

1 going to let her -- a couple of minutes to confer
2 with her witness.

3 Because if this is going to be about a
4 motion to suppress evidence, we're not going to try
5 this case. So I want her to talk to her witness and
6 zero in on the basics, thumbnail sketch of the facts.
7 And then once it gets to the search, arrest of the
8 defendant, then we can flesh that out at this
9 hearing. But just go ahead.

10 (Discussion off the record.)

11 THE COURT: All right. You may
12 proceed.

13 **OFFICER ARMAND SCHATTLE,**
14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 BY MS. COOPER:

17 Q Can you introduce yourself to the Court,
18 please.

19 A Yes, ma'am. My name is Armand Schattle.

20 THE COURT: All right. Raise your
21 right hand, please.

22 THE WITNESS: Oh, I'm sorry.

23 THE COURT: It's all right.

24 (Witness sworn.)

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Go ahead.

2 Q (BY MS. COOPER) Where are you assigned?

3 A Right now, mounted patrol downtown.

4 Q Okay. What about back in May -- or back in
5 January of this year, where were you assigned?

6 A CRU, Crime Reduction Unit.

7 Q What's the CRU?

8 A We're basically a city wide hot spot unit.
9 We're assigned to an area that has an increase in
10 crime. And that we just look for things to --
11 probable cause to pull people over and make sure
12 everything is as it should be and, you know, finding
13 bad people doing bad things.

14 Q Okay. I want to go straight to the case
15 involving this defendant?

16 A Yes, ma'am.

17 Q On January the 16th of 2013, were you on
18 duty that day?

19 A Yes, ma'am.

20 Q Were you in a marked patrol unit?

21 A Yes, ma'am.

22 Q Were you in uniform?

23 A Yes.

24 Q And did you conduct a traffic stop on the
25 defendant's vehicle?

1 A Yes, ma'am.

2 Q What kind of vehicle was it?

3 A It was a car -- I honestly don't know what
4 kind. Can I --

5 Q You can refer to your report.

6 A Refer to my report?

7 I wrote down that it was a Buick
8 LeSabre, 2000 Buick LeSabre, and the license plate,
9 Boy Charles Victor 5941.

10 Q Why did you conduct a traffic stop on that
11 vehicle?

12 A He failed to use a turn signal while
13 changing lanes going southbound on Scott Street.

14 Q Okay. Were there -- was this done in a safe
15 manner?

16 A The -- do you mean the lane change?

17 Q Yes. Was it safe for the other drivers on
18 the roadway?

19 A I would say, no. I mean, he -- it's not
20 like he cut a bunch of people off, but he failed to,
21 like I said, use his turn signal. There was traffic
22 going southbound and northbound. So...

23 Q Okay. So there was traffic on the roadway?

24 A Yes, ma'am.

25 Q So you conduct a traffic stop. Where is the

1 traffic stop conducted at?

2 A The 7400 block of Scott Street. That's
3 where the traffic stop was.

4 Q And when the traffic stop is conducted, what
5 do you do?

6 A We approached the car, asked him for his ID,
7 asked the passenger for his ID and information. And
8 you could smell the odor of marijuana coming from the
9 car, so we asked them to step out.

10 Q Okay. So as you approached the car, is the
11 window rolled down?

12 A Yes, ma'am.

13 Q And you said that you could smell the odor
14 of marijuana?

15 A Yes, ma'am.

16 Q Do you make contact with the driver of the
17 car?

18 A Yes, ma'am.

19 Q And who was that? Do you identify him?

20 A Yes. It was a -- a Mr. Hankston.

21 Q Okay. How do you identify him? Does he
22 have a driver's license, or...

23 A I honestly don't remember if he had a
24 driver's license, but I know that he had said his
25 name a couple of times.

1 Q Okay. So -- and then was there also a
2 passenger in the car?

3 A Yes, ma'am.

4 Q And who was that?

5 A That was a Mr. Davis, Waylon Davis.

6 Q So after you smell the odor of marijuana,
7 what do you do?

8 A Ask them to step out of the car. My partner
9 handled Mr. Davis, while I handled Mr. Hankston. And
10 proceeded to search their person.

11 Q All right. Do you have a warrant to search?

12 A No, ma'am.

13 Q And why do you search at this point?

14 A Because we had -- we already had the odor
15 and possible presence of marijuana, so we go ahead
16 and search.

17 Q Okay.

18 THE COURT: Search for what?

19 THE WITNESS: His person and the
20 vehicle.

21 THE COURT: And the vehicle. Okay.
22 Thank you.

23 Q (BY MS. COOPER) All right. And when you
24 search the defendant's person, why are you searching
25 his person at this point?

