

ORIGINAL

In the Matter of:)
)
TEXAS DEPARTMENT OF PUBLIC) BEFORE THE STATE OFFICE
SAFETY) OF ADMINISTRATIVE HEARINGS
)
v.)
)
ROBERTO HIRAM SOLIS, III)

Zoom Videoconference

August 17, 2023

The above-entitled matter came on for hearing,
pursuant to notice.

BEFORE: HON. LINDA J. BURGESS
Administrative Law Judge

APPEARANCES:

On behalf of the Department:
SANDI JOHNSTONE, ESQ.

On behalf of the Defendant:
GARY TRICHTER, ESQ.

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P R O C E E D I N G S

JUDGE BURGESS: We're on the record. This is SOAH Docket 405-23-08865, in the matter of Texas Department of Public Safety vs. Roberto Solis. I'm Linda Burgess, the Administrative Law Judge assigned by the State Office of Administrative Hearings to hear this matter today. It is August 17th, 2023 at about 10:00 a.m. At this time I'll take appearances of the parties, starting with the Department.

SANDI JOHNSTONE: Sandi Johnstone for the Department. We're ready.

GARY TRICHTER: Gary Trichter on behalf of Mr. Solis, and we have a preliminary matter.

JUDGE BURGESS: Okay. And what is that, sir?

GARY TRICHTER: Well, this is our third hearing. We've actually been here two other times. First was on June 13 and the other time was on July 18. One June 13 the officer appeared as he appeared today only audioly (sic). There was an objection made. The Administrative Law Judge instructed the witness on basis of the DPS request for a continuance because we objected to him appearing only by audio because we wanted to be able to face the accuser and watch the demeanor of that person. ALJ agreed, granted the continuance for DPS and instructed DPS to make sure that the witness would appear on video. On our second hearing the officer just no showed. We got a call from another

1 individual that works with him, his sergeant, just saying he
2 had an appointment. That would have been on July 18. So we
3 are back to square one. This officer is not capable of being
4 watched when he's being asked questions so we are denied the
5 opportunity to, one, face him, face the accuser, and two, to
6 look at his demeanor for credibility purposes. So we object
7 to going forward without him being on video.

8 JUDGE BURGESS: Okay. Thank you. Department, do
9 you have a response?

10 SANDI JOHNSTONE: I believe the officer is
11 attempting to appear to the best of his ability. He did let
12 us know early on this morning that he was having technical
13 difficulties. He is here today. He has appeared pursuant to
14 the subpoena.

15 JUDGE BURGESS: Okay. I'm going to overrule the
16 objection and we'll proceed. Because I'm the judge of
17 credibility and really just so you know, what I focus on are
18 the words and what I hear. And when I go back and listen to
19 the testimony I don't have the video so I'm prepared to judge
20 credibility based on the audio. But the officer must speak
21 up. So I'm ready to proceed. Department?

22 SANDI JOHNSTONE: I'll offer DPS-1. It's the Peace
23 Officer's Sworn Report, followed by the Offense Report and
24 the Statutory Warning.

25 JUDGE BURGESS: Any objection?

1 GARY TRICHTER: No, Your Honor, except anything
2 that's post-arrest in terms of statements by the defendant.
3 JUDGE BURGESS: Certainly. Exhibit No. 1 is
4 admitted.
5 (DPS-1 is admitted into the record)
6 SANDI JOHNSTONE: We call Officer De La Cruz.
7 JUDGE BURGESS: Officer, you really need to speak
8 up.
9 OFFICER DE LA CRUZ: Yes, ma'am.
10 JUDGE BURGESS: Speak up.
11 OFFICER DE LA CRUZ: Yes, ma'am.
12 JUDGE BURGESS: Do you swear or affirm that the
13 testimony you give in this proceeding is the truth, the whole
14 truth and nothing but the truth?
15 OFFICER DE LA CRUZ: Yes, ma'am.
16 JUDGE BURGESS: Ms. Johnstone?
17 SANDI JOHNSTONE: I'll pass the witness.
18 JUDGE BURGESS: I've lost you. Mr. Trichter?
19 GARY TRICHTER: You haven't lost me, Your Honor.
20 I'm here.
21 JUDGE BURGESS: Okay. I just see you're playing.
22 Okay.
23 GARY TRICHTER: Okay.
24
25

DIRECT EXAMINATION

BY GARY TRICHTER:

Q: Officer, would you state your name, please?

A: Yes, sir. Officer Luis De La Cruz.

Q: Okay. You did appear on June 13 by audio?

A: Yes, sir.

Q: You were instructed at that time by the SOAH judge that you had to appear and make proper arrangements to show on video?

A: Yes, sir.

Q: Okay. And knowing that you did not make an arrangement to be 100 percent sure that you could appear on video today, isn't that right?

A: I attempted to this morning, yes, sir, I tried.

Q: Yes, sir. Where are you?

A: In my -- does that matter, sir?

Q: Well, it matters in terms of your connectivity, yes, sir.

A: I'm in my house, sir.

Q: Um-hmm. You do not have -- are you connecting on your telephone? Is that what you're on?

A: No, sir. I'm on a laptop.

Q: On a cellular laptop?

A: I'm not too sure what that is. It's just a laptop, sir.

1 Q: Okay. You now work with what agency?
2 A: San Antonio Police Department.
3 Q: At the time of this arrest you had less than two
4 years experience as a San Antonio police officer?
5 A: Yes, sir.
6 Q: You had no prior law enforcement experience?
7 A: No, sir.
8 Q: Your age?
9 A: Twenty-six, sir.
10 Q: In this particular case you wrote a report?
11 A: That would be correct, sir.
12 Q: Okay. And can you show us the report that you're
13 working off of now?
14 A: No, sir, I'm not able to.
15 Q: Do you have your report with you?
16 A: Yes, sir.
17 Q: Now, do you have -- what pages are in your report?
18 If you would, tell us how many pages you have.
19 A: All the way to the DIC-24, from the beginning to
20 the 24.
21 Q: Okay. And you also have all the documents that you
22 swore to, the DIC-23?
23 A: Let me see here. No, sir. I just have the 24.
24 Q: Do you have your search warrant affidavit?
25 A: No, sir, I do not on this one I have, no, sir.

1 Q: In this particular case you've made some
2 audio/video recordings, is that right?

3 A: Are you talking about my body-worn camera, Coban,
4 sir?

5 Q: I'm talking about every electronic recording that
6 you made. Did you make audio/video recordings?

7 A: That'd be correct, sir.

8 Q: And you made a dash cam, right?

9 A: Coban, that'd be correct, sir.

10 Q: Okay. So if I play a video you can't see it, can
11 you?

12 A: I may or may not be. I'm not too sure.

13 Q: Can you see anybody right now?

14 A: Looks like a plane, maybe a sky behind it or blue.

15 Q: Okay. So you do have the possible capability of
16 seeing what's on screen?

17 A: Yes, sir.

18 GARY TRICHTER: Judge, can you share the screen
19 with Mr. Slaton? He's my IT assistant. Thank you, Judge.

20 BY GARY TRICHTER:

21 Q: What do you see on the screen now, Officer?

22 JUDGE BURGESS: No, whoa, whoa, whoa, whoa. Wait,
23 guys.

24 BY GARY TRICHTER:

25 Q: Officer, can you see the judge?

1 A: No. I see you right now. I see everyone on the
2 screen. That's pretty much it.

3 Q: So you don't -- you didn't see the judge when she
4 was just on the full screen?

5 JUDGE BURGESS: No. I think Mr. Slaton, he has
6 permission to share the screen.

7 MR. SLAYTON: Yes.

8 GARY TRICHTER: Thank you, Judge.

9 BY GARY TRICHTER:

10 Q: Officer --

11 JUDGE BURGESS: Are you trying to share the screen,
12 Mr. Slaton?

13 MR. SLAYTON: If Gary wants me to do so. Did you
14 want me to show --

15 JUDGE BURGESS: Okay. I think we're all getting
16 confused. Okay. We're all getting confused. Go ahead,
17 Defense Counsel.

18 BY GARY TRICHTER:

19 Q: Officer, when anybody -- let me put up on the
20 screen your TCOLE records and see if you recognize them.
21 Officer, can you see that on the screen?

22 A: Yes, sir.

23 Q: Okay. See the name at the top left?

24 A: Yes, sir.

25 Q: Is that your name?

1 A: Yes, sir.

2 Q: Okay. And let me come down to your total service
3 time. This would have been at the time that I secured these
4 records, which would have been about the time of this arrest
5 in the case. That would be about right, 1 year and 11
6 months, in terms of being total a service for the San Antonio
7 Police Department?

8 A: Yes, sir.

9 Q: Okay. Let me scroll down now to where it says
10 academic history and award information.

11 GARY TRICHTER: Up, Jim, a little bit.

12 BY GARY TRICHTER:

13 Q: Do you see the award information there?

14 A: Yes, sir.

15 Q: Do you see where it says basic peace officer
16 certificate?

17 A: Yes, sir.

18 Q: Okay. You understand that is where all your
19 certificates -- that's where all your certifications go under
20 award information, isn't that right?

21 A: The ones that the training academy are supposed to
22 put there, that'd be correct.

23 Q: Okay.

24 A: Now, sometimes they don't always get there but
25 yeah.

1 Q: All right. The Texas Commission on Law
2 Enforcement is the warehouse of all your training records,
3 isn't it?

4 A: Yes, the ones the academy sends them or if they
5 send them, that'd be correct.

6 Q: Okay. A check of your records indicate that you
7 have had some training in field sobriety courses, isn't that
8 right?

9 A: That is correct, sir.

10 Q: There's also a check that indicates that you are
11 not a person who holds a certification in Standard Field
12 Sobriety Tests, isn't that right?

13 A: No, I do have it, sir. It's just -- that's -- the
14 San Antonio Police Academy did not email it. I have an
15 email, the copy of my awards, from the academy that I can
16 send to the State if she'd like. That's because it -- just
17 because it's not there doesn't mean I'm not certified.

