

1 THE COURT: Cause Number 138443, styled
2 State of Texas versus Forest Penton, P-E-N-T-O-N, Jr.,
3 with counsel. Defense has previously filed a Motion to
4 Suppress defendant's statement. I have that in front
5 of me. I'm not sure when it was filed. At any rate,
6 call your first, please.

7 MS. STABE: Well, your Honor, we will
8 stipulate that it was a warrantless arrest.

9 THE COURT: You say you're going to
10 stipulate that there was no warrant?

11 MS. STABE: Correct. So the State will
12 have the burden and we will call Deputy Santos.

13 MICHAEL SANTOS,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. STABE:

17 Q. Will you please introduce yourself to the
18 Court?

19 A. Michael Anthony Santos.

20 Q. Where are you currently working?

21 A. Harris County Sheriff's office.

22 Q. What division?

23 A. HIDTA task force, officer at the DEA.

24 Q. How long have you been with the sheriff's
25 office?

1 A. July 19, will be 11 years.

2 Q. How long have you been with the HIDTA?

3 A. A little over two years.

4 Q. What do you do as a HIDTA deputy?

5 A. HIDTA. It's High Intensity Drug Traffic Area.

6 It pretty much encompasses all of south Texas. We're

7 in the major drug squads, which is a lot of cartel

8 stuff, major drugs, not street level, big drugs.

9 Q. You've had special training to be a part of
10 this task force?

11 A. Yes.

12 Q. So on April 16, 2013, were you on duty that
13 day?

14 A. Yes, I was.

15 Q. Were you riding with a partner or alone?

16 A. With a partner.

17 Q. Where were y'all stationed that day?

18 A. We were in District 30, which is east Harris
19 County.

20 Q. Okay. Were you in a particular location that
21 day?

22 A. We were in the Channelview area.

23 Q. Around -- or what time was your shift?

24 A. At that day -- our shift varies. I think that
25 day we were maybe 2:00 to 10:00.

1 Q. And at some point that day did you have a
2 reason to stop a four-door Chrysler Cirrus?

3 A. Yes, I did.

4 Q. Can you explain the circumstances that you
5 stopped them?

6 A. We were at a gas station -- I don't recall the
7 name of the gas station -- on Sheldon and I-10. We saw
8 the car traveling. That would be north on Sheldon
9 underneath the freeway and the light turned yellow and
10 the car tried to speed through the light and didn't
11 make it; ran the red light.

12 Q. Is that a reason for you to pull the car over?

13 A. Yes, ma'am, probable cause.

14 Q. Once you pull that car over, does it stop
15 right away?

16 A. No. It drove -- not very far. I would say a
17 thousand yards, maybe two. A car wash, I think, is
18 what they pulled into.

19 Q. At some point it did pull over?

20 A. It did pull over.

21 Q. When you got to the car, how many people were
22 inside?

23 A. Two occupants.

24 Q. Do you see one of those occupants in the
25 courtroom today?

1 A. Yes, I do.

2 Q. Would you point to him, identify an article of
3 clothing?

4 A. A striped button-down shirt.

5 MS. STABE: May the record reflect the
6 witness has identified the defendant?

7 THE COURT: The record will reflect.

8 Q. (MS. STABE) What location in the car was the
9 defendant seated?

10 A. In the passenger seat.

11 Q. When you approached the car, did you approach
12 the passenger side or driver's side?

13 A. Passenger side.

14 Q. When you got up to the passenger window, what
15 did you see?

16 A. The defendant reached in his pocket and shoved
17 something between the center console and the passenger
18 seat.

19 Q. Okay. And what you do?

20 A. Well, it scared me at first. It was -- scared
21 me at first, not knowing if he was going for a weapon
22 or what he was doing. I un-holstered my weapon.

23 Q. What happened?

24 A. He reached his hand in his other pocket and
25 pulled out a clear plastic bag with a substance in it.

1 Q. Okay. What did he do with that baggie?

2 A. The glove compartment was open in the car, so
3 he tried to toss it into the glove compartment and it
4 fell by his feet.

5 Q. So that was right in front of your view?

6 A. Right in front of my view.

7 Q. You were watching that happen?

8 A. Yes.

9 Q. That was coming from his pocket?

10 A. That was coming from his pocket.

11 Q. What did you do after that?

12 A. He was squirming around so I immediately
13 detained him.

14 Q. And by detain, you put him in handcuffs? What
15 did you do?

16 A. Put him in handcuffs.

17 Q. When that happened, did he say anything at
18 all?

19 A. At first he was complaining because something
20 was wrong with his leg. I can't remember if it was his
21 knee or ankle or something like that, so I didn't want
22 to get him out of the car. So I handcuffed him while
23 he was still seated in the car.

