

1 THE COURT: OKAY. DID YOU CHECK LOCALLY, BOTH
2 BEFORE SHIFT AND AT THE END OF SHIFT?

3 THE WITNESS: YES.

4 THE COURT: AND DID THE UNIT APPEAR TO BE WORKING
5 PROPERLY?

6 THE WITNESS: YES.

7 THE COURT: ALL RIGHT. OTHER THAN THE ODOR OF
8 ALCOHOL AND RED AND WATERY EYES, DID YOU OBSERVE
9 ANYTHING ELSE BEFORE YOU HAD THE DEFENDANT EXIT THE
10 VEHICLE?

11 THE WITNESS: NOT THAT I RECALL.

12 THE COURT: OKAY.

13 MR. RUFF.

14 MR. RUFF: MAY I, YOUR HONOR? THANK YOU.

15 THE COURT: YOU MAY.

16
17 CROSS-EXAMINATION

18 BY MR. RUFF:

19 Q. OFFICER, I WANT TO TALK TO YOU A LITTLE BIT
20 ABOUT YOUR TRAINING WITH REGARD TO DUI ENFORCEMENT.
21 WHERE WERE YOU TRAINED?

22 A. THE C.H.P. ACADEMY IN SACRAMENTO CALIFORNIA.

23 Q. AND THAT WAS ABOUT THREE AND A HALF YEARS
24 AGO?

25 A. CORRECT.

26 Q. AND WITH RESPECT TO DUI ENFORCEMENT, OTHER
27 THAN THE ACADEMY TRAINING, HAVE YOU DONE ANY OTHER
28 TRAINING WITH RESPECT TO DUI ENFORCEMENT?

1 A. YES.

2 Q. AND WHAT IS THAT?

3 A. THE -- THE AROID COURSE THAT OUR DEPARTMENT
4 OFFERS, ADVANCED RECOGNITION OF IMPAIRED DRIVING.

5 Q. FAIR ENOUGH. AND DURING BOTH OF THESE
6 COURSES, THE C.H.P. DUI ENFORCEMENT AT THE ACADEMY AND
7 THE AROID ENFORCEMENT, YOU ARE TAUGHT, ARE YOU NOT, THAT
8 THERE IS BASICALLY THREE PHASES TO DUI ENFORCEMENT?
9 PHASE 1, VEHICLE IN MOTION; CORRECT?

10 A. CORRECT.

11 Q. PHASE TWO, PERSONAL CONTACT; CORRECT?

12 A. YES.

13 Q. AND THEN PHASE THREE, FST'S OR THAT TYPE OF
14 THING; IS THAT CORRECT?

15 A. CORRECT.

16 Q. OKAY. I WANT TO TALK A LITTLE BIT ABOUT
17 WHAT YOU OBSERVED WITH REGARD TO THE VEHICLE IN MOTION.
18 DO YOU UNDERSTAND WHAT I MEAN BY THAT?

19 A. YES.

20 Q. SO THE TRAINING THAT YOU RECEIVED CONCERNING
21 DETECTING A DUI DRIVER, YOU ARE TAUGHT TO DETECT CERTAIN
22 CUES, ARE YOU NOT, CERTAIN CUES THAT INDICATE THAT THE
23 DRIVER MIGHT BE IMPAIRED; IS THAT CORRECT?

24 A. CORRECT.

25 Q. AND IN THIS PARTICULAR CASE, WHEN YOU
26 OBSERVED MR. VITE'S VEHICLE AT THE INTERSECTION, WERE
27 THERE ANY CUES THAT YOU COULD SEE WHEN YOU FIRST
28 OBSERVED THE VEHICLE WITH RESPECT TO WHETHER OR NOT HE

1 MAY BE IMPAIRED?

2 A. NO.

3 Q. AND, IN FACT, MR. VITES STOPPED
4 APPROPRIATELY AT THE LINE, AT THE LIMIT LINE, OF THE
5 INTERSECTION; IS THAT CORRECT?

6 A. I DON'T RECALL. I HAD NOT STOPPED BEHIND
7 THE VEHICLES THAT WERE ALREADY STOPPED THERE.

8 THE COURT: WAS HE ALREADY STOPPED WHEN YOU
9 APPROACHED THE INTERSECTION?

10 THE WITNESS: YES.

11 BY MR. RUFF:

12 Q. WOULD IT BE FAIR TO SAY THAT IF THAT WERE
13 OBSERVED, IT WOULD BE IN YOUR REPORT?

14 A. YES.

15 Q. AND IT'S NOT IN YOUR REPORT?

16 A. NO.

17 Q. SO IT'S FAIR TO SAY THAT YOU DIDN'T SEE IT?

18 A. I DID NOT.

19 Q. NOW, THE VISUAL CUES THAT YOU ARE LOOKING
20 FOR -- AND THIS IS ALL LEADING UP TO, AGAIN, FOR MY
21 CLARIFICATION OR DETERMINING WHETHER OR NOT YOU ARE
22 GOING TO DETAIN AN INDIVIDUAL AND HAVE THEM SUBMIT TO
23 FIELD SOBRIETY TESTS; CORRECT?

