We went home.

14 Q. Do you recall about what time you got home
15 after you went to the hospital?

16 A. I'd say about 3:00 o'clock.

17 Q. Okay. What did you-all do when you got back
18 home?

19 A. Sat at the table and talked, ate dinner.

20 Q. What did y'all talk about?

21 A. Just about our daily -- what we did throughout
22 the day and just laughed and enjoyed our day, you know,
23 our night together, not knowing it was going to be our
24 last day together.

25 Q. Did there come a point in time when Claudia

1 left the house?

2 A. Actually, yeah. I didn't know about it. She
3 had stepped out. She told my mother. I didn't know.

4 Q. Okay. When did you leave the house?

5 A. I was actually asleep. I was there at home. I
6 was asleep.

7 Q. What time did you go to sleep?

8 A. It was about 8:30, 9:00 o'clock.

9 Q. And so what was the last time you saw Claudia?

10 A. When I got up from the table, from the dinner
11 table, and I told them good night. And that was the
12 last I seen my daughter.

13 Q. Did you find out later that she decided to go
14 out with a friend of hers?

15 A. I found out actually when I got -- I woke up,
16 something woke me up, I got up, and I looked at my phone
17 and seen some missed calls. And I always have my phone
18 on. And I had a missed call from, I guess, the morgue.
19 And I just returned the call and they said they were
20 calling -- they had a Jane Doe and they needed to speak
21 to Claudia Hernandez. And I said: That's me. They
22 said: Ma'am, we have a Jane Doe here. You know, can
23 you tell me, do you have a daughter or do you know of a
24 female within the age of 20 to 25. And I said: Yes,
25 but my daughter is home, you know. "Are you sure,

1 ma'am?" When she told me that, I said -- "can you
2 describe your daughter," I said: Hold on.

3 So I went to her room, which is right
4 outside my room, and I knocked on her door. And my son
5 opened the door. And I said: Where is Ya-ya
6 [phonetic]?

7 "She went out, she stepped out."

8 I said: Why didn't y'all tell me? What
9 time was this? And I just started losing it from here.

10 I said: Oh, my God, my daughter is not
11 home. I'm told she went out last night, you know. And
12 to have these missed calls, what's going on?

13 "Ma'am, just calm down. We have a Jane Doe
14 here. Can you describe your daughter? Does she have
15 any tattoos."

16 And so at that time, I was going ballistic
17 already, screaming at everybody. I even slapped my son
18 at the time because I was like: Why didn't you tell me?
19 You know, why did you let your sister get out? You
20 know, and so that was when she said: Describe your
21 daughter. And I said: My daughter has a tattoo on her
22 left arm and on her right on both sides.

23 Q. Let me stop you there. What are those tattoos?

24 A. One of them said "Lost Cause." And on the
25 other one, it had shrooms, psychedelic shrooms on them.

1 And she had a flower on her left shoulder.

2 And so I described them to the lady on the
3 phone. And I just remember her saying: I'm sorry,
4 ma'am, to inform you the Jane Doe we have here, that you
5 have identified -- you have given us identity that's
6 your daughter. I'm sorry to inform you.

7 And I lost it. I just didn't -- I was lost
8 for words.

9 Q. Did you have to go to the morgue to identify
10 your daughter?

11 A. Yeah, I had to go to the hospital to identify
12 her. She goes: Ma'am, you need to get to the hospital
13 as soon as possible. They need to get her to the morgue
14 and start prepping her and all that. You've given us
15 the okay -- or something like that. I'm sorry.

16 Q. Did you go to the hospital and do that?

17 A. Yes, I did.

18 MR. ASLETT: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 Q. (By Mr. Aslett) Ms. Hernandez, I have to show
22 you a picture. I'm showing you for the record State's
23 Exhibit 77. If you could tell the jury who that is
24 (indicating).

25 A. That's my daughter. I'm sorry. My daughter.

1 Q. I want to show you some other pictures. Did
2 you give me some pictures of what your daughter looked
3 like when she was alive?

