

1 Q. And what did you do before that?

2 A. I was in the Navy.

3 Q. How long were you in the Navy?

4 A. Almost seven years.

5 Q. What was your position in the Navy?

6 A. Rank?

7 Q. Yes. That's what I mean.

8 A. Petty officer, first class.

9 Q. So, after your seven years in the Navy,
10 you went to HPD, just went to the normal academy,
11 right?

12 A. Yes, sir.

13 Q. And what type of training did you get at
14 HPD Academy?

15 A. It's a six-month course training
16 regarding the basic law enforcement, peace officer
17 license.

18 Q. And you graduated from the academy
19 obviously?

20 A. Yes, sir.

21 Q. What happened next?

22 A. I was assigned to the northeast command,
23 northeast patrol, where I did my six months of
24 probationary training.

25 Q. And that was in 2006, right?

1 A. Beginning of 2007, April of 2007.

2 Q. When you say probationary training, what
3 do you mean?

4 A. I'm assigned to a field training officer
5 for approximately six months, and it's on-the-job
6 training. You ride the streets as a patrol officer,
7 and you're evaluated and trained.

8 Q. And, obviously, is that something that
9 your supervision officer recommends you for
10 graduation from that program?

11 A. The field training officer will then
12 evaluate you and then if you pass evaluation, you're
13 clear to proceed on to being your own standalone
14 police officer.

15 Q. And what happened after you passed
16 evaluation?

17 A. Then I requested orders to the southeast
18 command, southeast patrol. My wife and I had
19 recently gotten married, and we'd moved closer to be
20 with family. So, the southeast patrol station was
21 closer to home.

22 Q. Is that where you currently are located?

23 A. In the southeast area.

24 Q. Okay. So, what is your current
25 position?

1 A. I'm assigned -- currently assigned to
2 the differential response team that is under patrol.
3 I'm still a patrol officer.

4 Q. And is that the same position you were
5 in on January 11th of 2012?

6 A. No.

7 Q. What were you on January 11th of 2012?

8 A. I was assigned to the southeast
9 divisional Gang Task Force.

10 Q. And what does that mean?

11 A. It's a group of approximately 10 to 12
12 officers with one sergeant under a lieutenant.
13 We're assigned to patrol. We wear patrol uniforms,
14 and we ride around in patrol cars. The only
15 difference between us and general patrol officers is
16 that we are not dispatched to calls for service. We
17 are a proactive unit that investigates gang-related
18 crimes and other types of issues in the area.

19 Q. And, so, when you say call for service,
20 do you mean like 911?

21 A. Yes, sir, like 911 hang-ups, 911 call of
22 any sort, vehicle accidents, burglary reports,
23 anything like that. We don't -- we aren't ordered
24 to go to calls that drop, but a lot of calls we
25 volunteer for to assist the patrol officers with.

1 Q. So, is it -- essentially what you do,
2 correct me if I'm wrong, is kind of patrol the
3 streets looking for -- seeing if you spot any crime
4 going on?

5 A. Yes, sir.

6 MR. AKERS: May I approach the
7 witness?

8 THE COURT: Yes, you may.

9 Q. Handing you what's been marked as
10 State's Exhibit 3 and 4. Let me know what these
11 are.

12 A. Exhibit 3 is -- looks to be a Google map
13 of the location of where the offense occurred.

14 Q. And is that what's indicated by this "A"
15 here?

16 A. Yes, sir.

17 Q. Okay. And what about State's Exhibit 4?

18 A. Same thing, just closer.

19 Q. And is that what's indicated by this "A"
20 marked right here?

21 A. Yes, sir.

22 Q. And do these both, State's Exhibit 3 and
23 4, fairly and accurately represent the area of
24 Houston where this crime occurred?

25 A. Yes, sir.

1 MR. AKERS: Your Honor, after
2 tendering to opposing counsel, we'd offer State's 3
3 and 4.

4 MS. BELL: No objection.

5 THE COURT: State's 3 and 4 will be
6 admitted without objection.

7 MR. AKERS: Permission to publish,
8 Your Honor?

9 THE COURT: Yes, sir.

10 Q. (By Mr. Akers) Officer, you can actually
11 draw on the screen to your left there. Would you
12 mind kind of circling for us where your area of
13 patrol is -- or excuse me, where it was in January
14 of 2012?

15 A. Okay. This is the top portion of it.

16 Q. And it goes down south, past where the
17 map ends; is that right?

18 A. Yes, sir. Down to Beltway 8.

19 Q. Okay. And is this location that you've
20 indicated and that "A" where the crime occurred, is
21 that in Harris County?

22 A. Yes, sir.

23 Q. And is that Harris, County, Texas?

24 A. Yes, sir.

25 Q. I'm showing you what's been marked as

1 State's 4, where you stated that the "A" indicated
2 is where you came in contact with the defendant; is
3 that right?

4 A. Yes, sir.

5 Q. And what's the intersection there?

6 A. It occurred on the intersection between
7 Yellowstone at or just east of Paris Street, which
8 is where the "A" is, and it ends up near the
9 intersection of Calhoun and Yellowstone.

10 Q. And is that -- where it ended up, is
11 that right here where I've circled on the monitor?

12 A. Yes, sir.

13 MR. AKERS: May I approach the
14 witness again, Your Honor?

15 THE COURT: Yes, you may.

16 Q. I'll hand you State's Exhibit 5, 6, and
17 7. Tell me what State's Exhibit 5 and 6 are.

18 A. Number five is a picture of the
19 intersection of Calhoun and Yellowstone, facing
20 westbound on Yellowstone.

21 Q. And what about State's Exhibit 6?

22 A. Again, same thing, just from a different
23 position, facing westbound on Yellowstone.

24 Q. Do they both fairly and accurately
25 depict those locations on the night of January 11th

1 of 2012?

2 A. Yes, sir.

3 MR. AKERS: After tendering to
4 opposing counsel, we'd offer State's 5 and State's
5 6.

6 THE COURT: Thank you, Counsel.

7 MS. BELL: No objection, Your
8 Honor.

9 THE COURT: State's 5 and 6 will be
10 admitted without objection.

11 Q. (By Mr. Akers) And when you were at
12 this location depicted in State's 5, do you remember
13 coming across someone you later found out to be
14 named Evelt Davis?

15 A. Yes, sir.

16 Q. Do you recognize that person in the
17 courtroom here today?

18 A. Yes, sir.

19 Q. Would you mind pointing him out for me
20 and identifying an item of clothing he's wearing?

21 A. Right there, wearing a white shirt with
22 a brown tie.

23 MR. AKERS: Your Honor, let the
24 record reflect the witness has identified the
25 defendant.

1 THE COURT: The record so shall
2 reflect.

3 Q. (By Mr. Akers) And State's 7 -- was he
4 wearing a shirt and tie when you saw him?

5 A. No, sir.

6 Q. What is depicted in State's 7?

7 A. A mug shot of the defendant.

8 Q. And is that what he was wearing on that
9 night?

10 A. Yes, sir.

11 Q. Does it fairly and actually represent
12 how the defendant looked on the night of January
13 11th of 2012?

14 A. Yes, sir.

15 MR. AKERS: We'd offer State's 7.

16 MS. BELL: No objection, Your
17 Honor.

18 THE COURT: State's Exhibit 7 is
19 admitted without objection.

20 Q. (By Mr. Akers) So, what do we see the
21 defendant wearing here in State's 7?

22 A. It's a blue hooded-sweatshirt.

23 Q. Let's go back to State's 6. Excuse me.
24 Let's do State's 5 first. So, when you first saw
25 the defendant, where were you?