24 YOU ARE LOOKING FOR CUES TO BUILD UP TO THAT
25 DECISION MAKING PROCESS?

26 A. CORRECT.

27 Q. SO LET'S GO THROUGH SOME OF THOSE AND
28 DETERMINE WHETHER ANY OF THEM WERE PRESENT. THE

1 TRAINING THAT YOU RECEIVED BASICALLY BREAKS DOWN TO --
2 THE FIRST ONE IS PROBLEMS MAINTAINING PROPER LANE
3 POSITION; CORRECT?

4 A. CORRECT.

5 Q. AND SOME OF THE CUES THAT YOU ARE TRAINED TO
6 LOOK FOR IN THAT REGARD ARE WEAVING; CORRECT?

7 A. CORRECT.

8 Q. WEAVING ACROSS LANE LINES; CORRECT?

9 A. OR UPON.

10 Q. OR UPON A LANE LINE?

11 A. YES.

12 Q. STRADDLING A LANE?

13 A. YES.

14 Q. TURNING WITH WIDE RADIUS?

15 A. YES.

16 Q. ALMOST STRIKING AN OBJECT OR VEHICLE?

17 A. YES.

18 Q. AND SWERVING AND DRIFTING?

19 A. YES.

20 Q. NOW, JUST A BACKDROP TO THIS CASE: WHEN YOU
21 FIRST OBSERVED MR. VITES'S VEHICLE, THE DISTANCE BETWEEN
22 WHERE YOU FIRST OBSERVED HIS VEHICLE AT THAT
23 INTERSECTION AND WHERE YOU STOPPED HIM UP AT RAINBOW
24 GLEN, WE ARE TALKING ABOUT A MILE OF TRAVEL; IS THAT
25 CORRECT?

26 A. CORRECT.

27 Q. AND SO YOU FOLLOWED HIS VEHICLE FOR
28 APPROXIMATELY A MILE OR ROUGHLY A MINUTE, MAKING

1 OBSERVATIONS TO HIS VEHICLE THE WHOLE TIME; IS THAT
2 CORRECT?

3 A. CORRECT.

4 Q. OKAY. AND THE PURPOSE OF THAT WAS THAT YOU
5 BELIEVED THAT MR. VITES WAS COMMITTING A SPEED
6 VIOLATION?

7 A. YES.

8 Q. SO YOUR EYES WERE FIXED ON HIS VEHICLE?

9 A. YES.

10 Q. AND AT NO TIME DID YOU OBSERVE ANY OF THOSE
11 VISUAL CUES INDICATING THAT THE DRIVER MIGHT BE
12 IMPAIRED?

13 A. EXCEPT FOR THE SPEED IS ONE OF THE THINGS
14 THAT A LOT OF IMPAIRED DRIVERS -- THAT IS ONE OF THE
15 OBSERVATIONS THAT WE HAVE.

16 Q. WELL, WE ARE TALKING ABOUT VALIDATED CUES;
17 AND BY "VALIDATED," I MEAN NHTSA CUES; CORRECT?

18 A. CORRECT.

19 Q. SPEED IS NOT A VALIDATED NHTSA CUE; WOULD
20 YOU AGREE WITH THAT?

21 A. YES.

22 Q. OKAY. SO WHEN WE ARE TALKING ABOUT
23 VALIDATED NHTSA CUES, WE ARE TALKING ABOUT WHAT THE
24 SCIENCE HAS SHOWN HOW PEOPLE ARE GOING TO DISPLAY
25 THEMSELVES, HOW THEY ARE GOING TO DRIVE THE VEHICLE, AND
26 WHAT THE RESEARCH SHOWS PEOPLE ARE GOING TO IDENTIFY IN
27 TERMS OF SHOWING CUES OF IMPAIRMENT; CORRECT?

28 A. CORRECT.

1 Q. AND SPEED IS NOT ONE OF THEM; CORRECT?

2 A. CORRECT.

3 Q. SO WITH RESPECT TO THAT DETERMINATION, IN
4 FACT, THE NEXT THING THAT YOU ARE LOOKING FOR DURING
5 YOUR TRAINING IS SPEED AND BRAKING PROBLEMS; CORRECT?

6 A. YES.

7 Q. AND YOU ARE LOOKING FOR STOPPING PROBLEMS;
8 CORRECT?

9 A. CORRECT.

10 Q. YOU ARE LOOKING FOR ACCELERATING AND
11 DECELERATING FOR NO APPARENT REASON; CORRECT?

12 A. YES.

13 Q. VARYING SPEEDS?

14 A. CORRECT.

15 Q. AND SLOW SPEED?

16 A. YES.

17 Q. AND NONE OF THOSE THINGS WERE PRESENT?

18 A. NO.

19 Q. AND THEN YOU ARE ALSO TRAINED TO LOOK FOR
20 VIGILANCE ISSUES; CORRECT?

21 A. CORRECT.

22 Q. MEANING THAT IS THE PERSON -- DO THEY HAVE
23 SLOW RESPONSE TO A TRAFFIC SIGNAL FOR EXAMPLE; CORRECT?

24 A. CORRECT.

25 Q. AND IN THIS PARTICULAR CASE, YOU OBSERVED
26 MR. VITES'S VEHICLE STOPPED AT A TRAFFIC SIGNAL. THAT
27 WAS YOUR FIRST OBSERVATION; TRUE?

