

1 (Whereupon the defendant is  
2 present.)

09:36:43 3 THE COURT: When we left off yesterday, the  
09:48:40 4 State was doing direct examination of this witness.  
09:48:45 5 You may proceed, or pick up where we left off  
09:48:48 6 yesterday.

09:48:48 7 MR. PHANCO: Thank you, Your Honor. Judge,  
09:48:55 8 may I approach just so I can write on the board here?

09:48:57 9 THE COURT: Absolutely.

10 **OFFICER JESUS AGUIRRE,**  
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION BY THE STATE**

09:48:54 13 BY MR. PHANCO::

09:48:59 14 Q. Just so that -- I want to do some  
09:49:01 15 organizational stuff since we are starting. I'd like to  
09:49:04 16 give you what's been previously marked as State's  
09:49:06 17 Exhibit 20, 21, 23, 24, and 25; talk to you about each one  
09:49:12 18 of those things. I know you talked about them yesterday,  
09:49:15 19 but let's start with State's Exhibit 20. I just want to  
09:49:24 20 make sure I write it all down so we don't forget when you  
09:49:27 21 leave.

09:49:32 22 You stated that you found State's Exhibit 20 where  
09:49:35 23 and what do you believe it to be?

09:49:36 24 A. This is the 2.8 grams that was delivered to me  
09:49:40 25 by the defendant.

09:49:42 1 MR. DUNN: Judge, I'm going to object to  
09:49:43 2 this writing. He's publishing something to the jury  
09:49:47 3 which would be improper at this point. It's not his  
09:49:51 4 own testimony that he's writing down.

09:49:54 5 THE COURT: It's overruled.

09:49:55 6 Q. (By Mr. Phanco) So it's 2.8 grams that you  
09:49:58 7 weighed and delivered by the defendant. And when you say  
09:50:10 8 delivered by the defendant, who you do mean?

09:50:13 9 A. The defendant on trial.

09:50:14 10 Q. Rigoberto Monrroy?

09:50:15 11 A. Yes.

09:50:16 12 Q. The same person who you identified in the  
09:50:17 13 courtroom?

09:50:18 14 A. Yes, sir.

09:50:25 15 Q. Let's go to State's Exhibit 21. Where did you  
09:50:27 16 say you found State's Exhibit 21, and what do you believe  
09:50:30 17 it to be?

09:50:30 18 A. These are two individually wrapped baggies of  
09:50:33 19 cocaine with a combined weight of 1.1 grams found in the  
09:50:37 20 center console of the defendant's pickup truck.

09:50:54 21 Q. State's Exhibit 22 was the consent form. So  
09:50:57 22 State's Exhibit 23?

09:51:03 23 A. Okay.

09:51:03 24 Q. State's Exhibit 23 I want to talk specifically  
09:51:05 25 about. Yesterday you identified State's Exhibit 23 as

09:51:09 1 being marked by your -- if I recall this correctly, by  
09:51:13 2 your partner Mark Zapata?

09:51:15 3 A. Correct.

09:51:16 4 Q. You said that you went home and looked at your  
09:51:19 5 reports. And explain to the jury what happened yesterday.

09:51:22 6 A. Yes. Yesterday when I took -- when I grabbed  
09:51:25 7 it, I noticed an "M" and what appears to me to be a "Z."  
09:51:28 8 My partner has got really messy handwriting. And I didn't  
09:51:33 9 recall him putting this in a baggie, but that's what it  
09:51:35 10 appears to be. But upon reading my report and coming  
09:51:37 11 back, I realized that this is actually the lab people's  
09:51:43 12 initial. And they normally don't repackage this, but they  
09:51:47 13 did. I actually packaged all of this. All these  
09:51:51 14 handwritings in here are mine.

09:51:53 15 Q. So there's actually three baggies inside of a  
09:51:56 16 bigger baggie?

09:51:59 17 A. I'm not sure if there's three.

09:52:01 18 MR. DUNN: Objection to leading.