1 A. I was in the passenger seat of my patrol
2 car with my partner.

3 Q. Who's your partner?

4 A. Officer Moss.

5 Q. Is that Robert Moss?

6 A. Yes, sir.

7 Q. And what were you guys doing?

8 A. Patrolling the area.

9 Q. And were you headed -- on the screen,
10 tell me which direction you were headed. Are you
11 coming towards the camera or away from the camera?

12 A. We're actually going away from the
13 camera. We're going westbound on Yellowstone.

14 Q. And where was the defendant when you saw
15 him?

16 A. When I initially saw him, he was making
17 a zigzag motion, coming eastbound on Yellowstone.

18 Q. What do you mean, zigzag motion?

19 A. He's riding a bicycle, and he was going
20 back and forth from the eastbound lane into the
21 westbound lane, back and forth.

22 Q. Was he crossing over the yellow line?

23 A. Yes, sir.

24 Q. Was that a -- is that a traffic offense
25 under the City of Houston Municipal violations?

1 A. It's failure to maintain single lane of
2 traffic.

3 Q. You can do that on a bicycle as well as
4 a car, right?

5 A. No, sir.

6 Q. But there are also municipal ordinance
7 violations regarding bicycles; is that right?

8 A. Yes, sir.

9 Q. I mean, you're supposed to ride close to
10 the right side of the lane; is that correct?

11 A. Yes, sir.

12 Q. And you're supposed to have a headlight
13 at night?

14 A. Yes, sir.

15 Q. Now, what time was it that you viewed
16 the defendant?

17 A. It was approximately 10:30 at night.

18 Q. So, that's just going to sound like a
19 silly question, 10:30 p.m., right?

20 A. 10:30 p.m., yes, sir.

21 Q. Was it light outside or dark outside at
22 10:30?

23 A. It was dark.

24 Q. This is Houston in the winter. So, it's
25 going to get dark around 5:00 in January or

1 something like that, right?

2 A. Yes, sir.

3 Q. So, it had been dark for a significant
4 amount of time?

5 A. Yes, sir.

6 Q. When you saw the defendant weaving in
7 and out of traffic and without -- did he have a
8 headlight on his bicycle?

9 A. No, sir.

10 Q. Is that, again, a Houston city ordinance
11 violation?

12 A. Yes, sir.

13 Q. When you saw the defendant weaving in
14 and out of traffic, what were your first thoughts?

15 A. My first thoughts were that he might be
16 intoxicated.

17 Q. Why?

18 A. He was -- it appeared to be erratic in
19 regards to the path he was going on the bicycle. He
20 was just weaving back and forth.

21 Q. He wasn't going in a straight line at
22 all?

23 A. No, sir.

24 Q. And, so, once you saw the defendant
25 weaving in and out of traffic on the bicycle and

1 riding without the headlight on, what were you about
2 to do?

3 A. We were going to stop and talk to him,
4 my partner and I.

5 Q. Is that something you normally do?

6 A. Yes, sir.

7 Q. Why?

8 A. Wanted to make sure that he wasn't going
9 to hurt himself or was intoxicated to the point that
10 he was going to crash into somebody else.

11 Q. Okay. Were you just going to stop and
12 talk to him, or were you about to arrest and put him
13 in cuffs and lock him up?

14 A. We were just going to talk to him.

15 Q. So, when you wanted to talk to him, how
16 did you guys start to go about doing that?

17 A. My partner began to slow the car down,
18 and as he was stopping, he got on the P.A. system
19 and ordered the suspect to, "Hey, come here for just
20 a second." Come talk to us. And at that time, I
21 was getting ready to get out of the car.

22 Q. So, you say he got on the P.A. system.
23 Is that something that's in the car?

24 A. Yes, sir.

25 Q. How loud is it?

1 A. It's as loud as the police siren. It's
2 extremely loud when we use it. The volume level is
3 very loud.

4 Q. How far away, approximately, was the
5 defendant from you when y'all issued this warning
6 over the P.A. system?

7 A. I believe he was about 20 to 30 yards.

8 Q. Safe to say, you can hear the P.A.
9 system from 20 to 30 yards away?

10 A. Yes, sir.

11 Q. Was he looking towards you or away from
12 when y'all did that?

13 A. He was looking at us.

14 Q. Was he looking just in that direction or
15 right at you?

16 A. I believe he was looking right at us.

17 Q. Okay. And, so, you stated that you told
18 him to stop the bike and come over and talk to you,
19 and you were about to get out of the car; is that
20 right?

21 A. Yes, sir.

22 Q. Was your car stopped, or did y'all just
23 slow to a roll?

24 A. I don't remember exactly if the car was
25 completely stopped, but I know I'm not going to jump

1 out of a moving car. So, it had to have been almost
2 to a stop as I was getting out.

3 Q. And we can agree that this drawing, this
4 is not really to scale, right? This is just to show
5 who was going where; is that correct?

6 A. Yes, sir.

7 Q. Let's erase the screen. And show me
8 exactly where you were when you got out of the car.

9 A. I don't remember exactly where, but I
10 believe it was up near -- the car was near --

11 Q. That's fine.

12 A. Almost to the entrance of the Capital
13 Inn Hotel right here.

14 Q. Okay. And when you got out of the car
15 and y'all told the defendant to come over and speak
16 to you, what did he do, meaning the defendant?

17 A. The car stopped here, and the defendant
18 went on the bicycle, continued peddling on past me
19 to the right-hand side, or the passenger side of my
20 patrol car.

21 Q. Would that mean he went this way?

22 A. Yes, sir.

23 Q. And going -- I mean, basically on the
24 passenger side of your car would mean he was in the
25 oncoming lane of traffic?

1 A. Yes, sir.

2 Q. Were there any other cars on the road
3 that day?

4 A. There were other cars out there that
5 day.

6 Q. This is -- this isn't rush hour. Were
7 there a lot or just a couple?

8 A. There were a few.

9 Q. When he rode past you, do you remember
10 if you guys made eye contact?

11 A. Yes, sir. I looked right at him.

12 Q. And what were you wearing at that point?

13 A. I was wearing my -- it's -- at the time
14 -- it's a black vest. It's a black outer ballistic
15 vest and has the "police" emblem across the front.

16 Q. Does it say "police" on it?

17 A. Yes, sir.

18 Q. How big is that?

19 A. The word itself is --

20 Q. Is it like right across your chest?

21 A. It's -- I think it's my left side. It's
22 right across the left side of my chest in big yellow
23 letters.

24 Q. And what kind of vehicle were you and
25 Officer Moss in?

1 A. We were in an H.P.D. patrol car, marked
2 patrol car.

3 Q. What's it look like?

4 A. It's a Crown Victoria with the lights on
5 the top and it's white, with "Houston Police" along
6 the side in blue letters.

7 Q. So, is it a very clearly marked police
8 vehicle?

9 A. Yes, sir.

10 Q. And were you in your HPD uniform?

11 A. Yes, sir.

12 Q. Do you believe that you were very
13 clearly identifiable at that point as a police
14 officer?

15 A. Yes, sir.

16 Q. And you said the defendant just rode
17 past you. What did he do?

18 A. As soon as he cleared past to my right,
19 he stood up on the bicycle, and he started peddling
20 quickly to accelerate away from me.

21 Q. When was the last time you rode a bike?

22 A. A long time.

23 Q. Is it true, and correct me if I'm wrong,
24 it's been awhile for me to, if you're just kind of
25 mossying along and then you want to start going

1 faster, you stand up off the bike, right?