28 A. YES.

1 Q. AND HIS RESPONSE TO THAT TRAFFIC SIGNAL WAS
2 PERFECTLY NORMAL; CORRECT?

3 A. YES.

4 Q. IT WAS DONE IN A PRUDENT FASHION?

5 A. I DID NOT OBSERVE HIM ACTUALLY COME TO A
6 STOP. I JUST OBSERVED HIM STOPPED AT THE INTERSECTION.

7 Q. BUT THERE WAS NOTHING ABOUT THE WAY HIS
8 VEHICLE EITHER STOPPED, WAS SITTING AT THE INTERSECTION,
9 OR THE WAY HE REACTED TO THE LIGHT THAT WOULD INDICATE
10 THAT HE WAS IMPAIRED?

11 A. NO.

12 Q. AND OTHER THINGS RELATING TO THAT CATEGORY
13 ARE STOPPING IN A LANE FOR NO REASON; CORRECT?

14 A. CORRECT.

15 Q. DRIVING WITHOUT LIGHTS AND FAILING TO SIGNAL
16 OR INCONSISTENT SIGNAL?

17 A. YES.

18 Q. AND NONE OF THOSE CUES WERE PRESENT?

19 A. NO.

20 Q. NO. AND SO, AGAIN, WE ARE TALKING ABOUT YOU
21 OBSERVING -- LEADING UP TO YOUR DECISION TO ASK
22 MR. VITES TO EXIT THE VEHICLE AND PERFORM FIELD SOBRIETY
23 TESTS. THESE WERE ALL OF YOUR OBSERVATIONS, AND YOU
24 OBSERVED THE VEHICLE DRIVE DOWN THAT ROADWAY --

25 WHAT WAS THE NAME OF THE ROAD?

26 A. SOLEDAD CANYON ROAD.

27 Q. -- FOR A PERIOD OF A MILE AND WHEN HE
28 APPROACHED RAINBOW GLEN INTERSECTION, YOU OBSERVED HIM

1 MAKE A TURN; CORRECT?

2 A. CORRECT.

3 Q. AND WAS THERE ANYTHING ABOUT THAT TURN THAT
4 INDICATED TO YOU THAT HE WAS IMPAIRED?

5 A. NOT THAT I RECALL.

6 Q. IN FACT, HE SIGNALLED APPROPRIATELY, DID HE
7 NOT?

8 A. I DON'T REMEMBER IF HE SIGNALLED.

9 Q. OKAY. IF THERE WAS AN IMPROPER SIGNAL, THAT
10 WOULD BE NOTED IN YOUR REPORT; CORRECT?

11 A. I HAD ALREADY MADE UP MY MIND TO STOP HIM
12 FOR THE SPEED. IF IT WAS SOMETHING OUT OF THE ORDINARY,
13 IT WOULD HAVE BEEN IN THE REPORT.

14 Q. OKAY. BUT YOU ARE TRAINED TO DOCUMENT EVERY
15 SINGLE ONE OF THESE CUES?

16 A. YES.

17 Q. AND, IN FACT, YOU ARE TRAINED, NOT ONLY TO
18 DOCUMENT EVERY SINGLE ONE OF THESE CUES, BUT ANYTHING
19 ELSE THAT YOU DETERMINE TO BE UNUSUAL IN REGARD TO YOUR
20 DECISION TO DETAIN AND ARREST; CORRECT?

21 A. YES.

22 Q. AND NONE OF THOSE THINGS WERE OBSERVED THAT
23 WE JUST WENT OVER?

24 A. NO.

25 Q. AND THE LAST THING IS JUDGMENT ISSUES. WAS
26 MR. VITES FOLLOWING A VEHICLE TOO CLOSELY, FOR EXAMPLE?
27 NO?

28 A. NO.

1 Q. WAS THERE ANY IMPROPER OR UNSAFE LANE
2 CHANGES?

3 A. NO.

4 Q. WERE THERE ANY ILLEGAL OR IMPROPER TURNS?

5 A. NO.

6 Q. DRIVING ON OTHER THAN A DESIGNATED ROADWAY?

7 A. NO.

8 Q. INAPPROPRIATE OR UNUSUAL BEHAVIOR?

9 A. NO.

10 Q. OR APPEARING TO BE IMPAIRED? CORRECT? NO?

11 A. WHILE DRIVING OR --

12 Q. WHILE DRIVING.

13 A. NO.

14 Q. THESE ARE ALL WHILE DRIVING.

15 A. NO.

16 Q. WE ARE NOW TALKING ABOUT THE VEHICLE IN
17 MOTION --

18 A. YES.

19 Q. -- LEADING UP TO YOUR DECISION TO DETAIN
20 MR. VITES FOR A DUI. AND SO NONE OF THESE THINGS WERE
21 DETECTED BY YOU; IS THAT CORRECT?

