

1 Court.)

2 THE COURT: Come forward. Let's proceed.

3 **OFFICER ARMAND SCHATTLE,**

4 having been first duly sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 BY MS. MITCHELL:

7 Q. Would you please state your name for the
8 record?

9 A. Armand Schattle.

10 Q. Where are you currently employed?

11 A. Houston Police Department.

12 Q. How long have you been with the Houston Police
13 Department?

14 A. About nine years.

15 Q. What is your current assignment?

16 A. HPD mounted patrol.

17 Q. Were you with mounted patrol in March of 2012?

18 A. No, I was with the crime reduction unit.

19 Q. Okay. And I'd like to take your attention to
20 March 26, 2012. Were you called out to a location called
21 Hottyz Nightclub?

22 A. We weren't called out. We were driving through
23 the parking lot and flagged down.

24 Q. And what were you flagged down about?

25 A. Robbery, assault with a weapon. The guy just

1 jumped out of a car and waved at us. We stopped. And he
2 pointed in the direction of two gentlemen that we wound up
3 arresting, and said, "The guy just pulled a gun on me. He
4 tried to rob me."

5 Q. And do you remember the address of this
6 location?

7 A. 9870 Westpark.

8 Q. Is that in Harris County, Texas?

9 A. Yes, it is.

10 Q. So, once you received this information from the
11 citizen, what did you do?

12 A. We told him to wait till we got the situation
13 handled; drove over to where the defendants were and made
14 contact with them. One of them jumped in the car and the
15 other one just kind of hung out by another car, parked
16 car.

17 Q. Okay. Do you remember what kind of car one of
18 the suspects jumped into?

19 A. A Chrysler 330M.

20 Q. Was it 30 or was it 300M?

21 A. On the model, it says 30M on my report.

22 Q. Okay.

23 A. It was a Chrysler.

24 Q. Once he jumped in the car, what did you do?

25 A. Ordered him out of the car. The car started

1 rolling forward. I was kind of stuck between my shotgun
2 and his car. We pulled -- we had our guns out because
3 they said it involved a weapon. And we were ordering him
4 out of the car. And I remember he was freaking out going,
5 "I can't stop. I can't stop." Finally, the car rolled to
6 a stop and hit the curb. And we got him out of the car.

7 Q. Okay. Were you able to identify that person at
8 that time?

9 A. Yes, ma'am.

10 Q. And who was that?

11 A. I know the last name was Sowell -- Patrick
12 Sowell.

13 Q. Okay. Once he got out of the car, what did you
14 do?

15 A. We put him and his friend in the back of our
16 patrol car and turned on our -- we have a microphone in
17 the back of our car, and started recording them and
18 started looking for the gun, or whatever else was around.

19 Q. Okay. Were you able to locate a gun?

20 A. Yes, ma'am.

21 Q. Where was that gun located?

22 A. Under the -- I think it was under the -- it was
23 under the car next to where he was parked.

24 Q. Okay. And how were you able to find that
25 weapon?

1 A. My partner found it. And we listened to our
2 recorder, and we have the suspect on tape saying that he
3 had thrown the gun under the car and was asking his uncle,
4 who we allowed to come up and speak to the suspect, to try
5 and kick it further under the car.

6 Q. Okay. Could you see anything else inside of
7 the car -- of the defendant's car?

8 A. There was a -- I remember a baby bottle and
9 another bottle, one having codeine syrup in it.

10 Q. Okay. Do you see the person who was in that
11 Chrysler that evening, do you see him in the courtroom
12 today?

13 A. Yes, ma'am. He's sitting right there.

14 Q. Could you please identify him?

15 A. He's sitting right there.

16 THE COURT: What's he wearing?

17 THE WITNESS: A blue shirt and a tie.

18 THE COURT: All right. He's identified the
19 defendant.

20 Q. (By Ms. Mitchell) And once you saw the baby
21 bottle, what does that tell you? What does the baby
22 bottle tell you?

23 A. It's usually codeine. People put it in there
24 to say that it's juice for their kid, but it's in fact
25 codeine syrup.

1 Q. And once you saw the codeine, what happened?

2 A. We recovered the codeine. We recovered the
3 pistol. He was the only one in the car. So, we arrested
4 him for the codeine and the pistol since we had him on
5 recording talk about the pistol. And we arrested his
6 friend for a marijuana joint that he had behind his ear.

7 Q. And who was his friend?

8 A. Joshua Johnson.

9 Q. And the codeine, was that in plain view?

10 A. Yes, ma'am.

11 Q. Once he was arrested, what did you do with the
12 car?

13 A. We towed it.

14 Q. Okay. Was it in a parking spot at that time?

15 A. At that time it was not in a parking spot. It
16 was -- because he had been trying to pull forward, or pull
17 out as we drove up, the car was literally in the middle of
18 the parking lot -- middle of the drive.