18 Q: Okay. You are a breath test operator?

19 A: Yes, sir, I am.

20 Q: Okay. So then you know that the odor of alcohol is
21 not indicative of how much a person's had to drink?

22 A: That is correct.

23 Q: Okay. In this particular --

24 GARY TRICHTER: Jim, you can come off of that now.
25

1 BY GARY TRICHTER:

2 Q: In this particular case the videos that you made,
3 I'd like to go ahead and walk you through a couple of videos.
4 I'm glad you can see them. It is important. I want to show
5 you what's Defense Exhibit 1, and I want to see after we play
6 it if you can recall it was a video -- a portion of the video
7 that you made.

8 A: Okay.

9 Q: This is only 21 seconds.

10 (Video is played.)

11 Q: Okay. Was that you talking to Mr. Solis?

12 A: Yes, sir.

13 Q: Okay. And that would have been at a time that was
14 even before the HGN?

15 A: That's correct.

16 Q: Okay. Did you review all your videos in
17 preparation for this hearing today?

18 A: No, sir.

19 Q: Of course, you used your videos to help comprise
20 your reports, is that right?

21 A: Yes, sir.

22 Q: Now, we heard him speak about his attorney. He had
23 just invoked his right to an attorney on the scene, didn't
24 he?

25 A: Yes, sir.

1 Q: And even after he invoked his right to an attorney
2 you asked him a question, isn't that right?

3 A: Yeah, I asked him.

4 Q: You asked him a question about alcohol consumption?

5 A: That is correct.

6 Q: Now, in the academy didn't you learn that when a
7 lawyer request is made that all questioning stops?

8 A: I don't recall that, sir.

9 Q: Okay, that's fine. Can we go to Defense -- by the
10 way, that was your video, a portion of your video? That was
11 true and accurate, wasn't it, that portion that we saw?

12 A: That is correct.

13 Q: Okay.

14 GARY TRICHTER: Move to admit Defendant's
15 Exhibit 1.

16 JUDGE BURGESS: Any objection?

17 SANDI JOHNSTONE: No objection.

18 JUDGE BURGESS: Exhibit 1 is admitted.

19 GARY TRICHTER: Jim, if you could play --

20 JUDGE BURGESS: Hold on. Hold on. I need to --

21 GARY TRICHTER: Sorry, Judge.

22 JUDGE BURGESS: -- call it Defendant's Exhibit 1.

23 Admitted.

24 (DEF-1 is admitted into the record)

25 GARY TRICHTER: Okay. May I proceed, Judge?

1 JUDGE BURGESS: Yes.

2 GARY TRICHTER: Okay. Jim, if you'd play
3 Exhibit 2. It's a four-minute video.

4 BY GARY TRICHTER:

5 Q: This is the Walk-and-Turn, Officer, just to give
6 you an idea what you're looking for. And I'm going to stop
7 it in part.

8 (Video is played.)

9 GARY TRICHTER: Okay. Stop.

10 BY GARY TRICHTER:

11 Q: Officer, how do we know you're demonstrating the
12 test right?

13 A: That's why there's Coban, sir.

14 Q: Uh-huh, is this is your dash camera?

15 A: There's no dash camera? Is that what you're
16 saying?

17 Q: I'm asking did you do this in front of your patrol
18 car? This is in front of your patrol car, isn't it?

19 A: That is correct, sir.

20 Q: Okay. But you're not in the screen?

21 A: That is a body-worn camera on my chest. That is
22 not my vehicle, sir.

23 Q: It's not? Are you on the screen video from the
24 dash?

25 A: To the best of my ability, yes. I set my vehicle

1 up in front where I was talking to him. That is correct,
2 sir. I'm not too sure. I haven't looked at my Coban at all,
3 just my body-worn camera.

4 Q: Okay. In this particular case you wrote in your
5 report how he did in this, yes?

6 A: Yes, sir.

7 Q: And how many steps did you tell him that he took on
8 the report?

9 A: Eight steps forward and eight steps on the return
10 walk.

11 Q: Okay. I want you to go ahead and watch this. I
12 want you to count the steps as he walks up.

13 GARY TRICHTER: And you can go ahead and begin,
14 Mr. Slaton.

15 (Video is played.)

16 GARY TRICHTER: Can you stop right there?

17 BY GARY TRICHTER:

18 Q: He's maintained that position for how long,
19 Officer?

20 A: What position?

21 Q: When he keeps one foot in front of the other?

22 A: I am not too sure. I'd have to look at my Coban.
23 I have no idea.

24 Q: It was over a minute, wasn't it?

25 A: Well, keeping his arm apart whenever I'm talking to

1 him I didn't tell him to move his arms like that once I
2 asked him to stand there.

3 Q: I'm asking in regard to his feet he never moved his
4 feet during that time, is that right?

5 A: No, I can't -- have no idea because I can't see his
6 feet on my body-worn camera.

7 Q: Okay. We'll proceed on.

8 GARY TRICHTER: Jim?

9 (Video is played.)

10 GARY TRICHTER: All right. Stop that, Jim.

11 BY GARY TRICHTER:

12 Q: Officer, how many steps did you count going up?

13 A: I counted nine on the forward and nine on the
14 return.

15 Q: Yes, sir. So how many did you write in your
16 report?

17 A: I put eight.

18 Q: So you put eight twice, didn't you?

19 A: Yes, sir.

20 Q: That's a mistake in counting, isn't it?

21 A: That is an error, yeah. That's an error I just
22 noticed right now. That'd be correct.

23 Q: Okay. That makes your report incorrect in regard
24 to its accuracy, right?

25 A: Just this minor, just this one right here, that'd

1 be correct. Just this option here.

2 Q: And well, did you give him a clue for that?

3 A: Let me see. Hold on. Give me one second. Let me
4 double check. Yes, sir, I did. It did count it as a clue.

5 Q: Yes, sir, yes. And since I know what the standards
6 are for instructors on field sobriety testing if you were
7 being tested right now as an instructor you would not pass,
8 would you, by making that mistake, would you?

9 SANDI JOHNSTONE: I'm going to object to the
10 relevance of that question.

11 JUDGE BURGESS: He can answer.

12 OFFICER DE LA CRUZ: I rather not, ma'am.

13 BY GARY TRICHTER:

14 Q: What's your answer, Officer?

15 A: I rather not answer

16 Q: I don't think you have a choice, Officer. You were
17 instructed to answer.

18 A: I don't know because I haven't been through
19 instruction school, so no, I wouldn't know.

20 Q: Okay. This video is the one that you made?

21 A: That is correct.

22 Q: Okay. And let's talk about his speech. During
23 this video there was no slurred speech, was there, on his
24 part?

25 A: To my understanding -- let me see. Let me see what

1 I put.

2 Q: I'm asking about this video.

3 A: I wasn't really focused on his speech. I was
4 focused on the Walk-and-Turn.

5 Q: Okay. So it would be safe to say during the speech
6 that he administered on this video you saw nothing that
7 indicated slurred speech on this video?

8 A: Throughout my investigation I observed --

9 Q: Again, you must answer my question.

10 JUDGE BURGESS: No, no. He -- let me answer. Just
11 let him answer.

12 GARY TRICHTER: Can I object to him being
13 responsive to something I didn't ask? He's not allowed to
14 narrate.

15 JUDGE BURGESS: And that -- I'm going to accept his
16 answer.

17 OFFICER DE LA CRUZ: Your Honor, that'd be my
18 answer, ma'am.

19 GARY TRICHTER: May I proceed, Judge?

20 JUDGE BURGESS: You may.

21 GARY TRICHTER: Thank you.

22 BY GARY TRICHTER:

23 Q: Officer, I want to show you what's marked
24 Defendant's 3.

25 JUDGE BURGESS: But did anyone move for

1 Exhibit 2 to be admitted?

2 GARY TRICHTER: No, Your Honor, I haven't.

3 JUDGE BURGESS: Do you want to?

4 GARY TRICHTER: No, Your Honor.

5 JUDGE BURGESS: Okay.

6 SANDI JOHNSTONE: I would actually move that it be
7 admitted since we've watched it.

8 JUDGE BURGESS: Okay. I've watched it. I'm going
9 to admit No. 2. Proceed, please.

10 (DEF-2 is admitted into the record)

11 GARY TRICHTER: Okay. Let's go to Exhibit 3, Your
12 Honor -- Jim.

13 BY GARY TRICHTER:

14 Q: This is 1 minute and 30 seconds, Officer, and it
15 deals with Miranda, just to give you a heads up.

16 (Video is played.)

17 BY GARY TRICHTER:

18 Q: Officer, was that your camera that made the
19 recording there, the audio and the video?

20 A: Yes, sir.

21 Q: Okay. That was you speaking and that was Mr. Solis
22 who was listening?

23 A: Yes, sir.

24 Q: Okay. In this particular case that fairly and
25 accurately depicted everything that happened during that

1 timeframe, is that right?

2 A: My body-worn camera, yes, sir.

3 Q: All right.

4 GARY TRICHTER: Move for admission of Exhibit 3.

5 SANDI JOHNSTONE: I'd object to post-arrest since
6 it doesn't have anything to do with the Statutory Warning or
7 the refusal. And clearly it's after the arrest.

8 GARY TRICHTER: It has everything to do with the
9 Statutory Warning. That's where we're trying to develop
10 evidence to show that.

11 JUDGE BURGESS: I'm not going to consider anything
12 post-arrest.

13 GARY TRICHTER: Judge, the officer beat him into
14 submission. And you don't want to go ahead and consider
15 that? It can record after arrest but if you don't want to
16 consider it then that's fine.

17 JUDGE BURGESS: I'll go ahead and admit -- I'm
18 going to admit Exhibit 3. I know what I need to consider and
19 what I don't.