22 A. CORRECT.

23 Q. NOW, WITH REGARD TO YOUR DECISION TO STOP
24 MR. VITES, IS IT SAFE TO SAY THAT WHEN YOU PULLED --
25 WHEN YOU HAD -- LET ME BACK UP.

26 WHEN YOU TURNED ON YOUR EMERGENCY LIGHTS,
27 YOUR DECISION WAS THAT YOU WERE GOING TO STOP HIM AT
28 THAT POINT AND WRITE HIM A TICKET FOR SPEEDING; CORRECT?

1 A. I DIDN'T KNOW IF I WAS WRITING HIM A TICKET
2 OR NOT.

3 Q. OKAY. SO YOU MAY HAVE JUST WARNED HIM;
4 CORRECT?

5 A. YES.

6 Q. YOU DID NOT DETECT ANYTHING ELSE TO INDICATE
7 THAT THIS IS AN IMPAIRED DRIVER, DID YOU?

8 A. NO.

9 Q. AND WITH RESPECT TO THE NEXT PHASE WHICH IS
10 PERSONAL CONTACT, THIS IS A -- YOU ARE TRAINED WHEN YOU
11 HAVE THE VEHICLE STOPPED, IT IS SITUATED IN FRONT OF
12 YOU, AND YOU EXIT YOUR VEHICLE AND COME UP AND MAKE
13 CONTACT WITH HIM FACE TO FACE. YOU ARE TRAINED TO,
14 AGAIN, OBSERVE CERTAIN CUES; CORRECT?

15 A. CORRECT.

16 Q. AND LET ME JUST ASK YOU: WITH RESPECT TO
17 THE WAY THAT HE RESPONDED TO YOUR SIGNAL, TO YOUR SIGNAL
18 TO STOP, YOUR EMERGENCY LIGHTS, WAS IT DONE IN A SAFE,
19 PRUDENT, REASONABLE FASHION?

20 A. YES.

21 Q. AND, IN FACT, HIS REACTION TO YOUR EMERGENCY
22 LIGHTS WAS VERY QUICK; CORRECT?

23 A. YES.

24 Q. AND THAT IS ONE OF THE THINGS THAT YOU
25 OBSERVED TO LOOK FOR, WHETHER OR NOT THERE IS A SLOW
26 REACTION TO YOUR COMMAND TO PULL OVER?

27 A. CORRECT.

28 Q. AND THAT WAS NOT PRESENT HERE?

1 A. NO.

2 Q. AND WHEN HE STOPPED AND PULLED OVER TO THE
3 SIDE OF THE ROAD AND PARKED HIS VEHICLE ALONG THE CURB,
4 IT WAS DONE IN A SAFE, PRUDENT, AND REASONABLE FASHION;
5 CORRECT?

6 A. CORRECT.

7 Q. INDICATING THAT THE DRIVER DID NOT HAVE ANY
8 IMPAIRMENT; CORRECT?

9 A. (NO RESPONSE.)

10 Q. CORRECT?

11 A. I DIDN'T KNOW IF HE HAD IMPAIRMENT OR NOT
12 UNTIL I CONTACTED HIM.

13 Q. OKAY. BUT YOU ARE TRAINED TO DETECT HOW
14 THAT VEHICLE IS BEING DRIVEN? ISN'T THAT THE ISSUE HERE
15 AS TO WHETHER OR NOT THE VEHICLE IS BEING DRIVEN WITH
16 THE CAUTION CHARACTERISTICS OF A SOBER PERSON? AREN'T
17 THOSE THE THINGS THAT YOU ARE LOOKING FOR?

18 A. YES.

19 Q. AND YOU DID NOT DETECT ANYTHING TO INDICATE
20 THAT THIS PERSON WAS IMPAIRED AT THAT POINT?

21 A. NO.

22 Q. NOW, SO YOU GET UP TO THE WINDOW, AND YOU
23 LET MR. VITES KNOW THAT YOU -- ESSENTIALLY, YOU SAY
24 THAT -- YOU WENT UP, AND HE KNEW THAT MAYBE HE WAS GOING
25 A LITTLE TOO FAST; IS THAT FAIR TO SAY?

26 A. YES.

27 Q. OKAY. SO HE WAS NOT HOSTILE TOWARDS YOU IN
28 ANY WAY?

1 A. NO.

2 Q. IN FACT, HE WAS SOMEWHAT APOLOGETIC FOR
3 POSSIBLY DRIVING A LITTLE TOO FAST; CORRECT?

4 A. CORRECT.

5 Q. AND HE WAS COOPERATIVE WITH YOUR REQUEST;
6 WAS HE?

7 A. YES.

8 Q. OKAY. AND SO THAT LEADS US UP TO THE NEXT
9 STEP OF PERSONAL CONTACT CUES. WHEN YOU ASKED MR. VITES
10 FOR DOCUMENTATION, YOU ASKED HIM FOR HIS DRIVER'S
11 LICENSE, HIS REGISTRATION, AND INSURANCE; CORRECT?