19 Q. Could you have left it there?

20 A. We could have left it there. If I'm
21 remembering correctly, because it's been two years, I
22 think that we offered to leave it there, but the club
23 manager, whatever, said they didn't want it. But I might
24 be wrong in that.

25 Q. When you towed the car, did you do an inventory

1 search on it?

2 A. Yes.

3 Q. And whenever you do the inventory search, do
4 you take all the items out of the car, or do you just
5 leave them in the car?

6 A. Generally, we leave them in the car depending
7 on what it is. If it's like a 3,000-dollar laptop, or
8 something like that, then we will take it and tag that
9 into evidence for safekeeping. But mostly it's -- usually
10 it's miscellaneous clothing, and tools, and stuff in the
11 trunk that we just leave in the car.

12 Q. And you took an inventory in this case?

13 A. Yes, ma'am.

14 Q. That's pursuant to your policy?

15 A. Yes.

16 MS. MITCHELL: Pass the witness.

17 THE COURT: All right. Cross?

18 MS. MITCHELL: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. STILL:

21 Q. Office Schattle; is that correct?

22 A. Yes.

23 Q. I just want to kind of go over the timeline
24 when things were happening at that scene if you don't
25 mind.

1 A. Okay.

2 Q. So, you're patrolling kind of the local
3 nightclubs in that area, the parking lot; is that right?

4 A. We were on the crime reduction unit at that
5 time, and we are out looking for reasons to pull people
6 over, bad people doing bad things. We are a hot spot
7 unit. So, Hottyz, at that time, was a pretty jumping club
8 that was known for dope, and guns, and stuff like that.

9 Q. The reason why you were able to get involved
10 with Mr. Sowell and Mr. Johnson tonight is because of
11 someone flagging you down --

12 A. Uh-huh.

13 Q. -- and indicating that he had a weapon of some
14 kind; is that correct?

15 A. Yes.

16 Q. Would you agree with me that that person who
17 flagged you down was never identified; is that correct?

18 A. No. When we went and made contact with the
19 defendants, he left.

20 Q. So, he was gone and you were not able to get a
21 name -- a name of him; is that correct?

22 A. Yes.

23 Q. Or any identifiers to find him, right?

24 A. Nothing.

25 Q. So, essentially, this is a anonymous tip at

1 this point, right?

2 A. Sure.

3 Q. You don't know who he is, correct?

4 A. No, I don't.

5 Q. Now, you approached the vehicle and you
6 describe -- you describe Mr. Sowell's being in the vehicle;
7 is that correct?

8 A. Yes.

9 Q. Mr. Johnson not being in the vehicle, correct?

10 A. Correct.

11 Q. And the vehicle, it took a little while to
12 roll, but it stopped; is that a fair and accurate
13 depiction?

14 A. Yes.

15 Q. At which point you removed Mr. Sowell's from the
16 vehicle; is that correct?

17 A. Yes.

18 Q. You handcuffed him?

19 A. Uh-huh.

20 Q. Yes?

21 A. I believe so.

22 Q. I'm just asking yes because uh-huh --

23 A. I understand. I apologize.

24 Q. No worries. So, you handcuffed him, correct?

25 A. I believe so.

1 Q. You put him in the back of the patrol car,
2 correct?

3 A. Correct.

4 Q. You also put Mr. Johnson in the back of the
5 patrol car; is that correct?

6 A. Yes, sir.

7 Q. And then you started to look in the car for the
8 gun that was mentioned by the anonymous tipster; is that
9 correct?

10 A. Yes, we were looking in the car and around the
11 car.

12 Q. So, you entered the car to look for this
13 weapon; is that correct?

14 A. Yes.

15 Q. You did not have a warrant to do so; is that
16 correct?

17 A. No, sir.

18 Q. While you were looking in this car, you found
19 some codeine; is that right?

20 A. Yes.

21 Q. And you found that in plastic cups, correct?

22 A. I believe some of it was in a plastic cup and I
23 believe the other was in a baby bottle, if I'm remembering
24 correctly.

25 Q. In a number of containers; is that right?

1 A. Yes, sir.

2 Q. You would agree with me that you use your sense
3 of smell to determine the smell of codeine and to
4 basically confirm --

5 A. To the best of my ability. I mean, it's within
6 our policy.

7 Q. Yes, sir. What I'm saying is a cup can contain
8 any type of item, but that extra step of smelling it
9 basically built your suspicion that it was indeed codeine;
10 is that right?

11 A. Yes, sir.

12 Q. Because cups can hold any kind of liquid,
13 right?

14 A. Correct.

15 Q. And it's not readily apparent from outside the
16 vehicle what type of liquid is going to be in the cups
17 that are in the vehicle, correct?

18 A. That is correct.

19 Q. So, you find the codeine; is that right?

20 A. Yes.

21 Q. At this point, the two suspects, Mr. Sowell's
22 Mr. Johnson, are in the car when you find the codeine; is
23 that right?

24 A. Yes.

25 Q. And you consider them under arrest at that

1 point, correct?