1 A Looking for more marijuana or, you know, or
2 other illegal drugs.

3 Q And is the person of the passenger also
4 searched, as well?

5 A Yes, ma'am.

6 Q Do you find marijuana in the vehicle?

7 A Yes. In the center console.

8 Q And while you were patting the defendant
9 down searching his person, what do you find?

10 A I believe it was like five small pills
11 containing a white substance.

12 Q Okay. And where was that found?

13 A In his front right pocket.

14 MS. COOPER: May I approach the
15 witness, Judge?

16 THE COURT: You may.

17 Q (BY MS. COOPER) I'm showing you State's 139
18 and the contents of State's 139. There's a green
19 rolled up little substance. What is that?

20 A Appeared to be marijuana.

21 Q Okay. And is that the marijuana that was
22 collected?

23 A Yes, ma'am.

24 Q And then I'm showing you the pills.

25 Were they inside of obviously, the

1 baggy that's contained inside of 139 at the time?

2 A Yes, they were.

3 Q And they're the five little white pills?

4 A Yes.

5 Q As you're searching the defendant, are
6 you -- as you're searching the defendant, is there
7 any -- are there any other reasons, besides searching
8 for drugs, that you're patting down or searching the
9 person of the defendant in this case?

10 A Let me --

11 MR. MAYR: Objection, asked and
12 answered.

13 THE COURT: It's overruled, that
14 question.

15 Q (BY MS. COOPER) You can answer.

16 A I mean, just for the drugs. No other -- I
17 mean, I don't know anything else about him. But, I
18 mean, like I said he has marijuana on him. So,
19 that's what we're looking for.

20 Q Okay. And you found marijuana, obviously?

21 A Yes.

22 Q And then found the drugs in his pocket?

23 A Yes, ma'am.

24 MS. COOPER: I pass the witness, Judge.

25 THE COURT: All right.

CROSS-EXAMINATION

1
2 BY MR. MAYR:

3 Q Officer, is it Schattle?

4 A Yes, sir.

5 Q Okay. I want to make sure I'm pronouncing
6 that correctly.

7 Officer Schattle, when you -- I want to
8 go back to when you first observed the defendant
9 operating his vehicle.

10 Where was it that you saw him?

11 A I believe it was about the 7200 block of
12 Scott.

13 Q Okay. And what is around there?

14 A Several businesses. I mean, you have
15 businesses on -- lining either side of Scott Street.
16 And then it's two lanes coming northbound and two
17 lanes going southbound.

18 Q Do you recall which side he was traveling
19 in?

20 A I believe it was the number 1 lane, and he
21 switched to the number 2 lane.

22 Q And was he in the northbound or southbound
23 lane?

24 A He was in the southbound lanes.

25 Q So he was in the number 1 southbound lane?

1 That would have been the -- the lane closest to the
2 median; is that right?

3 A Yes, sir.

4 Q You didn't observe him committing -- as you
5 saw him driving, you didn't observe him committing
6 any other traffic violations?

7 A No, sir, not to my knowledge.

8 Q And you said that he proceeded from the
9 number 1 lane into the number 2 lane?

10 A Yes, sir.

11 Q Do you recall where that was at?

12 A Where he?

13 Q Where specifically?

14 A About the 7200 block. I don't -- I mean --

15 Q Middle of the block? Right as he was going
16 into that block? Towards the end of that block?

17 A No, sir. I wasn't -- I was not paying
18 attention to exactly his point -- about the 7200
19 block was --

20 Q And just so we're clear, you don't have any
21 recording equipment in your vehicle?

22 A No, sir.

23 Q When you saw him move -- change lanes, were
24 there -- there weren't any other vehicles that had to
25 like swerve out of the way or anything else like

1 that, right?

2 A No, sir.

3 Q It was just a gradual lane change from the
4 number 1 to the number 2?

5 A Not a gradual. I mean, he changed from one
6 lane to another.

7 Q Now, do you recall him -- do you recall him
8 actually using his signal at some point as he was
9 moving over?

10 A Not that I recall.

11 Q Okay. You don't recall having a discussion
12 with him, after he made a stop, and explained to him
13 that the reason you had stopped him is because he had
14 failed to signal the lane change for a certain period
15 of time prior to moving over?

16 A Sir, I don't recall. It's been almost --
17 what January. I'm sorry. I might have. I'm not
18 saying I didn't, but I don't remember.

19 Q Well, let me ask you this: Is it possible
20 that -- that he did, in fact, use his signal, but it
21 was not until -- it was not until the very moment
22 that he started moving from the number 1 lane to the
23 number 2 lane?

24 MS. COOPER: I'm going to object to
25 speculation, Judge.

1 THE COURT: Sustained.

2 Q (BY MR. MAYR) Okay. Once you pulled over the
3 vehicle, you used your lights and sirens?

4 A Yes, sir.

5 Q And where did he pull over in to?

6 A A -- I believe it was a gas station parking
7 lot.

8 Q Okay.

9 A Or a tire shop parking lot.

10 Q Once you -- once you got him stopped, he
11 didn't make any -- to you he didn't make any attempts
12 to evade from you or place you in danger as he was
13 pulling over, did he?