2 A. Yes, sir.

3 Q. And it takes you awhile to start being
4 able to press the pedals to get up a requisite
5 amount of speed?

6 A. Yes, sir.

7 Q. And is that, in fact, what the defendant
8 was doing?

9 A. Yes, sir.

10 Q. So, after he passes by you and starts
11 getting on his bike and peddling faster, are you
12 still just going to stop and talk to him at that
13 point?

14 A. No, sir.

15 Q. Why?

16 A. He's evading from me at this point in
17 time.

18 Q. And evading, that's -- is that a Class B
19 misdemeanor or Class A?

20 A. It's a Class A, but can also be a felony
21 if there's a prior conviction for it.

22 Q. Okay. You're not saying either way
23 right now. You didn't know. You just knew that he
24 rode by you?

25 A. Yes, sir.

1 Q. So, at that time when he drove on by
2 you, did he turn back around at all, or did he look
3 straightforward?

4 A. Yes, sir. He looked back at me. I was
5 running after him, yelling "Stop", and he looked
6 back at me.

7 Q. What were you yelling?

8 A. "Police, stop".

9 Q. Why were you doing that?

10 A. Because I was chasing after him.

11 Q. You wanted him to know there was an
12 officer chasing after him, right?

13 A. Yes, sir.

14 Q. At that point there's just no question?

15 A. Yes, sir.

16 Q. So, were you ever able to catch up to
17 him?

18 A. Yes, sir.

19 Q. After about how far?

20 A. Maybe 20 to 30 yards.

21 Q. And after that 20 to 30 -- would you say
22 you were in the best of shape?

23 A. No. No, sir.

24 Q. Were you kind of winded after that 20 to
25 30 yards?

1 A. Yes, sir.

2 Q. I hate to embarrass you like that. What
3 happened after you caught up to him? First of all,
4 I'm sorry. Let's back-up. Did you pull your gun
5 out when he started evading you?

6 A. No, sir.

7 Q. Why not?

8 A. Deadly force wasn't warranted at the
9 time.

10 Q. You're not --

11 A. I'm not going to shoot him in the
12 back --

13 Q. You're not going to shoot him in the
14 back --

15 THE COURT: Excuse me, gentlemen.
16 Can't talk at the same time.

17 THE WITNESS: Yes, sir.

18 MR. AKERS: Pardon me, Your Honor.

19 Q. It was not your intention to shoot him
20 in the back, was it?

21 A. No, sir.

22 Q. Do you also have a Taser on your person?

23 A. Yes, sir.

24 Q. Why didn't you tase him?

25 A. Our policy doesn't allow for us to tase

1 just for running away.

2 Q. Because that's -- might be a little bit
3 dangerous, right?

4 A. Yes, sir.

5 Q. So, after you close both of those
6 options, clearly they were bad ideas, what did you
7 do?

8 A. I continued running after him and knew
9 that the only other option I had as he was quickly
10 starting to accelerate was to tackle him off the
11 bicycle.

12 Q. Okay. So, did you tackle him off of the
13 bicycle?

14 A. Yes, sir.

15 Q. When you say "tackle him", did you do
16 like a diving, Superman linebacker tackle, or did
17 you just -- or what happened?

18 A. I tackled him. I ran up and just kind
19 of jumped and hit him, and then I guess my momentum
20 -- we both fell off of the bike onto the opposite
21 side, onto the grass.

22 Q. Okay. So, you didn't hit the street at
23 all, right?

24 A. No, sir.

25 Q. Did you hit the sidewalk?

1 A. No, sir.

2 Q. So, you just hit the grass?

3 A. I believe so.

4 Q. Do you think you are -- I hate to
5 embarrass you again. Do you think you are
6 physically capable of doing a Superman tackle like
7 that?

8 A. No, sir.

9 Q. And you said you were propelled by your
10 momentum. Was it your momentum as well as -- I
11 mean, the bike's already moving, right?

12 A. Yes, sir.

13 Q. So, was it also a little bit of momentum
14 from the bicycle?

15 A. Yes, sir.

16 Q. So we're clear, you guys just landed on
17 the grass?

18 A. Yes, sir.

19 Q. And how did you land?

20 A. The defendant landed onto the grass, and
21 I believe he landed face down, and then I landed on
22 his back.

23 MR. AKERS: Your Honor, may the
24 witness step down and demonstrate?

25 THE COURT: Yes, but remember,

1 Officer, you don't have the benefit of the
2 microphone. So, keep your voice up so everyone can
3 hear what you have to say.

4 THE WITNESS: Yes, sir.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 Q. (By Mr. Akers) I'm not going to lie
8 down and have you lie on top of me, but say I'm the
9 defendant and say this wall right here is the grass.
10 Where are you in relation to him?

11 A. If the patrol car is over here, we were
12 running in this direction.

13 Q. Okay. So, were you, like, right here?
14 Were you right on top of him?

15 A. No, sir.

16 Q. I mean, when you tackled him, where'd
17 you end up?

18 A. Well, when I initially caught up to him,
19 I was only just able to grab hold of him, and then
20 we both fell in this direction.

21 Q. Okay. So, maybe I will lie down on the
22 ground. Where did you land? I'm the defendant
23 right here. Were his arms and --

24 MR. AKERS: Judge, can the jury --

25 THE COURT: Hold on a second. You

1 may stand up, ladies and gentlemen.

2 Q. Where are his arms when he lands on the
3 ground?

4 A. If the street -- if Yellowstone is
5 running east to west here --

6 Q. Okay.

7 A. The bike was going in this direction,
8 and I tackled him. So, he was laying in this
9 direction, facing almost north.

10 Q. This way, okay.

11 A. Yes, sir.

12 Q. Are his arms in front of him or to the
13 side?

14 A. No, sir.

15 Q. Where are they right when you fall down?

16 A. As soon as we hit the ground, his arms
17 both went underneath him.

18 Q. So, he's lying like this? Is that what
19 I'm --

20 A. Yes, sir.

21 MR. AKERS: Let the record reflect
22 I'm lying down on the ground rather uncomfortably
23 with my hands under me.

24 Q. And, so, after the defendant was lying
25 down on the ground, right when he put his hands

1 under him, what happened next?

2 A. Like I said, I landed on his back and
3 immediately started trying to get his hands from --
4 out from underneath him in order to handcuff him.

5 Q. Did eventually one of his hands come
6 out?

7 A. Yes, sir.

8 Q. Did it come out with anything in it?

9 A. Yes, sir.

10 Q. I'm marking this as State's Exhibit 8,
11 the gun, not the baggy. What is this?

12 A. It's a revolver.

13 Q. And where -- have you seen it before?

14 A. Yes, sir.

15 Q. Where?

16 A. The night of the incident.

17 Q. Where did it come from?

18 THE COURT: Counsel, is it
19 necessary to still be down here?

20 MR. AKERS: I'm sorry. You can go
21 ahead and take a seat. May I approach the witness?

22 THE COURT: Yes, sir.

23 Q. Where did you find this pistol?

24 A. The defendant pulled it out.

25 Q. Is it in the same or substantially the

1 same condition as when you saw it on January 11th?

2 A. It is.

3 Q. And is it, in fact, the exact same
4 pistol?

5 A. It is.

6 Q. And how can you tell?

7 A. It's huge.

8 Q. And did you tag it in an evidence bag?

9 A. Yes, sir.

10 Q. And did you put your name on it and all
11 that stuff?

12 A. Yes, sir.

13 Q. And is that this evidence bag we have
14 here?

15 A. Yes, sir.

16 Q. Did you, in fact, watch me in the back
17 take this out of the bag?

18 A. Yes, sir, I did.

19 MR. AKERS: Your Honor, after
20 tendering to opposing counsel, I'd offer State's 8.

21 MS. BELL: Judge, may I approach?

22 THE COURT: Yes, you may.

23 (Conference at the bench, on the
24 record)

25 MS. BELL: I forgot to ask for a

1 running objection to this evidence.

