

1 to reserve their right to make an opening at this time; is  
2 that correct, sir?

3 MR. AYERS: Yes, Your Honor, that is correct.

4 THE COURT: Call your first, please.

5 MS. STABE: State calls Deputy Santos.

6 THE COURT: This witness has previously been  
7 sworn, ladies and gentlemen.

8 Proceed, please.

9 MS. STABE: Thank you, Your Honor.

10 MICHAEL SANTOS,

11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 Q. (BY MS. STABE) Deputy, could you please introduce  
14 yourself to the jury?

15 A. Deputy Michael Santos.

16 Q. Where do you currently work?

17 A. The Harris County Sheriff's Department.

18 Q. What division are you in there?

19 A. Currently I'm assigned to the DEA, the HIDTA task  
20 force.

21 Q. Can you explain to the jury first what is the HIDTA  
22 task force?

23 A. HIDTA is the High Intensity Drug Trafficking Area.  
24 It encompasses southeast Texas. It's the major drug squad  
25 is what it is, major drugs.

1 Q. Okay. How long have you been working with the  
2 sheriff's office?

3 A. July will be 11 years.

4 Q. And then with the actual task force, how long have  
5 you been with them?

6 A. I've been with the DEA task force for two years and  
7 prior to that with the FBI task force, two years with that.

8 Q. Okay. What special or additional training did you  
9 have to go through to become a part of this major drug  
10 traffic force?

11 A. You have to pass several clearances through the  
12 government. Also I've taken several narcotics training  
13 classes: TNOA, which is the Texas Narcotics Officers  
14 Association; classes in Meridian, Mississippi, with the  
15 Naval Academy; just several law enforcement classes at the  
16 police academy, sheriff's department and HPD.

17 Q. Is that in addition to whatever training you needed  
18 to become a sheriff's deputy in the first place?

19 A. Yes, ma'am.

20 Q. What training was that?

21 A. In the basic academy, it's just general, basic  
22 narcotics, street-level narcotics. They introduce you to  
23 different narcotics, marijuana, cocaine, meth, heroin.

24 Q. Okay. And how long is your initial -- the academy  
25 to become a sheriff's deputy?

1 A. It's 20 -- it's seven months now. Seven months.

2 Q. Okay. And so, you did that, you became a certified  
3 peace officer at that point?

4 A. Yes, ma'am.

5 Q. Okay. And then you were hired by the sheriff's  
6 office?

7 A. Yes.

8 Q. And you said you'd been on a task force with either  
9 the FBI or DEA for now about four years?

10 A. About four years.

11 Q. Okay. What's the purpose of this task force?

12 A. This task force is targeting narcotics, all kinds,  
13 from -- it could start off at street level all the way up to  
14 major drugs, which is cartels, major drugs, kilos, several  
15 thousand pounds of marijuana, heroin. It takes us all over  
16 the world.

17 Q. Okay. And when you're working on a shift, what is  
18 a typical day like for you? What are your typical duties?

19 A. We do a lot of surveillance. We also do street  
20 patrol where we're inside the patrol car, a lot of  
21 undercover work. Sometimes I'm in uniform, sometimes in  
22 plain clothes. It just varies from day to day.

23 Q. And how do you get a specific assignment? I mean,  
24 how does that all get started?

25 A. It could be several different things. It could be

1 a spin-off from another case and we focus in a different  
2 direction. We could receive tips from citizens, anonymous  
3 tips from telephone calls. There's also an iWatch system  
4 where people can e-mail us an anonymous tip, so it comes in  
5 from several different ways.

6 Q. And so, at that point y'all start following up on  
7 those tips and then see where it could potentially lead?

8 A. Yes, ma'am.

9 Q. On August the 16th, 2013 -- I mean -- sorry.

10 A. April.

11 Q. April 16th, 2013, were you working with the High  
12 Intensity Drug Trafficking Area task force at that time?

13 A. Yes, ma'am.

14 Q. Were you on duty that day?

15 A. Yes, I was.

16 Q. Do you recall what shift you were working?

17 A. Yes, I do.

18 Q. What were those hours?

19 A. Evening shift, I want to say 2:00 to 10:00.

20 Q. Okay.

21 A. That day we were in a patrol car.

22 Q. Okay. So you were in a marked patrol unit?

23 A. Yes, ma'am.

24 Q. Were you in uniform or plain clothes that day?

25 A. Full, full uniform.

1 Q. And let's go back -- you said there were  
2 multiagencies involved in this task force?

3 A. Yes, ma'am.

4 Q. How do the agencies work together, I guess, to  
5 fight this -- the major drugs?

6 A. In our group, we have obviously the sheriff's  
7 department, HPD, Pasadena, DEA agents, FBI agents, ICE  
8 agents, border patrol, that's just in our particular group.  
9 There's five groups on our floor and there's just several  
10 different agencies in there from -- all the way from the FBI  
11 to the constables.

12 Q. How do you collaborate? Like, how do you -- what  
13 do y'all do together?

14 A. We all work on the same -- our group focuses -- we  
15 all work together -- if we're doing an investigation and  
16 it's in Harris County, then obviously Harris County takes  
17 over the investigation. If it's in Pasadena, then they  
18 would be the lead and they know the ins and outs of their  
19 area.

20 Q. Uh-huh. So, you're getting information about, you  
21 know, like, drugs or cartels, moving drugs in and out of the  
22 Houston area and then you -- that's -- when you take over  
23 the investigation?

24 A. Our investigation sometimes leads us -- leads us  
25 all the way to the border and we'll go down to the border

1 and follow drugs up, see where they take them, take them  
2 down there or if they start breaking it up and start  
3 knocking people off as they start moving dope from here --  
4 it goes all the way up -- we've gone as far up as New York  
5 City.

6 Q. Okay. So, this is -- I mean, is this a major  
7 problem in the Houston area?

8 A. Yes, it is.

9 Q. Okay. Our cartels, have they become a major  
10 problem in the Houston area?

11 A. Yes.

12 Q. So you said you -- even though you're a sheriff's  
13 deputy, you have the authority -- you go all the way down to  
14 Brownsville -- you follow the drugs wherever it leads you in  
15 the country?

16 A. Yes, ma'am. As a task force area, we're -- I want  
17 to say it's Title 21. We can do the same duties as a  
18 federal agent.

19 Q. Okay. And so, let's go back to April 16th, 2013.  
20 You said that you were on duty that day and you were in a  
21 marked patrol car that day?

22 A. Yes, ma'am.

23 Q. Were you working with any partners?

24 A. My partner, John O'Brien.

25 Q. Do y'all always work together or is it just

1 sometimes?

2 A. We always work together.

3 Q. Okay. And who was the driver of the patrol car?

4 A. John O'Brien was driving that day.

5 Q. Were you stationed in a particular area or part of  
6 Houston?

7 A. We were in east Harris County, which is Channelview  
8 area.

9 Q. Okay. And, I mean, can you give us roads,  
10 intersections where you guys were at?

11 A. It's I-10 east which is Sheldon, Uvalde,  
12 Wallisville, in that general area.

13 Q. So on that day you were stationed at I-10 and  
14 Sheldon Road?

15 A. I-10 and Sheldon, yes, ma'am.

16 Q. And that location is in Harris County, Texas?

17 A. Yes, it is.

18 Q. Okay. And you said you worked the night shift that  
19 day?

20 A. Evening, that's evening shift.

21 Q. Or evening shift. Sorry. And that was 2:00 PM to  
22 10:00 PM?

23 A. Yes, ma'am.

24 Q. Do you recall that day, around 7:30, observing a  
25 car that was committing any traffic violations?

1 A. Yes, yes, I did.

2 Q. Can you describe what the car was -- looked like?

3 A. It was a Cirrus, a Chrysler Cirrus, I think that's  
4 what it is, four door, traveling north underneath I-10.

5 Q. Okay. And what did the car do that drew your  
6 attention?

7 A. The car tried to beat a red light -- tried to beat  
8 that was turning yellow, didn't beat the light and ran a red  
9 light.

10 Q. So was that the only traffic violation that you saw  
11 or were there any others?

12 A. That was the only one.

13 Q. Okay. And once you observed this car running the  
14 red light, what did you do?

15 A. We pulled in behind the car and activated our  
16 emergency equipment, lights and sirens.

17 Q. Did the car pull over immediately?

18 A. No.

19 Q. How long did it take to pull over?

20 A. Just estimating, I would say about a thousand  
21 yards.

22 Q. Okay. So at some point the car did pull over?

23 A. Yes.

24 Q. And do you recall the location it pulled over?

25 A. It crossed over the railroad tracks and it pulled



1 into a, like, a little convenience store.