09:52:02 19 THE COURT: Do not lead. If you need to  
09:52:03 20 open up the bag and figure it out.

09:52:08 21 MR. PHANCO: I don't think we want the dust  
09:52:09 22 everywhere.

09:52:10 23 THE COURT: All right.

09:52:10 24 Q. (By Mr. Phanco) Could you see how many baggies  
09:52:12 25 are inside the bigger bag?

09:52:13 1 A. Yes, sir, there's three.

09:52:15 2 Q. So these three bags, do you see your initials  
09:52:18 3 on each and every one of those?

09:52:19 4 A. Yes, it's definitely my handwriting and my  
09:52:21 5 initials.

09:52:22 6 Q. From what day did you recover those?

09:52:24 7 A. From the 15<sup>th</sup>, October 15<sup>th</sup>.

09:52:26 8 Q. From where did you recover them?

09:52:27 9 A. From the fireplace mantel inside the  
09:52:30 10 defendant's residence.

09:52:35 11 Q. Do you weigh those at the scene?

09:52:37 12 A. Not at the scene, sir, back at the office.

09:52:39 13 Q. And what did you weigh them to be?

09:52:45 14 A. Let me check my report because since they  
09:52:48 15 repackaged it, I can't --

09:52:50 16 MR. DUNN: Objection, Your Honor,  
09:52:51 17 nonresponsive.

09:52:52 18 MR. PHANCO: I'll withdraw it.

09:52:54 19 THE COURT: Okay.

09:52:54 20 Q. (By Mr. Phanco) Would this package be weighed  
09:52:56 21 by the chemist?

09:52:58 22 A. They --

09:52:59 23 MR. DUNN: Objection, leading.

09:53:00 24 THE WITNESS: It's overruled.

09:53:01 25 Q. (By Mr. Phanco) What's that?

09:53:02 1 A. Yes, I believe they would also weigh it.

09:53:05 2 Q. No. 23 is what you believe to be cocaine?

09:53:08 3 A. Yes, sir.

09:53:08 4 Q. From the fireplace mantel?

09:53:10 5 A. Yes, sir.

09:53:10 6 Q. Are those the ball-looking packages that we saw  
09:53:14 7 in the photos?

09:53:15 8 A. Yes.

09:53:15 9 Q. So then you have No. 24.

09:53:18 10 A. This is the other bag that's containing  
09:53:23 11 16 grams of powder cocaine that came from the dining room  
09:53:27 12 table of the defendant's residence.

09:53:43 13 Q. I gave two N's in the dining room, sorry.

09:53:47 14 No. 24 is the 16 grams of what you believe to be cocaine  
09:53:50 15 from the dining room table?

09:53:51 16 A. Yes, sir.

09:53:52 17 Q. And State's Exhibit 25 is, I think, what you  
09:53:57 18 called as cut?

09:53:58 19 A. Yes, sir.

09:53:59 20 Q. In fairness, that's not cocaine?

09:54:00 21 A. Correct.

09:54:06 22 Q. Again, it's not cocaine, but how is it involved  
09:54:09 23 in drug transactions, if you will?

09:54:12 24 A. Narcotics traffickers commonly use this to  
09:54:15 25 basically thin out the more potent cocaine to maximize

09:54:21 1 profits.

09:54:21 2 Q. And these are all items that you recovered from  
09:54:26 3 the house of the defendant, or that were delivered to you  
09:54:29 4 or from his truck?

09:54:30 5 A. Correct.

09:54:31 6 Q. But all recovered by you?

09:54:32 7 A. Yes.

09:54:32 8 Q. On October 15<sup>th</sup> of 2014?

09:54:35 9 A. Yes, sir.

09:54:42 10 Q. Let me have all of those items back.

09:54:53 11 THE COURT: Is your cell phone on?

09:54:55 12 THE WITNESS: It's off, sir. It's on  
09:54:57 13 silent. You need me to turn it off?