24 Q. Okay. Okay. So you detained him. You
25 handcuff him in his seat?

1 A. Still in his seat.

2 Q. Did you figure out who the driver of the car
3 was?

4 A. Not at that point.

5 Q. But there was a driver?

6 A. There was a driver.

7 Q. So you handcuff the defendant?

8 A. I began taking him out of the car and he was
9 yelling.

10 Q. What type of things was he yelling?

11 A. Like, you set me up, you work for the man.

12 Q. Okay.

13 A. Very upset.

14 Q. Were those directed toward anybody?

15 A. Toward the driver.

16 Q. And did you -- had you initiated any
17 questioning at that point?

18 A. Not at that point. We hadn't done anything.
19 We were still trying to get everything under control.

20 Q. That was the defendant making those statements
21 spontaneously?

22 A. Yes.

23 Q. What happened next?

24 A. Got him out of the car, patted him down and
25 put him in the rear of the patrol car.

1 Q. Okay. After that, what happened?

2 A. He stopped screaming. We went back to the
3 vehicle that they were in. By that time my partner had
4 taken the driver out of the car. We could still hear
5 Mr. Penton, or the defendant, still upset. I went back
6 to the patrol car, and he made a statement, saying to
7 the fact that's not -- that the stuff doesn't belong to
8 his nephew, it's all his.

9 Q. So at that point when you go back to the
10 patrol car, do you open the door, does he roll down the
11 window, how are you talking?

12 A. I open the door.

13 Q. Did you initiate any conversation with him
14 yourself?

15 A. No. No, we didn't initiate. He was still
16 screaming and upset, saying you -- he works for the
17 man. And he was set up. And this is -- excuse me --
18 but this is bullshit, those kind of words.

19 Q. Okay. So the second statement made by the
20 defendant, was he subject to any type of questioning or
21 interrogation by you?

22 A. No, ma'am.

23 Q. What about by Deputy O'Brien?

24 A. O'Brien was still with the driver of the
25 vehicle.

1 Q. At no time did Deputy O'Brien come over to
2 talk to the defendant when this was going on?

3 A. No.

4 Q. When you opened the door, he started blurting
5 things out?

6 A. He was still angry and upset, thinking he was
7 set up.

8 Q. By being set up, what specifically did he say?

9 A. He said all the stuff belonged to him not to
10 his nephew, to let his nephew go.

11 Q. Okay. So at some point did you find out who
12 he was talking about?

13 A. After the fact we learned that it was the
14 driver.

15 Q. Okay. And did you come to know what the
16 defendant's name was?

17 A. He -- I can't remember if he provided his ID
18 or if he just gave it to me and I ran it on the
19 computer.

20 Q. What is his name?

21 A. Forest Penton.

22 Q. Did this all occur in Harris County, Texas?

23 A. Yes.

24 THE COURT: Hang on a second. What was
25 the name?

1 THE WITNESS: Forest Penton.

2 THE COURT: Okay.

3 Q. (MS. STABE) And I was saying, did this all
4 occur in Harris County, Texas?

5 A. Yes, ma'am.

6 Q. Officer, looking at your report -- did you
7 write a report?

8 A. Yes, I did.

9 Q. And in that report, if you look on page two of
10 three of your report?

11 A. Okay.

12 Q. Does it indicate where the defendant put the
13 drugs, in the investigative narrative.

14 A. Yes. Let me find it real quick.

15 (Pause.)

16 Yes, ma'am. I think that would be
17 right, in the investigative narrative report where it
18 says, I approached the passenger side of the vehicle.

19 Q. Yes. So in that first paragraph, is that
20 talking about the first bag?

21 A. Yes.

22 Q. Okay. And where does it say that he put that
23 first bag?

24 A. He removed an unknown object from his pocket
25 and shoved between the passenger seat and center

1 console.

2 Q. The paragraph below that, does that talk about
3 the second baggie?

4 A. Yes.

5 Q. And this -- if you'll read that paragraph to
6 refresh your memory. Where, at the time, that you say
7 he put the second bag?

8 A. He removed his hand quickly and placed it
9 between the passenger seat and -- the passenger seat
10 and console again.

11 Q. I know you talked about earlier that there was
12 a second bag that was thrown and I just want to make
13 sure I understand in your report. It looks like he put
14 it in between the seat and console twice, but can you
15 explain that?

16 A. He put his hand in his pocket and shoved it
17 between the passenger seat and the center console. I
18 didn't know if he was going for a gun. At that point
19 we don't really know what is going on. I was telling
20 him, show me your hand, show me your hand. He pulled
21 his hand back up, sticks it back in his pocket, removes
22 another bag and tries to toss it up by the glove box or
23 something. It doesn't go there. It hits the glove box
24 and kind of falls by, I would say, his left foot by the
25 console.

1 Q. In your report you say he put his hand again
2 between the passenger seat and console. Did he do that
3 twice?

4 A. He did it twice.

5 Q. He did. Okay. So the two bags that you
6 found, could you describe the size?

7 A. One of them is small, much smaller plastic bag
8 with a little bit of crystal-like substance in it. The
9 other one was a larger bag with a lot of crystal in it.