20 GARY TRICHTER: Okay. Well, I would --

21 JUDGE BURGESS: Exhibit 3 is admitted.

22 (DEF-3 is admitted into the record)

23 GARY TRICHTER: Okay. Well, I take back the
24 statement about him beating him because we're entitled to go
25 ahead and make a record. I'm just trying to make a good

1 record for -- as any good lawyer would want to do. And I
2 want to get you the best possible evidence because that's
3 what you'd like to have. I know that. So is it okay if I --

4 JUDGE BURGESS: Move on. Move on.

5 GARY TRICHTER: Thank you.

6 BY GARY TRICHTER:

7 Q: Officer, this occurred before you gave the
8 Statutory Warning, is that right?

9 A: That is correct.

10 Q: And you told Mr. Solis that he had a right to
11 remain silent and not answer any questions. Isn't that what
12 you told him in the Miranda Warnings?

13 A: That is correct.

14 Q: And you told him those were continuing rights, that
15 his right not to answer questions continued on from that
16 moment on, is that right?

17 A: That is correct. I read him the Miranda Rights.

18 Q: At no time did you ever tell him that those Miranda
19 Rights did not apply to any particular type of question that
20 might follow, did you?

21 A: I just read him his Miranda Rights, sir.

22 Q: Would you answer my question now?

23 A: I just --

24 Q: At no time did you --

25 A: I just answered it, sir. That's my answer.

1 JUDGE BURGESS: Yes. We need to move on. We need
2 to move on. Okay, Mr. Trichter?

3 GARY TRICHTER: Are you denying me the opportunity
4 to cross-examine this witness?

5 JUDGE BURGESS: I'm asking you to move on. I
6 thought he answered it. I thought he answered it so let's
7 proceed, please.

8 GARY TRICHTER: I disagree. He didn't answer. I
9 want to stay here.

10 JUDGE BURGESS: It doesn't matter if you disagree,
11 sir. It doesn't matter if you disagree. Please move on.

12 GARY TRICHTER: Is there something that you don't
13 like about me? Is there a bias or prejudice that you have
14 with me? If there is I'd like you to state it. I don't mean
15 to be rude or anything but I want to be professional and
16 ethical.

17 JUDGE BURGESS: You're not being professional at
18 this moment. Please proceed.

19 BY GARY TRICHTER:

20 Q: Officer, did you ever tell Mr. Solis that the
21 Miranda Rights you gave him did not pertain to the blood or
22 breath test question that was going to follow?

23 A: Again, I just read him his Miranda Rights, sir.
24 That's my answer.

25 GARY TRICHTER: Judge, would you instruct the

1 witness to answer the question I asked?

2 JUDGE BURGESS: No, I will not. I'm accepting his
3 answer. I'm instructing you to move on. That is what I am
4 doing. I'm instructing you to move on.

5 BY GARY TRICHTER:

6 Q: Officer, I want to play Exhibit 6 for you. It has
7 to do with your administration of the HGN and administration
8 of the VGN.

9 GARY TRICHTER: Jim, would you play Exhibit 6 for
10 the Judge, please, and the officer?

11 (Video is played.)

12 BY GARY TRICHTER:

13 Q: Officer, this is from your dash cam, isn't it?

14 A: Yes, sir.

15 Q: And that's Mr. Solis with his back to your vehicle
16 and you were in front of him?

17 A: Yes, sir.

18 Q: Okay. And you're basically giving him instructions
19 now to follow your stimulus and you're going to administer
20 the two tests, is that right?

21 A: HGN. That'd be correct, yes, sir.

22 (Video is played.)

23 BY GARY TRICHTER:

24 Q: Officer, if you happen to see the administration of
25 the VGN here I'd like you to make sure you point it out to

1 us. Do you hear me?

2 A: That is correct.

3 Q: Thank you.

4 (Video is played.)

5 BY GARY TRICHTER:

6 Q: What are you doing now, Officer?

7 A: I just finished the HGN.

8 Q: Okay. What are you talking to him now about?

9 A: I have no idea. I don't have my audio.

10 Q: Whenever you do the HGN and the VGN you always have
11 the subject in the same spot, don't you? They're
12 back-to-back tests, aren't they?

13 A: Yes, sir.

14 Q: Okay. You're giving him instructions down on the
15 Walk-and-Turn test, aren't you?

16 A: That'd be correct.

17 Q: All right. So where was it that you administered
18 the VGN?

19 A: From this angle I can't tell if I even did VGN.

20 Q: Okay. Let's go to your report now. Do you have
21 your report in front of you?

22 A: Yes, sir.

23 Q: Okay. Do you talk about the HGN in your report?

24 A: Yes, sir.

25 Q: And during your talking of the report at what page

1 do you speak to that?

2 A: In the narrative.

3 Q: What page?

4 A: It might be different from yours, but it'd be page
5 two for me.

6 Q: Page two? Okay. And then in there you indicate
7 that AP submitted to the HGN test. Is that the paragraph
8 that you're on?

9 A: Yes, sir.

10 Q: Okay. And at the very end of that paragraph you
11 have another sentence that talked about, "I observed," is
12 that right?

13 A: Yes, sir.

14 Q: Okay. And what did you observe according to what
15 you read?

16 A: According to what I put in my report it said I
17 observed Vertical Nystagmus.

18 Q: On your body cam and on the dash cam you never
19 administered the VGN, did you?

20 A: Well, on the Coban I can't see. Do you have a
21 video of the body-worn camera? I'm not too sure. I'm not
22 going to say I did or didn't without looking at the camera.
23 Do you have a body-worn camera of me doing a VGN, sir?

24 Q: Okay. So let me ask it a different way. At this
25 point in time you have no recollection of ever administering

1 the VGN, did you?

2 A: Well, no. I'd have to look at my camera, sir, my
3 body-worn camera.

4 GARY TRICHTER: Judge, I ask that you instruct the
5 witness to answer the question.

6 JUDGE BURGESS: He's answered.

7 BY GARY TRICHTER:

8 Q: Officer, there is no VGN between the end of the HGN
9 and the beginning of the Walk-and-Turn, is there?

10 A: Again, I'd have to look at my camera. I'm not
11 going to say yes or no. I just can't tell you. He's a tall
12 gentleman.

13 Q: Well, sir, you just saw the video from your dash
14 where the HGN ended and the Walk-and-Turn began. My question
15 is --

16 SANDI JOHNSTONE: I'm going to object.

17 JUDGE BURGESS: It's okay. Let him finish the
18 question.

19 BY GARY TRICHTER:

20 Q: My question is what we just saw there's no evidence
21 that you administered the VGN.

22 SANDI JOHNSTONE: I'm going to object. I think
23 he's asked and answered that he cannot see it from that angle
24 that he'd prefer to see the body-worn camera.

25 JUDGE BURGESS: I'm going to sustain the objection.

1 GARY TRICHTER: Move for admission of
2 Defendant's 6.

3 SANDI JOHNSTONE: No objection.

4 JUDGE BURGESS: Exhibit 6 is admitted.

5 (DEF-6 is admitted into the record)

6 BY GARY TRICHTER:

7 Q: And, Officer, I want to show you now -- it's
8 a 46-second video. It's Defendant's Exhibit 13. And this is
9 a video that you made when the blood test was being -- blood
10 specimens were being taken.

11 SANDI JOHNSTONE: And I'm actually going to object
12 to viewing this video. It appears to be maybe a blood test
13 or something. This is a refusal case.

14 GARY TRICHTER: Well, here's the purpose of the
15 video, Judge. It shows that the officer again made another
16 mistake in his reports because he says the nurse that you're
17 seeing here did a vial inversion and he said the 2 vials that
18 were there that the nurse inverted them 10 times each. This
19 video clearly shows that did not happen, which makes the
20 statement very wrong or very false or very reckless, which
21 goes to his credibility as a whole. This is the same
22 incident, and things that are post-arrest can be used for
23 impeachment of things in terms of credibility of the witness.
24 This is why we have this video here for you.
25 It's 46 seconds.

1 JUDGE BURGESS: Because it is a refusal case I'm
2 holding Exhibit 13 to be irrelevant and I'm not going to
3 admit it, but I hear what you're saying. But I hear what
4 you're saying.

5 GARY TRICHTER: Okay. We would go ahead and move
6 to show the officer --

7 BY GARY TRICHTER:

8 Q: But one more thing, Officer. On 13, that is a true
9 and accurate recording of the events that you saw on that
10 video while you were in the ER room with Mr. Solis, isn't
11 that right?

12 A: I was never in the ER room, sir. That's --

13 Q: Well, the room where the blood was being taken.
14 Let's put it that way.

15 A: Well, so what's your question again, sir? I'm --

16 Q: That was -- that video footage was your video of
17 Mr. Solis --

18 A: Yeah.

19 Q: -- and the nurse?

20 A: That's my video.

21 Q: Thank you very much. And it truly and accurately
22 recorded the phase that we saw on the video, yes?

23 A: That's what I recorded, yes.

24 Q: Thank you very much.

25 GARY TRICHTER: Now, we'll go to 14, Mr. Slaton.

1 BY GARY TRICHTER:

2 Q: This is a three-minute video and it has to do with
3 the administration of the DIC-24.

4 (Video is played.)

5 JUDGE BURGESS: Is there audio?

6 SANDI JOHNSTONE: Do we have audio?

7 GARY TRICHTER: There should be audios, Your Honor.
8 Mr. Slaton, can you work on the audio portion of this,
9 please?

10 MR. SLAYTON: I think the audio doesn't come on
11 until later. I don't think the officer turned his audio on
12 yet. Here --

13 JUDGE BURGESS: There is comes.

14 GARY TRICHTER: No. The audio would have to be on.
15 Jim, would you stop it for a second here?

16 BY GARY TRICHTER:

17 Q: Officer, this is in the booking room?

18 A: That is in the detention center, sir.

19 Q: Well, you're -- that's where you bring prisoners to
20 go through the booking process?

21 A: Yes, sir. That is 401 South Frio.

22 Q: Okay. And you're behind him now reading the
23 DIC-24 to him, is that right?

24 A: I am right on the side of him kind of behind him.
25 That'd be correct, sir.

1 Q: Okay. Can you see his eyes from where you are?

2 A: No, not from this point.

3 Q: Okay. You did not provide him a written copy of
4 the DIC-24 for him to read along as you were reading it, did
5 you?