2 Q. Okay. Are there any other stores that are right  
3 next to that convenience store?

4 A. There's several places that car could have pulled  
5 over, several different businesses.

6 Q. Okay. So you're saying along the way on Sheldon  
7 Road there are several businesses before that --

8 A. Convenience store.

9 Q. -- convenience store?

10 A. Yes, ma'am.

11 Q. And right next to the convenience store, is there  
12 also a car wash?

13 A. I think there's a car wash right next to it.

14 Q. Okay. So once you had the car pulled over, what  
15 did you do?

16 A. I approached the passenger side and my partner,  
17 John O'Brien, approached the driver's side.

18 Q. Okay.

19 MS. STABE: May I approach the witness, Your  
20 Honor?

21 THE COURT: You may.

22 Q. (BY MS. STABE) I'm showing you what's been  
23 previously marked as State's Exhibits 1 and 2. Do you  
24 recognize these?

25 A. Yes, I do.

1 Q. Okay. Do these images fairly and accurately depict  
2 the images they purport to display?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. STABE: Your Honor, at this time I'll  
6 offer State's Exhibits 1 and 2 into evidence after tendering  
7 to opposing counsel.

8 MR. AYERS: I have no objections, Judge.

9 THE COURT: State's Exhibits 1 and 2 are  
10 admitted.

11 MR. AYERS: 1 and 2.

12 MS. STABE: May I publish them to the jury,  
13 Your Honor?

14 THE COURT: You may.

15 Q. (BY MS. STABE) So Deputy Santos, we're looking at  
16 State's Exhibit No. 1, and just so the jury can see because  
17 it's a little bit hard, what are we looking at in State's  
18 Exhibit 1?

19 A. That's I-10 east at Sheldon Road.

20 Q. Okay. Is that where you were stationed that day?

21 A. Yes, ma'am.

22 Q. And were you stationed, I guess, north of I-10 or  
23 south?

24 A. North of I-10.

25 Q. Were you -- I mean, can you give the jury -- you

1 can actually, if you point on the map, you can show -- it  
2 will make a dot.

3 A. I think this is the Shell station right here.

4 Q. Okay. That's where you were stationed -- your  
5 patrol car was parked that evening?

6 A. Yes, ma'am.

7 Q. And actually here's -- State's Exhibit No. 2 is a  
8 closer view of the area and so, again, can you tell the jury  
9 what we're looking at?

10 A. This is I-10 -- this is I-10 and this is Sheldon.  
11 This is a Shell station right here and right here is a  
12 Whataburger. We're parked right alongside there.

13 Q. Okay. And at what point did you activate your  
14 lights on your car?

15 A. The vehicle was traveling north and he passed this  
16 stop light right here. Right about this area we activated  
17 our emergency equipment, I mean, right when it passed us.

18 Q. And is the area that the defendant pulled over, is  
19 that even on the map or is it further north?

20 A. It's further north.

21 Q. Okay. So all these shopping centers and  
22 everything, those are areas that he could have pulled over?

23 A. Yes, ma'am.

24 Q. The driver of that car?

25 A. (No response.)

1 Q. And Deputy, as part of the task force that day, did  
2 you receive any tip from law enforcement about a description  
3 of a vehicle to look for?

4 A. Not at -- not earlier in the day but afterwards,  
5 yes, we did.

6 Q. Okay. Well, I'm saying before you pulled this car  
7 over, had you been given any information from other law  
8 enforcement agencies about a car?

9 A. Yes, ma'am.

10 Q. Okay. And did this car meet that description?

11 A. Yes, it did.

12 Q. So, I guess, were you kind of on the lookout for a  
13 car that matched that description at that time?

14 A. Yes.

15 Q. And when you saw it, what were you looking for?

16 A. For a four-door Chrysler Cirrus.

17 Q. Okay. So once you saw the car, I mean, obviously,  
18 did you just pull it over without any reason?

19 A. No, we had probable cause. He ran the red light.

20 Q. Okay. And so, you always have to have probable  
21 cause before you pull a car over; is that right?

22 A. Yes, ma'am.

23 Q. And so, once you pulled the car over and they  
24 pulled into that convenience store lot, you said you  
25 approached on the passenger side and Deputy O'Brien on the

1 driver's side?

2 A. Yes, ma'am.

3 Q. And how many people were in the car?

4 A. Two.

5 Q. Do you see -- well, let's say -- where are they  
6 located?

7 A. The defendant was in the passenger seat and the  
8 driver was driving in the driver's seat.

9 Q. Okay. So there are two people in the car:  
10 Driver's seat, front passenger seat?

11 A. Yes, ma'am.

12 Q. And so, you said the defendant was in the front  
13 passenger seat. Do you see the person you saw in the front  
14 passenger seat today in the courtroom?

15 A. Yes, I do.

16 Q. Can you please point to him and identify an article  
17 of clothing he's wearing?

18 A. Button-down striped shirt.

19 MS. STABE: May the record reflect the witness  
20 has identified the defendant?

21 THE COURT: It will.

22 Q. (BY MS. STABE) And so, the defendant, he was in  
23 the front passenger seat that day?

24 A. Yes.

25 Q. What was the weather like?

1 A. It was drizzling.

2 Q. Okay. Was it light out? Was it dark? What was  
3 the lighting like?

4 A. It's sunset. It's not dark yet.

5 Q. Okay. And when you went up to the car, did you see  
6 anything that caught your attention?

7 A. I seen the defendant making furtive movements,  
8 sticking his hands in his pockets, moving all over the  
9 place.

10 Q. Can you explain to the jury, what do you mean by  
11 "furtive movements"?

12 A. Just squirming around the car, reaching in his  
13 pockets, just moving around.

14 Q. Okay. As an officer, when you see something like  
15 that, I mean, what goes through your mind?

16 A. I mean, our -- my safety first. I don't know what  
17 he's doing, if he's reaching for something, just don't have  
18 a clue what he's doing.

19 Q. Okay. So, when you see that type of action,  
20 what's -- you know, what are you trained to do?

21 A. Order him to show me your hands and I unholstered  
22 my weapon.

23 Q. Okay. When you say "unholster," I mean, did you  
24 just have your hand on it or do you pull it all the way out?

25 A. I took it all the way out.

1 Q. Okay. Where did you point it whenever you pulled  
2 it out?

3 A. I pointed it at the defendant.

4 Q. So when you ordered him to show his hands, did he  
5 show his hands?

6 A. No, he did not.

7 Q. What was he doing?

8 A. He was reaching in his pocket and then he shoved  
9 something between the center -- center console and the  
10 passenger seat.

11 Q. Okay. And did you get a good look at that time of  
12 what that object was?

13 A. Yes, ma'am.

14 Q. What did it look like?

15 A. Clear plastic bag.

16 Q. Okay. And -- but at the time, did you know at that  
17 point what was actually in the bag?

18 A. I didn't know what was in the bag at the time.

19 Q. And then what happened after that?

20 A. Continued ordering him to do it. His window was --  
21 is cracked a little bit. Continued: Show me your hands,  
22 show me your hands. He shoved his hands in his pockets  
23 again.

24 Q. And then what happened after that?

25 A. He pulled out a second bag.

1 Q. Okay. And could you tell -- I mean, size of the  
2 bag? Were they the same size, different sizes?

3 A. One bag was larger than the other. Second bag was  
4 larger than the other but I couldn't tell at the time if --  
5 what type of dope it was.

6 Q. Okay. So, he reaches his hands into his pockets a  
7 second time. Do you recall at that point -- I know it's  
8 been over a year ago -- what pocket he was reaching into?

9 A. I can't recall. I want to say it was his left  
10 pocket but I'm not sure.

11 Q. Okay. With his left hand in his left pocket?

12 A. Yes, ma'am.

13 Q. And so, he pulled the second baggie out. What does  
14 he do with that second baggie?

15 A. He attempts to toss it or -- toss it up but it  
16 lands almost where the first bag was between the center  
17 console and his left leg, or his left foot.

18 Q. And when you first got up to the car and he starts,  
19 you know, making these furtive movements, you tell him to  
20 show you his hands, is he saying anything at this time?

21 A. He is highly upset, cursing, yelling at the driver,  
22 You work for the man, you set me up, you guys are robbing  
23 me, just -- excuse me -- giving us a lot of curse words, I  
24 mean, just a lot of curse words.