09:54:59 14 THE COURT: Because I think it's making  
09:55:00 15 feedback on the speaker. It's in your shirt pocket?

09:55:05 16 THE WITNESS: Yes.

09:55:06 17 THE COURT: That's why.

09:55:10 18 MR. PHANCO: Your Honor, at this time I'd  
09:55:11 19 ask that State's Exhibit No. 25, which has been  
09:55:14 20 identified as the cut from the speaker box that was  
09:55:20 21 identified yesterday by this witness, be admitted  
09:55:24 22 into evidence.

09:55:27 23 MR. DUNN: Judge, briefly, can I ask a few  
09:55:29 24 questions?

09:55:30 25 THE COURT: Sure.

**VOIR DIRE EXAMINATION BY THE DEFENSE**

09:55:33

1

BY MR. DUNN::

09:55:34

2

Q. Officer Aguirre, State's Exhibit 25, has it

09:55:37

3

been in your sole possession since October 15<sup>th</sup> of 2014?

09:55:41

4

A. No, sir, it was taken to the lab.

09:55:43

5

Q. And did you sign it out from the lab?

09:55:46

6

A. Yes, sir, I did.

09:55:46

7

Q. Do you have any of that signature page with you

09:55:50

8

today?

09:55:51

9

A. Yes, sir, I do.

09:55:52

10

Q. May I see it, please?

09:56:21

11

A. (Witness produces document.)

09:56:41

12

Q. Sir, there's no seal -- is there a seal on

09:56:44

13

State's Exhibit No. 25?

09:56:45

14

A. I'm not sure what you're asking, sir.

09:56:49

15

Q. At any time has it been opened?

09:56:52

16

A. I couldn't testify if the lab opened it, sir.

09:56:55

17

It appears to be the same way as when I put it in the drop

09:56:59

18

box.

09:57:00

19

Q. You're not sure?

09:57:01

20

A. No, I'm not sure.

09:57:03

21

Q. And you don't know if anything was taken out in

09:57:07

22

the time that -- that you brought it over to the lab to

09:57:11

23

the time that you received it again, right?

09:57:13

24

A. No, sir.

09:57:14 1 MR. DUNN: I'm going to object as to chain  
09:57:16 2 of custody being improper.

09:57:19 3 THE COURT: It's overruled. It's admitted.  
4 (Whereupon State's Exhibit No. 25 is  
5 admitted into evidence.)

09:57:23 6 MR. PHANCO: Thank you, Your Honor. May I  
09:57:24 7 publish it by walking it by the jury, Your Honor?

09:57:27 8 THE COURT: Yes.

9 **DIRECT EXAMINATION (Continued)**

09:57:30 10 BY MR. PHANCO::

09:57:30 11 Q. Again, I want to be fair here. This is not  
09:57:34 12 cocaine. This is what you described as cut?

09:57:37 13 A. Yes, sir, it did not field test positive for  
09:57:40 14 cocaine.

09:57:51 15 Q. So you recovered all the narcotics. You said  
09:57:56 16 guns, those were recovered by who?

09:57:59 17 A. Me, myself.

09:57:59 18 Q. And you gave custody of those guns to whom in  
09:58:01 19 order to check them into evidence?

09:58:03 20 A. To Officer Mark Zapata, my partner.

09:58:07 21 Q. That's your partner?

09:58:08 22 A. Yes.

09:58:09 23 Q. And that night on October 15, 2014, what do you  
09:58:13 24 do with the defendant at that point?

09:58:16 25 A. After -- I believe maybe about midway through

09:58:20 1 the search, he was transported to the jail by the patrol  
09:58:24 2 officers.

09:58:25 3 Q. Okay. Now, I'm going to pass you off to the  
09:58:29 4 defense attorney for cross-examination. Before I do, is  
09:58:34 5 there anything that you could tell the jury about  
09:58:39 6 threatening, like call the cops on the kids, or doing  
09:58:45 7 anything that you believe was coercive or threatening to  
09:58:49 8 the defendant?