6 A: No, sir.

7 Q: You did not ask him to stand up and stand near you
8 so that he could read the form, did you?

9 A: No, sir.

10 Q: Okay.

11 GARY TRICHTER: Mr. Slaton, if you continue playing
12 this.

13 (Video is played.)

14 BY GARY TRICHTER:

15 Q: Okay, Officer. That was your video?

16 A: Yes, sir.

17 Q: And it accurately reflected the events that
18 occurred between you and Mr. Solis regarding the
19 administration of the DIC-24?

20 A: Yes, sir.

21 Q: Okay. At no time prior to you asking him to submit
22 to the breath test did you ever tell him that the Miranda
23 Rights that you gave him beforehand did not apply to that
24 question, did you?

25 A: Again, I read him his Rights at the arrest scene,

1 sir.

2 GARY TRICHTER: And, Judge, again, I ask you to
3 instruct the witness to answer the question asked.

4 JUDGE BURGESS: He's answered it. That's his
5 answer.

6 GARY TRICHTER: Respectfully, Your Honor, he --
7 you've given him an excuse not --

8 JUDGE BURGESS: Please move on. Respectfully, move
9 on, please.

10 GARY TRICHTER: Yes, Your Honor.

11 BY GARY TRICHTER:

12 Q: At no time did Mr. Solis waive his right to an
13 attorney?

14 A: What was your question? It sounded like a
15 statement, sir. What's your question?

16 Q: At no time did Mr. Solis ever waive his right to an
17 attorney?

18 A: I don't remember that. I'd have to look at my
19 body-worn camera if he ever said that.

20 Q: Okay. At no time did he ever waive his Miranda
21 Rights?

22 A: Again, I'd have to look at my body-worn camera,
23 sir.

24 Q: You have no proof as you sit here today and are
25 testifying that he ever waived his right to an attorney or

1 waived his Miranda Rights, right?

2 A: Again, I would have to look at my body-worn camera,
3 sir.

4 GARY TRICHTER: Your Honor, I'd like to get an
5 answer to that question.

6 JUDGE BURGESS: He's answered. Please move on.

7 BY GARY TRICHTER:

8 Q: Officer, in this case you did not hand him the DIC
9 written Statutory Warning prior to the time that you asked
10 him to submit to the requested specimen, did you?

11 A: That is correct. I did not.

12 Q: In the DIC-24 what did you ask for?

13 A: I asked for a breath sample, specimen.

14 Q: Okay. In your report when you talk about the
15 DIC-24 what did you indicate that you asked him for?

16 A: Let me see. Give me one second, sir. Let me
17 double check. I didn't put it. I just put that he refused
18 the -- to provide a specimen. That's what I put.

19 Q: Didn't you under chemical testing, the part of your
20 report, it talks about witness, passenger's information and
21 then chemical testing, check the appropriate box? Are you on
22 that page?

23 A: Let me see.

24 Q: It says "tests offered" and you have checked breath
25 and you also checked blood.

1 A: Yes, sir, that is correct.

2 Q: Okay. You never asked him for blood, did you?

3 A: No, sir.

4 Q: But yet you checked it?

5 A: For the chemical testings we have to -- we check
6 off breath and blood.

7 Q: Again, my question is you checked it and it never
8 was asked.

9 A: Yeah, we don't ask. It's a -- so for our SAPGM we
10 don't ask. We just take that as a refusal.

11 Q: Okay. But, sir, this is a sworn report. You swore
12 that all the information in it was true, didn't you?

13 A: Sir, that is true. That'd be correct.

14 Q: And so this is a false statement in a report you
15 swore was true, isn't that right?

16 A: No, because we offer breath and we offer blood and
17 due to our San Antonio Police Department procedures if they
18 do not want to give a breath specimen we automatically get a
19 blood warrant. That is by our Department procedures.

20 Q: Okay. I don't think I asked anything have to do
21 with we or your procedures. I only asked what you did so can
22 I --

23 JUDGE BURGESS: He answered the question. Please
24 move on.

25 GARY TRICHTER: Judge, I don't think in any world

1 he answered the question. I would like him to answer the
2 question that I have a right on behalf of my client under due
3 process to get an answer for. It's not a difficult question.

4 SANDI JOHNSTONE: Please ask another question.

5 GARY TRICHTER: Judge, you're denying my client --

6 JUDGE BURGESS: I've heard -- I'm not --

7 GARY TRICHTER: You're denying my client due
8 process rights and right to effectively cross-examine this
9 witness. You're doing it. Can I ask you to reconsider,
10 please?

11 JUDGE BURGESS: No. Move on.

12 BY GARY TRICHTER:

13 Q: Officer, in this particular case when you read the
14 administration -- when you read the DIC-24 you write or
15 actually you read that -- do you have the 24 in front of you?

16 A: Yes, sir, I do.

17 Q: Okay. At the very bottom paragraph, paragraph
18 seven starts with "I certify."

19 A: Um-hmm, yes, sir.

20 Q: And you said, "I certify that I informed you both
21 orally and in writing." The "and in writing" part wasn't
22 true, was it?

23 A: In writing?

24 Q: That's right, yes.

25 A: Yeah, when I hand it back to him that is -- that's

1 in writing. That'd be correct.

2 Q: No, sir. This is all before the question that you
3 asked at the bottom. "I am now requesting a specimen of your
4 blood," right?

5 A: Okay.

6 Q: So at the time that you read this that wasn't a
7 true statement, was it?

8 A: In both orally and writing like --

9 Q: That's right. You had not given him the written at
10 the time that you read this, is that right?

11 A: That is correct.

12 Q: And so you attached this to a sworn statement, a
13 DIC-23, didn't you?

14 A: Yes, I did, sir.

15 Q: And that made this a sworn statement also, didn't
16 it?

17 A: That'd be correct, sir.

18 Q: Okay. But it wasn't true because we just watched
19 it. You had not given him the written at the time that you
20 said you certified that he gave -- that you gave him both
21 orally and in writing? That wasn't true, was it?

22 A: That'd be correct. I didn't give it to him. I
23 didn't give him a copy.

24 Q: Okay. And then you go on to say in the next line,
25 "I certify that I requested to have your signature below

1 acknowledging the voluntary consent." At that time you
2 hadn't given him the written either, is that right?

3 A: That'd be correct.

4 Q: In the last line there you said, "I certify I have
5 provided you a complete and true copy of the Statutory
6 Warning." And that wasn't true at that time either, was it?

7 A: That'd be correct. I didn't give him a copy.

8 Q: Okay. So those are all things that are in the
9 implied consent law that command certain procedures in the
10 chronology of what you have to do in order to ask for a
11 specimen, isn't that right?

12 A: I'm not too sure, sir. I'm not going to say yes or
13 no because I really don't know that answer.

14 Q: Okay. But according to what you had read him you
15 did not do what you had read him you had done, right?

16 A: I did not give him a copy at the time, no. That'd
17 be correct.

18 Q: You did not give him a copy at the time that you
19 asked the question --

20 A: That'd be correct.

21 Q: -- about -- okay. And you indicate that you asked
22 him for blood on the form, didn't you?

23 A: I'm sorry?

24 Q: On the DIC-24 you checked blood, didn't you?

25 A: That's correct.

1 Q: But you asked him for breath?

2 A: Yeah, we don't pick two. That's how we do it. We
3 don't pick two. We pick one, whichever one.

4 Q: Excuse me. On the video we just watched you only
5 asked him for breath.

6 A: That is correct, sir.

7 Q: But you swore on this document you asked him for
8 blood.

9 A: It's the specimen that I gathered. That's what I
10 checked off, sir. That's my answer.

11 Q: Okay. It wasn't true that you asked him for blood
12 when you read the form to him on the video that we just
13 played?

14 A: Again, I asked him for his breath specimen. When
15 I -- we don't check off two boxes. We only check off the one
16 they give the specimen on.

17 Q: Okay. You keep saying we.

18 JUDGE BURGESS: Okay. Stop. Mr. Trichter, I
19 understand the testimony. I'm listening very carefully.
20 Let's move on.

21 GARY TRICHTER: Judge, I would like to go ahead and
22 talk to him about this we thing because his policy --

23 JUDGE BURGESS: You're --

24 GARY TRICHTER: He's hiding behind a we.

25 JUDGE BURGESS: It's getting repetitive. It really

1 is, sir. And I'm listening very carefully. So I'm going to
2 ask you very nicely to rephrase and let's move on to our next
3 subject and let's get Exhibit --

4 GARY TRICHTER: I'll rephrase, Judge. I'll
5 rephrase.

6 JUDGE BURGESS: But it's becoming very, very
7 repetitive and I'm trying to give everyone an opportunity to
8 develop the record but we need to not be so repetitive in --
9 and -- okay.

10 BY GARY TRICHTER:

11 Q: Officer, there is no written policy by the San
12 Antonio Police Department that says you are to check a box
13 falsely on a DIC-24, is there?

14 A: Yeah, you just -- I mean, it says nothing for that,
15 sir. That's just the way I was trained.

16 GARY TRICHTER: Judge, I would pass this witness.

17 JUDGE BURGESS: Okay. Is Exhibit 14 -- I've looked
18 at it. We've testified on it. I want it admitted. Are you
19 moving to admit it?

20 GARY TRICHTER: We're moving to admit it.

21 JUDGE BURGESS: Okay. Admitted -- is there any
22 objection?

23 SANDI JOHNSTONE: No objection.

24 JUDGE BURGESS: Did you say no?

25 SANDI JOHNSTONE: No.

1 JUDGE BURGESS: Okay. Exhibit 14 is admitted.

2 Thank you, thank you.

3 (DEF-14 is admitted into the record)

4 SANDI JOHNSTONE: I do have a couple of questions
5 for the officer before we release him.

6 JUDGE BURGESS: Please.

7 CROSS-EXAMINATION

8 BY SANDI JOHNSTONE:

9 Q: Officer, regarding the driving facts that you
10 observed I believe you put in your report that you stopped
11 him for an unsafe lane change, is that correct?