4 A. Yes.

5 Q. I'm showing you State's Exhibits 84 and 85. If
6 you could tell the jury what these are pictures of
7 (indicating).

8 A. My daughter.

9 Q. Okay. And could you tell us, do you remember
10 when the picture in State's 84 was taken?

11 A. This is her when she was always taking selfies.

12 Q. And was State's 84 taken relatively close to
13 the time she died?

14 A. Yes, that same week. That same week.

15 Q. State's Exhibit 85, when was this picture
16 taken?

17 A. This was around the same time.

18 Q. And do both the picture in State's Exhibits 84
19 and 85 fairly and accurately depict what your daughter
20 looked like when she was still alive?

21 A. Yes.

22 MR. ASLETT: Your Honor, at this time State
23 offers into evidence State's Exhibits 84 and 85.

24 **(State's Exhibit Nos. 84 and 85 Offered)**

25 THE COURT: Are you going to have any more

1 questions of this witness?

2 MR. ASLETT: Not after this, Your Honor.

3 THE COURT: Do you have any questions of
4 this witness, Mr. Ramirez?

5 MR. RAMIREZ: I do not.

6 THE COURT: Ma'am, you may step down.

7 THE WITNESS: Thank you.

8 THE COURT: What exhibits are you offering?

9 MR. ASLETT: State's Exhibits 84 and 85.

10 THE COURT: 84 and 85?

11 MR. ASLETT: That's correct, Your Honor.

12 THE COURT: Any objections?

13 MR. RAMIREZ: Other than the objection that
14 they have not been produced before, Judge.

15 MR. ASLETT: Judge, both these photos have
16 been in the file for several months.

17 THE COURT: The objection is overruled.
18 State's 84 and State's 85 are admitted.

19 **(State's Exhibit Nos. 84 and 85 Admitted)**

20 MR. ASLETT: Permission to publish, Your
21 Honor?

22 THE COURT: You may.

23 MR. ASLETT: State's Exhibit 84, State's
24 Exhibit 85 (indicating).

25 Nothing further from the State.

1 THE COURT: All right. And that's your
2 last witness for today; is that correct?

3 MR. ASLETT: That's correct, Judge.

4 THE COURT: All right. Ladies and
5 gentlemen, that's all the evidence that you're going to
6 hear today. Please remember the admonitions previously
7 given. Do not discuss this case amongst yourselves, and
8 certainly do not speak to anyone else about it.

9 In the unlikely event that you might run
10 into Ms. Velez during the pendency of this trial, do not
11 discuss anything with her such as asking her how she's
12 doing or making inquiry as to why she left the jury.
13 That would be improper for you to do so. You don't need
14 to concern yourselves with that.

15 With that, I'm going to ask you, if you
16 don't mind, to report at 9:30 tomorrow morning. Once
17 again, there is a docket, and, once again, there are
18 some matters relating to this case that must be
19 addressed outside your presence. So obviously these
20 lawyers and I are going to be getting here earlier than
21 that, but we'll get started with you as soon as we can
22 after 9:30. So if you would be here at 9:30.

23 Have a pleasant evening and be safe.

24 THE BAILIFF: All rise for the jury.

25 (Open court, defendant present, no jury.)

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THE COURT: You may be seated.

Is there any objection to going off the
record?

MR. ASLETT: No, Your Honor.

MR. RAMIREZ: No objection from the
defense.

THE COURT: Court's off the record.

(Proceedings recessed.)

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3 **REPORTER'S CERTIFICATE**4
5 THE STATE OF TEXAS)
6 COUNTY OF HARRIS)7
8 I, Gayle Patterson, Deputy Official Court Reporter
9 in and for the 351st District Court of Harris County,
10 State of Texas, do hereby certify that the above and
11 foregoing contains a true and correct transcription of
12 all portions of evidence and other proceedings requested
13 in writing by counsel for the parties to be included in
14 this volume of the Reporter's Record, in the
15 above-styled and numbered cause, all of which occurred
16 in open court or in chambers and were reported by me.17
18 I further certify that this Reporter's Record of
19 the proceedings truly and correctly reflects the
20 exhibits, if any, admitted by the respective parties.21
22 WITNESS MY OFFICIAL HAND this the 8th day of
23 February, 2016.
24
2526
27 /s/ Gayle Patterson
28 Gayle Patterson, Texas CSR 3355
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31 351st District Court
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33 Alvin, Texas 77512
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