

1 **THE BAILIFF:** This witness has not been
2 sworn.

3 **THE COURT:** Officer Swift, if you would
4 please step up on the witness stand. Turn and face the
5 jury. Would you please raise your right hand.

6 Do you solemnly swear the testimony you
7 are about to give before this jury be the truth, the
8 whole truth, and nothing but the truth, so help you
9 God?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** Please be seated.

12 **MISS VANIK:** May I proceed, Your Honor?

13 **THE COURT:** Yes, ma'am.

14 **E. SWIFT,**

15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 **BY MISS VANIK:**

18 **Q.** Officer, can you please introduce yourself to
19 the jury.

20 **A.** My name is Officer E. Swift. I'm with the
21 Houston Police Department.

22 **Q.** And how long have you been employed with the
23 Houston Police Department?

24 **A.** Approximately a little over a year.

25 **Q.** And have you had -- or what is your current

1 assignment with the Houston Police Department?

2 A. I work on the DWI Task Force.

3 Q. Can you explain to the jury what the DWI Task
4 Force is?

5 A. Um, we go out and run traffic and monitor the
6 roads and look for intoxicated drivers.

7 Q. Have you had any specialized training in
8 identifying intoxicated people and drivers?

9 A. Yes, ma'am.

10 Q. Can you explain that training.

11 A. In the academy we went to a week of training
12 with DWIs. And I recently went in August to another
13 class, also got additional training.

14 Q. And were you on the DWI Task Force on April
15 21st, 2012?

16 A. Yes, ma'am.

17 Q. And on April 21st, 2012, were you called out
18 to a scene?

19 A. Yes, ma'am.

20 Q. And where was that scene?

21 A. That scene was at 200 Carl and 2400 Thomas
22 Street.

23 Q. And when you arrived on that scene, what did
24 you observe?

25 A. I observed a vehicle in the ditch and, um, the

1 cop cars that were facing the vehicle.

2 Q. Okay. And was that car that was in the ditch,
3 was that in a public place?

4 A. Yes, ma'am.

5 Q. And once you got to the scene, what did you
6 do?

7 A. I talked to the other officers to obtain the
8 information as to what happened.

9 Q. And when you were there, did you observe other
10 people besides the officers and the person that they
11 had detained?

12 A. Yes.

13 Q. And who were those other people?

14 A. They were people that were standing outside of
15 their homes.

16 Q. No one else, though?

17 A. No.

18 Q. And can you describe the general location to
19 the jury. Was it residential, commercial?

20 A. Residential. Residential housing.

21 Q. And when you interacted or when you interacted
22 with the person that Officer Sokoloski had detained,
23 what was your impression of this person?

24 A. He was combative, yelling. Um, I didn't -- I
25 asked him if he was going to be okay for me to take him

1 out of the cop car.

2 Q. And what did he respond?

3 MR. RAMIREZ: Objection, Judge. That's
4 custodial interrogation.

5 THE COURT: Overruled.

6 Q. (BY MISS VANIK) You may respond.

7 A. Can you repeat your question?

8 Q. What did he respond when you asked him if you
9 could take him out of the police car?

10 A. I don't exactly know what he said but he was
11 yelling.

12 Q. Were you able to eventually get him out of the
13 police car?

14 A. Yes.

15 Q. And, at that point, were you able to look at
16 him and interact with him?

17 A. Yes.

18 Q. And do you recognize that person here in the
19 courtroom today?

20 A. Yes, ma'am.

21 Q. And can you please identify him by pointing at
22 him and stating an article of clothing he's wearing?

23 A. A khaki blazer. (Indicates.)

24 MISS VANIK: May the record reflect the
25 witness has identified the defendant?

1 **THE COURT:** Yes, ma'am.

2 **MISS VANIK:** Thank you, sir.

3 **Q. (BY MISS VANIK)** So once you've got the
4 defendant out of the police car, what was the first
5 thing that you did?

6 **A.** I began talking to him and trying to figure
7 out what was going on.

8 **Q.** And while you were talking to him, what sort
9 of things did you notice about him?

10 **A.** I noticed his balance wasn't steady. I
11 noticed as he was talking in a slurred speech, I
12 noticed his eyes were red and glassy, and a smell of
13 alcohol.

14 **Q.** And what did you think when you saw this?

15 **A.** I thought that he was impaired.

16 **Q.** And you said you asked him some questions.
17 What sort of things did you ask him?

18 **A.** I asked him where he was coming from, in which
19 he stated he was coming from --

20 **MR. RAMIREZ:** Objection, Judge. Same
21 thing; custodial interrogation.

22 **THE COURT:** Overruled.

23 **Q. (BY MISS VANIK)** You may respond, ma'am.

24 **A.** I asked him where he was coming from. He
25 stated a friend's house. Um, he stated he was driving

1 the vehicle. Um, I asked him if he remembered getting
2 into the accident. Just --

3 Q. And what was his response when you asked him
4 if he remembered getting into an accident?

5 A. That he remembered getting into the accident.

6 Q. So did this defendant admit that he was
7 driving the vehicle?

8 A. Multiple times.

9 Q. And did you observe anyone else in that
10 vehicle?

11 A. No, ma'am.

12 Q. Did you observe anyone else on the scene who
13 stated they were either passenger in the vehicle or a
14 driver of the vehicle?

15 A. No, ma'am.

16 Q. And so --

17 **MISS VANIK:** Your Honor, may I approach
18 the witness?

19 **THE COURT:** Yes, ma'am.

20 Q. **(BY MISS VANIK)** Officer, I'm showing you
21 what's been previously marked for identification
22 purposes as or, excuse me, State Exhibit No. 1.