09:58:50 9 A. No, sir.

09:58:52 10 Q. Did you have your guns drawn? Did you tell him  
09:58:55 11 that you were going to deport him, or do anything that you  
09:58:59 12 believe was a threat?

09:59:00 13 A. No, sir.

09:59:02 14 Q. Same thing about his wife?

09:59:03 15 A. No.

09:59:04 16 Q. Did you hear any other officers doing that?

09:59:06 17 A. I did not.

09:59:07 18 Q. And I understand why you wouldn't threaten him;  
09:59:12 19 but if he didn't give you consent, what were you going to  
09:59:15 20 do then?

09:59:16 21 A. I had it in my intentions to draw up a search  
09:59:19 22 warrant for the house.

09:59:20 23 Q. Now, here's the question. If you were going to  
09:59:22 24 get a search warrant, why not just get the search warrant?

09:59:26 25 A. Well, because the way he just voluntarily gave

09:59:28 1 consent, basically, I decided that was the route I would  
09:59:32 2 take.

09:59:33 3 Q. And he signed your consent form?

09:59:35 4 A. Yes, sir.

09:59:35 5 Q. All that stuff?

09:59:36 6 A. Yes.

09:59:37 7 Q. And if he hadn't done those things, what would  
09:59:39 8 you have done?

09:59:41 9 A. Drafted a warrant.

09:59:42 10 MR. PHANCO: I pass the witness, Your  
09:59:43 11 Honor.

09:59:44 12 THE COURT: Cross?

09:59:45 13 MR. DUNN: Yes, Judge.

14 **CROSS-EXAMINATION BY THE DEFENSE**

09:59:48 15 BY MR. DUNN::

09:59:57 16 Q. Good morning, Officer Aguirre.

10:00:00 17 A. Morning.

10:00:04 18 Q. I'll go through and ask you some questions on  
10:00:05 19 answers that you've previously given to the State. Okay?

10:00:08 20 A. Okay.

10:00:11 21 Q. Now, I believe you said that you've been on the  
10:00:15 22 force now for roughly 20 years?

10:00:17 23 A. Yes, sir.

10:00:17 24 Q. And you have been in the undercover narcotics  
10:00:22 25 unit since about February 2008?

10:00:24 1 A. Correct.

10:00:28 2 Q. And you talk about a partner that you worked  
10:00:32 3 with. Your partner's name is Officer Spata?

10:00:36 4 A. No. Officer Mark Zapata.

10:00:38 5 Q. Zapata?

10:00:39 6 A. Yes, sir.

10:00:40 7 Q. On October 15, 2014, when you came into contact  
10:00:44 8 with my client, where was Officer Zapata?

10:00:48 9 A. Officer Zapata was about, I would say, south of  
10:00:51 10 my location. He was my primary surveillance; he always  
10:00:56 11 is.

10:00:56 12 Q. He's your primary surveillance. I remember you  
10:00:59 13 talking about the fact that you don't personally bring in  
10:01:03 14 video recording or audio recording devices to your  
10:01:07 15 undercover activities personally because the threat of  
10:01:11 16 harm of being found out is great to you, correct?

10:01:14 17 A. Correct.

10:01:14 18 Q. Certainly, if you've got a partner there and,  
10:01:17 19 as you say, doing surveillance, that person should have  
10:01:22 20 some kind of equipment, either audio or visual recording  
10:01:26 21 equipment, correct?

10:01:28 22 A. No, sir. That would probably not be a good  
10:01:31 23 idea.

10:01:32 24 Q. He wasn't in view of Mr. Monrroy, was he?

10:01:36 25 A. From where he was parked, I believe he could

10:01:38 1 not see the defendant.

10:01:42 2 Q. Certainly, if he's not in view of the  
10:01:44 3 defendant, my client here, Mr. Monrroy, he wouldn't  
10:01:48 4 pose -- Mr. Monrroy wouldn't pose a threat to anybody.  
10:01:51 5 He's unseen, correct?