14 A No, sir.

15 Q Once you pulled him over, you approached the
16 passenger or the driver's side?

17 A His side, sir, the driver's side.

18 Q And was he cooperative with you?

19 A Yes, sir.

20 Q So you said the window was rolled down.

21 Could you see where his hands were?

22 A Yes. He had his hands in plain view.

23 Q He wasn't making any furtive movements or
24 any threatening gestures?

25 A No, sir.

1 Q Once you approached the vehicle, you smelled
2 marijuana?

3 A Yes, sir.

4 Q You weren't able to -- once you -- when you
5 first approached the vehicle, you weren't able to see
6 any marijuana within plain view at that moment, were
7 you?

8 A No, sir.

9 Q You asked him to step out of the vehicle?

10 A Yes.

11 Q And because you smelled the marijuana, based
12 on that you decided to pat him down and you proceeded
13 to place your hands on him?

14 A No. I -- I just -- I -- based on the smell
15 of marijuana, I searched him.

16 Q And by searching him, you put your hands in
17 his pocket and started digging around, right?

18 A Yes, sir.

19 Q And that was based solely on the odor of the
20 marijuana?

21 A Yes.

22 Q You found the pills in his pocket?

23 A Yes.

24 Q And then after that, that's when you
25 proceeded into the vehicle and eventually you

1 located the marijuana that you were shown here in
2 court earlier; is that right?

3 A Yes.

4 MR. MAYR: Okay. I have no further
5 questions, Your Honor.

6 THE COURT: All right. Anything else?

7 MS. COOPER: No judge.

8 THE COURT: All right. Thank you, sir.
9 May this witness be excused?

10 MS. COOPER: Well --

11 THE COURT: Just temporarily?

12 MS. COOPER: Right. Just for
13 temporarily.

14 THE COURT: Okay. Never mind. That's
15 force of habit. Don't worry about it. I misspoke.

16 Both sides ready for the jury?

17 MR. MAYR: Judge, we'd like to make --
18 we'd like to renew our motion at this time, outside
19 of the presence of the jury. If the Court would --
20 if I could make -- just make a point?

21 THE COURT: You may.

22 MR. MAYR: Judge, I don't believe that
23 the State -- that there's -- first of all, for the
24 purposes of the hearing, we don't have any other
25 further testimony to present.

1 Judge, based on this officer's
2 testimony, we would submit to this Court that the
3 pills that were found, were discovered as a result of
4 an illegal warrantless arrest. The officer, as
5 you've just heard him testify, did not see any
6 marijuana in plain view. He smelled an odor of
7 marijuana, but that did not justify him to actually
8 go and search the defendant's person.

9 There was nothing that led him to
10 believe that he was a danger to himself, that he
11 possessed any weapons, anything else like that. And
12 an odor of marijuana is not sufficient to search a
13 person. If he would have found marijuana and then
14 made a search incident to arrest, that would have
15 been one thing.

16 But for him to make the unilateral
17 decision to search the defendant, based solely --
18 solely on the odor of marijuana is not legal under
19 Supreme Court precedent, that has stated that an
20 officer has to have more than -- has to have an
21 articulable reasonable suspicion that the person has
22 something in their possession, before searching them.

23 Arizona V Gant I think was probably the
24 case that's best on point here. But because of that,
25 I would argue the pills that were found on the

1 defendant were derived as a result of an illegal
2 search, in violation of my client's constitutional
3 rights, as well as his rights against unlawful
4 searches and seizure under the Texas Constitution,
5 and should be suppressed under Article 3823, Texas
6 Code of Criminal Procedure.

7 THE COURT: All right. Thank you,
8 counsel.

9 MS. COOPER: Judge, the officer has
10 indicated that he did have a reasonable suspicion
11 that there was marijuana. He smelled an odor of
12 marijuana. That was -- it was a probable cause
13 search based on the smell of marijuana.

14 He believes that it was on -- possibly
15 on the defendant or inside the vehicle, that's why
16 they conducted the search. And he did find the
17 marijuana, as well as the pills. There's no search
18 warrant needed in this case.

19 THE COURT: Well, I know the odor of
20 marijuana in a traffic stop. You know, due to the
21 mobility of the vehicle, I know that's exigent
22 circumstances to search the vehicle -- the entire
23 vehicle for marijuana -- I mean, for contraband. If
24 he smelled marijuana.

25 Now, he has a case that he cited me on

1 point. Supreme Court case says, that doesn't render
2 -- that doesn't come up as probable cause to search
3 the person.