2 THE COURT: You have it. But be
3 sure to renew it if he goes into something new now.

4 MR. AKERS: Just so the Court's
5 aware, we're not -- the only reason I took it out of
6 the bag is because --

7 THE COURT: I've seen that. I
8 assume that. Thank you.

9 (Conference concluded)

10 MR. AKERS: Sorry, Judge. Is
11 State's 8 admitted?

12 THE COURT: State's 8 is admitted.

13 Q. (By Mr. Akers) Can you do me a favor
14 and describe this gun for me?

15 A. It's what appears to be a chrome-plated
16 revolver.

17 Q. And, for the record, about how long is
18 it?

19 A. The barrel itself or the entire gun?

20 Q. The entire gun.

21 A. Maybe 10 inches, 12 inches maybe.

22 Q. When you first spoke to a prosecutor at
23 our office, what did you say that -- when he pulled
24 it out, what did you say it reminded you of?

25 MS. BELL: Objection, Your Honor,

1 relevance.

2 THE COURT: Pardon me?

3 MS. BELL: Objection, relevance.

4 THE COURT: It's overruled.

5 A. It reminded me of the scene from the
6 original movie Batman where Jack Nicholson pulls out
7 the gun, and it just keeps coming and coming and
8 coming.

9 Q. Because it's a pretty big gun, right?

10 A. It's a very large gun, yes, sir.

11 Q. And so we're clear, where was the first
12 time you saw it? Whose hand was it in?

13 A. It was in the defendant's left hand.

14 Q. And what was he -- what was he doing
15 with it? Was he just waving it around?

16 MR. AKERS: Judge, it had been --
17 for the record --

18 (Bailiff checking weapon)

19 THE BAILIFF: This weapon is
20 cleared.

21 THE COURT: Thank you.

22 Q. And did he throw it anywhere, or what
23 happened with it?

24 A. When it immediately came out, I saw it
25 in the defendant's left hand as it basically cleared

1 his shoulder, I guess, or his torso.

2 Q. So, kind of like this?

3 A. It came out like this, in this motion.

4 Q. In which direction was he pointing it,
5 at 8:00 o'clock, 9:00 o'clock?

6 A. I would say about his 8:00 o'clock.

7 Q. 8:00 o'clock. So, about right here?

8 A. Yes, sir.

9 Q. Okay. So, when you saw this gun in the
10 defendant's hand, what did you do?

11 A. I immediately yelled "gun, gun, gun".

12 Q. Why?

13 A. Because he had a gun in his hand.

14 Q. And did you try and remove it from him?

15 A. I immediately saw it and tried to swat
16 at his arm in attempt to try to get him to drop it.

17 Q. Do you know how many times you tried to
18 swat at it?

19 A. I don't recall exactly.

20 Q. Was it a lot?

21 A. It was a few.

22 Q. Pretty frantic situation though, I would
23 imagine.

24 A. Very.

25 Q. And, so, eventually did the gun actually

1 fall from his hand?

2 A. It did.

3 Q. And what happened at that point?

4 A. The defendant continued to struggle with
5 me.

6 Q. When you say "struggle", what do you
7 mean?

8 A. He was a lot stronger than I was and
9 just refusing to submit to being handcuffed or
10 anything.

11 Q. Okay. And, so, the gun -- you say the
12 gun fell about -- he dropped it. So, about how far
13 away was it from you?

14 A. It was about two feet.

15 Q. So, about from where I am to that gun?

16 A. Give or take.

17 Q. Give or take?

18 A. Yes, sir.

19 Q. And is he still -- are you still on top
20 of him when that happens?

21 A. Yes, sir.

22 Q. And at that point, what is he trying to
23 do?

24 A. At that point in time, I made the
25 realization that I was losing this fight. So, I was

1 unable to get the guy in the handcuffs. He started
2 moving and actually picking me and him up.

3 Q. How was he doing that?

4 A. Almost as if he was trying to do a
5 pushup to slide.

6 Q. You don't have to get up. Just kind of
7 show us on the --

8 A. Just kind of, you know, while I'm on his
9 back. I mean, I couldn't get his hands to do
10 anything that I wanted them to do.

11 Q. Was he stronger than you?

12 A. Very much so.

13 Q. Is it your testimony that he was trying
14 to do pushups closer and closer to the gun?

15 A. I believe so.

16 Q. So, was it -- when y'all were wrestling,
17 was it within his reach?

18 A. It could have been.

19 Q. But he was just -- but he didn't reach
20 for it at any point, did he?

21 A. I don't remember him doing so.

22 Q. But like you said, he was trying to do
23 pushups closer and closer?

24 A. Yes, sir.

25 Q. Now, after -- eventually, you and --

1 Officer Moss came over to help you, right?

2 A. Yes, sir.

3 Q. And what was he doing?

4 A. While I was chasing him?

5 Q. While you were wrestling -- when you
6 were wrestling with Mr. Davis here, with the
7 defendant, what did Officer Moss do to come help
8 you?

9 A. Well, initially when I got out of the
10 car, the defendant took off running.

11 Q. You mean on the bicycle?

12 A. I mean running on the bicycle, yes, sir.
13 We believed he was trying to go northbound on
14 Calhoun. So, Officer Moss was in the process of
15 trying to turn the car around to go northbound on
16 Calhoun.

17 Q. And did Officer Moss eventually get out
18 of the car and come help you?

19 A. Yes, sir.

20 Q. And what did he do after he got over to
21 the location where the defendant was fighting with
22 you?

23 A. He got in between the gun and the
24 defendant.

25 Q. And what did he do?

1 A. At that point in time I couldn't -- I
2 still was unable to get his hands under control.
3 So, Officer Moss struck him in the torso with what
4 we call a diversionary strike to get his attention
5 away from whatever it is he's trying to do.

6 Q. Tell me what a diversionary strike is.

7 A. It's exactly that. It's -- if nothing
8 else works and you can't get a person into custody
9 or can't get them to comply, you strike them any
10 way, shape, or form that you can in order to get
11 them to stop doing whatever it is that they're
12 trying to do in an attempt for any arm or hand to
13 come out so that you can then try to latch on and
14 cuff them.

15 Q. Cuff them?

16 A. Yes, sir.

17 Q. As he's issuing those diversionary
18 strikes because just trying to wrestle for his hands
19 wasn't working for you, was it?

20 A. No, sir.

21 Q. What did you try to do at that point?

22 A. At that point in time I was trying to
23 choke the suspect with my right arm.

24 Q. And is that, you know, a choke-hold with
25 your bicep and forearm? Is that the type of thing

1 you're talking about?

2 A. Yes, sir.

3 Q. Why were you trying to do that?

4 A. At that point in time nothing else was
5 working. I was doing it for two reasons, to divert
6 him from whatever it is that he was trying to do and
7 to stop him from trying to do anything else that was
8 happening.

9 Q. Are diversionary strikes the type of
10 thing you're taught at the academy?

11 A. Yes, sir.

12 Q. What about putting a defendant in a
13 choke-hold that's reaching for a gun?

14 A. We're taught that when deadly force is
15 needed or warranted, that you do anything you can to
16 avoid getting hurt.