23 Officer, are you familiar with State
24 Exhibit No. 1?

25 A. Yes, ma'am.

1 Q. What is State Exhibit No. 1?

2 A. It's going to be the DVD from the scene.

3 Q. Okay. And, um, have you seen the contents of
4 State Exhibit No. 1?

5 A. Yes, ma'am.

6 Q. And were they recorded on a device that is
7 capable of making an accurate recording?

8 A. Yes, ma'am.

9 Q. And was it recorded by a person who is capable
10 of operating the machine?

11 A. Yes, ma'am.

12 Q. And does the contents of State Exhibit 1
13 fairly and accurately represent your interaction with
14 Mr. Galvan on April 21st, 2012?

15 A. Yes, ma'am.

16 Q. Has it been altered in any manner?

17 A. No, ma'am.

18 **MISS VANIK:** Your Honor, at that point,
19 I'll tender State Exhibit 1 to the defense counsel for
20 any objections.

21 **MR. RAMIREZ:** Judge, if I may ask this
22 officer a couple of questions?

23 **THE COURT:** Yes, sir. You may proceed.

24 **VOIR DIRE EXAMINATION**

25 **BY MR. RAMIREZ:**

1 Q. Did you bring this with you today?

2 A. No.

3 Q. Where has this recording been?

4 A. I tagged it in the D.A. Lock Box.

5 Q. And do you know who brought it with you today?

6 A. No.

7 Q. Okay. Is there any way for you to identify --

8 **MR. RAMIREZ:** Judge, I am going to object
9 to the chain of custody. I don't know where this thing
10 has been.

11 **THE COURT:** Let me see it.

12 **MISS VANIK:** Further, Your Honor, this
13 witness has personal knowledge of the contents of this
14 disk.

15 **THE COURT:** Well, why don't you ask her
16 that.

17 **DIRECT EXAMINATION (CONTINUED)**

18 **BY MISS VANIK:**

19 Q. Have you viewed this disk, ma'am?

20 A. Yes.

21 Q. And is this a fair and accurate representation
22 of your interactions with Mr. Galvan on April 21st,
23 2012?

24 A. Yes, ma'am.

25 Q. Has it been altered in any manner?

1 **A.** No, ma'am.

2 **THE COURT:** It will be admitted.

3

4 **MISS VANIK:** Your Honor, may I publish
5 State Exhibit 1 to the jury?

6 **THE COURT:** Yes, ma'am.

7 **Q.** **(BY MISS VANIK)** And so will we be able to
8 see the initial conversation that you had with
9 Mr. Galvan on that DVD?

10 **A.** Yes, ma'am.

11 **THE COURT:** Miss Vanik, why don't you
12 tilt that screen back so the jurors can look at it as
13 well.

14 **MISS VANIK:** Thank you, sir.

15 **Q.** **(BY MISS VANIK)** And that vehicle that we see
16 behind the police car on the left side of the screen,
17 what is that vehicle, ma'am?

18 **A.** That is the vehicle that the defendant was in.

19 **Q.** And where is it located?

20 **A.** In the ditch.

21 (DVD played.)

22 **Q.** **(BY MISS VANIK)** And that noise that we are
23 hearing, where is that coming from?

24 **A.** That is the officer giving me the time.

25 **Q.** So you are wearing a mic on your person?

1 **A.** Yes, ma'am.

2 **Q.** Okay. So did Mr. Galvan admit to drinking on
3 this night?

4 **A.** Yes, ma'am.

5 **Q.** And what did he say he had to drink?

6 **A.** First he said beers. Then he changed it to
7 tequila.

8 **Q.** Did he admit to driving on this particular
9 night?

10 **A.** Yes, ma'am.

11 **Q.** And did he admit or did he say this was his
12 vehicle?

13 **A.** Um, I don't recall.

14 **Q.** Going back to those drinks that he said, did
15 he say when he had his first drink?

16 **A.** He said 10:30.

17 **Q.** Did he say when he had the last drink?

18 **A.** No.

19 **Q.** Do you want to look at your report to refresh
20 your memory?

21 **A.** Oh, I'm sorry. He said between 8:30 and 9:30.

22 No, I'm sorry. 7:00 p.m. First drink was at 7:00

23 p.m., the last drink was at 10:30.

24 **Q.** Last drink was at 10:30 p.m.?

25 **A.** Yes.

1 Q. And did he know what time it was currently?

2 A. No. I had to tell him multiple times.

3 Q. Well, let me ask you this: Did he say he had
4 anything to eat that day?

5 A. He said eggs and bacon.

6 Q. And at what time did he eat the eggs and
7 bacon?

8 A. Between 8:30 and 9:30.

9 Q. And after you had this initial conversation
10 with Mr. Galvan, what did you do next?

11 A. I told him I was going to perform the standard
12 field sobriety tests.

13 Q. And why did you perform the standard field
14 sobriety tests?

15 A. Because I had reason to believe that he was
16 intoxicated.

17 Q. What's the first standard field sobriety test
18 that you performed?

19 A. The HGN.

20 Q. And what does HGN stand for?

21 A. Horizontal gaze nystagmus.

22 Q. Can you explain to the jury what the
23 horizontal gaze nystagmus test is?

24 A. It's the involuntary jerking of the eye.

25 Q. And how -- why do you test for horizontal gaze

1 nystagmus in DWI investigations?

2 **A.** Because when alcohol is introduced into the
3 system, whenever you do the HGN, the eyes, they
4 involuntarily jerk.

5 **Q.** And do we always have nystagmus or this
6 involuntary jerking?

7 **A.** Yes.

8 **MR. RAMIREZ:** I'm going to object, Judge.
9 State hasn't offered her as an expert in this field,
10 and so I object to that line of testimony.

11 **THE COURT:** Overruled.

12 **MISS VANIK:** Thank you, sir.

13 **Q. (BY MISS VANIK)** Okay. So do we always have
14 nystagmus?

15 **A.** Yes, ma'am.

16 **Q.** And what happens when alcohol is introduced to
17 the body? How does alcohol introduced into the body
18 affect nystagmus?