4 This witness didn't do a pat down
5 search for officer safety. He said specifically, to
6 find more marijuana -- not to find marijuana, looking
7 for marijuana. He already found some in the -- in
8 the glove box -- I mean, the console.

9 Now, having found marijuana in the
10 console, you know, based on this state of the record,
11 that's all we have. Having marijuana in the console,
12 I think, is probable cause for him to arrest both
13 people in that vehicle. Now, proving joint
14 possession of -- one of them had possession over the
15 other, is a different story.

16 I think he has probable cause to arrest
17 him -- had probable cause to arrest him. This search
18 for further marijuana in his person, I think, is
19 probable cause to search this person. But I'd like
20 to look and think -- look and see what that Gant case
21 says.

22 MS. COOPER: And, Judge, the Gant case
23 is a case that the suspect was not in the vehicle at
24 the time. That case, the car was parked outside.
25 The defendant in that case was arrested outside of

1 the vehicle. There was no indication he was ever
2 inside of the vehicle. And based on the automobile
3 exception, they searched the vehicle.

4 This case is much different than that,
5 in that the defendant was in the vehicle at the time
6 the marijuana was smelled. And, you know, he was
7 just in the vehicle. And they pulled him out to
8 search him, because of the smell of marijuana, is the
9 distinction.

10 But I don't -- I didn't realize we were
11 doing this, so I don't have that case or -- but I can
12 pull it up and e-mail it if you want.

13 MR. MAYR: And, Judge, again, my
14 expectation was with the traffic stop, that there was
15 based -- based on what he's testifying, if he would
16 have seen the marijuana, then he could have done a
17 search incident to arrest. But that's not what he
18 said.

19 He said that he made the search, that
20 he searched the individual person, based on -- that
21 he got Mr. Hankston out of the vehicle, but that he
22 proceeded to search. For the search to go -- become
23 even more intrusive, to search the person, I will
24 submit that that's not permissible. Let me -- I'm
25 going to pull up the case right now, so I can make

1 sure we're clear on this. If I may just have a
2 moment?

3 (Discussion off the record.)

4 MR. MAYR: It's going to be 129 Supreme
5 Court, 1710.

6 (Discussion off the record.)

7 (Pause in proceedings.)

8 MR. MAYR: Can we go on the record?
9 I'll submit, I think really the more pertinent case,
10 Your Honor, is State versus Steelman, where the Court
11 said that odors alone do not authorize search without
12 a warrant. That's quoting Johnson versus United
13 States Supreme Court Decision 333 U.S.10. And a
14 Court of criminal appeals decision Moulden,
15 M-O-U-L-D-E-N, versus State 576 SW2d, 817.

16 THE COURT: I think Steelman had to do
17 with odor plus a search warrant. I think it had to
18 do with a search warrant. It didn't have anything to
19 do with a car.

20 MR. MAYR: Well, but -- and that's
21 exactly what the case dealt with. But there's still
22 -- I pull that case up because they cite --

23 THE COURT: The car is different
24 though.

25 MR. MAYR: They -- it doesn't

1 provide -- I mean, it says here, the mere odor of
2 burning marijuana did not give officers probable
3 cause to believe that he committed the offense of
4 possession of marijuana in their presence.

5 The odor does not authorize a
6 warrantless seizure -- we'll concede that the odor of
7 marijuana authorizes the search of a vehicle. But
8 whether or that extends and allows an officer to then
9 intrude in a person and search them, just based
10 on the odor of marijuana alone, I would submit that
11 State versus Steelman, and the authority that it
12 cites therein is still applicable.

13 That just because a person has
14 marijuana -- there's a smell of marijuana, that
15 doesn't allow an officer -- let me try to explain it
16 this way.

17 The reason for an officer's smell --
18 that an officer can search a vehicle once he smells
19 marijuana is because of the automobile exception.
20 Because of the mobility and all the other
21 circumstances, an officer doesn't have time to get a
22 search warrant. But to take it a step further and
23 actually invade the -- the space of a person and
24 begin to search his clothes pockets, I would submit
25 that the odor of marijuana alone is not sufficient.

1 MS. COOPER: I'm e-mailing Gant to both
2 you and the Judge.

3 MR. MAYR: Yeah. I don't -- Gant might
4 not be -- Gant might not be the case that's directly
5 on point. It has some general principles of law that
6 are applicable in this case, but...

7 MS. COOPER: I think it is a good case
8 to read though, because it does point out the
9 distinction. And, I mean, in that case the person
10 was not in the vehicle. In this case he was.