25 Q. Okay. I mean, did you -- I mean, was it in a



1 threatening manner at you guys?

2 A. At me and at the driver.

3 Q. Okay. So both threatening you and the front -- the  
4 person that was in the driver's seat?

5 A. Yes, ma'am.

6 Q. And after he pulled out the second bag, you said he  
7 kind of tosses it?

8 A. Yes.

9 Q. Towards what?

10 A. Towards the glove box or the dashboard but he's got  
11 his seat belt on, so it's kind of a little toss, hits and it  
12 just drops by his foot.

13 Q. Okay. What do you do after you see all that?

14 A. At that point I'm scared. I mean, I don't know  
15 what he's doing. I open up the passenger door and put a  
16 handcuff on him while he's still seated in the car, turn him  
17 around and then put the other handcuff on him while he's  
18 still seated in the car.

19 Q. Why did you do that or is there a reason you did  
20 that with him seated in the car?

21 A. Once I opened up the door, he was complaining that  
22 something was wrong with his knee or his ankle or it was  
23 broken or fractured or something like that.

24 Q. Okay. So why did you decide to handcuff him in the  
25 car?

1           A.     Because I was afraid if he got out, the fight would  
2     be on or he would try to run or -- he's still contained in  
3     that area so it's hard to -- once he's out, I mean, it's me  
4     and him then.

5           Q.     Okay.  So once you handcuff him, what do you do  
6     next?

7           A.     I immediately take him from -- I pat him down and I  
8     take him to the patrol car and place him in the rear of the  
9     patrol car.

10          Q.     When you patted him down, did you -- did he have  
11     anything else on him?

12          A.     I can't recall if he had miscellaneous stuff in his  
13     pockets; I don't recall.

14          Q.     Okay.  But no other items that you thought were  
15     contraband or suspicious?

16          A.     No, ma'am.

17          Q.     And you put him in the back of your patrol car?

18          A.     Yes.

19          Q.     Whenever you put him in the back of your car, is  
20     the window rolled up in the backseat or is it rolled down?

21          A.     The window is rolled up; it's raining.

22          Q.     All the windows in your car, are they rolled up?

23          A.     Yes, ma'am.

24          Q.     During this time, what is Deputy O'Brien doing?  Do  
25     you know?

1           A.    He's dealing with the driver of the vehicle.  If I  
2    can recall, I think he's getting him right -- when -- I'm  
3    walking back to the car, he's getting him out of the  
4    vehicle.

5           Q.    Okay.  And whenever you and Deputy O'Brien are  
6    working together and there's multiple people in a car, I  
7    mean, how do you decide who's going to do what?

8           A.    It just depends what our approach is.  If I  
9    approach the passenger side, then the passenger's obviously  
10   my responsibility.  If he approaches the driver's side, then  
11   that's his area of responsibility.

12          Q.    Okay.  So, once you get the defendant handcuffed, I  
13   mean, is he -- is he detained or what?  What are you doing  
14   with him at that time?

15          A.    At that point he's pretty much detained.  We just  
16   have him in the back of the car for officer safety so he  
17   doesn't flee the scene.  I go back to the vehicle that they  
18   were in and I think Mr. Davis gives Deputy O'Brien consent  
19   to search the vehicle.

20          Q.    Okay.  And at that time the defendant, he's  
21   detained.  Is he in custody?

22          A.    I don't think he's in custody at that point; he's  
23   just detained.

24          Q.    To you what was the difference?

25          A.    In custody is when I call the District Attorney to

1 accept charges; they say, okay, take this guy to jail.  
2 Right now he's detained because several times I've had  
3 people in the backseat of the patrol car, we call the DA to  
4 get charges and they'll dismiss them, they don't accept  
5 charges, and we let them out.

6 Q. So at this point you're just furthering your  
7 investigation?

8 A. Yes.

9 Q. And so, you go back to the patrol car and what do  
10 you do?

11 A. Well --

12 Q. I'm sorry. You go back to the suspect car?

13 A. Yes, ma'am. And the driver gives us consent,  
14 because he's in control and custody of the car, gives us  
15 consent to search and I begin the search of the vehicle.

16 Q. Okay. When you're searching the vehicle, explain  
17 to the jury how do you conduct your search?

18 A. Just -- searches are methodical. We're taught to  
19 search from the front to the back so we don't miss anything.  
20 So I start obviously from the dashboard, work my way back to  
21 the area where I saw Mr. Penton placing something between  
22 the seats.

23 Q. Okay. Do you search, I mean, all compartments, all  
24 containers, like, open things up? How are you looking? You  
25 know, what do you do?

1           A.    We search -- like I said, methodically, it's --  
2           it's just a general, look at the dash, move back a little  
3           bit more, just keep searching but we do search everything.

4           Q.    Okay.  So, you said you went to the place where the  
5           defendant, Forest Penton, was, it looked like, putting  
6           items?

7           A.    Yes, ma'am.

8           Q.    And did you find anything in that area?

9           A.    I found a small plastic baggie with a crystal-like  
10          substance in it.  Two of them.

11          Q.    Two baggies?

12          A.    Yes, ma'am.

13          Q.    And where exactly did you find them?

14          A.    One was shoved between the passenger seat and the  
15          center console and another one was just on the floorboard  
16          just a little by the center console.

17          Q.    Okay.  Under the law, when someone gives you  
18          consent to search, I mean, does that give you enough reason  
19          to search the car?

20          A.    Yes, ma'am.

21          Q.    Okay.  And also, I guess, if you see something in  
22          plain view, does that also give you reason to search the  
23          car?

24          A.    Yes, ma'am.

25          Q.    Okay.  So you had, I guess, it seems like, multiple

1 reasons --

2 A. Yes.

3 Q. -- to be able to search that car that day?

4 A. Yes, ma'am.

5 Q. And what did you see in plain view?

6 A. Crystal meth.

7 Q. Okay. You said you found one bag in between the  
8 seat and center console?

9 A. Yes.

10 Q. Was that the same area that the defendant was  
11 putting his hands?

12 A. It's exactly the same one.

13 Q. Did you find anything else in that area?

14 A. There was nothing else there.

15 Q. Okay. So the only thing was that one baggie where  
16 the defendant had put his hands?

17 A. Yes, ma'am.

18 Q. And then you said you found the other baggie where?

19 A. Just a little on the floorboard, just a little  
20 further up from where the first bag was found.

21 Q. Okay. And which bag was that? Was that consistent  
22 with what you saw the defendant throwing?

23 A. Yes, ma'am.

24 Q. Okay. Now when you looked at the bags, based on  
25 your training and experience, what did it look like to you?

1 A. Crystal meth.

2 Q. Okay. What does that look like?

3 A. It's almost like crushed glass or ice cubes that  
4 are crushed up.

5 Q. Okay. And I mean, explain to the jury the amounts  
6 that it looked like? Like, does it -- is it personal use?  
7 Did it look like more than personal use?

8 A. The smaller bag looked like personal use. That's  
9 the original one that was being shoved. The second bag was  
10 a larger amount.

11 Q. Okay. Can you explain to the jury, I mean, how  
12 much, in your experience, is a personal use amount of  
13 crystal meth?

14 A. A personal -- it's less than a gram. It's a very  
15 small amount to get high with meth.

16 Q. Okay. So typically when you're working in the task  
17 force and you arrest somebody and they have only about a  
18 personal use amount of methamphetamines, I mean, is it  
19 usually less -- it's usually less than a gram or is it  
20 sometimes more?

21 A. It's right around a gram usually.

22 Q. How many uses, I guess, can a person get out of 1  
23 gram?

24 A. Maybe two.

25 Q. Okay. And do you know around now what the street

1 value is of 1 gram of crystal meth?

2 A. It could be anywhere from a hundred dollars up to  
3 \$500 a gram.

4 Q. Okay. So, the -- you said the smaller baggie  
5 looked like a personal use amount; the large baggie looked  
6 like a lot more than personal use?

7 A. Yes, ma'am.

8 Q. In your experience, when somebody has that large  
9 amount of drugs, what does that indicate to you?

10 A. It's their intent to deliver or sell.

11 Q. Okay. Did you see anything else in the car, like  
12 ledgers or anything like that?

13 A. No, ma'am.

14 Q. So this was just based on the amount of drugs that  
15 you found, you felt there was possible delivery or selling  
16 going on?