12 A. CORRECT.

13 Q. AND THE REASON -- ONE OF THE REASONS YOU DO
14 THAT, IN ADDITION TO CITING HIM, IS IF YOU ARE
15 CONDUCTING A DUI INVESTIGATION, YOU WANT TO SEE HOW THAT
16 PERSON RESPONDS IN TERMS OF THEIR PHYSICAL DEXTERITY,
17 ABILITY TO FOLLOW INSTRUCTIONS, AND THAT TYPE OF THING;
18 CORRECT?

19 A. CORRECT.

20 Q. AND HE FOLLOWED YOUR INSTRUCTIONS TO A "T,"
21 DID HE NOT?

22 A. I DON'T REMEMBER IF HE HANDED ME HIS PROOF
23 OF INSURANCE AND THE REGISTRATION. I KNOW HE HANDED ME
24 HIS DRIVER'S LICENSE.

25 Q. OKAY. AND THAT WAS BECAUSE YOU WERE ENGAGED
26 IN CONVERSATION WITH HIM, WERE YOU NOT?

27 A. CORRECT.

28 Q. IN FACT, WHILE YOU WERE ENGAGED IN

1 CONVERSATION WITH MR. VITES, YOU ACTUALLY ASKED HIM FOR
2 ALL OF THOSE THINGS AND THEN WHILE HE WAS GETTING THOSE
3 THINGS, YOU ASKED HIM WHERE HE WAS COMING FROM; IS THAT
4 CORRECT?

5 A. CORRECT.

6 Q. AND HE WAS LUCID IN HIS RESPONSE AS TO WHERE
7 HE WAS COMING FROM; CORRECT?

8 A. CORRECT.

9 Q. AND AT NO POINT DID MR. VITES DEMONSTRATE
10 ANY SLURRED SPEECH TO YOU?

11 A. NOT THAT I RECALL.

12 Q. SO YOU SAY YOU OBSERVED -- SO YOU SAY THAT
13 YOU OBSERVED MR. VITES TO HAVE RED EYES; IS THAT
14 CORRECT?

15 A. CORRECT.

16 Q. AND WHAT TIME OF NIGHT WAS THIS? DO YOU
17 REMEMBER?

18 A. IT WAS ABOUT 12:25 A.M.

19 Q. AND WITH YOUR TRAINING CONCERNING DUI
20 ENFORCEMENT AND YOUR BACKGROUND AND EXPERIENCE IN NOT
21 ONLY DUI ENFORCEMENT IN THE ACADEMY BUT ALSO THE MORE
22 IN-DEPTH ENFORCEMENT IN THE ARIDE PROGRAM, WHICH IS THE
23 NEXT STEP UP; CORRECT?

24 A. CORRECT.

25 Q. WERE YOU EVER TAUGHT OR CAN YOU IN ANY WAY
26 QUANTIFY OR ARTICULATE ANYTHING TO THIS COURT TO
27 INDICATE THAT A PERSON'S RED EYES WOULD INDICATE A LEVEL
28 OF IMPAIRMENT?

1 A. NO.

2 Q. AND SO AGAIN, AS YOU ARE TALKING TO
3 MR. VITES AND YOU OBTAINED THE INFORMATION, MR. VITES IS
4 EXPLAINING TO YOU IN DETAIL THE PATH THAT HE TOOK TO GET
5 TO THAT LOCATION? THAT IS SOMETHING THAT YOU ASKED HIM
6 FOR; IS IT NOT? THE ROUTE HE TOOK?

7 A. CORRECT.

8 Q. AND HIS RESPONSES TO YOUR QUESTIONS IS --
9 IS -- HIS ANSWERS TO YOUR INTERROGATORIES, AT NO POINT
10 DID ANY OF THEM INDICATE ANY SIGNS OF MENTAL IMPAIRMENT
11 ON HIS PART; CORRECT?

12 A. CORRECT.

13 Q. SO WITH REGARD TO THE NEXT SET OF CUES THAT
14 YOU ARE DESIGNED TO LOOK FOR -- AND AGAIN THESE ARE
15 VALIDATED CUES. THESE ARE NHTSA CUES, THE SAME TYPE OF
16 CUES THAT YOU ARE LOOKING FOR WHEN YOU ARE GIVING FST'S;
17 CORRECT?

18 A. CORRECT.

19 Q. AND AT NO TIME DURING THE POST-STOP -- YOU
20 ARE TRAINED TO LOOK FOR DIFFICULTY WITH VEHICLE
21 CONTROLS, FOR EXAMPLE. DID HE HAVE ANY DIFFICULTY WITH
22 VEHICLE CONTROLS?

23 A. NO.

24 Q. DID HE HAVE ANY DIFFICULTY AT ANY POINT
25 EXITING THE VEHICLE?

26 A. NO.

27 Q. DID HE HAVE ANY DIFFICULTY AT ANY POINT
28 FUMBLING FOR THE REQUESTED DOCUMENTS?

1 A. NO.

2 Q. AND AT NO POINT DID YOU HAVE TO REPEAT ANY
3 QUESTIONS? HE UNDERSTOOD THEM, AND RESPONDED IN A
4 PROPER FASHION; CORRECT?