11 THE COURT: All right. I think the --
12 from the testimony in front of this Court, Ms. Cooper
13 asked:

14 QUESTION: When you searched the
15 defendant's person, why are you searching his person
16 at that point?

17 ANSWER: Looking for more marijuana,
18 you know, or other usually illegal drugs.

19 And the next question is:

20 QUESTION: Is there something of the
21 passenger also searched, as well?

22 ANSWER: Yes, ma'am.

23 Next question:

24 QUESTION: Do you find marijuana in the
25 vehicle?

1 ANSWER: Yes. In the area of the
2 console.

3 QUESTION: And while you're patting the
4 defendant down, searching his person, what do find?

5 ANSWER: I believe it was five small
6 pills containing a white substance.

7 All right. Now, he has a right to the
8 vehicle but, you know, I would think he also has the
9 obvious right to search the person for safety, but --
10 which is not here. He didn't testify that it was.
11 But he had -- having already found marijuana in the
12 console, I think it's probable cause to search him,
13 search his person. Now, give me a case that says the
14 contrary, then we'll go that way.

15 MR. MAYR: Let me just make sure the
16 facts are clear before we get to the law.

17 His testimony is that he searched him,
18 then he went in the vehicle and found the marijuana.

19 THE COURT: No. His testimony's kind
20 of disjointed.

21 First question -- first question:

22 QUESTION: So after you smell it with
23 odor of marijuana, what do you do?

24 ANSWER: Asked them -- asked them to
25 step out of the car. My partner handled Mr. Davis,

1 while I handled Mr. Hankston. And proceeded to
2 search.

3 I don't know, I can't read it. It's
4 something about:

5 QUESTION: Do you have a search
6 warrant?

7 ANSWER: No, ma'am.

8 QUESTION: Why do you search at this
9 point?

10 ANSWER: Because we already have odor
11 and possible presence of marijuana, so we go ahead
12 and it's says apparent search -- but go ahead and
13 search, it looks like.

14 QUESTION: Okay.

15 And the Court:

16 QUESTION: Search what?

17 The answer:

18 ANSWER: I guess his -- it says here
19 his pen -- but maybe it's his person in the vehicle.

20 QUESTION: All right. In the vehicle.
21 Thank you.

22 Question, Ms. Cooper:

23 QUESTION: When you search the
24 defendant's person, why are you searching this person
25 at that point?

1 ANSWER: Looking for more marijuana,
2 you know, or other -- usually illegal drugs.

3 QUESTION: Is the pen -- but maybe is
4 the passenger also searched, as well?

5 ANSWER: Yes, ma'am.

6 QUESTION: Do you find marijuana in the
7 vehicle?

8 ANSWER: Yes. In the area of the
9 console.

10 QUESTION: And while you were patting
11 the defendant down, searching his pen or his person,
12 what do you find?

13 ANSWER: I believe it was 57 (sic)
14 small pills containing a white substance.

15 QUESTION: Okay. And where was that
16 point?

17 ANSWER: In the front pocket.

18 May I approach the bench? Now, y'all
19 approaching the bench. But the point is, the
20 question in response is -- is such that he says under
21 oath, that he's looking for more marijuana, period.

22 Now, had she asked from point one to a
23 point 100, tell me all the steps you took. You pull
24 him over, you asked question A, you did this, he did
25 that, you did this, he did that, you did this, y'all

1 did that. If it was that sequential questioning,
2 that's one thing. But it wasn't. It was the way it
3 was. This is the state of record.

4 MR. MAYR: But, Judge, if you recall my
5 cross-examination, I went through that sequential
6 stuff. And that's what the officer testified. And
7 he's right here. I mean, if he's under oath.

8 Q (BY MR. MAYR) Officer, did you --

9 THE COURT: But he said more marijuana,
10 before you even asked any question on cross. More
11 marijuana means more marijuana. Now -- but you can
12 ask him. I understand your point. This isn't real
13 clear.

14 MR. MAYR: Sure.

15 **CROSS-EXAMINATION**

16 BY MR. MAYR:

17 Q Officer Schattle, did you -- you testified
18 that you did not see any marijuana in plain view when
19 you approached the vehicle, correct?

20 A Yes, sir.

21 Q And that you when you approached the
22 vehicle, you smelled the marijuana, but you still had
23 not seen any marijuana at that point?

24 A No, sir.

25 Q You removed the defendant from the vehicle?

1 A Yes, sir.

2 Q You began your search of him?

3 A Yes.

4 Q You found the pills?

5 A Yes.

6 Q And then you went into the vehicle, and that
7 was the first time that you actually saw the
8 marijuana, correct?

9 A The actual physical marijuana?

10 Q Yes.

11 A Yes.

12 Q Okay. Is that exactly the order that things
13 that actually took place, correct?

14 A To my memory, yes.

15 MR. MAYR: Judge, I have no further
16 questions.

17 THE COURT: About what this officer
18 saw. He's got a partner there. I don't know what
19 that officer saw.

20 MR. MAYR: Well -- and again, the State
21 has the burden at this point --

22 THE COURT: I know.

23 MR. MAYR: -- of proving that. So, I
24 would submit that based on what he's testified to,
25 having not seen any offense committed in his

1 presence, that that odor alone is not sufficient.
2 That's the position that I'm going to -- that I'm
3 presenting to this Court, and I'm asking the Court to
4 suppress.