17 A. Yes, ma'am.

18 Q. Once you found the drugs, what do you do with them?

19 A. I take them out of that vehicle and I place them in  
20 the front passenger floorboard of our patrol vehicle.

21 Q. Okay. Why do you put them in that location?

22 A. It's secure there. You don't want to leave them in  
23 the car or on the hood or anything like that. The wind  
24 could blow them; they could get wet.

25 Q. And when you go up to your car and you open the



1 door, put the drugs in, is there anything that happened?

2 A. Mr. Penton is still extremely upset, threatening  
3 us, threatening me, threatening to kill me, telling me I'm  
4 going to rob him, just cursing me up and down and he can see  
5 through the driver's window -- he can see through the cage  
6 through the front window where the driver's standing and he  
7 makes a statement saying that that's all mine.

8 Q. Okay. So, what was he referring to?

9 A. To the meth.

10 Q. Okay. And did he -- I know he said, That's all  
11 mine. Did he say anything else?

12 A. That's all mine. Let my nephew go.

13 Q. Okay. So at that point, I mean, is he talking  
14 about the driver of the car?

15 A. Yes.

16 Q. Had y'all identified the driver of the car?

17 A. I never dealt with the driver, so I think John  
18 O'Brien was still talking to him.

19 Q. Okay. Deputy O'Brien dealt with the driver?

20 A. Yes.

21 Q. And did you do anything to identify who the  
22 defendant was?

23 A. I think he provided -- I can't recall if he had his  
24 ID on him or if he provided his name and birthday and we ran  
25 them on our computer system inside the vehicle.

1 Q. Okay. And so what was -- did you find out what the  
2 defendant's name is?

3 A. Forest Penton, yes, ma'am.

4 Q. Okay. Is it Forest Penton, Jr.?

5 A. Forest Penton, Jr.

6 Q. And so, he makes this statement, that the drugs are  
7 his. What do you do with that?

8 A. At that point, it's kind of a done deal. He  
9 claimed it. We didn't find any other drugs in the vehicle  
10 or John O'Brien didn't find any other drugs on the driver,  
11 so it's kind of done after that. He claimed it, claimed  
12 ownership.

13 Q. Okay. And the only drugs that you did find, they  
14 were right in the vicinity of where the defendant had been  
15 seated?

16 A. Yes, ma'am.

17 Q. And actually where the defendant had been putting  
18 his hands; is that right?

19 A. Yes, ma'am.

20 Q. At that point, you had the drugs, you had the  
21 defendant's admission. What do you do?

22 A. We called the DA, see if they're going to accept  
23 charges, called DA intake.

24 Q. Okay. And what happens?

25 A. Called DA intake, ran the story down to them and

1 they accepted charges of possession of a controlled  
2 substance.

3 Q. What's the reason that you call DA intake when you  
4 have a potential case?

5 A. They are the people who let us know if they're  
6 going to accept charges or if we need to further the  
7 investigation or refer it to some detectives or our  
8 narcotics units.

9 Q. Okay. And so that -- since you're -- I guess the  
10 officers aren't just, you know, filing charges on their own?

11 MR. AYERS: Your Honor, I'm going to object at  
12 this point. It's speculation at this point what the DA's  
13 office is going to do.

14 THE COURT: Sustained.

15 Q. (BY MS. STABE) But at that point when you called  
16 the DA's office, they accepted charges of possession with  
17 intent to deliver methamphetamine?

18 A. Yes, ma'am.

19 MS. STABE: I'll pass the witness.

20 MR. AYERS: May I proceed, Judge?

21 THE COURT: You may.

22 **CROSS-EXAMINATION**

23 Q. (BY MR. AYERS) Deputy Santos, I'll just ask you a  
24 few questions. I got that right, right? Deputy? It's  
25 Deputy Santos?

1 A. Yes, yes, sir.

2 Q. All right. And you said that you were working with  
3 this, I think you called it, HIDTA task force. It's a  
4 multijurisdictional thing, federal agencies are involved, et  
5 cetera, right?

6 A. Yes, sir.

7 Q. And after this incident back in April 16th, 2013,  
8 you wrote an offense report, right?

9 A. Yes, sir, I did.

10 Q. And you do that right after the event?

11 A. Yes.

12 Q. While your memory is fresh, right?

13 A. Yes, sir.

14 Q. And the purpose of the offense report is to record  
15 important details about what happened at the scene?

16 A. Yes, sir.

17 Q. And anything important about the facts of the case,  
18 right?

19 A. Yes, sir.

20 Q. And so that later on, a year or more later when you  
21 testify, like in this case, you have something to refresh  
22 your memory from?

23 A. Yes, sir.

24 Q. Certainly in this case you had an opportunity  
25 before you testified to look at your offense report, right?

1           A.    Yes, sir, I have.

2           Q.    And the offense report in this case, you wrote it  
3 yourself?

4           A.    Yes, I did.

5           Q.    And you've had an opportunity to talk to the  
6 prosecutor before you testified and go over everything in  
7 your testimony before, correct?

8           A.    Yes, sir.

9           Q.    Now, you talked about the stop and in your police  
10 report that you wrote after the fact, you mentioned seeing a  
11 vehicle fail to stop at a red light at Interstate 10 and  
12 Sheldon and I think it says: Failed to stop at a designated  
13 point. Does that -- is that what you wrote?

14          A.    Yes, sir.

15          Q.    And what exactly does that mean, failed to stop at  
16 a designated point?

17          A.    Didn't stop for the red light.

18          Q.    Okay. And then you pull in and institute the  
19 traffic stop; is that correct?

20          A.    Yes, sir.

21          Q.    All right. Now you then mentioned that -- again,  
22 you've had a lot of cases, stops, things you've worked on  
23 since then, right?

24          A.    Yes, sir.

25          Q.    In the last over a year. And so, are you

1     testifying strictly from the offense report or from your  
2     memory?

3           A.    Both.

4           Q.    Okay.  But anything important, you would have put  
5     in there, right?

6           A.    Yes, sir.

7           Q.    Now, in your offense report, you didn't mention  
8     anything about this tip from this other agency, did you?

9           A.    No, sir.

10          Q.    All right.  And in fact, the prosecutor asked you,  
11     in order to stop the car, you have to have some probable  
12     cause, right?

13          A.    Yes, sir.

14          Q.    And in this case, whatever this tip may have been,  
15     obviously whoever these other people were, they didn't have  
16     any probable cause, did they?

17          A.    I'm not sure if they did or not.

18          Q.    Well, if they had, they could have stopped the car  
19     or they could have told you to stop the car based on their  
20     probable cause, right?

21                    MS. STABE:  Objection to speculation.

22                    THE COURT:  Sustained.

23          Q.    (BY MR. AYERS)  Well, is that not a possibility?  
24     Do you not -- you're a law enforcement officer, right?

25                    MS. STABE:  Objection, again --

1                   MR. AYERS: Your Honor, I'm going to ask the  
2 record reflect I --

3                   THE COURT: All right. I'm going to let him  
4 complete his question before you make your objection,  
5 please.

6                   MR. AYERS: Your Honor, I'm going to ask the  
7 record to reflect, just so it's clear, that every time I've  
8 asked these questions, the witness looks at the prosecutor  
9 before he answers the question.

10                  THE COURT: All right. Just move on, please.

11                  Q. (BY MR. AYERS) Okay. I'd like your answer, not  
12 hers, okay?

13                  A. Yes, sir.

14                  Q. All right. So, as a law enforcement officer, have  
15 you ever had occasion to communicate with another law  
16 enforcement officer and then act based on their probable  
17 cause?

18                  A. Yes, sir.

19                  Q. So it can happen, right?

20                  A. It can happen.

21                  Q. Okay. In this case that's not what happened,  
22 right?

23                  A. No, it -- I observed him --

24                  Q. No, no, no. I'm saying another law enforcement  
25 agency did not communicate to you probable cause that --

1 A. No, sir, they did not.

2 Q. In fact, they told you, Develop your own probable  
3 cause?

4 A. Yes, sir.

5 Q. So you were really targeting this car when you saw  
6 it and the -- waiting for it to commit a traffic violation  
7 so you could pull it over, right?