5 A. CORRECT.

6 Q. OKAY. AT NO POINT WAS HE SWAYING, UNSTEADY,
7 HAD BALANCE PROBLEMS INSIDE THE VEHICLE?

8 A. NO.

9 Q. AT NO POINT DID HE HAVE ANY SLURRED SPEECH?

10 A. NO.

11 Q. WHEN HE PROVIDED THE DOCUMENTS TO YOU, YOU
12 SAID THAT HE GAVE YOU HIS DRIVER'S LICENSE; CORRECT?

13 A. CORRECT.

14 Q. HE DIDN'T PRESENT A MACY'S CREDIT CARD OR
15 ANYTHING LIKE THAT?

16 A. NO.

17 Q. SO HE PROVIDED YOU THE CORRECT DOCUMENT?

18 A. YES.

19 Q. AND THOSE ARE THINGS THAT YOU ARE ALSO
20 TRAINED TO LOOK FOR?

21 A. YES.

22 Q. AND WITH REGARD TO WHEN YOU ARE NOW LEADING
23 UP TO MAKING THE DECISION AS TO WHETHER OR NOT YOU ARE
24 GOING TO ASK MR. VITES TO SUBJECT HIMSELF TO A CONTINUED
25 DETENTION BY EXITING THE VEHICLE AND WALKING OVER TO THE
26 SIDE AND DOING FIELD SOBRIETY TESTS, YOU ARE ALSO USING
27 YOUR SENSE OF SIGHT; CORRECT?

28 A. CORRECT.

1 Q. OKAY. AND YOU ARE LOOKING FOR THINGS LIKE
2 SOILED CLOTHING; CORRECT?

3 A. YES.

4 Q. YOU DIDN'T SEE ANY OF THAT?

5 A. NO.

6 Q. FUMBLING FINGERS?

7 A. NO.

8 Q. ALCOHOL CONTAINERS?

9 A. NO.

10 Q. DRUGS, DRUG PARAPHERNALIA?

11 A. NO.

12 Q. ANY INDICATION -- BRUISES, BUMPS, INJURIES
13 LIKE HE HAD FALLEN OVER OR ANYTHING LIKE THAT?

14 A. NO.

15 Q. AND NO UNUSUAL ACTIONS?

16 A. NO.

17 Q. AND HEARING. YOU ARE TRAINED TO USE YOUR
18 SENSE OF HEARING IN TERMS OF DOES THE DRIVER -- IS HE
19 DISPLAYING SIGNS OR SYMPTOMOLOGY OF IMPAIRMENT WITH
20 REGARD TO YOUR DECISION MAKING PROCESS? AND YOU ARE
21 TRAINED TO LOOK FOR SLURRED SPEECH. WE TALKED ABOUT
22 THAT. THAT WASN'T PRESENT; CORRECT?

23 A. CORRECT.

24 Q. ABUSIVE LANGUAGE?

25 A. NO.

26 Q. CORRECT?

27 A. CORRECT.

28 Q. UNUSUAL STATEMENTS; CORRECT?

1 A. CORRECT.

2 Q. NOTHING ABOUT -- NOTHING ABOUT ANY OF THOSE
3 THINGS?

4 A. NO.

5 Q. SO LET'S -- SO LET'S TALK ABOUT THE LAST --
6 REALLY THE ONLY OTHER THING THAT YOU SAW OTHER THAN THE
7 RED EYES -- BY THE WAY, YOU WOULD NOT CHARACTERIZE
8 MR. VITES'S EYES AS BLOODSHOT? YOU DID NOT USE THE WORD
9 "BLOODSHOT," DID YOU?

10 A. I HAVE NEVER USED THE WORD "BLOODSHOT" TO
11 DESCRIBE EYES. I ALWAYS SAY "RED AND WATERY."

12 Q. AND SO "RED AND WATERY" IN YOUR TRAINING AND
13 EXPERIENCE COULD JUST BE THE FACT THAT HE HAS HAD A
14 ROUGH DAY OF WORK; HE IS FATIGUED?

15 A. IT'S A POSSIBILITY.

16 Q. AND A VARIETY OF OTHER THINGS THAT COULD
17 CAUSE RED EYES AT 12:15 AT NIGHT?

18 A. YES.

19 Q. AND YOU ARE NOT ABLE TO ARTICULATE ANY FACTS
20 TO THIS COURT TO INDICATE THAT RED EYES ARE THE ONLY
21 CAUSE OF IMPAIRMENT?

22 A. NO.

23 Q. SO LET'S TALK ABOUT THE ONLY OTHER THING
24 THAT YOU SAW WHICH WAS -- OR YOU HEARD -- OR YOU
25 SMELLED, RATHER, USING YOUR SENSES, WHICH IS YOU
26 DETECTED AN ODOR. YOU SAY THAT YOU DETECTED AN ODOR
27 COMING FROM WITHIN THE VEHICLE; CORRECT?