5 THE COURT: Odor alone without --
6 without -- well, odor alone. There's a -- clear they
7 didn't have a search warrant.

8 And, I guess, the State's position is
9 what?

10 MS. COOPER: That it is, Judge. He
11 smelled the marijuana, he knows what marijuana smells
12 like, he's got experience with this, he knew it was
13 in there. He's pulling him out -- the defendant was
14 in the vehicle at the moment, and while we was
15 smelling the marijuana at that point, he's got
16 probable cause to search the car and everything in
17 the car, which includes the defendant.

18 He asked him to step out, immediately
19 searches him because of the odor of marijuana. He
20 finds it on his person and then finds the marijuana
21 in the center console. And, I mean, yes, the order
22 is reversed, but, I mean, just a few seconds later,
23 he did find the marijuana and the defendant would
24 have been under arrest for the marijuana and searched
25 anyway. So I don't -- I mean, he is -- obviously,

1 I'm glad being honest as to the order that the things
2 that were found. And I think he would have gotten
3 there either way.

4 THE COURT: Okay. So you're --

5 MR. MAYR: There is no inevitable
6 discovery doctrine.

7 THE COURT: I know that.

8 MR. MAYR: We know that. So I mean --

9 THE COURT: Not in Texas.

10 MR. MAYR: We know that he found it.
11 It doesn't change it. He has to go based on what he
12 has at that point.

13 THE COURT: All right. Well, here's
14 the deal. This is going to -- you know, neither one
15 of you have authority on this, so this is just
16 impressions. My impression is that it's a good
17 search. That's my impression. But I'm not going to
18 risk one -- ten days of trial and a guilty verdict in
19 this trial on my impression.

20 So what we're going to do is, I'm going
21 to bring the jury out and excuse the witness until
22 after lunch, and y'all are going to bring me some
23 authority on this. And I'm going to let the jury go
24 to lunch at 11:30. No, quarter to 12:00, quarter to
25 12:00, and come back.

1 MS. COOPER: The three witnesses of my
2 punishment, my first three witnesses, have to do with
3 this drug case. So -- and I -- there was not a
4 motion to suppress filed. Otherwise I would have
5 brought case law up here. I didn't know we were
6 doing this. But, I mean, can we maybe break and let
7 us do it real quick and, I mean, go get some case
8 law and then come back and --

9 THE COURT: If you can do in between
10 now and 11:30 -- well --

11 MS. COOPER: I mean, this is the --
12 this is the only other case he has.

13 THE COURT: Let me just ask one pointed
14 question.

15 MR. MAYR: Sure.

16 THE COURT: What's the status of this
17 case?

18 MS. COOPER: It's indicted and it's
19 pending in this court.

20 THE COURT: Okay.

21 MR. MAYR: It hasn't been set. I mean,
22 I don't know if we're set for trial. It's just --

23 THE COURT: It's a pending case?

24 MR. MAYR: It's just been pending.

25 MS. COOPER: It's a State jail felony

1 and that's been pending since January, he's been
2 indicted on it.

3 MR. MAYR: Judge, hold on. Just give
4 me one moment. Let me just read and make sure I'm
5 caught up on this. Again, just so the Court's aware,
6 in all fairness, I was prepared to argue that there
7 was not a reasonable suspicion to stop the vehicle in
8 the first place. I was not expecting this additional
9 issue to arise based on the testimony of the officer.
10 So -- but --

11 MS. COOPER: You've had the police
12 record from day one. It's in there.

13 MR. MAYR: But look -- I think -- hold
14 on.

15 THE COURT: Off the record.

16 (Discussion off the record.)

17 THE COURT: On the record.

18 MR. MAYR: Okay. Judge, pursuant to my
19 ethical duty to candor and disclose authority to the
20 Court. I have discovered -- I have found a case,
21 Jordan versus State 394SW3d 58. It's a Houston Court
22 of Appeals case from 2012. Where it appears they
23 took up this exact issue. And as the appellant in
24 that court -- the appellant in that court did exactly
25 what I had suggested. That based on State versus

1 Steelman, the proposition that -- to support an
2 arrest of an individual based on marijuana alone, it
3 must be particularized to that individual.

4 The Court, however, goes on to state
5 that a different rule has been recognized in
6 situations where the odor of marijuana has been
7 detected in a confined space. They cite to a Court
8 of Criminal Appeals decision, Parker versus State,
9 208SW3d, 593, note 11. It's a 2006 case.