8 A. Yes.

9 Q. What's called a pretext stop, right?

10 A. Yes, sir.

11 Q. Okay. But you didn't put any of that in your  
12 report?

13 A. No, sir.

14 Q. Okay. Now, you also, in your report, you talk  
15 about -- and I think you testified it was raining, right?

16 A. Yes, sir.

17 Q. And it was about 7:30 in the evening, in April,  
18 right?

19 A. Yes, sir.

20 Q. So it was getting on dusk, dark?

21 A. Yes, sir.

22 Q. All right. And since it's raining, the windows of  
23 your car are up, right?

24 A. Yes.

25 Q. And the windows of the car you stopped are up?



1 A. Halfway rolled down.

2 Q. All right.

3 A. Just cracked, cracked.

4 Q. All right. So there's a little crack in the top of  
5 the window?

6 A. More than a little crack, I mean.

7 Q. All right. Well, you held up your hands about two  
8 to three inches.

9 A. (Indicating.)

10 Q. Oh, now you're changing it to this much.

11 A. Well, I --

12 Q. Well, I'm just asking you. I wasn't there. When I  
13 asked you the question first, you went like this  
14 (indicating). Now you're saying like this (indicating).

15 A. The window's open. The window's open.

16 Q. All right. All right. so you're saying the window  
17 of this car was actually open?

18 A. Yes. Well, it's cracked or open or halfway rolled  
19 down.

20 Q. Well, you're driving around with your windows up  
21 because it's raining but they're driving around with their  
22 windows down; is that what you're saying?

23 A. Yes, sir.

24 Q. Okay. Because obviously when you walked up to the  
25 car, if the window is up, you probably couldn't see very

1 well. It's dark and rainy, right?

2 A. It's not dark and it's drizzling.

3 Q. Now, did you mention anywhere in your report  
4 whether the windows were up or down?

5 A. I don't recall if I put --

6 Q. You certainly didn't mention that they were down,  
7 though, did you?

8 A. No.

9 Q. Well, you've had an opportunity to read your  
10 report.

11 A. I don't have a copy of my report.

12 MR. AYERS: Your Honor, could he get a copy of  
13 his report from the prosecutor?

14 THE COURT: If it's available.

15 A. Thank you.

16 Q. (BY MR. AYERS) Officer, that's the same report  
17 that you yourself wrote, right?

18 A. Yes, sir.

19 Q. Over a year ago, correct?

20 A. Yes.

21 Q. Same report you read before you testified today,  
22 correct?

23 A. Yes.

24 Q. You've looked at that report recently, right?

25 A. Yes.

1 Q. Okay. Same report you reviewed with the prosecutor  
2 before you testified, right?

3 A. Yes, sir.

4 Q. And nowhere in there does it say anything about the  
5 windows of the car were down, right?

6 A. No, but it does mention the light rain.

7 Q. Light rain. That's right. And usually when it's  
8 raining, people have the windows to their car up, like you  
9 and Deputy O'Brien did, right?

10 A. Yes, sir.

11 Q. But certainly you're telling the jury that when you  
12 walked up, the window was down, so you could clearly see in  
13 the car; is that right?

14 A. I could see in the car.

15 Q. All right. And even though they didn't pull over,  
16 I think you made -- the prosecutor asked you -- they didn't  
17 pull over right away, right?

18 A. No, sir.

19 Q. You said it was a thousand yards?

20 A. Estimating.

21 Q. All right. And drove by some other places, so  
22 certainly if they were going to hide something, they would  
23 have had ample time to do that before they pulled over?

24 A. Yes, sir.

25 Q. But your testimony is that right when they pulled

1 over and right as you're walking up to this open window that  
2 you can clearly see in, you see this hiding going on; is  
3 that right?

4 A. Yes, sir.

5 Q. Now, in your report, would you agree with me that  
6 what you actually wrote at the time was that you saw  
7 Mr. Penton place his hands in his shorts pocket, you ordered  
8 him to remove his hands, he would not comply, you ordered  
9 him a second time and then you observed him remove an  
10 unknown object --

11 MS. STABE: Your Honor, I'm going to object to  
12 defense counsel reading from something that's not in  
13 evidence.

14 THE COURT: Sustained.

15 Q. (BY MR. AYERS) All right. Well, let me ask you to  
16 consult with your -- look at your offense report.

17 A. Yes, sir.

18 Q. Anywhere in there do you mention in the paragraph  
19 where you talk about what you saw when you walked up to the  
20 car, anywhere in there do you mention anything about a  
21 plastic baggie?

22 A. No, I refer to it as a unknown object.

23 Q. All right. So the report you wrote that night, you  
24 stated that it was an unknown object that you saw?

25 A. Yes, sir.

1 Q. Placed between the passenger seat and the console.  
2 Now, anywhere in there do you mention a second baggie in  
3 your report?

4 A. In here it says I ordered him a second time and  
5 observed him remove an unknown object from his pocket and  
6 shoved it between the passenger seat and the center console.

7 Q. All right. So that's what you said.

8 A. Okay.

9 Q. And again, didn't refer to it as a plastic baggie;  
10 it's an unknown object, correct?

11 A. Yes.

12 Q. Then you tell him again, Leave your weapon. You  
13 think he's reaching for a weapon. That's what you wrote,  
14 right?

15 A. Yes, sir, right here, it says, Suspect attempted to  
16 then place his left hand back inside his left shorts pants  
17 pocket.

18 Q. And what you were afraid of was he was getting a  
19 weapon. That's what you said, right?

20 A. At that point I'm unsure of what he's getting.

21 Q. What does the very next sentence that you wrote  
22 say?

23 A. I feared, for our safety, Suspect Penton was  
24 reaching for a weapon.

25 Q. So as I just said and asked you, you phrased that

1 he was reaching for a weapon?

2 A. Yes, sir.

3 Q. You don't mention anything about any plastic  
4 baggies or drugs at that point, correct?

5 A. No, sir.

6 Q. And you order him at that point and unholster your  
7 weapon, right?

8 A. Yes.

9 Q. And you can read your whole report. In fact --

10 MR. AYERS: May I approach, Judge?

11 THE COURT: Uh-huh.

12 Q. (BY MR. AYERS) If you can show me in the body of  
13 that report, is there any place you mention this throwing of  
14 another baggie towards the glove compartment or any of that?  
15 Is that there anywhere in your report?

16 A. No, sir, it's not in here.

17 Q. Just like the other thing about the tip and working  
18 with the other agency and the pretext stop, that's nowhere  
19 in your report?

20 A. No, sir.

21 Q. And nowhere in the body of the report, until you go  
22 back and search the car, nowhere in the body of that report  
23 do you mention any plastic baggie, right?

24 A. No, unknown object was the original thing.

25 Q. Okay. Now, in the car, Mr. Penton was the

1 passenger, correct?

2 A. Yes.

3 Q. He was not the driver; is that correct?

4 A. He's the passenger.

5 Q. So he was not the driver?

6 A. Can't drive from the passenger seat.

7 Q. Right. So the person who was driving the car, the  
8 person who didn't stop for a thousand yards, that wasn't  
9 Mr. Penton, right?

10 A. No.

11 Q. Okay. And the driver of the car, who you said you  
12 later learned you believed was Mr. Penton's nephew, is the  
13 owner of the car; isn't that correct?

14 A. Yes, sir.

15 Q. And you have the ability as an officer to find that  
16 out at the scene. You can run information, like you  
17 mentioned, date of birth and the name, if somebody gives it  
18 to you. You have computers in the car, right?

19 A. Yes, sir.

20 Q. So you can check and verify that that was his car,  
21 not Forest Penton's car?

22 A. Yes, sir.

23 Q. In fact, that night when you were done, you  
24 released the car to him at the scene, to the driver?

25 A. To the driver.

1 Q. Right. And you wrote the driver tickets for  
2 running the red lights, right?

3 A. No, sir.

4 Q. So no traffic citation was ever actually issued for  
5 this alleged running of the red light?

6 A. No, sir.

7 Q. All right. And you said when you run a red light,  
8 they were trying to make the yellow and they actually didn't  
9 make it is what you actually said?

10 A. Yes, sir.

11 Q. Okay. Now, again, in the report, further on in  
12 your report, you do mention that you searched the vehicle  
13 and found a clear plastic baggie with a crystal-like  
14 substance, right?

15 A. Yes, sir.

16 Q. Now in your report, do you mention, in that car  
17 where you're actually talking about the baggie for the first  
18 time that you found, do you ever mention a second baggie or  
19 that there were two baggies, a small one and a large one?

20 A. No, sir.

21 Q. That's nowhere in your report?

22 A. No.

23 Q. Okay. And in the front part where you list the  
24 evidence that you tagged, you list one item of clear crystal  
25 meth, substance, meth; you don't list two items, you don't



1 list two bags, nothing, right?