10 Q. In your training and experience, did that
11 appear to be anything to you?

12 A. It appeared to be crystalized meth.

13 Q. Did you do anything at the scene to confirm?

14 A. I think we tested it on the scene right there.

15 Q. Okay. And so at some point did you search the
16 vehicle?

17 A. Once we had -- he was in the back seat and the
18 passenger, the driver, was never at any time in the
19 back seat of the car. We had him between the vehicle
20 and the patrol car by the trunk, and he gave us consent
21 to search the vehicle.

22 Q. When you searched the vehicle, did you find
23 anything besides those two bags?

24 A. No, ma'am. Those were the only two.

25 Q. So there were no other drugs found in the car?

1 A. No.

2 Q. Just the ones that the defendant had in his
3 pocket and what we described, throwing it --

4 A. Yes, ma'am.

5 Q. -- to the center console?

6 Was there -- was a lab test eventually
7 done?

8 A. It was eventually submitted to the medical
9 examiner's office.

10 Q. What was the substance that was found in those
11 bags?

12 A. I don't have it here, but it tested positive
13 for crystal meth.

14 MS. STABE: I pass the witness.

15 CROSS-EXAMINATION

16 BY MR. AYERS:

17 Q. Deputy Santos, is it?

18 A. Yes, sir.

19 Q. Now, you mentioned -- I think the prosecutor
20 asked you -- that you wrote this report in this case,
21 correct?

22 A. Yes, sir, I did.

23 Q. You would agree with me that this was over a
24 year ago that this happened?

25 A. Yes.

1 Q. You certainly have been involved in stops and
2 arrests numerous times since then?

3 A. Yes, sir.

4 Q. So the purpose of the report when you write it
5 is to put all the details down so you can refresh your
6 memory later?

7 A. Refresh my memory.

8 Q. You put the important stuff in that, right?

9 A. Yes, sir.

10 Q. Did you have an opportunity the review this
11 report before you testified today?

12 A. Yes.

13 Q. Do you have any other field notes other than
14 this report?

15 A. No, sir.

16 Q. So you are testifying from your memory and
17 what you read in this report?

18 A. Yes, sir.

19 Q. Now, you said this was basically, in effect, a
20 routine traffic stop initially?

21 A. Yes.

22 Q. You testified that your assignment was with
23 this HIDTA?

24 A. High Intensity Drug Traffic Area.

25 Q. Y'all worked with the Federal authorities?

1 A. Yes.

2 Q. DEA, FBI, whoever, right?

3 A. Yes.

4 Q. Are you in uniform out there?

5 A. I am. I'm in uniform.

6 Q. You and your partner?

7 A. Yes.

8 Q. And your partner was Deputy O'Brien?

9 A. Yes.

10 Q. And he's also a HIDTA officer?

11 A. Yes.

12 Q. So you're in this multi jurisdictional task
13 force?

14 A. Yes.

15 Q. You're in a marked patrol unit?

16 A. Yes.

17 Q. You target the large drugs, not street level,
18 cartels and things?

19 A. Sometimes.

20 Q. Well, that's what you said earlier?

21 A. Yes, sir.

22 Q. So you're not out there on patrol?

23 A. We do sometimes patrol.

24 Q. But that is not your assignment?

25 A. When I say patrol, I don't run calls for

1 service and things like that.

2 Q. So you're out there. You're supposed to be
3 working on these deals for these major dugs, cartels,
4 and stuff, right? But in this particular case you're
5 doing a routine traffic stop?

6 A. Yes.

7 Q. You put everything about this -- all the
8 significant, important information is in the report,
9 right?

10 A. Yes, sir.

11 Q. Because, of course, you wouldn't not put it in
12 there if it wasn't important?

13 A. Yes, sir.

14 Q. Did you put everything in your report about
15 this?

16 A. What are you asking me?

17 Q. Everything is in there, right?

18 A. Yes.

19 Q. So your representation is you and your partner
20 were sitting at this -- near this intersection, and you
21 saw a car fail to stop and you pulled it over?

22 A. Yes.

23 Q. That was it, right? Okay. You didn't get any
24 kind of tip or anything?

25 A. Yes, we did.

1 Q. From your people at the FBI or DEA?

2 A. Yes.

3 Q. I know pretext stops aren't really illegal any
4 more. You can do a pretext stop?

5 A. Yes, sir.

6 Q. You've been trained about that, right?

7 A. Yes, sir.

8 Q. So this was really a pretext stop, wasn't it?

9 A. Yes.

10 Q. To be clear to the Court, you really were
11 targeting Forest Penton when you pulled the car over?

12 A. Yes.

13 Q. You knew Forest Penton was in the car, right?

14 A. I didn't. I had never heard of his name.

15 Q. Well, what information was it that -- I mean,
16 you just said the FBI or somebody gave you a tip.

17 A. The FBI advised --

18 MS. STABE: Outside the scope of the
19 hearing.

20 THE COURT: I'm sorry?

21 MS. STABE: Outside the scope of the
22 hearing. It's about the defendant's statement.

23 MR. AYERS: Clearly all, everything --

24 THE COURT: I'm going to allow it. Go
25 ahead.

1 Q. (MR. AYERS) Go ahead and explain what you're
2 talking about to the Judge, this tip you received, if
3 you will.

4 A. Basically we received a call that, assistance
5 from the FBI because in Homeland Security there is just
6 one patrol vehicle. Several different agencies from
7 Harris County use that one patrol vehicle. They
8 requested our assistance. I have no idea about the
9 investigation, what they are doing or anything on their
10 end of this.