28 A. CORRECT.

1 Q. IS IT FAIR TO SAY THAT YOU ASSUMED OR YOU
2 USED YOUR EXPERIENCE TO JUSTIFY THAT THAT MAY HAVE BEEN
3 COMING FROM HIS BREATH?

4 A. YES.

5 Q. OR POSSIBLY HIS CLOTHES?

6 A. CORRECT.

7 Q. BUT YOU DIDN'T SEE ANYTHING TO INDICATE THAT
8 HE HAD SPILLED ANYTHING ON HIMSELF?

9 A. NO.

10 Q. AND YOU ARE TRAINED, ARE YOU NOT, TO
11 RECOGNIZE THE FACT THAT IT IS NOT ILLEGAL TO SIMPLY
12 DRINK AND THEN DRIVE; CORRECT?

13 A. CORRECT.

14 Q. IN FACT, YOU HAVE A TERM FOR IT, DO YOU NOT?
15 IT'S H.B.D., HAD BEEN DRINKING?

16 A. YES.

17 Q. SO THE ONLY THING THAT THE ODOR OF ALCOHOL
18 INDICATED TO YOU IS THAT MR. VITES POTENTIALLY WAS
19 H.B.D.; CORRECT?

20 A. CORRECT.

21 Q. NOT DUI, CORRECT, BECAUSE YOU HAD NOT SEEN
22 INDICATION OF ANY SIGNS OF IMPAIRMENT UP UNTIL THAT
23 POINT; CORRECT?

24 A. CORRECT.

25 Q. AND SO WHEN YOU EVENTUALLY MADE THE DECISION
26 TO ASK MR. VITES TO EXIT THE VEHICLE, DID YOU ASK
27 MR. VITES TO EXIT THE VEHICLE ON HIS OWN ACCORD, OR DID
28 YOU ORDER HIM OUT OF THE VEHICLE?

1 A. I BELIEVE I ASKED HIM TO WALK OUT OF THE
2 VEHICLE.

3 Q. OKAY. HE WASN'T FREE TO LEAVE AT THAT
4 POINT?

5 A. NO.

6 Q. OKAY. AND YOU DIDN'T GIVE HIM THE OPTION OF
7 SAYING, "HEY, YOU COULD DO IT, OR YOU DON'T HAVE TO?"
8 YOU DIDN'T TELL HIM THAT?

9 A. NO.

10 Q. YOU ASKED HIM -- YOU TOLD HIM TO GET OUT
11 BASICALLY? COULD YOU STEP OUT OF THE VEHICLE?

12 A. YES.

13 Q. AND HE DID. AND AGAIN, DURING THAT PERIOD
14 OF TIME, NOT TO GET INTO WHAT TRANSPIRED, BUT ABSOLUTELY
15 NO INDICATION OF ANY IMPAIRMENT ISSUES OF SWAYING,
16 WOBBLING, ANYTHING OF THAT NATURE; CORRECT?

17 A. CORRECT.

18 Q. OKAY.

19 MR. RUFF: MAY I HAVE A MOMENT, YOUR HONOR?

20 THE COURT: YOU MAY.

21 BY MR. RUFF:

22 Q. NOW, WITH REGARD TO YOUR INVESTIGATION, DUI
23 INVESTIGATION IN THIS CASE VERSUS JUST A SPEEDING
24 TICKET, YOU ARE TRAINED, ARE YOU NOT, THAT THERE IS LESS
25 INTRUSIVE METHODS TO DETECT WHETHER OR NOT A PERSON IS
26 IMPAIRED PRIOR TO ASKING HIM TO EXIT A VEHICLE, WALK
27 OVER TO THE SIDE OF THE ROAD, AND PERFORM FIELD SOBRIETY
28 TESTS, ARE YOU NOT?

1 THE REPORTER: I AM ARE SORRY. DEPUTY, CAN YOU
2 PLEASE DO THAT OUTSIDE.

3 MR. RUFF: SHOULD I REPEAT THE QUESTION?

4 THE COURT: JUST A SECOND.

5 OKAY. MR. RUFF.

6 MR. RUFF: I WILL REPEAT THE QUESTION, OFFICER.
7 BY MR. RUFF:

8 Q. YOU ARE TRAINED, ARE YOU NOT, AS NOT ONLY A
9 DUI TRAINED OFFICER, BUT AN ARIDE OFFICER, THAT THERE
10 ARE LESS INTRUSIVE METHODS TO DETECT IMPAIRMENT WHILE
11 THE PERSON IS STILL IN THE VEHICLE AS OPPOSED TO ASKING
12 TO EXIT THE VEHICLE, WALKING OVER TO THE SIDE, AND
13 DETAINING THEM ON THE SIDE OF THE ROAD; CORRECT?