12 A: Yes, ma'am.

13 Q: And why did you believe the lane change to be
14 unsafe?

15 A: So to be honest, ma'am, I'd have to look at my
16 Coban again because, like I said, I just remember it being
17 unsafe and he did go over the white solid lines without --
18 went over the white solid lines with his right tires,
19 which -- what that means -- with that being said, it's
20 unsafe, you know, and out of control for a motor vehicle
21 whether or not there are other cars around, if it's him in
22 the vehicle, you know. He is driving a motor vehicle. I
23 wouldn't want him to, you know, crash or run into the bridge
24 or anything on the roadway.

25 Q: Okay.

1 SANDI JOHNSTONE: I don't have anything further.
2 JUDGE BURGESS: Mr. Trichter?
3 GARY TRICHTER: Nothing further of this witness.
4 SANDI JOHNSTONE: We'd ask the witness be excused.
5 JUDGE BURGESS: Officer De La Cruz, you're excused
6 but you're more than welcome to hang out or leave.
7 OFFICER DE LA CRUZ: Yes, ma'am. And then I asked
8 that my witness fee could be sent to 515 South Frio, the
9 central substation.
10 GARY TRICHTER: Officer, just give us the address
11 again and we'll do that for you.
12 OFFICER DE LA CRUZ: Yes, sir, 515 South Frio, SAPD
13 Central Sub.
14 GARY TRICHTER: Okay. Mr. Slaton, you have that?
15 MR. SLAYTON: Yes, I do.
16 GARY TRICHTER: Okay, perfect. Judge, if the
17 officer's going to remain I want to place him under the Rule.
18 JUDGE BURGESS: Well, I thought we weren't going to
19 use him anymore.
20 GARY TRICHTER: Well, if he's leaving then he
21 doesn't have to be under the Rule, but if he's going to
22 participate and listen then I may call him back.
23 JUDGE BURGESS: Let me think about this a moment.
24 What other witnesses are we having?
25 GARY TRICHTER: We have an expert on the

1 administration of the field sobriety tests.

2 JUDGE BURGESS: Okay. So, Officer, do you want to
3 be put under Rule or do you want to leave? It's up to you.

4 OFFICER DE LA CRUZ: No, ma'am. I was going to
5 head out.

6 JUDGE BURGESS: Okay. We'll see you. Thank you so
7 much, sir.

8 OFFICER DE LA CRUZ: Thank you, ma'am. No reason
9 to sit here.

10 JUDGE BURGESS: You're welcome.

11 OFFICER DE LA CRUZ: Bye-bye.

12 JUDGE BURGESS: Okay, bye-bye. Now, Ms. Johnstone,
13 are we in your case?

14 SANDI JOHNSTONE: Yes, so we would rest.

15 JUDGE BURGESS: Okay. Let's throw it over to the
16 defense now then. Oh, someone must have come in. Hold on.
17 Let's see.

18 SANDI JOHNSTONE: I don't see anyone new on the
19 screen.

20 JUDGE BURGESS: There's someone who wanted to come
21 into the waiting room.

22 SANDI JOHNSTONE: Oh, okay.

23 JUDGE BURGESS: I -- we're going to take just a
24 short recess so -- and everyone remind me to pick up the
25 recording again, and we're going to deal with this person and

1 then we'll pick back up, okay? We're off the record for a
2 short recess.

3 (Off the record.)

4 JUDGE BURGESS: We're back on the record. This is
5 SOAH Docket 405-23-08865, in the matter of Roberto Solis. We
6 just took a short recess but we're back now and we're ready
7 to put it to the defense.

8 GARY TRICHTER: Okay, Judge. May we proceed?

9 JUDGE BURGESS: Sure, sure, please do.

10 GARY TRICHTER: We would call Ms. Lisa Martin.

11 JUDGE BURGESS: Hi, Ms. Martin. Nice to see you.

12 LISA MARTIN: Hi. Thank you. Nice to see you too.

13 JUDGE BURGESS: Good, good. Can you raise your
14 right hand? Do you swear or affirm that the testimony you
15 give in this proceeding is the truth, the whole truth and
16 nothing but the truth?

17 LISA MARTIN: I do.

18 JUDGE BURGESS: Thank you, ma'am. You may proceed.

19 DIRECT EXAMINATION

20 BY GARY TRICHTER:

21 Q: Ms. Martin, would you state your name for the
22 record?

23 A: Yes. It's Lisa Martin.

24 Q: Okay. You're here as an expert on the
25 administration of field sobriety tests?

1 A: Yes.

2 Q: Have you been recognized as an expert by other
3 courts within the State of Texas?

4 A: Yes.

5 Q: Was that on few or many occasions?

6 A: Many.

7 Q: And as an expert both as a prosecution witness and
8 as a defense witness?

9 A: That's correct.

10 Q: You're now a retired police officer?

11 A: Yes, I am.

12 Q: Okay. And in your experience as a field sobriety
13 test expert you have been a TCOLE instructor?

14 A: Yes.

15 Q: You've gone through the certified Advanced Roadside
16 Impaired Driving Enforcement, the ARIDE program?

17 A: Yes.

18 Q: In fact, during your day as a law enforcement
19 officer you were -- at one time you were the leading DWI
20 enforcement officer in Denton County, isn't that right?

21 A: Yes.

22 Q: And just because you're testifying as a defense
23 expert does not mean that you find it okay for a person to
24 drive while they're impaired?

25 A: That's correct.

1 Q: Okay. In this particular case you had the
2 opportunity to review videos that were made by the officer,
3 Officer De La Cruz?

4 A: Yes, I did.

5 Q: Okay. And would you tell the judge which videos
6 you had an opportunity to see?

7 A: Yes. I did view his body-worn camera and his
8 in-car cameras.

9 Q: Okay. And you were able to hear on the body camera
10 his audio, the speaking portion of it too, right?

11 A: Yes.

12 Q: Okay. So we -- can we just jump to a portion of
13 the case investigation? At no time did he ever administer a
14 VGN, right?

15 A: That's correct, on no video did he -- that's
16 correct. He did not administer VGN at any time on any video.

17 Q: So that would make his statement in his report that
18 he did false, is that right?

19 A: That's correct.

20 Q: In this particular case you watched him administer
21 the HGN. Would you tell us what he did and tell us whether
22 it was right or wrong as we go through the steps and if you
23 would tell us what the National Highway and Traffic Safety
24 Administration requires to do a proper test? So can we go
25 through the HGN?

1 A: Yes.

2 Q: Yes. All right. I'll leave it to you.

3 A: Would you like me to --

4 Q: Yes, I would.

5 A: Okay, thank you. Okay. So in order to administer

6 the standardized test the officer should administer the first

7 two passes to make sure that the person is a candidate, which

8 this officer did administer those first two passes and he did

9 report that Mr. --

10 LISA MARTIN: You can't hear me?

11 JUDGE BURGESS: Well, you were kind of freezing up.

12 SANDI JOHNSTONE: If I make a suggestion -- I know

13 we like to see the witnesses but if you'll turn off the video

14 the audio will come through more clearly. It's cutting in

15 and out.

16 LISA MARTIN: Okay. Let me try that and let me

17 know if that works. Hang on.

18 JUDGE BURGESS: Okay.

19 LISA MARTIN: Give me just a second. Let me see if

20 I can -- I don't know how to turn it off. Hang on.

21 JUDGE BURGESS: It's okay.

22 GARY TRICHTER: On the bottom row of your screen if

23 it's an iPad and up at the top it should be on an iPhone.

24 JUDGE BURGESS: Yeah.

25 LISA MARTIN: Okay. Did that work?

1 JUDGE BURGESS: You know, it's better. It's
2 better.

3 LISA MARTIN: Did that work?

4 JUDGE BURGESS: Yeah, so why don't we do that last
5 question over?

6 LISA MARTIN: Okay. So should I just start again
7 with how to administer --

8 BY GARY TRICHTER:

9 Q: Please tell us what you observed. Yes.

10 A: Okay. So this officer did administer two passes to
11 check to make sure that Mr. Solis was a candidate but he
12 administered those passes extremely quickly. They should
13 take about 8 seconds each and he administered those two
14 passes in 11 seconds. He went on and he administered one
15 pass to make sure or to look for the lack of smooth pursuit.
16 The standardization is clear you administer two passes to
17 look for each of the three clues. This officer administered
18 one pass to look for lack of smooth pursuit and he
19 administered it incorrectly by stopping at the nose. And
20 it's very visible on the video that we viewed that he does
21 bring his stimulus out, stops at the nose, then goes out to
22 the right eye, stops at the nose when he administers a single
23 pass rather than two. He goes on to administer two passes to
24 check for distinct and sustained nystagmus at maximum
25 deviation and he administers those correctly. He goes on to

1 administer two additional passes to check for the onset of
2 nystagmus prior to 45 degrees, which he does not administer
3 correctly, and you can see that clearly on the video that he
4 moves his stimulus out and immediately brings it back in. He
5 does not move it as the standardization requires to be moved
6 slowly, carefully watching the eye. And if you see the eye
7 begin to jerk you stop the stimulus and you verify that the
8 jerking continues and that you have not gone past 45 degrees,
9 meaning there's still white showing in the corner of the eye.
10 And this officer does not follow that procedure at all to
11 check for that final clue when he administered the HGN.

12 Q: Okay. So were those minor deviations or major
13 deviations in terms of how a proper NHTSA test should be
14 conducted?

15 A: So those are considered major deviations because
16 the standardization tells you how to move the stimulus when
17 you're looking for each of the clues separately. And so in
18 this case while he was looking for two out of the three clues
19 he failed to move the stimulus in the standardized manner to
20 look for the clue in the proper way. So technically, you
21 know, more than half of this test he did not administer
22 properly.