11 Q. I understand. They specifically asked you to
12 stop a person?

13 A. If we get in the patrol car and help them with
14 a stop. That's all it is.

15 Q. They specified the car?

16 A. They hadn't specified anything.

17 Q. A person?

18 A. Not at that moment.

19 Q. How did you know which car they wanted you to
20 stop?

21 A. We listened to the radio.

22 Q. Did they specify a vehicle?

23 A. They were following Mr. Penton.

24 Q. So some other law enforcement agency was
25 following this vehicle?

1 A. Yes.

2 Q. They contacted you?

3 A. Yes.

4 Q. Because you're working this task force?

5 A. Yes.

6 Q. And you're in a marked unit?

7 A. Yes.

8 Q. And they asked the marked unit to pull them
9 over?

10 A. Right. Sheldon.

11 Q. It wasn't just you happened to be there?

12 A. No. We were there intentionally.

13 Q. So they call you and tell you, here comes this
14 vehicle, follow it and when it makes a traffic
15 violation, pull it over?

16 A. Yes, sir. Develop our own probable cause.

17 THE COURT: What?

18 THE WITNESS: Develop our own probable
19 cause.

20 Q. (MR. AYERS) You understand what we're talking
21 about, a pretext stop?

22 A. Yes.

23 Q. You were targeting somebody?

24 A. Someone.

25 Q. Did you know at that point it was Forest

1 Penton, Edward Davis?

2 A. Had no idea who it was.

3 Q. Just a vehicle?

4 A. Yes.

5 Q. So this vehicle, you then follow it for a
6 fairly short distance?

7 A. Short.

8 Q. As soon as you saw it, it basically rolled a
9 stop light?

10 A. It did.

11 Q. Went through a red light?

12 A. Changing from yellow to red. They didn't make
13 it.

14 Q. So you follow them, pull them over?

15 A. Lights and siren.

16 Q. At that point this isn't a routine traffic
17 stop?

18 A. It's not a chase or anything.

19 Q. In the sense that you already knew who you
20 were pulling over, whoever was in the car, FBI, DEA,
21 somebody wanted you to stop them?

22 A. Yes.

23 Q. So it's not like Joe Citizen being pulled over
24 for running a red light?

25 A. Exactly.

1 Q. There is a little more to it?

2 A. Yes.

3 Q. When you approach the car, as far as you know,
4 this is not your typical traffic stop? Both of you
5 come out and approach the vehicle; is that right?

6 A. Yes, sir.

7 Q. I think you mentioned it was drizzling,
8 raining that night?

9 A. Yes.

10 Q. This was what time of the day?

11 A. I can't recall. It was 7:30, what the
12 reported time is. Evening. Evening.

13 Q. So around 7:30 in the evening in April last
14 year?

15 A. Yes.

16 Q. So it's dark, dusk, close to it, right?

17 A. Uh-huh.

18 Q. You're walking up to one side of the car and
19 you say Mr. Penton was the passenger. You saw him make
20 some movement; is that right?

21 A. Yes. Not movement. I saw him stick his hand
22 in his pocket.

23 Q. So you were actually literally next to the
24 car?

25 A. Correct.

1 Q. Windows up or down?

2 A. Half way down.

3 Q. Is O'Brien on the driver's side?

4 A. Driver's side.

5 Q. Is he talking to the driver?

6 A. I can't recall.

7 Q. Your focus was on the passenger. You walk up
8 and claim you can look in the car and see him putting
9 something between the seats, right?

10 A. Yes, sir.

11 Q. And I think if you look at your report that
12 you wrote at the time -- and you would agree with me
13 your memory when you wrote this report back that day
14 was certainly more fresh, right?

15 A. Yes.

16 Q. You said, I believe, that he immediately
17 placed his left hand in his short's pocket, correct?

18 A. Yes.

19 Q. You say, I observed him remove an unknown
20 object from his pocket and shove it between the seat
21 and the console, right?

22 A. Uh-huh.

23 Q. You do not mention anything about the plastic
24 baggie?

25 A. Yes, sir, in the report.

1 Q. That you wrote? Okay. And you testified
2 earlier about, well, then he stuck his hand back in his
3 pocket and pulled out a second baggie and threw it at
4 the glove compartment; is that correct?