19 **MR. RAMIREZ:** Objection, Judge. Same
20 objection. She's getting into specialized questions
21 that have --

22 **THE COURT:** You may answer, if you know,
23 officer.

24 **A.** Can you repeat your question for me?

25 **Q. (BY MISS VANIK)** Yes, ma'am. How does

1 alcohol entering the body affect our natural nystagmus?

2 **A.** It makes the eyes jerk involuntarily.

3 **Q.** Can you see it with the naked eye when alcohol
4 is introduced?

5 **A.** Yes, ma'am.

6 **Q.** And how do you perform the horizontal gaze
7 nystagmus test?

8 **A.** Just through the whole thing. You start with
9 the equal tracking and equal pupil size.

10 **Q.** Why is equal tracking and equal pupil size
11 important?

12 **A.** To check if they had any head injuries or
13 anything.

14 **Q.** And if they had any head injuries or something
15 of that nature, would they be a good candidate for the
16 horizontal gaze nystagmus test?

17 **A.** No, ma'am.

18 **Q.** And if they had in fact had a head injury,
19 would you be able to see equal tracking and pupil size?

20 **A.** No, ma'am.

21 **Q.** Can you explain to the jury how you look for
22 equal tracking and pupil size?

23 **A.** I hold my stimulus up and I go back and forth
24 over the eyes.

25 **Q.** And after you're done checking for equal

1 tracking and pupil size, what's the next thing that you
2 do?

3 **A.** Lack of smooth pursuit.

4 **Q.** Can you explain to the jury what lack of
5 smooth pursuit is?

6 **A.** Lack of smooth pursuit, the best example I can
7 give you is turning your windshield wipers on, on a dry
8 windshield, your windshield wiper does this in a
9 motion, and as you go past the eyes, their eyes are
10 doing that. There's not smooth pursuit. Their eyes
11 are just like this as you go across.

12 **Q.** And you performed this lack of smooth pursuit
13 on Mr. Galvan?

14 **A.** Yes, ma'am.

15 **Q.** And what's the next phase of the horizontal
16 gaze nystagmus test?

17 **A.** Distinct and sustained nystagmus at maximum
18 deviation.

19 **Q.** Can you explain what that means to the jury?

20 **A.** It's where you hold the stimulus out 45
21 degrees where you cannot see any white in the eyes, and
22 approximately four seconds, and in that four seconds
23 the eye is going to involuntarily jerk.

24 **Q.** And what happens if you hold that stimulus out
25 for less than four seconds?

1 **A.** I could possibly miss a clue.

2 **Q.** So that wouldn't be held against the defendant
3 as a sign of intoxication?

4 **A.** Correct.

5 **Q.** And what happens if you hold it out for longer
6 than four seconds?

7 **A.** If you hold it longer than four seconds,
8 thirty seconds, you could get nystagmus.

9 **Q.** That's only if it's approximately thirty
10 seconds that you're holding?

11 **A.** Yes, ma'am.

12 **Q.** And did you perform the maximum deviation test
13 on Mr. Galvan?

14 **A.** Yes, ma'am.

15 **Q.** And what is the next step of the horizontal
16 gaze nystagmus test?

17 **A.** Onset prior to 45 degrees.

18 **Q.** Can you explain to the jury what that is?

19 **A.** It's where you have the stimulus and you
20 slowly move the stimulus out, and whenever you see the
21 involuntary jerking prior to 45.

22 **Q.** And did you perform onset prior to 45 degrees
23 on Mr. Galvan?

24 **A.** Yes, ma'am.

25 **Q.** Do we see you performing these tests on State

1 Exhibit No. 1?

2 A. Yes, ma'am.

3 (DVD continued to be played.)

4 Q. (BY MISS VANIK) Is there anything besides
5 the horizontal gaze nystagmus that led you to believe
6 that this defendant was intoxicated while you were
7 performing the test?

8 A. He had a noticeable sway.

9 MISS VANIK: Your Honor, may I approach
10 the witness?

11 THE COURT: Yes, ma'am.

12 Q. (BY MISS VANIK) Officer, I'm going to show
13 you what's been marked for identification purposes only
14 as State Exhibit 2. Are you familiar with the contents
15 of State Exhibit 2?

16 A. Yes, ma'am.

17 Q. Do you believe that the contents of State
18 Exhibit 2 will help aid the jury in understanding your
19 testimony about the horizontal gaze nystagmus?

20 A. Yes, ma'am.

21 MISS VANIK: Your Honor, at this point,
22 I'm going to tender State Exhibit 2 for identification
23 to defense counsel for any objection as a demonstrative
24 aid.

25 (At the Bench)

1 **MR. RAMIREZ:** What is it?

2 **MISS VANIK:** As I told you, it's the HGN
3 demonstrative that I gave you the opportunity to view
4 before trial.

5 **THE COURT:** You've seen two pairs of eyes
6 on top of each other; one demonstrating no nystagmus,
7 one demonstrating nystagmus under the influence of
8 alcohol.

9 **MR. RAMIREZ:** I'm going to object.

10 **THE COURT:** Just to show what the eyes
11 looked like.

12 **MR. RAMIREZ:** I'm going to object, Judge.
13 I mean, I don't know who prepared it. I don't know who
14 are the subjects. I don't know -- it seems to me it's
15 not relevant to my client's participation in that
16 testing, so I'm going to object.

17 **THE COURT:** Denied. It will be admitted.

18 **MISS VANIK:** Thank you, Your Honor.

19 May I publish State Exhibit 2 to the
20 jury?

21 **THE COURT:** Yes, ma'am.

22 *(Open court, jury and defendant present)*

23 **Q. (BY MISS VANIK)** Now I'm going to show the
24 jury what has previously been marked as State
25 Exhibit 2.

1 Can you explain to the jury what State
2 Exhibit 2 is?

3 **A.** The DVD you're basically getting ready to
4 show?

5 **Q.** Yes, ma'am.