23 Q: So would it be fair to characterize that he did not
24 do a NHTSA test? He did his own version of an HGN?

25 A: Yes.

1 Q: Let me now turn to the One-Leg-Stand test.

2 Actually, I'm switching back. I'm going to go to the
3 Walk-and-Turn test. You watch videos of him administering
4 the Walk-and-Turn test to Mr. Solis?

5 A: Yes, I did.

6 Q: You had the benefit of being able to go over the
7 officer's written report also?

8 A: Yes, I did.

9 Q: Now, the officer indicates in his report that he
10 saw him miss heel-to-toe on the eight steps he saw going up
11 and eight steps he saw going back?

12 A: That's correct.

13 Q: Okay. Did you count nine steps going up and going
14 back?

15 A: Yes, I did.

16 Q: Did you also see any missing of heel-to-toe in the
17 video evidence that you observed?

18 A: I did not.

19 Q: So his statement that he saw missing of heel-to-toe
20 is factually inaccurate based upon the videos that you
21 watched?

22 A: I did not see that. That's correct.

23 Q: All right. In this particular case the officer
24 also reports during the Walk-and-Turn instructions that he
25 lost his balance. Did you time that?

1 A: Yes, I did.

2 Q: What did you see in terms of maintaining his
3 balance for the Walk-and-Turn, the instruction period of it?

4 A: During the instructions it appears Mr. Solis
5 maintained his balance for 1 minute and 50 seconds, just shy
6 of 2 minutes, prior to starting the test. I do not see him
7 fail to maintain balance while listening to instructions.

8 Q: So does that make the officer's written report
9 inaccurate as to what he said there?

10 A: Yes.

11 Q: Can we go through this report and say that there
12 were a number of inaccuracies in it?

13 A: There are.

14 Q: And there are things that he says are critical in
15 terms of whether a person might pass or fail a standardized
16 field sobriety test?

17 A: Well, he assesses some clues that actually you
18 don't see happen on the video so that would be critical
19 because people would be looking at those clues to see if it
20 meets a decision point.

21 Q: Well, he does clearly say in his report that he
22 sees these things and then we see on the video that there --
23 at least the video evidence is inconsistent with the report.
24 Does that give credibility to any of his report?

25 A: I would say it would definitely cause concern.

1 Q: Is there anything that he did that you were able
2 to see in his administration of the tests, his
3 demonstrations, that showed that he was properly
4 demonstrating the tests?

5 A: I don't recall.

6 Q: You prepared a report in this case?

7 A: Yes, I did.

8 Q: Okay.

9 GARY TRICHTER: And, Judge, we submitted that
10 report as Exhibit 17. We're going to move for admission into
11 evidence.

12 JUDGE BURGESS: Any objection?

13 SANDI JOHNSTONE: No objection.

14 JUDGE BURGESS: Exhibit 17 is admitted.

15 (DEF-17 is admitted into the record)

16 GARY TRICHTER: We would pass this witness.

17 SANDI JOHNSTONE: I don't have any questions for
18 the witness.

19 JUDGE BURGESS: Okay. Ms. Martin, it looks like
20 they're finished with you.

21 LISA MARTIN: Okay. Thank you.

22 JUDGE BURGESS: No. Thank you very much.

23 LISA MARTIN: Okay. I'm going to go ahead and log
24 out. Y'all have a great day. Thank you.

25 GARY TRICHTER: Thank you.

1 JUDGE BURGESS: Okay, bye-bye.

2 LISA MARTIN: Bye-bye.

3 GARY TRICHTER: Judge, we would call Mr. Solis.

4 JUDGE BURGESS: Hi, Mr. Solis.

5 ROBERTO SOLIS: Good morning, Your Honor.

6 JUDGE BURGESS: Can you raise your right hand,
7 please? Do you swear or affirm that the testimony you give
8 in this proceeding is the truth, the whole truth and nothing
9 but the truth?

10 ROBERTO SOLIS: Yes, Your Honor.

11 JUDGE BURGESS: Thank you, sir.

12 DIRECT EXAMINATION

13 BY GARY TRICHTER:

14 Q: Roberto, would you state your full name, please?

15 JUDGE BURGESS: You can call him Mr. Solis.

16 ROBERTO SOLIS: Roberto Solis, yes, ma'am.

17 BY GARY TRICHTER:

18 Q: Mr. Roberto Solis, how old are you?

19 JUDGE BURGESS: No. Please don't -- please call
20 him Mr. Solis. I like it to be a little formal. Now, you're
21 just trying to not be nice about it. So if you would,
22 please, just call him Mr. Solis.

23 BY GARY TRICHTER:

24 Q: Mr. Solis, would you tell the judge how old you
25 are?

1 A: Thirty-four years old, Your Honor.

2 Q: Share with the judge what you do for a living.

3 A: I just finished my Masters in Science at Dell
4 Medical School, the University of Texas at Austin, as well as
5 at McCombs School of Business. I'm a entrepreneur in the
6 healthcare field creating a virtual cancer care program for
7 rural community hospitals amongst my colleagues. And I live
8 in Austin, Texas, yes, ma'am.

9 Q: Okay. In terms of past law enforcement interaction
10 can we say that you've never been a subject of an
11 investigation by a law enforcement officer for any type of a
12 major crime or even a Class A misdemeanor or B misdemeanor,
13 other than this particular case?

14 A: That is correct.

15 Q: When the officer stopped you -- some people get
16 nervous. Were you nervous?

17 A: Yes, I was. Unfamiliar scenario for me.

18 Q: When the officer stopped you and he asked you to
19 step out of the vehicle would you share with the judge the
20 environmental temperatures?

21 A: Yes. It was a holiday. It was the arctic front
22 that Texas was experiencing. It was 20, low 20 degrees. It
23 was freezing. There was warnings on the news to keep your
24 pets indoor, your plants indoor. It was brutally cold
25 outside.

1 Q: And you shared with the officer several times that
2 you felt like you were freezing?

3 A: That is correct, yes.

4 Q: I'm trying to keep this short and to the point. I
5 want to come to where you're -- it's post-arrest for you and
6 the officer reads you the Miranda Rights. Do you recall
7 those?

8 A: Correct, yes.

9 Q: And that would have been immediately after he
10 arrests you, is that right?

11 A: Yes.

12 Q: And is it true that you took that to mean that you
13 had a right not to answer questions?

14 A: That is correct.

15 Q: Did you also let him know that you had an interest
16 in speaking to a lawyer?

17 A: Correct.

18 Q: Okay. Then he proceeded to put you in the back of
19 his patrol car and then he transported you to the station and
20 then he sat you down in the booking area that we saw on the
21 video and he read you the form called the DIC-24, right?

22 A: Correct.

23 Q: Did he read the Miranda Warnings fast to you?

24 A: Yes.

25 Q: Did he read the DIC-24 fast to you?

1 A: Yes.

2 Q: After each line of the DIC-24 did he stop and ask
3 you if you understood it?

4 A: No. As he was reading out loud to me sentence
5 after sentence I was trying to understand and process what he
6 was saying one sentence at a time but he continued to go on
7 and on without ever having me to -- the opportunity to
8 actually understand.

9 Q: Okay. Did he ever present the written document to
10 you prior to him asking you to submit to a breath test?

11 A: No, I was not given a written copy.

12 Q: When was the first time that you had a written
13 copy?

14 A: After everything was done.

15 Q: On release you received it?

16 A: Correct.

17 Q: That would have been after the blood had already
18 been taken?

19 A: Correct.

20 Q: Now, you told him when he read the form to you that
21 you were not going to take it, the test that he had asked.
22 After you read the Statutory Warning did you have a different
23 thought process about the request?

24 A: I did. After reading it I understood what it
25 actually meant. I would have made a different decision based

1 off of understanding and having that opportunity to read and
2 understand the context.

3 Q: So if he had given you the written warning prior to
4 him asking you to submit to the test your answer would have
5 been different? You would have accepted his request to
6 provide a specimen and you would have given it?

7 A: That is correct. I would have chosen the less
8 harsh outcome.

9 Q: Would you explain to the judge your thinking there
10 so that she understands what you understood and what you
11 didn't understand?

12 A: I understood at the time that if I had refused that
13 a warrant was going to be issued regardless and I'd be facing
14 a greater penalty. Now, if I would have submitted I would
15 have been facing a less harsh outcome. And upon my
16 understanding that documentation if I would have given and
17 had the opportunity to actually review for myself what was
18 transpiring at that moment I would have made a better
19 decision and one that was less harsh for me.

20 Q: So the fact that he didn't give you the written
21 caused confusion within you?

22 A: Absolutely. I was confused due to the officer not
23 giving me anything to relate to what was transpired in that
24 moment.

25 Q: You say give you anything. You mean anything in

1 writing?

2 A: Correct, I had no written copy of the document that
3 he was reading from behind from me.

4 Q: Okay. Did he also cause confusion by giving you
5 the Miranda Warnings first?

6 A: Yes. He had mentioned that I had the right to
7 refuse, the right to terminate and when I understood
8 terminate to mean no. I had no longer -- I reserved that
9 right to terminate and refuse anything moving forward in
10 order to protect myself. And so I did. I trusted his words.

11 Q: Okay. At no time did he ever tell you that the
12 Miranda Rights did not apply to the breath or blood test
13 questions?

14 A: Correct.

15 Q: If he had told you, by the way, these Miranda
16 Rights don't apply to those questions what would have been
17 your answer? Would it have been the same or may it have been
18 changed?

19 A: May have been changed.

20 Q: So the confusion that occurred because of the
21 Miranda giving and not giving you the written warning was
22 that confusion you caused or the officer caused?