5 A. Yes.

6 Q. Okay. Now, up --

7 MR. AYERS: May I approach?

8 THE COURT: You may.

9 Q. (MR. AYERS) If you could, show me in my copy
10 of the report where you wrote that, about this second
11 bag and the throwing it in the glove compartment. Is
12 that in the report on page two of three there?

13 A. I ordered him -- and he -- a second time, and
14 I observed him remove unknown object. He placed his
15 left hand back inside the short pocket. I feared for
16 our safety. Reordered him to remove hands.

17 Q. Just to continue on, you talk about taking his
18 hands and handcuffing him?

19 A. Yes.

20 Q. You would have to agree with me, in the
21 offense report there is no mention at all of any baggie
22 being thrown to the glove compartment?

23 A. Exactly.

24 Q. No mention at all of this second baggie
25 falling at his feet; is that correct?

1 A. It's not in the report, no.

2 Q. In fact, there is no mention of a plastic
3 baggie at all in the report until later when you search
4 the car; is that correct?

5 A. Yes.

6 Q. Okay. Now, you said again -- and we talked
7 about this -- that you stopped the vehicle on traffic.
8 When all was said and done, the driver, who was
9 Mr. Davis, correct?

10 A. I think.

11 Q. Who -- you learned that night -- you believed,
12 or somebody told you the driver was the defendant's
13 nephew?

14 A. Yes.

15 Q. When all that was said and done, Mr. Davis was
16 let go?

17 A. Yes, with the vehicle.

18 Q. He was never written any traffic ticket --

19 A. No.

20 Q. -- for running the red light or anything?

21 A. No, sir.

22 Q. So, again, that is more consistent with this
23 pretext, targeted, stop?

24 A. It's kind of at our discretion if we want to
25 try and ticket or not.

1 Q. So in this case?

2 A. Didn't need to write one.

3 Q. You would agree with me, based on the
4 information you had, because y'all a run registration
5 on cars, the car was Mr. Davis', right?

6 A. I believe it was, yes, sir.

7 Q. In your report you talk about releasing the
8 car. The car was released to owner in the report,
9 right?

10 A. Okay.

11 Q. I mean --

12 A. Yeah.

13 Q. The top of page two, disposition of vehicle,
14 released to owner. Very top under vehicle.

15 A. Released to Mr. Davis.

16 Q. And then on page three it says, witness
17 statement, did not have any warrant, released on the
18 scene with his vehicle.

19 A. Yes.

20 Q. So that was clearly Edward Davis' vehicle.
21 You would have known on the scene if it was his or not,
22 right?

23 A. If I ran the registration, sure. I can't
24 recall who it came back to.

25 Q. That is a pretty much routine you would do on

1 a stop, right?

2 A. Yes.

3 Q. I'm assuming that rather than release it to
4 somebody at the scene?

5 A. I released it to the person who was originally
6 driving the vehicle.

7 Q. I'm just reading right from your report. So
8 you are telling me you never have checked who owned the
9 vehicle?

10 A. It didn't come back as stolen.

11 Q. So normally you would check?

12 A. It does -- the computer would alert us if it
13 was stolen.

14 Q. And it would tell you who the registered owner
15 was?

16 A. It should.

17 Q. Released it to the owner, Mr. Davis. Nothing
18 complicated?

19 A. No.

20 Q. The point being it's not Mr. Penton's vehicle,
21 right?

22 A. Yes.

23 Q. You know that, right?

24 A. Yes.

25 Q. So now, did you have -- you have the ability

1 to run -- you stop them, run their ID, check their
2 priors?

3 A. Yes.

4 Q. You routinely do?

5 A. Yes.

6 Q. Did you check Mr. Penton's priors?

7 A. Yes, sir.

8 Q. And Mr. Davis' priors?

9 A. Yes.

10 Q. Based on that, both of them have been in
11 trouble before?

12 A. Yes.

13 Q. Both been to prison before, correct?

14 A. Yes. I don't recall what they were for
15 Mr. Davis.

16 Q. But once you saw this and, again, to be clear,
17 in your report it says you saw Mr. Penton put an
18 unknown object between the console and the seat; is
19 that correct?

20 A. Yes.

21 Q. I think you testified to the Judge that that
22 scared you because you thought it might be a weapon?

23 A. When you shove your hand in your pocket,
24 anything could be there.

25 Q. Sure. I'm saying that's a reasonable

1 conclusion, it could have been a weapon?