17 Q. Now, when you say -- I mean, you weren't
18 trying to choke him out and kill him, were you?

19 A. I was trying to choke him to the point
20 that he would stop.

21 Q. To submission?

22 A. Yes, sir.

23 Q. And, so, eventually once Officer Moss
24 came to help you, were the two of you able to get
25 him somewhat under control?

1 A. Yes, sir. We were able to handcuff him.

2 Q. And at that point, what did you do? Did
3 y'all pick him up?

4 A. Once he was searched for any other
5 contraband, he was picked up and placed in the
6 backseat of our patrol car.

7 Q. Now, you guys are in the middle of the
8 street, right -- or excuse me, on the grass, when
9 all this happened?

10 A. Yes, sir.

11 Q. And you actually saw him driving on the
12 street --

13 A. Yes, sir.

14 Q. -- on the bicycle. Is that street or
15 the grass -- it's going to sound like a silly
16 question, but is that area someplace where anyone
17 lives?

18 A. No, sir.

19 Q. That street's public property, is it
20 not?

21 A. Yes, sir. It's public property.

22 Q. And this gun right here, is this a big
23 enough gun that, you know, you had it in your hoodie
24 pocket or in your waistband or something -- is this
25 the type of thing you'd feel if it was -- if I stuck

1 this in my pants right here, would I feel it, or is
2 it something you could overlook?

3 A. Something that you would feel?

4 Q. Or anyone putting it in their waistband.

5 A. Yes, sir. They'd feel it.

6 Q. I mean, because it's big, right?

7 A. And heavy.

8 Q. When you got him off the bike, do you
9 remember if there's anything else in the grass?

10 A. I don't recall anything else.

11 Q. But do you think if this was just lying
12 there and you just happened to fall on a Colt 1911
13 military revolver, do you think you would have
14 noticed that lying in the street?

15 A. I'd like to think so.

16 Q. I mean, it's big and shiny, right?

17 A. Yes, sir.

18 Q. So, once you got him into custody, did
19 you -- you said you put him in the patrol car?

20 A. Yes, sir.

21 Q. What was his demeanor?

22 A. He was very combative.

23 Q. Now, without saying anything that he
24 said, tell me what he was doing in the back of your
25 car.

1 A. He was just noncompliant with everything
2 that we were trying to get him to do. When we put
3 him in the backseat of the car, he just started
4 kicking around and yelling --

5 Q. Was he kicking -- you mean kicking the
6 windows?

7 A. He was kicking at the windows, yes, sir.

8 Q. And was it you or Officer Moss that
9 recovered this weapon?

10 A. I don't remember exactly who picked it
11 up.

12 Q. But one of you did?

13 A. Yes, sir.

14 Q. And is this Colt 1911, is this a
15 firearm? I've got to ask.

16 A. It is, but it's a 1909.

17 Q. 1909. Excuse me. But is this a firearm
18 within the laws of the State of Texas?

19 A. Yes, sir.

20 Q. Once you picked it up, did you guys
21 fingerprint it?

22 A. No, sir.

23 Q. Why not?

24 A. I saw him with it in his hand.

25 Q. Does HPD or does the City of Houston

1 have the budget to go around fingerprinting every
2 piece of evidence you pick up?

3 MS. BELL: Objection, calls for
4 speculation.

5 THE COURT: Sustained.

6 MS. BELL: Unless he knows what
7 their budget is.

8 Q. (By Mr. Akers) Did you conduct any DNA
9 testing or hair follicle testing, or something like
10 that?

11 A. No, sir.

12 Q. Is that something you normally do in a
13 case like this?

14 A. Not if I see them with the weapon in
15 their hand.

16 Q. Is fingerprinting in the case the type
17 of thing you would normally do if you see him pull
18 the weapon out of his waistband?

19 A. No, sir.

20 Q. And when you finally got him in the car,
21 did you eventually try to I.D. him?

22 A. Yes, sir, we tried.

23 Q. Or ask him for his name?

24 A. Yes, sir.

25 Q. Did he give you his name?

1 A. No, sir.

2 MR. AKERS: That's all I have, Your
3 Honor. Pass the witness.

4 THE COURT: Thank you. You may
5 proceed.

6 MS. BELL: Thank you Your Honor.

7 CROSS-EXAMINATION

8 Q. (By Ms. Bell) Officer, I'm going to
9 fast-forward just to the night this all happened.

10 A. Yes, ma'am.

11 Q. What time did you come on patrol?

12 A. That day? I believe it was 3:00. I
13 don't know if I worked overtime that day or not.

14 THE COURT: Keep your voice up,
15 Officer.

16 A. Yes, sir.

17 Q. When you saw Mr. Davis --

18 MS. BELL: May I approach the
19 witness?

20 THE COURT: Yes, you may. Keep
21 your voice up, too, Ms. Bell.

22 MS. BELL: Yes, Your Honor.

23 THE COURT: Thank you.

24 Q. If you could use -- if you could clear
25 off the screen. Could you put a dot where Mr. Davis

1 was when you first saw him?

2 A. When he was on the bicycle?

3 Q. Yes. Yes, sir.

4 A. Somewhere around here.

5 Q. Okay. So, he was within the span of the
6 Capital Inn?

7 A. Does it go all the way to Paris? I
8 believe so, yes, ma'am.

9 Q. Okay. So, that's one block. When you
10 saw him, you were on the same block?

11 A. Yes, ma'am.

12 Q. And the only thing that's on that is the
13 Capital Inn, correct, on that block?

14 A. I believe so.

15 Q. And when you saw him in that block,
16 period of time, this all happened during the span of
17 a block?

18 A. Yes, ma'am.

19 Q. So, you see him, and you call him over,
20 correct?

21 A. Yes, ma'am.

22 Q. About how much time did that take?

23 A. Between when?

24 Q. Between the time you saw him and called
25 him over.

1 A. Maybe a few seconds.

2 Q. Okay. And a few seconds later he was
3 riding past your door?

4 A. Yes, ma'am.

5 Q. And where did you tackle Mr. Davis?

6 A. Somewhere in the grass right here or
7 maybe even right there.

8 Q. So, the altercation took place in a half
9 a block period or half a block space, correct? From
10 the time you saw him to the time you actually
11 tackled him is half a block?

12 A. From the time he began running or from
13 when I first saw him?

14 Q. From when you first saw him because you
15 said it's at the beginning of the Capital Inn,
16 correct?

17 A. When we first saw him on the bicycle?

18 Q. Yes.

19 A. Yes, ma'am.

20 Q. You tackled him before he got to the
21 next street. So, it was in that space between the
22 Capital Inn driveway and the next street, correct?

23 A. The time when we first saw him was
24 approximately in this area, just east of Paris.
25 That's the next street that runs north and south,

1 and then when we stopped, he ran, and then we ended
2 up almost to the intersection of Calhoun and
3 Yellowstone.

4 Q. Did he run, or did he ride the bicycle?

5 A. Run -- my apologies, peddled on the
6 bicycle.

7 Q. Officer, what was he wearing that night?

8 A. A blue sweatshirt.

9 Q. And what were his pants like?

10 A. I don't recall.

11 Q. Would you be surprised to know they were
12 sweatpants?

13 A. It's possible.

14 MS. BELL: Judge, may I approach
15 the gun?

16 THE COURT: Yes, you may.

17 Q. Officer, you testified that he's riding
18 on a bike with this gun, which -- about how tall is
19 Mr. Davis?

20 A. Maybe 5'10.

21 Q. He has this gun tucked into his
22 waistband?

23 A. I never saw where the gun was hidden.

24 Q. Okay. When did you see the gun for the
25 first time?

1 A. When we were already on the ground and
2 he had it in his left hand.

3 Q. Okay. And when he is on the bike and
4 he's running, like, peddling as he's standing up, is
5 that what you mean by running?