6 **A.** It's basically two sets of eyeballs. One is
7 going to be one with no alcohol and the other one is
8 going to be a pair of eyeballs that has alcohol in the
9 system.

10 **Q.** And with the complete understanding that these
11 are not Mr. Galvan's eyes that we're watching --

12 **A.** Correct.

13 **Q.** -- do you believe that this is a fair and
14 accurate representation of what you're looking for when
15 you check for nystagmus?

16 **A.** Yes, ma'am.

17 **Q.** Okay. And is this the first phase of the
18 horizontal gaze nystagmus test?

19 **A.** Yes, ma'am.

20 (DVD continued to be played.)

21 **Q.** **(BY MISS VANIK)** And, again, with the
22 complete understanding those are not Mr. Galvan's eyes,
23 is that a fair and accurate representation of what you
24 looked for when you looked for lack of smooth pursuit?

25 **A.** Yes, ma'am.

1 **Q.** And on April 21st, 2012, did Mr. Galvan
2 exhibit a lack of smooth pursuit?

3 **A.** Yes, ma'am.

4 **Q.** And what is the second phase of the test?

5 **A.** The distinct and sustained nystagmus at
6 maximum deviation.

7 **Q.** Again, with the understanding these are not
8 Mr. Galvan's eyes, is it a fair and accurate
9 representation of what you looked for when you looked
10 for distinct and sustained nystagmus?

11 **A.** Yes, ma'am.

12 **Q.** And on April 21st, 2012, did Mr. Galvan
13 exhibit distinct and sustained nystagmus?

14 **A.** Yes, ma'am.

15 **Q.** What's the final phase of the horizontal gaze
16 nystagmus test?

17 **A.** Onset prior to 45.

18 **Q.** Again, with the understanding these are not
19 Mr. Galvan's eyes, is this a fair and accurate
20 representation of what you looked for when you looked
21 for onset prior to 45 degrees?

22 **A.** Yes.

23 **Q.** And on April 21st, 2012, did Mr. Galvan
24 exhibit onset prior to 45 degrees?

25 **A.** Yes, ma'am.

1 **Q.** Officer, how many clues are there on the
2 horizontal gaze nystagmus test?

3 **A.** Six clues.

4 **Q.** How many clues of intoxication did Mr. Galvan
5 exhibit?

6 **A.** All six clues.

7 **Q.** Okay. So after you performed the horizontal
8 gaze nystagmus test, what was the next thing that you
9 did?

10 **A.** The one-leg stand.

11 **Q.** Can you explain to the jury what the one-leg
12 stand is?

13 **A.** The one-leg stand is where I ask the defendant
14 to stand with his feet together and his hands down by
15 his side. I then ask him to, again, if he understands
16 those instructions. I then begin to tell him what I
17 want him to do, which would be to lift the leg of his
18 choice, approximately 6 inches off the ground, which is
19 about the length of a dollar bill, put your hands down
20 to his side, need to look down at his feet, count one
21 thousand one, one thousand two, one thousand three, and
22 on until time to stop. I ask him if he understands the
23 instructions, and then I demonstrate.

24 **Q.** And is the one-leg stand a divided-attention
25 test?

1 **A.** Yes, ma'am.

2 **Q.** And what is a divided-attention test?

3 **A.** A divided-attention test would be if an
4 example as if you're driving. You're not only using
5 the gas pedal to go faster, slower, also dividing your
6 attention to change the radio station, to look at your
7 phone, to check the mirrors. You're dividing your
8 attention, just like this test.

9 **Q.** And why is that important in a DWI
10 investigation?

11 **A.** Because if you can't divide your attention,
12 then how are you able to operate a vehicle?

13 **Q.** And on April 21st, 2012, did you ask
14 Mr. Galvan to perform the one-leg stand test?

15 **A.** Yes, ma'am.

16 **Q.** And do you have to be an athlete to
17 participate in this test?

18 **A.** No.

19 **Q.** Did Mr. Galvan state if he had any injuries?

20 **A.** He did state that his ankles were hurting and
21 that he had back issues.

22 **Q.** And did you take that into consideration when
23 you asked him to perform the one-leg stand test?

24 **A.** Yes, ma'am.

25 **Q.** Okay. And are there clues on the one-leg

1 stand test?

2 **A.** Yes, ma'am.

3 **Q.** What are the clues on the one-leg stand test?

4 **A.** There's four clues. You drop your foot, you
5 have sway, you use your arms for balance or you hop.

6 **Q.** And on April 21st, 2012, did Mr. Galvan
7 perform the one-leg stand test?

8 **A.** Yes, ma'am.

9 **Q.** And how -- what did he exhibit?

10 **A.** He exhibited three clues which sways, uses his
11 arms, and drops his foot.

12 **Q.** And after you performed the one-leg stand
13 test, what was the next test that you asked Mr. Galvan
14 to perform?

15 **A.** The walk-and-turn test.

16 **Q.** Okay. And would you explain to the jury what
17 the walk-and-turn test is.

18 **A.** The walk-and-turn test is where I have them
19 put their right foot on the line or left foot on the
20 line, right foot in front of the left foot, hands down
21 by your side, ask them to stand in that position until
22 I ask them to begin, and ask them if they understand.
23 I then ask them or tell them I want them to take a
24 series of nine heel-to-toe steps. When they get to
25 nine steps, keep the front foot flat, take a series of

1 small steps to turn themselves around and then return
2 nine heel-to-toe steps. While taking the test, he
3 needs to look down at his foot, count every step out
4 loud so I can hear it, and do not stop walking until
5 you've completed the test, then I demonstrate.

6 Q. And did you demonstrate the test for
7 Mr. Galvan on April 21st, 2012?

8 A. Yes, ma'am.

9 Q. Did he perform that test?

10 A. Yes, ma'am.

11 Q. Are there clues on this test?

12 A. Yes, ma'am.

13 Q. What are those clues?

14 A. Um, can't keep balance, starts too soon,
15 misses heel-to-toe, steps off line, uses their arms for
16 balance, wrong number of steps, improper turn and
17 stopped walking.