2 A. Or dugs.

3 Q. Well, drugs, you wouldn't have been frightened
4 with drugs?

5 A. You don't know.

6 Q. I'm just saying he's not going to pull out a
7 baggie of meth and assault you?

8 A. Throw it out the window.

9 Q. You were concerned -- the reason you pulled
10 your gun is because you thought maybe he had a weapon,
11 right?

12 A. And on top of the order I was giving him to
13 show me your hand.

14 Q. Your own words, you said he was -- you were
15 afraid he might be concealing a weapon?

16 A. Getting a weapon.

17 Q. So, again, in the report it's an unknown
18 object that you thought might be a weapon?

19 A. Uh-huh.

20 Q. After you -- he put his hand back in his
21 pocket, you grabbed him and cuffed him?

22 A. Yes.

23 Q. Handcuff both hands?

24 A. He -- I put one handcuff on his right hand and
25 then turned him in the seat, because like -- he said

1 something was wrong with his knee or leg or ankle or
2 something like that. So I handcuffed him while he was
3 still in the vehicle. I didn't want to get him out of
4 the vehicle because he was already complaining and
5 upset and yelling.

6 Q. He was yelling, you said, at the driver, who
7 you found out later was his nephew?

8 A. Uh-huh.

9 Q. He was kind of accusing Mr. Davis of somehow
10 setting him up?

11 A. Setting him up, he worked for the man.

12 Q. Is it fair to say he was upset and angry at
13 Mr. Davis?

14 A. At everyone. He was focusing those statements
15 on Mr. Davis. He said a couple of choice words about
16 us, but I'm not going to get offended by it.

17 Q. I understand. Part of the job. But when he's
18 talking about you're setting me up, working for the
19 man --

20 A. He's referring to Mr. Davis.

21 Q. He's upset at Mr. Davis?

22 A. Yes.

23 Q. You get him out of the car?

24 A. After he's handcuffed I get him out of the
25 vehicle.

1 Q. End up handcuffing him behind his back?

2 A. Yes.

3 Q. Put him in the patrol car?

4 A. Yes.

5 Q. The car you and Deputy O'Brien were in?

6 A. Yes.

7 Q. Put him in the back seat. So he's secure in
8 the back seat of the patrol car?

9 A. Yes.

10 Q. Did you ever handcuff Mr. Davis?

11 A. I never dealt with Mr. Davis. Deputy O'Brien
12 was dealing with him.

13 Q. After you put Mr. Penton in your patrol car,
14 at that point -- was it you that searched the car?

15 A. Both of us. When I was putting him in the
16 vehicle, I put him in, went back to the vehicle, and by
17 that time O'Brien had Mr. Davis out of the car, talking
18 to him. And when I went back, he gave us consent to go
19 search the vehicle.

20 Q. Again, further evidence that you believed the
21 vehicle was Mr. Davis'. You asked him for consent?

22 A. Yes.

23 Q. He gave you consent to search the vehicle?

24 A. Uh-huh.

25 Q. You and Deputy O'Brien?

1 A. Yes.

2 Q. You both -- you searched?

3 A. I searched the passenger side where he was
4 shoving his hand, found the bag.

5 Q. So you went to right where you saw him shove
6 his hand?

7 A. Yes.

8 Q. That's when you pulled out the plastic bag?

9 A. Yes.

10 Q. Was it one or two?

11 A. Two.

12 Q. Were they both in the same spot?

13 A. One was between the center console and the
14 passenger seat and one was at the console like where
15 the left leg would go, not shoved all the way in, where
16 he was trying to hide the other one, but they were
17 trying to conceal it.

18 Q. You never recovered any plastic baggie or
19 contraband of any kind from the person of Mr. Penton?

20 A. No, just what he removed from his pocket.

21 Q. Or Mr. Davis?

22 A. I never touched Mr. Davis.

23 Q. While you were at the scene with the officer,
24 you never recovered anything from Davis?

25 A. No, sir.

1 Q. So the only stuff found was these two plastic
2 bags found inside the car?

3 A. Yes, what he removed from his pocket.

4 Q. And now you said after Mr. Penton was placed
5 in the car he was still upset, still yelling at Mr.
6 Davis, and you agree about that, right?

7 A. He was upset. He was saying that he should
8 have ran but he can't because his leg was hurt. I
9 mean, that's -- people say stuff like that all the
10 time.

11 Q. Once you recovered the bag, did you physically
12 have it in your hand?

13 A. I had it in my hand, went back to the vehicle,
14 searched it. I had it in my hand. I don't like, want
15 to handle meth too much. Don't want to get it on your
16 skin and stuff like that. I also put everything in the
17 front passenger seat, or in the front seat of the
18 patrol vehicle.

19 Q. At some point you showed it to Mr. Davis,
20 right?

21 A. I'm pretty sure he saw it when we pulled it
22 out.

23 Q. If you look in your report you specifically
24 say the item was shown to witness Davis. Who did that?

25 A. I did.

1 Q. You pull it out of the car, show it to Davis?

2 A. Yes.

3 Q. Do you hold it up like this?

4 A. Sure.

5 Q. Did you say anything?

6 A. I don't think I did.

7 Q. That's what I'm trying to get to. You showed
8 this bag to the guy and you just stand there with it or
9 do you say, hey, Mr. Driver, is this yours? Do you
10 know anything about this, whose is this?