10 And the Court then goes on to hold that
11 the strong odor of marijuana emanating from the
12 vehicle, made the officer's probable cause to search
13 not only the vehicle but also its passengers. Now, I
14 would -- I would submit that -- it appears that there
15 was other circumstances, but I would submit that this
16 case -- under these specific facts -- in other words,
17 there is authority that from the Court of Appeals
18 that seem to suggest that odor is sufficient to
19 search the person.

20 However, I would submit that State
21 versus Steelman is still controlling under these
22 circumstances. And in light of the fact that there
23 was nothing else other than the odor of marijuana,
24 and more importantly, that there -- because there was
25 another individual inside of the vehicle, there still

1 was not enough specific knowledge that this officer
2 had, that he was going to be in possession of further
3 marijuana.

4 It's like the Court said, the marijuana
5 odor was just coming generally from inside the
6 vehicle. The officer testified there was another
7 passenger inside of the vehicle. If an officer walks
8 into a room and smells -- walked into this courtroom
9 and smells an odor of marijuana, he can't begin to
10 search every single person that's present in the
11 courtroom.

12 Because there's another individual
13 inside the car that could potentially be in
14 possession, I would argue that that is not enough to
15 get that individualized suspicion that Mr. Hankston's
16 going to be in possession of an illegal substance.
17 So, based on that, I would argue the Court to
18 suppress.

19 THE COURT: State?

20 MS. COOPER: Judge, I'm looking at the
21 Jordan State, which I'm just now getting to look at,
22 because I didn't have it ahead of time. And it -- I
23 mean, that case is directly on point and says that
24 it's fine. So --

25 THE COURT: Did they search the driver?

1 MS. COOPER: They did. They searched
2 the driver, they had an odor of marijuana.

3 THE COURT: Yeah. So I would think if
4 they can search the passenger, they certainly could
5 search the driver.

6 MS. COOPER: Yes.

7 THE COURT: I would think. But I don't
8 know the unique facts and circumstances in that case.
9 But --

10 MS. COOPER: It's directly on point and
11 it was upheld at this time.

12 MR. MAYR: Judge, without waiving our
13 complaint at this point.

14 THE COURT: Uh-huh.

15 MR. MAYR: I would propose this. Let
16 me forward -- let me forward this case to you. I
17 don't want to waive my -- I don't want to waive my
18 complaint here. If the Court cares to take this
19 issue under advisement, and if the Court decides to
20 change its mind and then maybe ask the jury to
21 disregard that, we can cross that bridge when we get
22 to it. But I want my -- my complaint is very
23 specific and I want a ruling on my --

24 THE COURT: Buzz Ms. Leal, please.
25 Buzz Ms. Leal. Go ahead.

1 MR. MAYR: I want to make my complaint
2 very specific to the Court. Have a ruling on it at
3 this time. And then -- but I would submit this case
4 to the Court, you can review it, and then if we find
5 something differently later on, then we can obviously
6 take that up as we continue to move forward.

7 THE COURT: All right. If you would,
8 e-mail it to Ms. Leal. She'll print it out while I'm
9 still up here.

10 (Discussion off the record.)

11 MS. COOPER: Are you sending him the
12 Jordan case?

13 MR. MAYR: Yes.

14 Off the record.

15 (Discussion off the record.)

16 MR. MAYR: All right. We have nothing
17 further then at this time, Judge.

18 THE COURT: All right.

19 MR. MAYR: We are ready to proceed.

20 MS. COOPER: So, am I -- are we putting
21 this testimony on before the jury?

22 THE COURT: She's printing it out. I'm
23 going to look at it. Admitting it in front of the
24 jury and then asking them to forget about it is a
25 very difficult thing for them to do. And --

1 MR. MAYR: I can't concede. I
2 obviously can't concede that Jordan versus State is
3 controlling on this issue.

4 THE COURT: Of course not. Who knows
5 that the facts are there? That's a specific case on
6 a specific fact situation that may apply to this fact
7 situation or it may not. May be distinguished
8 somehow from this case.

9 (Discussion off the record.)

10 (Pause in proceedings.)

11 THE COURT: All right. I've read
12 Jordan V. State, 394SW3d 58, Court of Appeals case,
13 Houston First District. Based on that, the defense
14 objection is overruled.

15 You may proceed. Oh, anything else?

16 MS. COOPER: No, Judge.

17 MR. MAYR: Nothing further, Your Honor.

18 THE COURT: All right. Thank you.
19 Bring out the jury, please.

20 (Discussion off the record.)

21 THE COURT: The Rule has been invoked.
22 You know about the Rule, right?

23 THE WITNESS: Yes.

24 THE COURT: Don't talk to anybody about
25 the testimony or the case.

1 (Discussion off the record.)

2 (Jury Panel enters courtroom.)

3 (Open court; defendant and jury panel
4 present.)