18 Q. And how many clues did Mr. Galvan exhibit?

19 A. He exhibited six clues.

20 Q. What were those clues?

21 A. Can't keep balance, he stepped off the line,
22 he stopped walking, he missed heel-to-toe, wrong number
23 of steps and improper turn.

24 Q. Can we see Mr. Galvan perform these tests on
25 video?

1 **A.** Yes, ma'am.

2 (Video played for the jury.)

3 **Q.** **(BY MISS VANIK)** So, in all fairness,
4 Mr. Galvan, did tell you he had a back injury, correct?

5 **A.** Yes, ma'am.

6 **Q.** And did you take that into consideration when
7 you were evaluating how he performed on the
8 walk-and-turn test and the one-leg stand test?

9 **A.** Yes, ma'am.

10 **Q.** And did you still believe that he exhibited
11 signs of intoxication?

12 **A.** Yes, ma'am.

13 **Q.** And why did you believe that?

14 **A.** Cause not only did he exhibit the clues that I
15 counted, he also did not count out loud when I asked
16 him to on the one-leg stand and the walk-and-turn. I
17 had to explain the instructions to him multiple times
18 cause he couldn't mentally focus on what I was telling
19 him.

20 **Q.** And after you performed the walk-and-turn, the
21 one-leg test stand or the one-leg stand test, what did
22 you do next?

23 **A.** I then placed him in handcuffs, read him the
24 DIC-24.

25 **MISS VANIK:** Your Honor, may I approach?

1 **THE COURT:** Yes, ma'am.

2 **Q. (BY MISS VANIK)** Officer, I'm going to show
3 you what's been previously marked as State Exhibit 3
4 for identification purposes. Are you familiar with
5 State Exhibit 3?

6 **A.** Yes, ma'am.

7 **Q.** How are you familiar with State Exhibit 3?

8 **A.** I know it as the DIC-24, the Statutory
9 Warning.

10 **Q.** How do you know that it was the DIC-24 from
11 this particular case?

12 **A.** Because Sam Galvan's name is on there and I
13 signed it.

14 **Q.** Is that your signature?

15 **A.** Yes, ma'am.

16 **Q.** Has it been altered in any manner?

17 **A.** No, ma'am.

18 **MISS VANIK:** Your Honor, at this time,
19 I'd like to tender State Exhibit 3 to defense counsel
20 for any objections.

21 **MR. RAMIREZ:** No objection, Your Honor.

22 **THE COURT:** It will be admitted.

23 **MISS VANIK:** Your Honor, may I publish
24 State Exhibit 3 to the jury?

25 **THE COURT:** Yes, ma'am.

1 **Q.** **(BY MISS VANIK)** Now, officer, can you
2 explain to the jury what the DIC-24 is?

3 **A.** The DIC-24 is the statutory warning. It
4 explains to the person why they were arrested and also
5 it explains what would happen if they refused or
6 provided breath and/or blood, and it also states that
7 if they refused to provide a breath and/or blood that I
8 can get a search warrant for a specimen of their blood.

9 **Q.** And did you read this form to Mr. Galvan on
10 April 21st, 2012?

11 **A.** Yes, ma'am.

12 **Q.** And did you read it verbatim?

13 **A.** Yes, ma'am.

14 **Q.** And did you offer him a sample of his breath
15 and/or a sample of his blood?

16 **A.** Yes, ma'am.

17 **Q.** And did Mr. Galvan -- and how do you know
18 that?

19 **A.** I'm sorry?

20 **Q.** How do you know that you offered to give him
21 a -- you offered the opportunity for him to give a
22 sample of his breath or of his blood?

23 **A.** Because I read it to him and I offered it.

24 **Q.** Is that marked anywhere on the form?

25 **A.** Yes.

1 Q. Where?

2 A. On this form? Right where the X's are. I
3 asked him.

4 Q. So what did those X's in the box mean?

5 A. That means he refused to provide breath and/or
6 blood.

7 Q. And right underneath those boxes, what does
8 that line say of the checked box?

9 A. "Subject refused to allow the taking of any
10 specimen and further refused to sign below as requested
11 by this officer."

12 Q. And under subject signature, is there a
13 signature?

14 A. No, ma'am.

15 Q. So did Mr. Galvan refuse to sign this form?

16 A. Yes, ma'am.

17 Q. And can we see on the video you reading the
18 DIC-24 to Mr. Galvan?

19 A. Yes, ma'am.

20 (Video played for jury.)

21 Q. **(BY MISS VANIK)** And, officer, is your
22 reading of the DIC-24 continued on another disk?

23 A. Yes, ma'am.

24 **MISS VANIK:** Your Honor, may I approach?

25 **THE COURT:** Yes, ma'am.

1 **Q.** **(BY MISS VANIK)** Officer, I'm going to show
2 you what's been previously marked as State Exhibit No.
3 4.

4 Are you familiar with the contents of
5 State Exhibit No. 4?

6 **A.** Yes, ma'am.

7 **Q.** What is on State's Exhibit 4?

8 **A.** The continuation of the DIC-24.

9 **Q.** Okay. And have you viewed the contents of
10 State Exhibit No. 4?

11 **A.** Yes, ma'am.

12 **Q.** Were they recorded by a device capable of
13 making a fair and accurate recording?

14 **A.** Yes, ma'am.

15 **Q.** Was that machine operated by an operator
16 competent to make that recording?

17 **A.** Yes, ma'am.

18 **Q.** Has the contents of State Exhibit No. 4 been
19 altered in any manner?

20 **A.** No, ma'am.

21 **MISS VANIK:** Your Honor, at this point,
22 I'd like to tender State Exhibit 4 to defense counsel
23 for any objections.