11 A. When I take it out, like I said, it was
12 raining, so when I showed it to him, I don't remember
13 what I said. I'm not going to do that, dangle it in
14 his face or anything like that. I secure it in the
15 vehicle.

16 Q. The item was shown to witness Davis and he
17 immediately said he did not know that it was in the
18 vehicle?

19 A. Uh-huh.

20 Q. So somebody had to show it to him and it
21 elicited the response?

22 A. It had to be me. I'm the one who got it.

23 Q. You're the one who wrote the report?

24 A. Yes.

25 Q. When you show it to him, are you saying you

1 showed it to him and waited to see what he said?

2 A. No. I showed it to him and on traffic stops
3 we can show stuff to people and they are like, that's
4 mine.

5 Q. Is there some sort of conversation, is this
6 yours, or do you know anything about this, is this your
7 dope?

8 A. I really wouldn't have need to do that because
9 I saw him pull this out of his pocket.

10 Q. At the scene you are kind of moot, a silent
11 guy?

12 A. No. I'm saying I don't recall what was said.
13 I don't recall what I said at all.

14 Q. But certainly reasonable to assume there might
15 have been a conversation, right?

16 A. Yes. He was standing between -- Mr. Davis was
17 standing between the patrol vehicle and the trunk of
18 his vehicle at that point.

19 Q. But at some point you guys, you showed him the
20 baggie. You're saying he said, I don't know anything
21 about it?

22 A. Yes.

23 Q. You are saying you took the baggie over to the
24 vehicle where Mr. Penton was?

25 A. Yes, to the patrol vehicle.

1 Q. It was your intention to put it in the front
2 seat to secure it?

3 A. Secure it.

4 Q. So you opened the front door to the vehicle?

5 A. The front passenger door.

6 Q. Or the back door where he was sitting?

7 A. The front passenger door was where I was
8 seated and I put it on the floorboard.

9 Q. So he was still sitting in the back? You
10 didn't open the door?

11 A. He's still sitting in the back running his
12 mouth.

13 Q. He's talking, upset still, and you put it in
14 the front floorboard passenger seat?

15 A. Yes.

16 Q. You are saying you didn't show it to him like
17 you showed it to Mr. Davis?

18 A. He knew what it was, it came out of his
19 pocket.

20 Q. I'm just asking you. You said you showed it
21 to Mr. Davis?

22 A. Uh-huh.

23 Q. Is there some reason you didn't so show it to
24 the other guy?

25 A. Didn't need to.

1 Q. So in your opinion you already knew he had it?

2 A. I observed him pulling it out of his pocket.

3 Q. Unknown object?

4 A. At that point it's unknown.

5 Q. So you never took an opportunity to show him
6 the bag and say, do you know anything about this, is
7 this yours?

8 MS. STABE: Asked and answered.

9 THE COURT: Sustained.

10 Q. (MR. AYERS) So you came and tossed it in the
11 front seat and he voluntarily blurts out, that is all
12 mine, my nephew didn't know anything about it?

13 A. Exactly.

14 Q. This is the same nephew he's screaming, you
15 set me up?

16 A. Exactly.

17 Q. But now he's telling -- he's calmly telling
18 you --

19 A. He's not calm until we get to the jail.

20 Q. But he's saying the person I'm angry at, who
21 set me up, is a good guy and you should let him go?

22 A. I don't think he wanted his nephew to go to
23 jail.

24 Q. And then -- okay. Then you said that you
25 place him in the patrol car. Let's talk about that a

1 little bit. You would agree with me that at the point
2 you handcuff him and put up him in the patrol car, he
3 was in custody?

4 A. He was detained at that point.

5 Q. What is the difference between detained and in
6 custody?

7 A. We haven't called to get any charges filed or
8 anything yet. He's not free to leave. I just
9 detained, right. Now, until we call the DA and run the
10 story down to them --

11 Q. He's not free to leave?

12 A. Uh-huh.

13 Q. From the moment you handcuffed him -- from the
14 moment you put hands on him and put handcuffs on him
15 and all the way to the car, he was not free to leave?

16 A. He was not free to leave.

17 Q. It certainly would be reasonable for someone
18 handcuffed and placed in the back of a patrol car to
19 believe he's not free to leave?

20 A. Yeah. And he also alluded to the fact, I
21 would have ran -- upset, a couple of choice words -- he
22 was going to kick my ass and stuff like that.

23 Q. Anybody in his position who has been
24 handcuffed and put in the back seat of a patrol car
25 like that, would you think it's reasonable for them to

1 believe that they are not free to go?

2 A. Yes.

3 Q. Not free to go means they are in custody,
4 right?

5 A. I would say detained but custody is fine.

6 Q. The reason you use "detain" is you understand
7 the whole custodial interrogation thing?

8 A. Sure.

9 Q. Don't say he's in custody. He's detained.
10 You talked to the prosecutor before this hearing. You
11 understand what the issues are, right?