14 A. ASKING THEM TO GET OUT OF THE VEHICLE IS
15 STANDARD IF WE OBSERVED OBJECTIVE SIGNS AND SYMPTOMS AT
16 THE WINDOW, WE WILL HAVE THEM EXIT SO WE CAN RUN THROUGH
17 THE PREFIELD SOBRIETY TESTS AND THE FIELD SOBRIETY
18 TESTS.

19 Q. I UNDERSTAND THAT, AND I UNDERSTAND THAT YOU
20 MADE THAT DECISION BASED ON TWO THINGS: RED EYES AND AN
21 ODOR. BUT MY QUESTION TO YOU IS THERE IS METHODS BY
22 WHICH YOU CAN EMPLOY AS A TRAINED DUI OFFICER TO QUICKLY
23 DETECT, WHILE THAT PERSON IS BEHIND THE WHEEL, WHETHER
24 OR NOT, PERHAPS, THEY HAVE ANY SIGNS OF IMPAIRMENT THAT
25 YOU HAVEN'T SEEN; CORRECT?

26 LET ME JUST -- LET ME HELP YOU. ONE OF THEM
27 IS ONE OF THE THINGS THAT YOU MENTIONED. YOU COULD GIVE
28 HIM A QUICK HGN TEST RIGHT THERE WHILE HE IS IN THE

1 VEHICLE, COULD YOU NOT?

2 A. CORRECT. I DO THAT FROM TIME TO TIME.

3 Q. YOU DIDN'T DO THAT IN THIS CASE?

4 A. NO.

5 Q. AND YOU COULD ASK HIM TO PERFORM SOME OTHER
6 DIVIDED ATTENTION TYPE TASKS, COULD YOU NOT? FOR
7 EXAMPLE, LIKE HEY DO A QUICK FINGER COUNT. THAT IS IN
8 YOUR MANUAL; CORRECT?

9 A. I HAVE NEVER DONE THAT.

10 Q. BUT YOU ARE TRAINED THAT YOU COULD DO THAT?

11 A. COULD.

12 Q. AND, IN FACT, ALL THOSE THINGS THAT YOU WERE
13 LOOKING FOR WAS NOTICED -- DIVIDED ATTENTION, CAN THE
14 PERSON DIVIDE THEIR ATTENTION BETWEEN TWO DIFFERENT
15 TASKS; CORRECT?

16 A. CORRECT.

17 Q. AND THAT IS WHAT THE FIELD SOBRIETY TESTS
18 ARE DESIGNED TO LOOK FOR; CORRECT?

19 A. CORRECT.

20 Q. IN THIS PARTICULAR CASE, YOU OBSERVED ON
21 MORE THAN ONE OCCASION THAT MR. VITES HAD NO PROBLEMS
22 DIVIDING HIS ATTENTION BECAUSE YOU ASKED HIM FOR
23 DRIVER'S LICENSE, INSURANCE, AND HE PROVIDED YOU THOSE
24 THINGS; CORRECT?

25 A. CORRECT.

26 Q. OKAY. HE WAS ABLE TO SEE YOUR VEHICLE IN
27 THE REAR VIEW MIRROR; DIVIDE HIS ATTENTION BETWEEN
28 PARKING THE VEHICLE, WATCHING YOUR LIGHTS, AND DIRECTING

1 RECROSS-EXAMINATION

2 BY MR. RUFF;

3 Q. OFFICER, YOUR DECISION TO DETAIN MR. VITES
4 FOR -- ASK HIM TO GET OUT OF THE CAR, EXTEND OUT THE
5 DETENTION, START A SEPARATE DETENTION ON THE SIDE OF THE
6 ROAD WAS BECAUSE YOU BELIEVE THAT HE WAS IN VIOLATION OF
7 23152, DRIVING UNDER THE INFLUENCE; IS THAT CORRECT?

8 A. I BELIEVE IT WAS A POSSIBILITY.

9 Q. POSSIBILITY?

10 A. IT WAS MY JOB TO FIND OUT.

11 Q. POSSIBILITY. AND ARE YOU AWARE OF WHAT THE
12 DEFINITION OF DRIVING UNDER THE INFLUENCE IS LEGALLY?

13 A. IMPAIRED DRIVING.

14 Q. YES. IMPAIRED DRIVING.

15 A. YES.

16 Q. AND THE PERSON'S MENTAL OR PHYSICAL
17 FACULTIES ARE IMPAIRED TO SUCH A DEGREE THAT THEY CAN NO
18 LONGER DRIVE A VEHICLE WITH THE CAUTION AND
19 CHARACTERISTIC OF A SOBER PERSON; IS THAT CORRECT?

20 A. YES.

21 Q. DID YOU SEE ANYTHING TO INDICATE THAT
22 MR. VITES'S MENTAL OR PHYSICAL FACULTIES WERE IMPAIRED
23 WHEN YOU ASKED HIM TO EXIT THE VEHICLE?

24 A. THE EXCESSIVE SPEED, THAT IS A BAD DECISION.

25 Q. IT'S A BAD DECISION, BUT IT DOESN'T INDICATE
26 IMPAIRMENT?

27 A. DOES NOT.

28 Q. SO THE ANSWER TO MY QUESTION IS NO?