24 **MR. RAMIREZ:** Same objections as the
25 first one, Judge.

1 **THE COURT:** They will be admitted.

2 **MISS VANIK:** May I publish State
3 Exhibit 4 to the jury, sir?

4 **THE COURT:** Yes, ma'am.

5 (DVD played before the jury.)

6 **Q. (BY MISS VANIK)** So after you read Mr. Galvan
7 his DIC-24, what did he state to you?

8 **A.** He was not driving the vehicle.

9 **Q.** And previously what had he stated about
10 driving?

11 **A.** That he was driving his vehicle multiple
12 times.

13 **MISS VANIK:** Your Honor, may I approach
14 the witness?

15 **THE COURT:** Yes, ma'am.

16 **Q. (BY MISS VANIK)** Now, to be fair, it's a
17 little difficult to get a closeup of Mr. Galvan on this
18 video. So I'm showing you what's been previously
19 marked as State Exhibit No. 5.

20 Are you familiar with State Exhibit No.
21 5?

22 **A.** Yes.

23 **Q.** Okay. Is this a fair and accurate
24 representation of how Mr. Galvan appeared on April
25 21st, 2012, during your interactions with him?

1 **A.** Yes, ma'am.

2 **MISS VANIK:** Your Honor, I'm now
3 tendering State Exhibit No. 5 to defense counsel for
4 any objections.

5 **MR. RAMIREZ:** No objection.

6 **MISS VANIK:** Your Honor, may I publish
7 State Exhibit No. 5?

8 **THE COURT:** Yes, ma'am.

9 **Q.** **(BY MISS VANIK)** So this is how Mr. Galvan
10 appeared on April 21, 2012, correct?

11 **A.** Yes, ma'am.

12 **Q.** So after you read Mr. Galvan his DIC-24 and he
13 refused to give a blood and/or a breath sample, what
14 did you do next?

15 **A.** I then placed him in my back seat.

16 **Q.** While he was in your back seat, what was his
17 demeanor like?

18 **A.** Very combative and rude.

19 **Q.** And can we hear Mr. Galvan while he's in the
20 back seat of your patrol car?

21 **A.** Yes, ma'am.

22 (DVD played before the jury.)

23 **Q.** Is that Mr. Galvan's voice that we are
24 hearing?

25 **A.** Yes, ma'am.

1 Q. You have the vehicle towed at this point?

2 A. Yes, ma'am.

3 Q. Why are you having the vehicle towed?

4 A. Because of the DWI.

5 Q. Is it normal policy if there's someone else
6 there who's able to take the car that you would release
7 it to them?

8 A. No, ma'am.

9 Q. During the course of your investigation did
10 you figure out who this car was registered to?

11 A. It was registered to an Edward Galvan.

12 Q. And what was the address of the car or where
13 is the physical address of where the car was
14 registered?

15 A. 10903 Highland Meadow Village Drive, Number
16 1601, Houston, Texas.

17 Q. And is that the same address as the address
18 you had listed for the suspect?

19 A. Yes, ma'am.

20 **MR. RAMIREZ:** Judge, if there's not going
21 to be -- I'm going to object unless there's some more
22 testimony regarding my client's voice that has not been
23 identified and which is hearsay.

24 **THE COURT:** Overruled.

25 **MISS VANIK:** Your Honor, at this point,

1 the officer has already testified that's Mr. Galvan's
2 voice that we're hearing.

3 **MR. RAMIREZ:** Objection. There's also
4 voices that are being broadcasted that I am not sure
5 what they're saying, and it's testimonial in nature but
6 it's not coming from the stand.

7 **THE COURT:** Overruled.

8 **MISS VANIK:** Your Honor, we're not
9 offering those for the truth of the matter.

10 **THE COURT:** Overruled.

11 **Q. (BY MISS VANIK)** And so where are you going
12 now?

13 **A.** I'm transporting him to Central Intox, to 61
14 Riesner.

15 **Q.** And why are you taking him to Central Intox?

16 **A.** Because that's what I do whenever I leave the
17 scene.

18 **Q.** And what is Mr. Galvan's attitude like on the
19 way to 61 Riesner?

20 **A.** Very abusive language, saying different
21 things.

22 (DVD played before the jury.)

23 **Q. (BY MISS VANIK)** And, officer, it's very hard
24 to hear, but is this the sort of language continued the
25 entire length of the car ride?

1 **A.** Yes, ma'am.

2 **Q.** And what sort of things is Mr. Galvan saying
3 to you?

4 **A.** Can I say it in the courtroom?

5 **Q.** Yes, you may.

6 **A.** He was telling me to just fucking shoot him,
7 that's what I'm good for; he didn't do a mother-fucking
8 thing; things like that.

9 **Q.** Did you find those things offensive?

10 **A.** Yes.

11 **Q.** And that lasted the entire length of the car
12 ride?

13 **A.** Yes.

14 **Q.** And when you eventually stopped the car, where
15 were you?

16 **A.** At 61 Riesner, which is really closer to
17 Intox.

18 **Q.** What was the purpose of going to Central
19 Intox?

20 **A.** So that I could complete the charges and
21 report and also, um, because it's a no refusal weekend,
22 Fridays and Saturdays. We take the defendants who
23 refuse to provide a breath and/or blood, and we have
24 D.A.s down there that will type the search warrant and
25 a registered nurse that will take blood at Central

1 Intox.

2 Q. And when you got there, did you fill out an
3 affidavit?

4 A. Yes.

5 Q. And was the search warrant eventually
6 obtained?

7 A. Yes, ma'am.

8 Q. And did you sign a probable cause affidavit?

9 A. Yes, ma'am.

10 Q. And is Judge Joe Villarreal a judge or
11 magistrate in Harris County, Texas?

12 A. Yes, ma'am.

13 Q. And did Judge Joe Villarreal have an
14 opportunity to review your probable cause affidavit?

15 A. Yes, ma'am.

16 Q. And after reviewing the probable cause
17 affidavit, what actions did Judge Villarreal take?

18 A. He signed it.

19 **MISS VANIK:** Your Honor, may I approach
20 the witness?