5 THE COURT: Be seated, please.

6 Good morning.

7 JURY PANEL: Morning.

8 THE COURT: We were scheduled to start
9 today at 10:00 o'clock. You were -- you all were
10 ready. The Court was in a hearing on another case
11 having nothing do with this case, a different person.
12 That took a little time, then we were going to start
13 this case and there was some legal issues that came
14 up, and that took a little time. So, here with are.
15 It's almost 11:30.

16 What we usually do is I take a break at
17 11:30 to resume court business. Court business --
18 not just hearings, but court business. Cases that I
19 have to deal with. Court is here from 8:30 till
20 10:00, court business, and then 10:00 on to -- for
21 trial. But we usually take a break at 11:30 for 30
22 minutes, to take care of court business. And then
23 resume the trial at 12:00. Then lunch at 1:00.

24 But we're out of synch here. So what
25 we're going to do, I know you got here at 10:00,

1 you're probably not hungry yet. But we're going to
2 break you for lunch, so we can take care of court
3 business, 30 more minutes, which will bring us to
4 12:00 o'clock. And then in the meantime, you'll wait
5 40 minutes for us to start at 12:00.

6 Anyway, the schedule's messed up. So,
7 we're going to take a break at -- for lunch now,
8 around 12:30, 12:40 to around -- I mean 11:30, 11:40
9 to around 12:45. Then we'll go straight to --
10 through the testimony.

11 Once the State's case is presented and
12 defense evidence, if any, is presented, then I'll
13 read to you the jury charge as to punishment. Then
14 you'll begin your deliberations on punishment. And
15 it's my understanding that this will be --
16 deliberation could be early -- starting early
17 afternoon.

18 So that's the schedule. So, during
19 this break and all breaks, remember the instructions.
20 Don't discuss the case at all among yourselves or
21 with anyone else. Don't do any kind of investigation
22 concerning the law of punishment or anything like
23 that or any person, place, thing or issue in this
24 case.

25 Just have a good lunch. The Court --

1 the bailiffs have to -- they'll be with you in a
2 little while, and then they'll take you to lunch and
3 bring you back, and we'll pick up where we left off.
4 So if you would, go with the bailiff.

5 (Discussion off the record.)

6 THE BAILIFF: All rise.

7 (Jury exits courtroom.)

8 THE COURT: Be seated, please. Be
9 seated, please. All right, counsel, 12:45.

10 Do you need anything outside the
11 presence of the jury? Any other testimony, Mr.
12 Cooper?

13 MS. COOPER: I'm sorry, Judge.

14 THE COURT: Do you need any testimony
15 outside the presence of the jury on this issue?

16 MS. COOPER: I do not, Judge.

17 THE COURT: Okay. Defense? On this
18 issue? If you do, we'll break.

19 MR. MAYR: I can't think of any.

20 THE COURT: If you do we'll break
21 during the trial. All right. 12:45 for this trial.

22 (Lunch recess.)

23 THE COURT: Both sides ready for the
24 jury?

25 MR. MAYR: We're ready, Your Honor.

1 THE COURT: All right. Bring them in,
2 please.

3 THE BAILIFF: All rise.

4 (Jury Panel enters courtroom.)

5 (Open court; defendant and jury panel
6 present.)

7 THE COURT: Be seated, please.

8 Both sides ready?

9 MS. COOPER: State's ready, Your Honor.

10 MR. MAYR: Defense is ready, Your
11 Honor.

12 THE COURT: All right. What says the
13 State?

14 MS. COOPER: State calls Pablo Villa.

15 THE COURT: Pablo Villa, come on up.

16 THE BAILIFF: The witness has not been
17 sworn, Judge.

18 THE COURT: All right. Thank you.
19 Good afternoon, Mr. Villa.

20 THE WITNESS: Good afternoon, Your
21 Honor.

22 THE COURT: Raise your right hand,
23 please.

24 (Witness sworn.)

25 THE WITNESS: I do.

1 THE COURT: All right. Feel free to
2 adjust the chair and microphone, answer as directly
3 as you can.

4 You may proceed.

5 PABLO VILLA,
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. COOPER:

9 Q Can you introduce yourself to the members of
10 the jury, please.

11 A Yes. My name's Pablo Villa.

12 Q How are you employed?

13 A I'm employed through the Harris County
14 Community Supervision and Corrections Department.

15 Q And what are your roles and responsibilities
16 in your position?

17 A The -- currently as the Court Liaison
18 Officer for Court 178. Some of those duties and
19 roles here is to keep probation records, report
20 probation violations to the Court, do intakes on
21 defendants who are on probation, and report any other
22 probation matters to the Court.

23 Q Okay. What is a -- what is a bond?

24 A A bond is a -- it's when somebody is
25 currently on -- has a pending case, but they're out