12 A. Yes.

13 Q. So he's in the back and he's being detained.
14 Do you think that -- would it be reasonable for someone
15 in his position to think they were in custody?

16 A. Sure.

17 Q. Sure. Okay.

18 A. He's a career criminal so he knows in the back
19 seat, probably going to end up going to jail.

20 Q. So he's in custody as far as he knows. You
21 haven't told him yet what he's charged with, right,
22 because you haven't called it in?

23 A. I haven't called anyone yet.

24 Q. So you are saying when you went over to the
25 car, you did not talk Forest Penton?

1 A. He's still screaming.

2 Q. I understand. Did you ever talk to him at
3 that point? Did you go over to the car at any point
4 and talk to him?

5 A. No. He was so upset you couldn't get a word
6 in with him.

7 Q. So when you spoke to him at the window, put
8 your hands where I can see them --

9 A. Un-huh.

10 Q. After you handcuff him you never say --

11 A. If you're trying to say I interrogated him or
12 questioned him, if that's what you're trying to get
13 out, no. I never asked him where it came from; none of
14 that.

15 Q. But you did talk to him?

16 A. Asked him his name.

17 Q. So you did ask him questions?

18 A. We have to get everyone's name.

19 Q. So you were asking him questions like your
20 name, finding out information?

21 A. Un-huh.

22 Q. You didn't ask him any specific, specifically
23 about the dope?

24 A. Uh-huh.

25 Q. But you did talk to him?

1 A. Yes.

2 Q. It would be insane to arrest somebody, not
3 talk to them?

4 A. I told him, calm down.

5 He's going to beat me up, kill me, he
6 knows people, he's this Aryan Brotherhood, this, that,
7 the other. I should have ran. I could have. I could
8 kick your --

9 Q. Is that in your report, by the way?

10 A. No, it's not in my report.

11 Q. If you could show me in your report where any
12 of the stuff you just said is in your report?

13 A. It's not in there.

14 Q. This is like a year ago. You've done a lot of
15 arrests since then. So you understand my question was
16 about was he in custody and asking him questions?

17 A. Yes.

18 Q. All this stuff you're volunteering, these
19 threats, being in a gang, does that have something to
20 do with whether you asked him questions or not?

21 A. No.

22 Q. Are you saying you were so scared --and you
23 weren't scared?

24 A. He's in handcuffs.

25 Q. He's in custody. Everything is under control,

1 right?

2 A. Yes.

3 Q. So to be clear, all your interactions with
4 him, was any of that recorded?

5 A. No.

6 Q. Not audio, video, nothing?

7 A. No, sir.

8 Q. Was there a video in this patrol car?

9 A. There is a video in that patrol car but that
10 particular one don't work in there.

11 Q. There is a video camera, audio, but you are
12 saying it wasn't working?

13 A. I don't think there is audio in that vehicle.

14 Q. But there is video?

15 A. Video.

16 Q. Video of the stop and everything, but you are
17 saying it wasn't working?

18 A. Don't work.

19 Q. At any point in time did you give Mr. Penton
20 any of the Miranda warnings?

21 A. No.

22 Q. At any point in time?

23 A. No.

24 Q. Was there ever a point later that evening once
25 he was processed, arrested, did you try to get a

1 statement from him?

2 A. No.

3 Q. Certainly when you're on the scene, as far as
4 recording -- I assume you have a phone, cell phone,
5 smart phone?

6 A. Yes.

7 Q. It would be in your ability to record. When
8 somebody makes these statements, you could record it
9 with your phone?

10 A. Yeah, but usually on traffic stops I leave my
11 phone in the car.

12 Q. Again, we've already established this wasn't a
13 routine traffic stop?

14 A. On any scene I always leave the phone in the
15 car.

16 Q. This is one where you have a tip?

17 MS. STABE: Objection. Asked and
18 answered.

19 THE COURT: Sustained.

20 Q. (MR. AYERS) There was no effort on your part
21 to record any of this, right?

22 A. It's not my job to record.

23 Q. So your job is to write down in the report
24 what you recall, and that's it?

25 A. Yes.

1 Q. Okay.

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

4 MS. STABE: I pass the witness, your
5 Honor.

6 THE COURT: You may stand down.

7 THE WITNESS: Thank you, sir.

8 THE COURT: From the State?

9 MS. STABE: Can I have just one moment,
10 your Honor?

11 THE COURT: Yes.

12 (Pause.)

13 MS. STABE: State rests your, Honor.

14 THE COURT: You rest on your motion,
15 Mr. Ayers?

16 MR. AYERS: For the purposes of the
17 hearing, I need to call the defendant, Mr. Penton, to
18 the stand for the limited purposes of the statement.

19 FOREST PENTON,
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. AYERS:

23 Q. Sir, could you introduce yourself?

24 A. Forest Penton, Jr.

25 Q. Mr. Penton, obviously the Judge has heard a