6 A. Yes, ma'am.

7 Q. He turns around and looks at you,
8 correct?

9 A. Yes, ma'am.

10 Q. And you don't see a gun?

11 A. At the time, no.

12 Q. And he's wearing these sweatpants, and
13 the gun this size doesn't drop?

14 A. That's correct.

15 Q. Officer, let's talk about the tackle.
16 Where was he on the street when you tackled him?

17 A. I don't recall exactly if he was on the
18 sidewalk or on the street, but he was right about
19 here.

20 Q. Okay. And how far away from him were
21 you when you tackled him, like, what was your
22 distance away from Mr. Davis?

23 A. Can you -- I don't understand.

24 Q. How far away from you --

25 THE COURT: Excuse me. We can't

1 talk at the same time now. Keep your voices up.

2 Q. How far away from you -- from Mr. Davis
3 were you at the time you tackled him?

4 A. Well, I was running up to him, and when
5 I caught hold of him, I guess I was right on top of
6 him.

7 Q. And there were cars in the street,
8 correct?

9 A. There were cars in the street at the
10 time when we initially saw him. I don't remember
11 seeing anything else during the event.

12 Q. So, is it your testimony at the time you
13 tackled Mr. Davis, there wasn't an oncoming car?

14 A. I don't remember.

15 Q. Is it possible there could have been an
16 oncoming car at the time you tackled Mr. Davis off
17 the bike and in the street?

18 A. Yes, ma'am. It's possible.

19 Q. But you still chose to tackle him at
20 that period of time in the street?

21 A. Yes, ma'am.

22 Q. And you tackled him. Did you have any
23 control over where you would land?

24 A. No, ma'am.

25 Q. You could have landed in the street,

1 correct?

2 A. Correct.

3 Q. And there is possibly -- there could
4 have possibly been an oncoming car, correct?

5 A. It's possible.

6 Q. But you chose to tackle him?

7 A. Yes.

8 Q. You had no say in whether y'all chose to
9 land on the sidewalk -- or you landed on the
10 sidewalk, correct?

11 A. I'm sorry. Could you repeat the
12 question?

13 Q. Did you have any control over whether
14 you landed on the sidewalk?

15 A. No, ma'am.

16 Q. So, he could have landed on the sidewalk
17 and done serious bodily injury to himself, correct?

18 A. It's possible.

19 Q. Or -- I'm sorry. I phrased that wrong.
20 You would have done seriously bodily injury to him
21 since you were tackling him, correct?

22 MR. AKERS: Judge, I'm going to
23 object to relevance.

24 THE COURT: That objection is
25 overruled.

1 MS. BELL: You can answer.

2 A. Can you repeat the question, please?

3 Q. (By Ms. Bell) Because you're the one
4 that tackled him, you could have caused him serious
5 bodily injury by tackling him if he landed on the
6 street or the sidewalk?

7 MR. AKERS: And I'll object to
8 speculation.

9 THE COURT: Sustained.

10 Q. (By Ms. Bell) Officer, at the time you
11 chose to tackle Mr. Davis, what were his law
12 violations?

13 A. At the time when I tackled him, he was
14 evading from me.

15 Q. And that was a misdemeanor, correct?

16 A. It can be a misdemeanor or a felony.

17 Q. Okay. Officer, how far did he evade?

18 A. I would say approximately 20 yards, 30
19 yards, maybe, from where he initially ran by me.

20 Q. So, he's riding on a bicycle, and how
21 long does it take to go 20 yards on a bicycle at his
22 rate of speed? How long, based upon what you saw?

23 A. Based on what happened, maybe a few
24 seconds.

25 Q. Okay. So, he didn't stop in a few

1 seconds. He didn't make it to the next street. He
2 didn't try to turn off or any of that, did he?

3 A. No, ma'am.

4 Q. A couple seconds went by and he didn't
5 stop; so, you tackled him, correct?

6 A. It was a little longer than that, but,
7 yes.

8 Q. Officer, after you tackled him, you said
9 you were able to secure one of his hands, correct?

10 A. In reference -- I mean, when are you
11 referring to?

12 THE COURT: Do you understand the
13 question?

14 A. I don't understand the question.

15 MS. BELL: My apologies.

16 THE COURT: That's all right.

17 Q. After you tackled Mr. Davis --

18 A. Yes, sir -- yes, ma'am.

19 Q. -- what happened next?

20 A. He began struggling with us.

21 Q. Okay. So, you landed on top of him,
22 correct?

23 A. Yes, ma'am.

24 Q. And after you landed on top of him,
25 where exactly were his hands?

1 A. His hands were underneath him to where I
2 couldn't see them.

3 Q. Okay. And how did you get the hand out?

4 A. Well, initially I didn't.

5 Q. How did the hand come out?

6 A. He pulled it out with a gun in it. Are
7 we talking about the left hand?

8 Q. Sorry I cut you off. I was just --

9 A. Are you asking about when his left hand
10 came out?

11 Q. Yes.

12 A. Yes, it came out on its own free will,
13 not by me.

14 Q. Okay.

15 MS. BELL: May I approach the
16 weapon?

17 THE COURT: Yes, you may.

18 MS. BELL: May I have the witness
19 step down for demonstration?

20 THE COURT: Remember now, keep your
21 voice up.

22 Q. Officer, when the weapon came out -- I'm
23 sorry -- let me stand on this side. I just want you
24 to show us in the direction -- how did the weapon
25 come out?

1 A. It initially came out, and I saw from
2 here -- if you don't mind standing here. I don't
3 like pointing guns, loaded or unloaded. It came out
4 like this (demonstrating).

5 Q. Did he point it at you?

6 A. No, ma'am.

7 Q. Did he ever try to point the gun at you?

8 A. No, ma'am.

9 Q. You -- that's all I had. You
10 testified --

11 THE COURT: Are you ready for him
12 to take his seat?

13 MS. BELL: Yes.

14 Q. So, he pulls it out, and he doesn't try
15 to point it at your direction?

16 A. Not in my direction.

17 Q. And he doesn't try to turn towards you
18 with the weapon, did he?

19 A. No, ma'am.

20 Q. Did he at that time yell out anything to
21 you like, "I'm going to get you" or anything else
22 like that?

23 A. No, ma'am.

24 Q. You testified that you swatted the
25 weapon, and then it dropped. Is that what you

1 testified to?

2 A. I believe so.

3 Q. Officer, is it -- did you swat the gun,
4 or did it just fall?

5 A. I don't know. I swatted at the gun. I
6 swatted at the hand. I don't know for sure if it --
7 if I swatted it out or if it just fell. I don't
8 know.

9 Q. So, it could have been just dropped,
10 correct?

11 A. It's possible.

12 Q. Officer, when he had the gun, how was he
13 holding the weapon?

14 A. I don't understand the question.

15 Q. How was it positioned in his hand?

16 A. (Demonstrating)

17 Q. With finger around the trigger?

18 A. I don't remember if the finger was
19 around the trigger or not.

20 Q. But his hands were clearly on it?

21 A. Yes, ma'am.

22 Q. Officer, at what time did you start
23 choking him?

24 A. The gun had fallen down, and I'm still
25 unable to get him under control. And, so, after I

1 swatted at the gun, that was when he started moving.
2 So, as a last resort, I began choking him.

3 Q. Okay. Officer, you said he was doing a
4 pushup motion, right?

5 A. Similar to it.

6 Q. So, at that time he's not reaching for
7 anything else, correct?

8 A. I couldn't see. Again, you know, his
9 hands were underneath him. I couldn't see what was
10 going on. I just knew that we were moving.