2 A. Yes.

3 Q. Because of the contraband that's found in the
4 car, correct?

5 A. Well, yes and no, because I'm not an expert at
6 codeine. I usually don't arrest people for the codeine
7 unless I'm 100 percent sure. So, we had other people look
8 at it.

9 Q. Okay. Because it's a narcotics investigation,
10 you had them under arrest because they are in possession
11 of this substance, right?

12 A. Yes.

13 Q. And more specifically, you indicated it was
14 Mr. Sowell because he was the person in the car, correct?

15 A. Yes.

16 Q. Later on, after the search of the car and the
17 finding of the codeine, this pistol was located; is that
18 right?

19 A. I can't remember if it was right around the
20 same time period. Like I said, while I'm searching the
21 car, my partner was looking for the gun. And it might
22 have been within minutes of each other because he was
23 looking on the ground and around.

24 Q. This didn't take a tremendously long amount of
25 time, this entire investigation; is that correct?

1 A. No, sir, it did not.

2 Q. So, your partner finds the gun underneath the
3 vehicle; is that correct?

4 A. Yes.

5 Q. Now, you agree with me that when it comes to
6 the possession of any item, the police needs -- or law
7 enforcement needs to have some affirmative links to the
8 contraband; is that right?

9 A. Uh-huh.

10 Q. Affirmative links being a reason to believe
11 that a particular person is in possession of an item; is
12 that right?

13 A. Yes.

14 Q. So, in this particular case, this gun was not
15 found on the person of Mr. Sowell; is that correct?

16 A. That's correct, it was not found on his person.

17 Q. It was not found on his person?

18 A. Uh-huh.

19 Q. It was found underneath the vehicle next to the
20 car that he was driving; is that right?

21 A. Yes.

22 Q. Your primary affirmative link to charge him for
23 possession of that weapon is the recording that you made
24 while he was under arrest in your car; is that correct?

25 A. Yes.

1 Q. And just timing-wise, your search of the
2 vehicle began and the finding of the codeine began before
3 the discovery of the gun; is that correct?

4 A. Honestly, sir, I can't tell you "yes" or "no"
5 one way or the other on that. Everything was happening
6 fairly rapidly. I can't say from memory what was found
7 first.

8 Q. Okay. Was there any additional information
9 that you received, aside from that gun being found
10 underneath another car, that corroborated the tip that was
11 made by the anonymous person?

12 A. Well, the recording that we have him telling
13 his uncle, or the person that he said was his uncle, to go
14 and kick the gun further under the car.

15 Q. I'm talking about before you began the search
16 of that car. Was there any --

17 A. The gun -- where we located the gun, it could
18 have been placed there very easily by somebody either
19 sitting, you know, in the driver seat where he was, or
20 standing where we originally saw him when we started to
21 roll up, which was right next to -- in between the
22 vehicles.

23 Q. But you're not sure, right?

24 A. No, I can't say 100 percent that -- I didn't
25 see him drop it; I didn't see him have it.

1 Q. But my point is, is that you were looking in
2 that car for the gun; is that right?

3 A. Yes, sir.

4 Q. You happen to stumble upon some codeine while
5 you were doing that; is that right?

6 A. Yes.

7 Q. And the reason and sole reason you were looking
8 for a gun in that car was because of an anonymous tipster;
9 is that correct?

10 A. Sure.

11 MR. STILL: Pass the witness, Your Honor.

12 THE COURT: Anything else?

13 Q. (By Mr. Still) Briefly.

14 **REDIRECT EXAMINATION**

15 BY MS. MITCHELL:

16 Q. Whenever the defendant was in the backseat of
17 your patrol car and he was talking, you were not
18 interrogating him, correct?

19 A. No, ma'am, we did not ask him any questions.

20 Q. So, he said that on his own free will to his
21 uncle?

22 A. Yes.

23 Q. And then you got an anonymous tip that someone
24 pointed a gun at them, correct?

25 A. We got the anonymous tip first. That's when he

1 flagged us down and said that he had a gun.

2 Q. Okay. And then you found the gun?

3 A. Then we found the gun.

4 MS. MITCHELL: Pass the witness.

5 THE COURT: All right. Thank you.

6 MR. STILL: Nothing further, Your Honor.

7 THE COURT: All right, sir. Thank you.

8 You may step down.

9 The State have any other witnesses?

10 MS. MITCHELL: No, Your Honor.

11 THE COURT: I'll give you guys a couple of
12 minutes each to argue. Your burden. You may
13 proceed.

14 MS. MITCHELL: Your Honor, I'll reserve the
15 right to close.

16 THE COURT: All right.

17 **CLOSING ARGUMENT BY THE DEFENSE**

18 MR. STILL: Your Honor, I'm going to go in
19 the order of the witnesses just so it's a little more
20 convenient for everyone.

21 We will start with Sergeant Wilson. The
22 defense's contention is there has to be a reason to
23 look inside the car. We have standing because he
24 told her he owned the car, there's an arrest where
25 he's driving the car, there's an additional arrest