21 **THE COURT:** Yes, ma'am.

22 Q. **(BY MISS VANIK)** Officer, I'm showing you
23 what's been previously marked as State Exhibit No. 6.

24 Are you familiar with State Exhibit No.
25 6?

1 **A.** Yes, ma'am.

2 **Q.** What is State Exhibit No. 6?

3 **A.** It is a search warrant command to obtain the
4 defendant's blood.

5 **Q.** How do you know it's for this particular
6 defendant?

7 **A.** Because his name is stated and his date of
8 birth.

9 **Q.** Okay. And is it a fair and accurate
10 representation of the search warrant you obtained on
11 April 21st, 2012?

12 **A.** Yes, ma'am.

13 **Q.** Has it been altered in any manner?

14 **A.** No, ma'am.

15 **Q.** Whose signature is at the bottom?

16 **A.** It's Judge Joe Villarreal.

17 **Q.** And whose fingerprint is in the box?

18 **A.** Sam Galvan.

19 **MISS VANIK:** At this time, I tender State
20 Exhibit No. 6 to defense counsel for any objection.

21 **MR. RAMIREZ:** Judge, I'm going to object
22 to this warrant in that it doesn't -- I'm sorry, Judge.
23 It doesn't specify --

24 **THE COURT:** Let me see it.

25 **MR. RAMIREZ:** -- the facts that make the

1 basis of requesting a warrant. It's no factual
2 information, nothing other than the name of this
3 person.

4 **THE COURT:** It will be admitted.

5 **MISS VANIK:** Thank you, Your Honor.

6 Your Honor, may I publish State
7 Exhibit No. 6 to the jury? Your Honor, may I publish?

8 **THE COURT:** Yes, ma'am.

9 **MISS VANIK:** Thank you, sir.

10 **Q. (BY MISS VANIK)** So is this a copy of the
11 search warrant that you received or you had signed to
12 obtain Mr. Galvan's blood on April 21st, 2012?

13 **A.** Yes, ma'am.

14 **Q.** And how do you know that it's a search warrant
15 for this purpose?

16 **A.** I'm sorry, repeat your question.

17 **Q.** How do you know it's a search warrant for this
18 purpose?

19 **A.** Because it commands us to get a specimen of
20 his blood and a judge signed it.

21 **Q.** And that signature we see at the bottom, whose
22 signature is that?

23 **A.** Judge Joe Villarreal.

24 **Q.** When was it signed?

25 **A.** At 3:04 a.m.

1 Q. On what date?

2 A. April 21st, 2012.

3 Q. And whose fingerprints is at the bottom?

4 A. Of Sam Galvan.

5 Q. Do you believe the search warrant was valid
6 when you had it executed?

7 A. Yes, ma'am.

8 Q. And how did you have the search warrant
9 executed?

10 A. I present to -- well, the D.A. presented it to
11 the guy, the officer that was in the blood room, and he
12 explained to Mr. Galvan whenever he got into the blood
13 room that this is a search warrant, we're commanded to
14 get his blood, that this is a registered nurse that
15 withdrew the blood.

16 Q. And is that also located at Central Intox?

17 A. Yes, right next to the D.A.'s office.

18 Q. Were you present when Mr. Galvan's blood was
19 drawn on April the 21st?

20 A. Yes, ma'am.

21 **MISS VANIK:** Your Honor, may I approach?

22 **THE COURT:** Yes, ma'am.

23 **MISS VANIK:** Thank you, sir.

24 Q. **(BY MISS VANIK)** Officer, I'm going to show
25 you what's been previously marked as State Exhibit No.

1 7. Are you familiar with the contents of State Exhibit
2 No. 7?

3 A. Yes, ma'am.

4 Q. Were they recorded on a device that was
5 capable of making accurate recordings?

6 A. Yes, ma'am.

7 Q. Were they recorded by a person who was
8 competent to operate that machine?

9 A. Yes, ma'am.

10 Q. Do you have personal knowledge of the contents
11 contained in State Exhibit No. 7?

12 A. Yes, ma'am.

13 Q. Have they been altered or -- have they been
14 altered in any manner?

15 A. No, ma'am.

16 **MISS VANIK:** Your Honor, at this time,
17 I'd like to tender State Exhibit No. 7 to
18 defense counsel for any objection.

19 **MR. RAMIREZ:** No objection.

20 **THE COURT:** It will be admitted.

21 **MISS VANIK:** Thank you, sir.

22 Q. **(BY MISS VANIK)** So were you present in the
23 room when Mr. Galvan's blood was drawn?

24 A. Yes, ma'am.

25 Q. And what was Mr. Galvan's demeanor when he was

1 in the blood draw room?

2 **A.** Um, abusive language, did not want to get his
3 blood drawn, would not cooperate with us.

4 **Q.** Was it similar to his demeanor in the back of
5 your police car?

6 **A.** Yes, ma'am.

7 **Q.** So at some point was Mr. Galvan's blood drawn?

8 **A.** Yes, ma'am.

9 **Q.** And who took possession of that blood?

10 **A.** Officer M. Perales.

11 **Q.** And what did you do after Mr. Galvan's blood
12 was drawn?

13 **A.** I handcuffed him and put him back in the
14 holding cell at Central Intox.

15 **Q.** And did you prepare a report?

16 **A.** I'm sorry?

17 **Q.** Did you prepare a report?

18 **A.** Repair?

19 **Q.** Prepare a report?

20 **A.** Yes, ma'am. I'm sorry.

21 **Q.** And based on the totality of your interactions
22 with Mr. Galvan on April 21st, 2012, did you have an
23 opinion about whether Mr. Galvan had the normal use of
24 his physical faculties?