23 A: That was confusion caused by the officer.

24 Q: Would you repeat that, please?

25 A: That was confusion caused by the officer.

1 GARY TRICHTER: Pass the witness, Your Honor.

2 SANDI JOHNSTONE: I don't have any questions for
3 this witness.

4 JUDGE BURGESS: Okay. It looks like they're
5 finished with you, Mr. Solis. Anything further,
6 Mr. Trichter?

7 GARY TRICHTER: If I haven't moved to admit
8 Ms. Martin's Report -- I think I did. I just want to make
9 sure I did.

10 JUDGE BURGESS: You did. It was Exhibit 17.

11 GARY TRICHTER: Seventeen, okay. We have nothing
12 further, Judge.

13 JUDGE BURGESS: Okay. But let's go over a few
14 things real fast before I ask for closing remarks. So
15 from the Department I have Exhibit 1, and then for
16 Defendant I have Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 6,
17 Exhibit 14 and Exhibit 17. Does that sound right, everyone?

18 GARY TRICHTER: Well, Judge. I also moved to
19 admit 13 but you said you would not consider it. It has to
20 be admitted for appellate purposes. You can't deny a
21 litigant the opportunity not to put in evidence.

22 JUDGE BURGESS: Well, you can make an offer of
23 proof.

24 GARY TRICHTER: Well, I did. I did make the offer.

25 JUDGE BURGESS: Well, I didn't understand. Maybe I

1 didn't understand that.

2 GARY TRICHTER: So I offered that into evidence.

3 JUDGE BURGESS: So let's go back over what's
4 admitted. So we have on defense side that will need to be
5 filed 1, 2, 3, 6, 14 & 17. I'm not admitting Exhibit 13 but
6 I understand counsel is making an offer of proof and we'll
7 put it in the record but I haven't -- but I'm not considering
8 it.

9 GARY TRICHTER: Understood, Judge. Understood. I
10 think that's proper the way you just stated it.

11 JUDGE BURGESS: Do you know what?

12 GARY TRICHTER: I don't know what, Judge.

13 JUDGE BURGESS: Don't tell me what's proper or not,
14 okay? So anything further on the evidence?

15 GARY TRICHTER: No, Judge.

16 SANDI JOHNSTONE: Nothing from the Department.

17 JUDGE BURGESS: Okay. And I welcome closing
18 remarks and by both the Department and the defense, and I'm
19 happy to let everyone take a moment if they want before they
20 give closing remarks. If you're ready you're ready.

21 SANDI JOHNSTONE: I will waive closing.

22 JUDGE BURGESS: Okay. Do you want to take a
23 moment, Mr. Trichter, or are you ready?

24 GARY TRICHTER: No, Your Honor. I was ready back
25 in June for this case.

1 JUDGE BURGESS: Okay, good, good. So if you're
2 ready let's hear it.

3 GARY TRICHTER: Okay. I want to start out with a
4 case I'm hoping that you're familiar with. It's called
5 *Hardin v. State*, and you'll find --

6 JUDGE BURGESS: I am. Go ahead. Just make your
7 closing.

8 GARY TRICHTER: Well, just it's from the Texas
9 Court of Criminal Appeals. It's a November of 2022 case.

10 JUDGE BURGESS: I have the cite. I know the case.

11 GARY TRICHTER: Thank you.

12 JUDGE BURGESS: Go ahead.

13 GARY TRICHTER: And *Hardin* clearly says that if
14 you're talking about weaving then there has to be an element
15 of unsafe. But I will also point out to the court a case
16 called *Ford v. State* from the Court of Criminal Appeals that
17 dates back to 2005, and it's found at 158 S.W.3d at 488 where
18 the Court of Criminal Appeals quite specifically in a
19 distance case says we need facts. You cannot expect the
20 court to find reasonable suspicion or probable cause on the
21 basis of conclusory statements.

22 There is no evidence in this case factually that an
23 unsafe lane change was made. There's no showing that there
24 were other vehicles there. There's no showing of a possible
25 accident that might occur. There's no showing that some

1 other vehicle took evasive action. There's no testimony as
2 to why it was unsafe or it was any different from him being
3 in one lane versus the other. There's just no evidence in
4 this record to show there was anything unsafe about it. All
5 we have is a conclusory statement. So the case should be
6 decided based upon that.

7 If the court gets by that then I would ask the
8 court to find that there's a problem with the witness', that
9 is Officer De La Cruz's credibility, that much of what the
10 officer has indicated was just factually untrue and it
11 arguably cannot be stated that anything in his report should
12 be given any credence at all because of the numerous mistakes
13 that he made that were just untruthful. They were just
14 outright misrepresentations.

15 And I would remind the court there is no VGN that
16 was ever administered but yet it's there in the report. We
17 also know from hearing Mr. Solis' speech that it was not
18 slurred but the officer says in his report that it was. We
19 also know from Ms. Martin, who watched all the video evidence
20 and is a recognized expert in the administration of field
21 sobriety tests, when the officer says Mr. Solis lost his
22 balance or was unable to maintain his balance during the
23 Walk-and-Turn instructions that wasn't true.

24 We also know that the officer said that he walked
25 up and walked back eight steps each way. That wasn't true.

1 We also know categorically that when he said he missed heel-
2 to-toe on the steps that wasn't true but yet he writes it in
3 the report and he writes it in the report in a way that it
4 doesn't matter whether it's a statement that he writes in the
5 report or he swears to it.

6 It makes no difference because he -- all those
7 things were sworn to by incorporating it with the DIC-23. We
8 also know that from the video that he asked for breath but he
9 checks off blood on the DIC-24. It's a false statement. So
10 if it's a false statement it's false as to blood. And
11 there's no allegation that he refused a breath sample. So
12 the allegation that DPS is proceeding on would be that he
13 refused blood.

14 We know it's not debatable that he never refused
15 blood because it was never asked. So it makes it impossible
16 for DPS to have any evidence that he refused when we heard
17 from the video and the officer himself that he never asked
18 for blood. It's such that the court can't find anything that
19 he has written or said, especially because he was so evasive
20 in his answers -- the answers should have been yes or no.

21 The Court gave him great latitude not to answer and
22 I think the fact that he had the opportunity to answer a
23 question that was clear on its face again shows that he's not
24 an officer that should be believed.

25 Let us now go to the heart of this case and that's

1 724.015 of the Texas Transportation Code, and that deals
2 with what an officer's duty is and what the chronology must
3 be in the proper administration of a request for a specimen
4 test.

5 Now, that section starts out with the word
6 "before." It is a legislative command to the officer and it
7 says, "Before a request is made for a breath or blood sample
8 these things must be done." And I use the word "must"
9 because under the words and phrases section for the
10 Government Code proper statutory interpretation "shall" is a
11 command and "shall" appears in that section of the law. It
12 basically says, "officer shall provide oral and" -- it's
13 "and" not "or" -- "written warnings prior to asking a person
14 to submit to a breath or blood sample." That's what it says.

15 If anybody violated the implied consent law in this
16 case it was the officer. We know categorically from the
17 evidence that Mr. Solis was not given the legislative
18 intended benefit to have a written statement at the time he
19 had to answer that question.

20 We also know that the officer's action in
21 Mirandizing him first led to confusion that he did not have
22 to as a matter of right answer any additional questions. Due
23 process prohibits that from happening. A proper chronology
24 would have had the officer giving Miranda after the Statutory
25 Warning and not before. The officer chose that action

1 improperly, unprofessionally, and the person who's harmed by
2 it is the citizen. In this case it's Mr. Solis.

3 So I don't think that if we would use the word
4 entrapment it would not fit. He was entrapped into thinking
5 these rights applied to that situation. He could have easily
6 given him a qualifier and said, by the way, these rights
7 don't apply to this decision you have to make later about
8 breath or blood. But he didn't do that and nor did he decide
9 to give the Miranda Warnings after the Statutory Warning.

10 So in either case the officer is the one who's at
11 fault. It is the officer who violated the statute. The
12 citizen is entitled to have a meaningful opportunity under
13 due process to understand the consequences of what was being
14 asked by the officer according to the statute, not the
15 officer's interpretation of the statute, but as the
16 legislature demanded that they do orally and in writing.

17 What we do know is Mr. Solis gave uncontradicted
18 testimony that the officer caused that confusion and had he
19 not been confused by the Miranda Warnings and had he not been
20 confused by the failure to give the written warning he'd be
21 not subject to an additional 90-day suspension.

22 So the *Jamal* case teaches us out of the 14th Court
23 of Appeals, and you have that as part of the record. Let me
24 just confirm that you do, Judge.

25 JUDGE BURGESS: You can give me the cite. I know I

1 have it but I don't mind taking the cite.

2 GARY TRICHTER: Mr. Slaton, would you give the cite
3 to the judge? You have that there.

4 JUDGE BURGESS: Well --

5 MR. SLATON: Which one was it again? I'm sorry.

6 GARY TRICHTER: *Jamal*.

7 MR. SLATON: Oh; I'm sorry. *Jamal*, I see it. It
8 is --

9 GARY TRICHTER: Show it, Jim. Just put it on the
10 screen.

11 MR. SLATON: All right.

12 JUDGE BURGESS: I can look it up.

13 MR. SLATON: Here we go.

14 JUDGE BURGESS: I got it.

15 GARY TRICHTER: Okay. Show it -- Jim, you have to
16 come down the page at 731 --

17 JUDGE BURGESS: No, no, no, no. Just, guys --

18 MR. SLATON: Here?

19 JUDGE BURGESS: I got that. I got it. I got it.

20 GARY TRICHTER: All right, Jim. She has it, Judge.
21 I mean, she has it, Jim. You can take it down.

22 JUDGE BURGESS: Okay. Thank you, thank you for the
23 cite. I always appreciate that.

24 GARY TRICHTER: Okay. So, Judge, the *Jamal* court
25 says quite specifically the lawyer in that case failed to

1 make a showing of cause and harm that didn't happen here.
2 We showed the cause and we have showed you the harm. Mr.
3 Solis is now harmed because of what the officer did and he
4 should not be penalized because the officer violated the law
5 and caused him to be at a disadvantage. The disadvantage is
6 one the legislature clearly wanted him not to have.