2 A. It's all the same drug, so it's all just put into  
3 evidence together.

4 Q. Well, I understand that that's what you're saying  
5 now, but in your report there's no mention of a second bag  
6 in any way, shape or form?

7 A. No, sir.

8 Q. Okay. Now, when you search someone's car and find  
9 drugs, I mean, you understand -- you're a law officer,  
10 right?

11 A. Yes.

12 Q. You've been one for 11 years and you understand the  
13 concept of mere presence is not enough, correct?

14 A. Yes.

15 Q. So if -- you have to have something more to link  
16 somebody to a contraband like drugs, don't you?

17 A. Yes, I do.

18 Q. So if you were to come in and tell the jury  
19 hypothetically -- in a hypothetical case, if you were to  
20 come in and say, I stopped a car, I found drugs in the  
21 trunk, it's not the driver's car and that's all you had,  
22 that's probably not going to be enough, is it?

23 A. Well, I'm -- it's just the driver in the car?

24 Q. Well, I'm just saying, it's in the trunk, it's not  
25 his car. You understand what I'm saying?

1           A.    I understand what you're saying.

2           Q.    But he's the driver, he's alone in the car.  That's  
3 not going to be enough for you to prove that he knew there  
4 were drugs in the trunk, right?

5           A.    He's --

6                    *MS. STABE:*  Objection, Your Honor, to  
7 speculation.

8                    *THE COURT:*  I'm going to let the officer  
9 answer his question if he understands it.

10          Q.    (*BY MR. AYERS*)  Well, it's -- again, that's the  
11 only evidence you have.  I'm not trying to make it  
12 complicated.

13          A.    I understand what you're saying but if he's driving  
14 the car and there's drugs in the car, he's still in  
15 possession of that car, which makes him in possession of the  
16 drugs.

17          Q.    So in your opinion, if you pulled somebody over  
18 that was not driving their own car and you found some drugs  
19 hidden in the trunk of that car, you think that's enough to  
20 charge that person and convict them; that's enough links in  
21 your mind?

22                    *MS. STABE:*  Your Honor, I'm going to object to  
23 speculation and relevance.

24                    *MR. AYERS:*  Well, let's move on.

25                    *THE COURT:*  I'm going to allow him to answer.

1 Go ahead.

2 A. He's still in the possession of the drugs.  
3 Hypothetically, if he's the only one in the car, there's  
4 drugs in the car, he's driving it, he's in care, custody and  
5 control of that car, so he would be in possession of it.

6 Q. (BY MR. AYERS) Okay. So --

7 MS. STABE: Your Honor, may we approach?

8 THE COURT: You may.

9 (At the bench, on the record.)

10 MS. MANNING: Judge, these questions are  
11 invading the province of the jury. He's asking questions  
12 about the ultimate fact issue and that's invading the  
13 province of the jury. He's asking cumulative questions  
14 about whether or not if drugs were found in the trunk.  
15 That's irrelevant, number one, because they were not  
16 found --

17 THE COURT: The trunk isn't relevant. I don't  
18 see the relevance.

19 MS. MANNING: But also it's invading the  
20 province of the jury.

21 THE COURT: Okay. On these hypotheticals, I  
22 don't see the relevance of that one on the trunk. But  
23 invading the province of the jury --

24 MS. MANNING: The ultimate --

25 THE COURT: He keeps asking him his opinion

1 and he keeps telling him the same thing you want him to  
2 respond to, I think, isn't he?

3 MS. MANNING: No, Judge. Because what he's  
4 asking him are hypothetical questions about, well, what if  
5 this, what if that. Well, that's irrelevant to this because  
6 those are hypothetical situations.

7 THE COURT: They are, they are. I agree.  
8 Let's cut it off. Let's just move on.

9 MR. AYERS: (To the jury) Can y'all hear all  
10 this?

11 THE COURT: Let's move on. Move on.

12 (End of discussion at the bench.)

13 Q. (BY MR. AYERS) All right. You know, as a police  
14 officer, that you -- when you investigate, you have to have  
15 something to connect somebody to the drugs, right?

16 A. Yes.

17 Q. All right. And that something could be somebody  
18 admitting it's theirs or somebody putting their hands where  
19 the drugs are. That type of evidence is going to get you  
20 there, isn't it?

21 A. Yes, sir.

22 Q. And without that type of evidence, you're not going  
23 to get there, are you?

24 A. Yes, sir.

25 Q. You're going to have problems with that phone call

1 to the DA, aren't you?

2 A. Yes.

3 Q. And that's a simple fact, right?

4 A. Yes.

5 Q. Now, let's talk about this patrol car you were  
6 driving and when you made this traffic stop. Do you have a  
7 video of that stop?

8 A. No, sir.

9 Q. Why not?

10 A. Our car does have a camera but it's inoperable. It  
11 doesn't work.

12 Q. Just wasn't working on that occasion?

13 A. No, just doesn't work in general. It's never  
14 worked.

15 Q. All right. So you have a car that you drive with a  
16 useless video?

17 A. Pretty much.

18 Q. So when it comes time to come and tell juries about  
19 all these traffic stops, you don't have any independent  
20 video to show; it's just your word?

21 A. Yes, sir.

22 Q. All right. And kind of the same about this  
23 statement, this alleged oral statement that was made, Hey,  
24 that's mine, the jury just has to take your word for it,  
25 right?

1 A. Yes, sir.

2 Q. Because, again, it's not recorded, correct?

3 A. It's not recorded.

4 Q. Now you have in your possession the ability to  
5 record any statement at a scene, don't you?

6 A. With what?

7 Q. Well, don't you have a phone, a Smartphone? You  
8 can record anything with that, right?

9 A. Yes, sir.

10 Q. But in this case, no recording of it. Again, just  
11 your word that that was said?

12 A. I'm not going to use my personal phone for -- to  
13 record stuff.

14 Q. But you could?

15 A. If I wanted, but I'm not.

16 Q. It's possible?

17 A. That would be admitted into evidence and --

18 Q. Well, not your phone, just the statement. Well,  
19 you make a choice then not to record these statements,  
20 right?

21 A. Yes, sir.

22 Q. And if you recorded it, then there would be no  
23 doubt whether it was said or not said and what was said,  
24 correct?

25 A. Yes, sir.

1 Q. But the way you're doing it, you're saying it's  
2 just your word, what you saw, what you heard, that's it,  
3 correct?

4 A. Yes.

5 Q. There's no written statement or anything like that?

6 A. I didn't take any statements from Mr. Penton.

7 Q. Because, again, if you got it in writing, then it  
8 would have to be signed, et cetera, right?

9 A. Yes.

10 Q. So, no evidence that this statement exists other  
11 than you saying it.

12 A. Other than him saying it.

13 Q. Other than you saying he said it.

14 A. In the report.

15 Q. Right.

16 A. Yes.

17 Q. And certainly your position is you talked to  
18 Mr. Penton at some point?

19 A. The whole time during the whole ordeal, he was  
20 upset.

21 Q. Okay.

22 A. So, I think what we got out of him was his name and  
23 his birthday and that's how I found him on the computer that  
24 doesn't work sometimes also.

25 Q. Sure. At some point you did ask him some

1 questions?

2 A. Name and date of birth.

3 Q. All right. Did you ever give him his Miranda  
4 warnings at the scene?

5 A. No, sir.

6 Q. And you know what those are, right, that you have a  
7 right not to give a statement, all that?

8 A. Yes, sir.

9 Q. He was never Mirandized, right?

10 A. No, sir.

11 Q. Again, if he had been, that would have to be  
12 recorded or documented in writing and signed, right?

13 A. Yes.

14 Q. Now you mentioned that the whole time, from the  
15 time you made the initial stop and walked up to the car,  
16 even after you put Mr. Penton in the back of the patrol car,  
17 that he was upset, you said he was highly -- I believe you  
18 said he was highly upset and he was yelling at the driver,  
19 his alleged nephew?

20 A. And at me also.

21 Q. And at you also?

22 A. Yes, sir.

23 Q. But you did specify he was yelling at the driver,  
24 accusing the driver of things. You work for the man, you  
25 set me up, something like that, right?



1           A.    Yes, sir.

2           Q.    Okay.  And according to your testimony, he was  
3 trying to hide this dope from you when you walked up to the  
4 car, he was trying to hide it from you?

5           A.    Yes, sir.

6           Q.    Conceal it.  He didn't want it found is what you're  
7 saying.

8           A.    Exactly.

9           Q.    But then you're saying that as soon as you found it  
10 and as soon as he saw it, you didn't ask him about it?  You  
11 didn't, like, say, hey, what's with this that we found?  You  
12 didn't ask him any questions about it?