11 Q. And you started choking around his neck?

12 A. Yes, ma'am.

13 Q. Was he gasping for air?

14 A. Eventually.

15 Q. Did he get to the point where he was
16 kicking uncontrollably?

17 A. I don't understand the question.

18 Q. Did he lose so much air he began kicking
19 uncontrollably?

20 MR. AKERS: I'm going to object to
21 relevance, Judge.

22 THE COURT: That's overruled. If
23 you know, if you know.

24 A. I don't know.

25 Q. (By Ms. Bell) Officer, have you

1 previously testified that he began kicking
2 uncontrollably because he was losing so much air?

3 A. I can't answer that in a yes or no. I
4 don't remember answering that he was kicking because
5 of something.

6 Q. Did you ever say that he was kicking
7 uncontrollably?

8 A. I believe that I previously stated that
9 he was kicking and resisting.

10 Q. Are you saying you didn't give that
11 testimony, or are you saying you don't remember?

12 A. I'm saying that I don't remember
13 specifically what I said.

14 MS. BELL: Just one moment, Your
15 Honor. May I approach the witness, Your Honor?

16 MR. AKERS: May we approach the
17 bench, Your Honor?

18 (Conference at the bench, on the
19 record)

20 MR. AKERS: Judge, at this point I
21 would object to improper impeachment. Impeachment
22 must be done on issues of material fact. This is
23 not material. It's merely just --

24 THE COURT: I won't let her go into
25 it, but you need to get to it. Either he remembers

1 it, or he doesn't. Let's move on.

2 MR. AKERS: I would ask just that
3 the impeachment be limited obviously to the fact
4 that there was another statement on another trial.

5 THE COURT: No, don't be having
6 that. However, if he can't remember, he has a right
7 to refresh his memory.

8 MR. AKERS: That's fine.

9 (Conference concluded)

10 MS. BELL: Your Honor, may I
11 approach the witness?

12 THE COURT: Yes.

13 Q. (Showing witness a document)

14 A. Yes, ma'am.

15 Q. So, is it your testimony that he was
16 kicking uncontrollably?

17 A. Yes, ma'am.

18 Q. Despite that, you continued to choke
19 him, didn't you?

20 A. Until he was detained and handcuffed.

21 Q. And what was his body like when he got
22 to the point where he couldn't move anymore?

23 A. I'm sorry. I didn't hear you.

24 Q. What made you stop choking him?

25 A. I believe Officer Moss was finally able

1 to get an arm out from underneath him.

2 Q. What happened to his body? Like, what
3 was his body physically like at the point that you
4 stopped choking him?

5 A. I don't remember exactly. I just know
6 that Officer Moss was able to get one arm out and
7 start cuffing it.

8 Q. Okay. Let's go through the choking. As
9 you're choking him, he's begging and he's pleading
10 and screaming, correct, because he can't breathe?

11 MR. AKERS: I'm going to object to
12 facts not in evidence and relevance.

13 THE COURT: Let's rephrase the
14 question, and keep your voice up, please.

15 MS. BELL: Yes, Your Honor.

16 Q. (By Ms. Bell) As you're choking him, was
17 he screaming and yelling and telling you he couldn't
18 breathe?

19 MR. AKERS: Object to compound
20 question and facts not in evidence.

21 THE COURT: Overruled as to facts
22 not in evidence. Let's avoid the compound question,
23 please. One question at a time.

24 Q. (By Ms. Bell) As you're choking, was he
25 screaming?

1 A. I don't remember. I don't believe he
2 was screaming. I don't remember.

3 Q. Did he ever tell you he couldn't
4 breathe?

5 A. I don't remember if he did or not.

6 Q. But it's possible that he told you that?

7 A. (No response)

8 THE COURT: I'm sorry. I didn't
9 hear your answer.

10 A. I don't remember him doing it.

11 THE COURT: Okay. Thank you.

12 Q. So, your testimony is, you don't
13 remember him saying anything at all?

14 A. I'd have to refer to my offense report.
15 I don't remember exactly if he said anything or not
16 or yelled anything or not.

17 Q. But it's possible he did?

18 A. Possible.

19 Q. And you didn't keep -- you didn't stop
20 choking him at that point, did you?

21 A. I stopped choking him once we were able
22 to get him handcuffed.

23 Q. You said Officer Moss came up, correct?

24 A. Yes, ma'am.

25 Q. When Officer Moss came up, you said he

1 stood between Mr. Davis and the gun, correct?

2 A. Yes, ma'am.

3 Q. At the time Officer Moss approached, was
4 his gun drawn?

5 A. I don't remember even seeing Officer
6 Moss when I was struggling with the defendant.

7 Q. But you saw him standing in between
8 Mr. Davis and the gun?

9 A. The first time that I observed him or
10 acknowledged him or noticed that he was there was
11 when he was on the ground with me, trying to get the
12 defendant into custody.

13 Q. Okay. You previously testified today
14 that Officer Moss approached and was standing
15 between the defendant and the gun, correct?

16 A. Yes. If I may -- he was on the ground
17 with me, in between the suspect and the gun, the
18 defendant and the gun. And I don't recall -- or I
19 never saw what he did prior to that.

20 Q. Okay. So, when he approached, did he
21 attempt to secure the gun?

22 A. No, ma'am.

23 Q. So, he just left it there?

24 A. Yes, ma'am.

25 Q. And he left it there and walked right

1 past a gun and went and started giving blows to
2 Mr. Davis?

3 A. He began giving strikes to the
4 defendant's torso, yes, ma'am.

5 Q. Did Officer Moss see his hands at the
6 time?

7 MR. AKERS: I'm going to object,
8 calls for speculation, Judge.

9 THE COURT: That's sustained,
10 unless he knows from his own personal knowledge.

11 A. I don't know.

12 Q. (By Ms. Bell) Is it your testimony at
13 this time his hands were not visible?

14 A. I don't believe that they were at this
15 time.

16 Q. When I say "this time", I mean when
17 Officer Moss approached, as -- before he starts
18 giving the blows to Mr. Davis, is it your testimony
19 that Mr. Davis' hands were not visible?

20 A. I believe so.

21 Q. So, you're saying his hands were not
22 visible?

23 A. That is correct.

24 Q. And Officer Moss starts hitting on
25 Mr. Davis?

1 A. Yes, ma'am.

2 Q. And at this point, Mr. Davis doesn't
3 have a weapon on him anymore, does he?

4 A. He didn't have that weapon, but I don't
5 know if he had another one.

6 Q. Okay. When you picked him up, did he
7 have another weapon on him?

8 A. After he was handcuffed and searched?

9 Q. Yes.

10 A. No, ma'am.

11 Q. He didn't have anything on him, did he?

12 A. Once he was handcuffed and searched --

13 Q. After he --

14 THE COURT: Excuse me. Excuse me.
15 Can't talk at the same time.

16 Q. Did he have another weapon on him?

17 A. That was the only weapon he had on him
18 that night.

19 Q. So, your testimony is that he may have
20 laid a weapon down and y'all continued to hit on him
21 and he didn't have anything else?

22 A. At the time, we didn't know, and we're
23 trained that if there's one gun, there's two.

24 Q. How long did y'all proceed to hit
25 Mr. Davis?

1 A. How long did the struggle take place?

2 Q. How long did you choke him?

3 A. I don't remember exactly.

4 Q. How long was Officer Moss hitting him?

5 MR. AKERS: Judge, I'm going to
6 object again to relevance. We've litigated this
7 issue.

8 THE COURT: That objection is
9 overruled.

10 Q. (By Ms. Bell) How long was Officer Moss
11 hitting him?

12 A. I don't know for sure. If I were to
13 say, I'd say the struggle took place probably over
14 the course of about a minute or so.