7 And in terms of our learning I think we all would
8 agree we learn better if we have something to read than by
9 just hearing something. And I think the video would bare me
10 out on this observation that I made. He read very fast the
11 Statutory Warning. And if you're reading something that fast
12 it makes it very difficult for anyone, for me, and I would
13 think for anyone to understand what the first sentence would
14 be if you're immediately launching into the second sentence.
15 You have to pay attention, which means you can't be thinking
16 about what happened just immediately before. And there's a
17 lot of information within the Statutory Warning which is
18 confusing by itself.

19 And the officer by saying at the end of that, by
20 the way, Mr. Solis, I know you don't have it in front of you
21 but I'm telling you I've already given you the written, and
22 I've provided it to you but it wasn't true. The whole thing
23 was confusing with the facts of this case. Any citizen would
24 be confused by what was happening here.

25 So under due process we have shown on the *Jamal*

1 case that he's entitled to relief. If we could take a
2 suspension for failing the test we would gladly accept that
3 but that wasn't the case. That wasn't what was pled.

4 So he's being sanctioned now an additional 90 days
5 for the officer's confusion. So, Judge, in your oath, and I
6 looked it up, you have an obligation and a duty to protect
7 the due process rights of Mr. Solis, and they have been
8 violated here.

9 So we're asking you to do nothing more than that
10 which the laws requires you to do under the Constitution and
11 find that the officer, no matter what his intentions were, no
12 matter what this we policy was, they need to change it and
13 Mr. Solis should not be paid -- should not be paying the
14 penalty for the officer's bad reporting of facts, incorrect
15 reporting facts, nor should he be penalized because the
16 officer failed to show why his drifting within the lane was
17 unsafe.

18 And nor should he be penalized for not getting the
19 very written document at the time that was meaningful to him
20 that he could have made a decision that would have been
21 reversed now that we know that he had read it and taken very
22 little time to read it and digest it.

23 So we ask you to make a negative finding in this
24 case. Judge, we've also given you findings of fact and
25 conclusions of law, and we ask that you go ahead and make

1 those findings in this case. Some are highlighted that you
2 would use if you denied our request to make a negative
3 finding but in the event that you went with Mr. Solis we
4 would ask that you go ahead and make those findings because
5 they're true based upon the evidence. So we will ask you to
6 make a negative finding.

7 JUDGE BURGESS: Thank you, sir. Thank you for the
8 remarks. Ms. Johnstone, do you have any remarks?

9 SANDI JOHNSTONE: Just with regards to whether or
10 not the defendant actually refused, there was testimony today
11 from the officer and testimony in the written narrative of
12 his report, also, in the defendant's video that was offered
13 and admitted, that the Warnings were read, he asked for a
14 sample of breath and that he refused to provide a sample of
15 breath, so we'd ask for an affirmative finding.

16 JUDGE BURGESS: And can I ask you to give me some
17 remarks on *Hardin*, please?

18 SANDI JOHNSTONE: Well, I did ask the officer
19 whether -- what he believed to be unsafe about it and if
20 you'll listen closely, I think his testimony -- he said he
21 didn't know specifically or couldn't recall specifically but
22 that he believed it was unsafe because other -- could be
23 other people on the roadway or something like that. I can't
24 remember his exact testimony. But he did say that he
25 believed it to be unsafe.

1 JUDGE BURGESS: Okay, okay, parties, anything
2 further? Mr. Trichter?

3 GARY TRICHTER: No, Your Honor, nothing. I just
4 was waiting for the Department to comment first.

5 JUDGE BURGESS: Okay. I think she was shaking her
6 head no. Okay, nothing from you. So now, Mr. Trichter, is
7 your staff going to be able to get those exhibits on file?
8 So we know --

9 GARY TRICHTER: Your Honor, they're --

10 JUDGE BURGESS: We know Exhibit 17 is on file
11 because I have even printed that out so I know that's on
12 file, but you're going to need to get the other ones on file.
13 So is your staff prepared to do that?

14 GARY TRICHTER: May I ask you a question?

15 JUDGE BURGESS: Sure.

16 GARY TRICHTER: Judge, it's my understanding that
17 we filed the videos by something called MOVEit. They have
18 all been filed properly within MOVEit.

19 JUDGE BURGESS: No. See, that's what I was trying
20 to explain too. I tried to look for the exhibits yesterday
21 and they're not. So, you know, I'm just sorry that that is
22 not the case and I know that your staff -- I know that you
23 submitted it by MOVEit so I'm just going to apologize for
24 MOVEit or I'm going to apologize for MOVEit and I'm going to
25 apologize for SOAH. So you're going to have to have your

1 staff resubmit those. Now --

2 NICOLE: It's already been done.

3 JUDGE BURGESS: Has it?

4 NICOLE: Yes, ma'am.

5 SANDI JOHNSTONE: I think it happened right before
6 we logged in.

7 JUDGE BURGESS: Oh, perfect. So tell me what you
8 did so I'll kind of shepherd it through.

9 NICOLE: I just went to the MOVEit and sent it
10 to -- it -- what is your secretary's name, your legal
11 assistant?

12 JUDGE BURGESS: Her name is Nora.

13 NICOLE: Nora? Okay. The information I got was
14 that we had Rachelle Robles.

15 JUDGE BURGESS: Right. So --

16 NICOLE: Is she not with you anymore or --

17 JUDGE BURGESS: Okay. That's a judge so let's --

18 NICOLE: Oh, okay.

19 JUDGE BURGESS: So where did you send it? Where
20 did you send it?

21 NICOLE: To Tujuana Tate, Secretary 6.

22 JUDGE BURGESS: So what I want you to do is you've
23 notified me of that and so we're just going to have to make
24 sure this gets to the right place but you've sent the
25 admitted exhibits, is that right?

1 NICOLE: Correct.

2 SANDI JOHNSTONE: Yes.

3 JUDGE BURGESS: Nicole, I --

4 NICOLE: Nicole, uh-huh.

5 JUDGE BURGESS: I appreciate it.

6 NICOLE: Sure.

7 JUDGE BURGESS: Okay. Okay. So let's -- I want

8 you to follow-up on this so I'm going to follow-up too, okay?

9 NICOLE: Okay.

10 JUDGE BURGESS: But I want you to -- do they say

11 bird dog this as well?

12 NICOLE: Okay, no problem, no problem.

13 JUDGE BURGESS: It just -- because that is not

14 where it needs to go but I was asking her where they were

15 yesterday. So hopefully she knows Tiajuana. Okay. Then we

16 have defense counsel's going to make sure they get filed and

17 I'm going to carefully look at everything and I appreciate

18 everyone's time.

19 GARY TRICHTER: Judge?

20 JUDGE BURGESS: Anything further?

21 GARY TRICHTER: Yes, Judge. Would you like us to

22 send you a flash drive with those on there?

23 JUDGE BURGESS: I think that would just actually

24 delay it. I actually think -- I'm pretty good at

25 downloading. I'm pretty good once I find the stuff, you

1 know. That's why I was upset that I didn't have them
2 yesterday because I did know you submitted them. So I
3 appreciate the offer. I hate telling people no but it would
4 really work out better if it went through MOVEit and then
5 I'll download it. I'll make sure that it gets posted to the
6 file but thank you for the offer.

7 GARY TRICHTER: Yeah, we intend to do as you
8 request. I just wanted to know if you'd want us to do
9 something else.

10 JUDGE BURGESS: No, I think that will just actually
11 make it harder.

12 GARY TRICHTER: That's fine, Judge.

13 JUDGE BURGESS: Yeah. Do you think the MOVEit went
14 through?

15 NICOLE: It said that it was sent.

16 JUDGE BURGESS: Okay.

17 NICOLE: I have to check and see if it's been
18 viewed yet because usually there's two green bubbles that get
19 filled once they've been viewed.

20 JUDGE BURGESS: Okay. Why don't we do one more
21 thing since we're beating this to death? Why don't you give
22 me your email and I might even have my secretary just reach
23 out to you directly.

24 NICOLE: That'd be great.

25 JUDGE BURGESS: That would be better.

1 NICOLE: Okay.

2 JUDGE BURGESS: Why don't I just give you my
3 secretary? Let's just do it that way.

4 NICOLE: Yeah, that'd be great. That'd be great.

5 JUDGE BURGESS: Okay. So -- but I always have to
6 look at her last name so -- okay. I want you to write down
7 Nora, N-O-R-A, dot, A-R-I-Z-O-L-A.

8 NICOLE: Okay.

9 JUDGE BURGESS: At SOAH, dot, Texas, dot, gov.

10 NICOLE: Got it.

11 JUDGE BURGESS: And --

12 NICOLE: I'm reaching out right now.

13 JUDGE BURGESS: Yes, and tell her that Judge
14 Burgess --

15 NICOLE: Okay. I'll reach out to her and tell her
16 to send me a MOVEit link and that way we're all connected and
17 it goes through.

18 JUDGE BURGESS: Right, exactly. We're going to
19 make that happen. That'll be the best way. Okay. Thank
20 you, parties. Thank you, Mr. Solis.

21 NICOLE: Thank you.

22 JUDGE BURGESS: Okay, bye-bye.

23 ROBERTO SOLIS: Thank you, Your Honor.

24 JUDGE BURGESS: We're off the record, right? Oh,
25 Ms. Johnstone, we're finished with the docket, right?

1 SANDI JOHNSTONE: I believe we are until next
2 time.

3 JUDGE BURGESS: Okay, okay. Thank you, Ms.
4 Johnstone. Thank you.

5 SANDI JOHNSTONE: Thanks. Bye.

6 (Off the record.)
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C E R T I F I C A T E

CASE NAME: DPS vs. Roberto Hiram Solis, III
DOCKET NUMBER: 405-23-08865
LOCATION: Zoom Videoconference
DATE: August 17, 2023

I do hereby certify that the foregoing pages,
numbers 1 through 73, inclusive, are the true, accurate, and
complete transcript prepared from the verbal recording
provided by the State Office of Administrative Hearings.

Jennifer Ferris 9/7/23

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