13          A.    Mr. Penton?

14          Q.    Uh-huh.

15          A.    No, sir.

16          Q.    So you're saying that as soon as he just saw that  
17 you had it, he immediately:  That's mine?

18          A.    He was in the back of the patrol car when I went  
19 back to the vehicle.

20          Q.    Yes.

21          A.    When I took the dope that he was hiding out of the  
22 vehicle where he was seated and put it in the patrol car,  
23 he's still running his mouth, he's going to kill me, he's --

24          Q.    Well, again, you're saying that when he saw that  
25 you had this dope, suddenly he tells you, That's mine; is

1 that correct?

2 A. Yes, the gig's up.

3 Q. All right. And you're telling the jury that when  
4 you walked up to the car, you had already drawn your pistol  
5 and pointed it at him at the point you saw him putting  
6 something --

7 A. Not -- I didn't walk up to a vehicle with my gun,  
8 pointing it at him.

9 Q. All right. But at some point when you got to the  
10 vehicle, you drew your weapon and pointed it at him?

11 A. Because he's reaching all over the place, yes, sir.

12 Q. All right. And I think your testimony on direct  
13 from the prosecutor was you saw him fumbling around, you  
14 were scared because you didn't know what he had, right?

15 A. Yes, sir.

16 Q. So at this point you hadn't seen anything, plastic  
17 bag or anything, because you thought it might be a weapon,  
18 right?

19 A. Could have been a weapon.

20 Q. So, if it was a plastic bag, that's not a weapon,  
21 right?

22 A. No, sir.

23 Q. So, you thought gun, knife, something, and you  
24 pulled your gun and pointed at him, right?

25 A. Yes, sir.

1 Q. And you're saying you told him at that point, with  
2 a gun pointed at him through this open window, you know,  
3 Stop what you're doing, put your hands up, show me your  
4 hands, right?

5 A. Yes, sir.

6 Q. And you're saying that he then continued stuffing  
7 stuff down into the seat, that he put his hands back in his  
8 pocket, took something else out and threw it in the floor  
9 all while you're standing there with a gun to his head,  
10 saying, Show me your hands, show me your hands, show me your  
11 hands?

12 A. Yes.

13 Q. If you were afraid at that point, why didn't you  
14 shoot him?

15 A. Didn't have reason to shoot him at that point.

16 Q. Well, you said you didn't know what he had. You  
17 thought he might have a weapon; that's why your gun was  
18 drawn?

19 A. No weapon ever came out, so there was no reason to  
20 shoot him.

21 Q. So, in fact, he never had a weapon, right?

22 A. Not a weapon.

23 Q. Okay. And when you searched him at arrest, you  
24 never had anything on his person, correct?

25 A. He already took it out and put it on the side of

1 the console.

2 Q. So the answer to the question would be no, correct?

3 A. It would be he didn't remove a weapon; he removed  
4 dope.

5 Q. That wasn't my question. When you searched him --  
6 after you arrest him and brought him out of the car, you  
7 said you patted him down, right?

8 A. Yes, sir.

9 Q. So, when you searched him -- that's what a pat-down  
10 is, right, a search?

11 A. Yes.

12 Q. You didn't find any contraband or weapon of any  
13 kind on his person, right?

14 A. No, sir.

15 Q. So the only contraband you found at the scene was  
16 what you found in the car when you searched it after both he  
17 and the driver had been removed, correct?

18 A. Yes.

19 Q. And if you had found that dope without any  
20 connection other than that in the car, you couldn't have  
21 really charged him; you would have probably charged the  
22 driver, right?

23 A. Well, we would have to call the DA to see -- run  
24 the story to him.

25 Q. Well, let me go back to my earlier question to you

1 about the hypothetical of the dope in the car. You said the  
2 person who's driving the car, the owner of the car has  
3 custody of it. So if you found dope in a car, that would  
4 have went on the driver unless you had something to link it  
5 to him; isn't that right?

6 A. Yes, sir.

7 Q. And at this point the only links that you had, the  
8 only things beyond that are the statement you say he made,  
9 this unrecorded statement that it's mine, not my nephew's,  
10 and what you claim, you saw him fumbling and hiding, right?

11 A. Yes, sir.

12 Q. And the throwing of the baggie and all this stuff,  
13 right?

14 A. The same bag that we found was the one he removed  
15 from his pockets.

16 Q. Right. But again we've established that baggie,  
17 the throwing and all that, it's not documented at all in the  
18 police report, right?

19 A. But it's in evidence.

20 Q. It's not in evidence yet. It's not documented in  
21 the police report, is it?

22 A. Yes, sir.

23 *MR. AYERS:* Okay. I'll pass the witness.

24 *MS. STABE:* May I proceed, Your Honor?

25 *THE COURT:* You may.



1 likely both would get charged, right?

2 A. Yes, ma'am.

3 Q. In this case, only the defendant, Forest Penton,  
4 was charged with the drugs; is that right?

5 A. Yes.

6 Q. Okay. And do you know if anyone asked or talked to  
7 the nephew, Edward Davis, about whether these drugs were  
8 his?

9 MR. AYERS: I'm going to have to object. That  
10 would be hearsay unless Mr. Davis is going to come testify.

11 THE COURT: I believe he can testify -- I  
12 believe I've heard this before and I believe he can testify  
13 to what he observed. If he observed two people in  
14 conversation -- I'm not asking him -- she's not going to be  
15 allowed at this point to tell what the conversation involved  
16 but that they're having a conversation.

17 MR. AYERS: I agree, but if the response calls  
18 for hearsay, then I'm objecting to that.

19 THE COURT: Sustained as to that but that's  
20 not my understanding that's what she's asking for.

21 MR. AYERS: Okay.

22 Q. (BY MS. STABE) Okay. So my question was: Do you  
23 know if anyone ever talked to the witness -- the nephew,  
24 Edward Davis, about whether or not he knew about the drugs  
25 or had possession of the drugs?

1           A.    I never spoke to Mr. Davis but John O'Brien talked  
2 to him.

3           Q.    So your partner, Deputy O'Brien, talked to the  
4 witness?

5           A.    Yes, ma'am.

6           Q.    Okay.  And based on that conversation, did y'all  
7 request any charges to be filed on Edward Davis?

8           A.    No.

9           Q.    Okay.  And during your investigation, I mean, why  
10 is it?  What links did you have to place this defendant in  
11 possession of those drugs?

12          A.    When he reached his hand in his pocket, pulled out  
13 the unknown object, which at that point it's unknown if it's  
14 cocaine or meth or fake dope or whatever it is, he shoved it  
15 in the -- he, Mr. Penton himself, shoved it where he was  
16 seated between the driver -- the passenger seat and the  
17 center console.  Not on the driver's side.  On his side.  
18 While my weapon was unholstered, pointed at him, he still  
19 wasn't complying, he takes his hand a second time, puts it  
20 back in his pocket while I'm still ordering him, giving him  
21 orders, he takes it out and tries to toss it, it hits the  
22 dash, glove box, and falls right where his foot is.  These  
23 are the same two objects -- they're -- what I mean by  
24 "unknown" is they're not tested yet.  It could be soap, it  
25 could be -- it could be fake, it could be anything.  These



1 are the same two objects that he took out and placed right  
2 where he was seated.

3 Q. Okay. And then those are the same two objects that  
4 you recovered?

5 A. Yes.

6 Q. That appeared to be methamphetamine?

7 A. Yes, ma'am.

8 Q. And then was there anything else that -- his  
9 statements that he made that linked him to these drugs?

10 A. Those are mine, let my nephew go.

11 Q. And these were -- I mean, were these in response to  
12 an interrogation by you?

13 A. No, ma'am. He's seated in the back of a patrol  
14 car, just upset. He's just running his mouth, just saying  
15 all kinds of stuff. When he sees that his nephew is between  
16 the patrol car and the suspect, he can see right out the  
17 window, he sees John O'Brien talking to him and he's, like,  
18 Let my nephew go.

19 MR. AYERS: Your Honor, I'm going to object.  
20 There's a lot of speculation there. He's talking about what  
21 the defendant sees through the window and who he sees  
22 talking to who. That's speculation. I'm going to object to  
23 that.

24 THE COURT: He can testify as to what he saw  
25 out the window.

1                   MR. AYERS: He's not testifying to what he,  
2 the witness, saw out the window. He's testifying to what  
3 Mr. Penton allegedly saw out the window. He's testifying to  
4 what someone else allegedly saw.