15 Q. Officer, you compiled an offense report
16 for this, didn't you?

17 A. Yes, ma'am.

18 Q. And in that offense report, did you say
19 anything about Mr. Davis and lighting him up with a
20 spotlight or anything like that prior to getting out
21 and tackling him?

22 A. I have to see. If you can just give me
23 one second. I don't believe so.

24 Q. Your offense report is pretty important,
25 correct?

1 A. Yes, ma'am.

2 Q. When you write an offense report, you
3 write details in that offense report to help you
4 when you get in front of a jury, correct?

5 A. That is correct.

6 Q. So, the important things that happen
7 should be in the offense report, correct?

8 A. That's correct.

9 Q. And the part about you lighting him with
10 a spotlight and all that, that wasn't there, was it?

11 A. It was not.

12 Q. When you compiled the offense report,
13 prior to getting out of the car, did you say
14 anything to Mr. Davis?

15 A. While the car was moving?

16 Q. Yes.

17 A. I did not.

18 Q. Okay. Officer, so based upon what you
19 wrote there, your contact with him was as he rode by
20 your door?

21 A. As he was riding by, yes, ma'am.

22 Q. And based upon that offense report, he
23 continued to -- based upon your testimony, he
24 continued to evade for a couple seconds?

25 A. That is correct.

1 Q. And then you tackled him?

2 A. That is correct.

3 Q. Officer Davis -- or, Officer, Mr. Davis
4 was pretty upset he had been assaulted, wasn't he?

5 A. I don't know why he was upset, but he
6 was upset.

7 Q. Did he have to call somebody out to the
8 scene because of what had happened, the assault?

9 A. Well --

10 MR. AKERS: I'm going to object to
11 her continuing to use the word "assault". That's
12 argumentative.

13 THE COURT: All right. Sustained.
14 Rephrase your question.

15 MS. BELL: Yes, Your Honor.

16 Q. (By Ms. Bell) Did you have to call a
17 sergeant out to the scene?

18 A. Yes.

19 Q. Why?

20 A. It's our -- in our general orders it
21 states if we have a use of force, we call a
22 supervisor to the scene.

23 Q. And you have to justify that use of
24 force, don't you?

25 A. That is correct.

1 Q. What happens if you don't justify the
2 use of force?

3 MR. AKERS: Object to relevance,
4 Your Honor.

5 THE COURT: Sustained.

6 Q. (By Ms. Bell) Officer, what happens if
7 you use that kind of force on somebody that's
8 unarmed?

9 MR. AKERS: Object to relevance,
10 Your Honor.

11 THE COURT: Sustained.

12 MS. BELL: Pass the witness.

13 THE COURT: Anything further, Mr.
14 Akers?

15 MR. AKERS: Very briefly, Your
16 Honor.

17 REDIRECT EXAMINATION

18 Q. (By Mr. Akers) As far as an offense
19 report is concerned, is an offense report always
20 100% of the facts of the case?

21 A. No, sir.

22 Q. You don't want to write a novel, do you?
23 It's just a few pages?

24 A. That's correct.

25 Q. And you don't -- you're not telling us

1 that you know exactly which pocket or if it was in
2 his -- as to the gun, I mean. You don't know if it
3 was in his waistband or in the hoodie pocket or
4 anything like that, right?

5 A. I didn't know where it was.

6 Q. You just know he is the one that pulled
7 it out?

8 A. Yes, sir.

9 MR. AKERS: That's all I have, Your
10 Honor. Pass the witness.

11 MS. BELL: Just briefly.

12 RECROSS-EXAMINATION

13 Q. (By Ms. Bell) Officer, when you compile
14 an offense report, what's the purpose of it?

15 A. For me to recall the events.

16 Q. So, the important details, you include
17 those, don't you?

18 A. I do the best I can.

19 Q. Because sometimes the trials are a
20 lot -- a lot of time passes between the incident and
21 the trial, correct?

22 A. That is correct.

23 Q. And your memory is fresher at the time
24 it happens as opposed to the day of the trial
25 sometimes?

1 A. That is correct.

2 Q. Officer, the D.A. asked you earlier
3 about printing the gun. You can turn in a gun and
4 have it printed, can't you?

5 A. I can.

6 Q. But in this case, you made the decision
7 not to, correct?

8 A. That is correct.

9 Q. You reference that the gun had bullets
10 in it, correct?

11 A. That is correct.

12 Q. And HPD has a lab dedicated to testing
13 the gun and also testing the bullets for prints?

14 A. That's correct.

15 Q. And you made the decision not to have
16 that submitted, correct?

17 A. That is correct.

18 Q. Mr. Davis didn't have any say in whether
19 that got submitted or not, correct?

20 MR. AKERS: Object to argumentative
21 and speculation.

22 THE COURT: Sustained. Sustained.

23 Q. (By Ms. Bell) Officer, there's a lab
24 that's dedicated to testing things for DNA, correct?

25 A. Correct.

1 Q. And at the time this gun was being held,
2 you're saying that Mr. Davis was struggling,
3 correct?

4 A. That is correct.

5 Q. And you eluded to, before the gun was
6 out of Mr. Davis' pants, it was next to his person,
7 correct?

8 A. I don't know where it was when it was --
9 the first time I saw it was here.

10 Q. Did you ever have it submitted to the
11 lab?

12 A. No. No, ma'am.

13 Q. But the lab does do those things, and
14 it's something you could have done, correct?

15 A. That is correct.

16 Q. But you made the decision not to do
17 that?

18 MR. AKERS: Object to asked and
19 answered.

20 THE COURT: Sustained.

21 MS. BELL: Pass the witness, Your
22 Honor.

23 THE COURT: Thank you. Anything
24 further?

25 MR. AKERS: Not from this witness,

1 Your Honor. May he stand down?

2 THE COURT: Is he excused, not
3 subject to recall?

4 MS. BELL: Subject to recall.

5 THE COURT: He is subject to
6 recall?

7 MS. BELL: Yes, Your Honor.

8 THE COURT: Thank you for your time
9 and your testimony. You are excused at this time.
10 Please remain outside the courtroom in case you're
11 called back to testify. You're still under the
12 rule. Thank you.

13 THE WITNESS: Yes, sir.

14 MR. AKERS: Judge, State would call
15 Officer Robert Moss.

16 THE COURT: Thank you, sir.

17 THE BAILIFF: This witness has been
18 sworn.

19 THE COURT: Thank you. Please come
20 around to the court reporter. Have a seat in the
21 witness box. Make yourself comfortable. Please
22 keep your voice up so everyone can hear what you
23 have to say.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Thank you.

1 MR. AKERS: May I proceed, Your
2 Honor?

3 THE COURT: You certainly may.

4 ROBERT MOSS,
5 After having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 Q. (By Mr. Akers) Good afternoon, Officer
8 Moss. Would you mind stating and spelling your name
9 for the record?

10 A. Good afternoon. My name's Robert Moss,
11 R-O-B-E-R-T, M-O-S-S.

12 Q. And we can see that you are employed by
13 the Houston Police Department; is that right?

14 A. Yes, sir.

15 Q. How long have you been with HPD?

16 A. Just over ten years.

17 Q. What did you do before you were an HPD
18 officer?

19 A. I was in the Marine Corps.

20 Q. For how long?

21 A. Four years.

22 Q. And in your four years in the Marine
23 Corps, were you ever deployed?

24 A. I was.

25 Q. How many times?