25 **A.** He did not have the normal use of his physical

1 faculties.

2 Q. And based on your interactions with Mr. Galvan
3 on April 21st, 2012, did you form an opinion about
4 whether Mr. Galvan had the normal use of his mental
5 faculties?

6 A. He did not have the normal use of his mental
7 faculties.

8 Q. And what do you base this on?

9 A. The totality of the circumstances with how I
10 started talking to him, the standard field sobriety
11 tests, his demeanor, the way he was acting in my
12 vehicle, everything. He just -- the totality of the
13 circumstance he was impaired, too impaired to drive,
14 operate a vehicle.

15 Q. And do you have an opinion about what the
16 source of Mr. Galvan's impairment was?

17 A. Can you repeat your question?

18 Q. Yes, ma'am. Do you have an opinion about the
19 reason for Mr. Galvan's impairment?

20 A. I don't understand the question.

21 Q. Why do you believe Mr. Galvan no longer had
22 the normal use of his mental or physical faculties?

23 A. Okay. I believed that he didn't have the
24 normal use of his mental or physical faculties because
25 he was impaired by alcohol.

1 Q. And why do you say that?

2 A. Not only did he admit to drinking beer but
3 then he changed his answers to tequila shots, and he
4 really didn't know where he was going or what he was
5 really doing when I was talking to him.

6 MISS VANIK: Pass the witness, Your
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. RAMIREZ:

10 Q. What time did you arrive on the scene?

11 A. I arrived on the scene -- I can't recall when
12 I arrived to the scene.

13 Q. Do you know what time the stop was?

14 A. It was at 12:20 a.m.

15 Q. And if you took -- if the warrant to take the
16 blood was signed at 3:04, would that help you tell us
17 what time you arrived?

18 A. Um, well, his arrest time was at 1:35, so I
19 can't exactly tell you what time I arrived to the
20 scene, but I was at the scene.

21 Q. Okay. And what -- besides Mr. Galvan, what
22 other witnesses did you talk to besides officers? Let
23 me rephrase that. Besides Mr. Galvan, did you speak to
24 any other witnesses?

25 A. I did not.

1 Q. Okay. And Mr. Galvan told you that he had
2 some injuries to his back, right?

3 A. Yes, sir.

4 Q. Told you he had injuries to his ankle?

5 A. Yes, sir.

6 Q. And you stated in direct examination that you
7 gave him some consideration for that --

8 A. Yes, sir.

9 Q. -- in your field sobriety tests? Is it
10 indicated in here what type of consideration you gave
11 him?

12 A. No. It's just I considered it whenever he was
13 doing the test.

14 Q. And, obviously, you know, Mr. Galvan was
15 pretty upset to say the least, right?

16 A. Uh-huh.

17 Q. And you heard him when he told you that he had
18 not been driving; is that right?

19 A. Correct.

20 Q. You heard that?

21 A. I did.

22 Q. And you can understand, could you not, that if
23 you're being arrested for something you didn't do, that
24 you might get a little upset?

25 A. Correct.

1 Q. I mean, you would agree with that, that is
2 probably a normal reaction?

3 A. Uh-huh.

4 Q. In fact, people that commit crimes and are
5 arrested for crimes are upset most of the times; is
6 that a fair statement?

7 A. Can you repeat it?

8 Q. People that are generally -- in your
9 experience, people that are generally arrested are not
10 happy about that arrest, right?

11 A. That's right.

12 Q. And then if you're being arrested for
13 something that you believe you didn't do, you could
14 understand it being even more upset, right?

15 A. Can you repeat it, your statement?

16 Q. If they are being arrested -- if someone is
17 being arrested for something that they didn't do, you
18 can understand them being upset, right?

19 A. Correct.

20 Q. And Mr. Galvan attempted to tell you on
21 several occasions that he wasn't the driver, right?

22 A. Correct.

23 Q. Now, at what point did you give Mr. Galvan his
24 Miranda warnings?

25 A. After I did the standard field sobriety tests.

1 Q. And do you believe that Mr. Galvan was being
2 truthful with you?

3 A. Yes.

4 Q. And so if you believed that he was being
5 truthful with you, and he told you he wasn't driving,
6 you'd believe that, right?

7 A. No.

8 Q. So you don't believe he was being truthful
9 with you?

10 A. He told me that he was driving multiple times
11 before I placed him in handcuffs.

12 Q. If I recall the video, you asked him whether
13 he was driving; and he said that he was driving in the
14 vehicle.

15 A. Can you repeat your statement?

16 Q. Did you ever ask him if he was operating the
17 vehicle?

18 A. No, I didn't ask him if he was operating the
19 vehicle.

20 Q. You asked him if they were driving or
21 something like, like --

22 **MISS VANIK:** Objection, Your Honor. I
23 think that is misstating what the officer said.

24 **THE COURT:** All right. Let's proceed,
25 please.

1 **Q.** **(BY MR. RAMIREZ)** So, when he told you that
2 he wasn't driving, did you attempt to talk to any of
3 the witnesses that were in the area that might have
4 confirmed whether he was driving?

5 **A.** The other officers on scene talked to the
6 witnesses.

7 **Q.** I did not ask you that.

8 **A.** I did not ask any witness.

9 **Q.** Okay, yes, it's an imperfect question for you.
10 But you did not personally do that, did you?

11 **A.** No, sir.

12 **Q.** And you never saw him driving that vehicle,
13 right?

14 **A.** No, sir.

15 **Q.** And, in fact, let's assume for argument sake,
16 just for this question, if he had not been driving the
17 vehicle, then he couldn't be driving intoxicated,
18 correct?

19 **A.** Repeat your question.

20 **Q.** Yes, ma'am. If he -- let's assume for
21 argument sake here, for this question, if he was not
22 driving the vehicle and yet he was in this condition,
23 he still couldn't be charged with driving while
24 intoxicated, right?

25 **A.** Correct.