5                   THE COURT: My understanding is -- all right.  
6 You can clear that up as to what he saw versus what he was  
7 capable of seeing and which direction he was looking and  
8 then what he said.

9                   MS. STABE: Yes, Your Honor.

10                  Q. (BY MS. STABE) And I'm just concerned with  
11 whenever you went back to the car, what did the defendant  
12 tell you?

13                  A. That's all mine, let my nephew go.

14                  Q. Okay. And when you have a traffic stop and then  
15 you have a first degree felony amount of drugs, are you  
16 always going to write a citation for that?

17                  A. No, we're -- it's at our discretion if we want to  
18 write a ticket or not.

19                  Q. Okay. And so, in this situation, did you decide  
20 whether or not you felt like it was appropriate to write a  
21 ticket for that traffic stop?

22                  A. No, ma'am.

23                  Q. Okay. And defense counsel is asking you if you  
24 could have recorded any statements on your own personal cell  
25 phone, right? That's what he asked you?

1 A. Yes, ma'am.

2 Q. Okay. I mean, is that protocol to record things on  
3 your own personal items?

4 A. No, ma'am.

5 Q. Okay. And why is that?

6 A. It could be altered. My phone's personal. If I  
7 bring it home, I could hook it up to my computer, do all  
8 kinds of stuff with it.

9 Q. Also wouldn't it be possible then that your actual  
10 personal property would have to be introduced into evidence?

11 A. Yes, ma'am.

12 Q. Okay. And so, that's not a reasonable thing for  
13 you to be doing on the scene, is it?

14 A. No, ma'am. And I leave my phone -- my phone is  
15 always -- on any traffic stop or any scene or anything we're  
16 going to, we're trained to leave our phones in the car, in  
17 the glove box. You don't want to approach somebody or a  
18 high, intense situation and your phone rings and, you know,  
19 it startles you and -- a number of stuff can happen.

20 Q. Okay.

21 A. Or the bad guy knows where you're at. If you're  
22 approaching him and your phone starts ringing, now he knows  
23 you're coming around the corner.

24 Q. Right. It's also a safety thing that you don't  
25 have your phone on you at all times?

1 A. It's a safety issue, yes, ma'am.

2 Q. Okay. And what circumstances do you have to read  
3 Miranda warnings?

4 A. When they're being interrogated.

5 Q. Okay. And so, in this situation, did you  
6 interrogate the defendant at all?

7 A. Never.

8 Q. Did you ever sit him down, ask him any questions,  
9 anything like that?

10 A. No, ma'am.

11 Q. Okay. So, why did you decide not to read him  
12 Miranda warnings in this particular case?

13 A. He claimed ownership. He claimed that the drugs  
14 were his and I never interrogated him, where did it come  
15 from, how did you get it, how much was it. Never asked him  
16 anything like that.

17 Q. Okay. And so, there was no reason for you to have  
18 read them at the scene at that time?

19 A. Exactly.

20 Q. Do you know -- defense counsel's asked you about  
21 the window, was it rolled up, rolled down, all these  
22 questions. Do you know, I mean, how long the defendant had  
23 his window rolled down?

24 A. I couldn't tell you.

25 Q. Do you know -- you know, did you see any drugs

1 being thrown out the window by the defendant?

2 A. No, ma'am.

3 Q. Or the driver?

4 A. No, ma'am.

5 Q. And I mean, so, when this driver kept going for a  
6 little bit of time, you didn't see any drugs being thrown  
7 out of the car or anything like that?

8 A. No.

9 Q. Any furtive movements made by the driver?

10 A. No, ma'am.

11 Q. Okay. So, only the passenger, the defendant, was  
12 the one making furtive movements?

13 A. Yes, ma'am.

14 Q. And when you went up to the car, I mean, was the  
15 passenger side of the car inside drenched, soaking wet with  
16 water?

17 A. No.

18 Q. Okay. So, I mean, it wasn't -- you said it was --  
19 is it sprinkling?

20 A. I put in my report: Light rain, sprinkling.

21 Q. Okay. So it wasn't, like, a full-on downpour?

22 A. No, ma'am.

23 Q. So isn't it possible that he had just rolled his  
24 window down?

25 MR. AYERS: Your Honor, objection,

1 speculation.

2 *THE COURT:* Sustained.

3 *MS. STABE:* I'll pass the witness.

4 *MR. AYERS:* A few follow-up questions, Judge.

5 *THE COURT:* Uh-huh.

6 **RECROSS-EXAMINATION**

7 *Q. (BY MR. AYERS)* You're saying you don't carry a  
8 phone with you because you're afraid it will ring?

9 *A.* Yes, sir.

10 *Q.* Don't your phone have a mute/silent button on it?

11 *A.* Even at that point --

12 *Q.* Let me ask you this. You do undercover deals,  
13 right?

14 *A.* Yes, sir.

15 *Q.* How do you do undercover deals without access to  
16 some kind of cell phones to make the calls and make the  
17 deals?

18 *A.* It's a undercover phone.

19 *Q.* You have access to undercover phones? You could  
20 use your undercover phone if you're worried about your  
21 personal phone to make these recordings, couldn't you?

22 *A.* I'm not going to use --

23 *MS. STABE:* Your Honor, argumentative and  
24 irrelevant.

25 *THE COURT:* Sustained.

1 Q. (BY MR. AYERS) Well, isn't it true you do have  
2 access to other phones in your job? You just said  
3 "undercover phones"?

4 A. It's exactly like my personal phone but I'm not  
5 going to record something that could -- if I bring it to  
6 court, it could be altered.

7 Q. Well, only if you altered it.

8 A. Exactly.

9 Q. So you're saying -- your argument -- what you're  
10 saying is rather than record something that could -- you  
11 yourself could then alter, it makes more sense that you  
12 yourself, the person who would be doing the altering, the  
13 jury should just take your word for it, when you're saying  
14 the recording, you could alter? Does that make sense to you  
15 at all?

16 A. I understand what you're saying or where you're  
17 going but I --

18 MS. STABE: Objection, Your Honor, to  
19 relevance.

20 THE COURT: I'm going to allow him to respond.

21 A. I have no reason not to put what he said in the  
22 report.

23 Q. (BY MR. AYERS) Well, I'm just saying there's  
24 nothing here other than you saying that he said it, right?

25 A. Yes, sir.

1 Q. And there could be. If you had a recording of it,  
2 then there would be no question, would there?

3 A. There would be no question, yes, sir.

4 Q. But you don't.

5 A. No, sir.

6 Q. Just like you don't have the video from the traffic  
7 stop because the camera in your car doesn't work.

8 MS. STABE: Your Honor, asked and answered.

9 THE COURT: Sustained.

10 Q. (BY MR. AYERS) Correct?

11 A. Yes, sir.

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

13 MS. STABE: Nothing further from this witness,  
14 Your Honor.

15 THE COURT: You may stand down. May this  
16 officer be excused? Any objection?

17 MS. STABE: No objection.

18 MR. AYERS: No objection, Judge.

19 THE COURT: You're excused.

20 Call your next, please.

21 MS. STABE: State calls Deputy O'Brien.

22 THE COURT: This witness was previously  
23 excused -- I'm sorry -- previously sworn in.

24 THE WITNESS: Yes, sir.

25 THE COURT: Proceed, please.



1 MS. STABE: Thank you, Your Honor.

2 JOHN O'BRIEN,  
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (BY MS. STABE) Deputy, can you please introduce  
6 yourself to the jury?

7 A. I'm John O'Brien. I work for the Harris County  
8 Sheriff's Department. I've been employed with the Harris  
9 County Sheriff's Department for 16 years. I'm currently  
10 assigned to HIDTA and I've been there for seven years.

11 Q. Can you explain to the jury what HIDTA is?

12 A. High Intensity Drug Trafficking Area.

13 Q. What do you do as a HIDTA task force officer?

14 A. We're responsible for large-scale narcotics  
15 investigations, tasked to the DEA.

16 Q. Sorry. You can continue.

17 A. We do multijurisdictional large-scale narcotics  
18 investigations throughout the state of Texas and throughout  
19 the United States.

20 Q. All right. What other agencies do you work with?

21 A. Houston Police Department, FBI, DEA, Homeland  
22 Security, Texas Department of Public Safety, Montgomery  
23 County, Fort Bend County and Wharton County.

24 Q. So a lot of agencies?

25 A. Yes, ma'am.