10:01:56 6 A. That's not correct, sir, because if you're  
10:01:58 7 sitting there with a camera in your hand, we commonly  
10:02:02 8 encounter countersurveillance on the streets, people  
10:02:08 9 riding their bikes. You really, really have to do a good  
10:02:11 10 job to fit in. And holding a camera up would definitely  
10:02:14 11 give away your operation.

10:02:15 12 Q. So, is it your testimony today, all these  
10:02:17 13 undercover assignments, that there's never any audio or  
10:02:20 14 visual surveillance that goes on?

10:02:22 15 A. That is not common with HPD.

10:02:25 16 Q. But it's common with other --

10:02:26 17 A. The feds sometimes use it, sir.

10:02:32 18 Q. Now, you stated that when you met with  
10:02:42 19 Mr. Monrroy, you asked him for some cocaine, right?

10:02:48 20 A. Yes, sir.

10:02:48 21 Q. And he went into the house?

10:02:49 22 A. No. Actually, I never asked him for cocaine.

10:02:53 23 Q. You just said, "yes, sir"?

10:02:56 24 A. I'm sorry. Let me rephrase. I never directly  
10:02:58 25 asked him. I asked a third party. The third party said

10:03:01 1 it.

10:03:02 2 Q. When you first came into contact with  
10:03:04 3 Mr. Monrroy, he went into the home, correct?

10:03:06 4 A. Correct.

10:03:06 5 Q. And he was there for a couple of minutes,  
10:03:08 6 right?

10:03:08 7 A. Correct.

10:03:08 8 Q. And, presumably, to find your requested items?

10:03:13 9 A. Correct.

10:03:14 10 Q. You said it took him a couple of minutes to  
10:03:15 11 come back out, right?

10:03:16 12 A. Correct.

10:03:19 13 Q. Then you go into the transaction and give him a  
10:03:23 14 hundred-dollar bill, right?

10:03:24 15 A. Yes.

10:03:24 16 Q. And then he goes back inside?

10:03:28 17 A. No, he never -- after the transaction was done,  
10:03:31 18 it's my opinion he remained there by his truck until he  
10:03:34 19 was arrested.

10:03:35 20 Q. So he just stood there with a blank gaze and  
10:03:41 21 waited to be arrested after having handed it over?

10:03:44 22 A. I can't testify to that, sir. I was already  
10:03:46 23 gone. I don't know what he did.

10:03:49 24 Q. So how do you know he just stood outside?

10:03:52 25 A. Because the marked patrol units couldn't have

10:03:56 1 been more than 20, 30 seconds out from arresting him.

10:03:59 2 They were right around the corner.

10:04:00 3 Q. So it's your assumption that he was standing  
10:04:02 4 outside?

10:04:02 5 A. I believe so, yes.

10:04:04 6 Q. And if it was 20 to 30 seconds out, so that  
10:04:10 7 means you got on the phone immediately after making that  
10:04:15 8 transaction, right?

10:04:17 9 A. Not on the phone, on our radio, portable  
10:04:19 10 radios.

10:04:20 11 Q. On your radio. So it takes -- and I'm trying  
10:04:24 12 to walk you through this timeline. Mr. Monrroy hands you  
10:04:27 13 an alleged bag of cocaine, you hand him a hundred-dollar  
10:04:30 14 bill, 20 to 30 seconds after that, cops arrive, correct?

10:04:36 15 A. Approximately, yes.

10:04:38 16 Q. So in 20 to 30 seconds, you no longer know if  
10:04:42 17 Mr. Monrroy is just standing there. Within 20 to 30  
10:04:45 18 seconds, you're able to make a -- you're able to make a  
10:04:52 19 radio dispatch all in view of Mr. Monrroy who just stands  
10:04:56 20 there?

10:04:57 21 A. No, sir. I waited till I cleared his driveway.  
10:05:00 22 He has a privacy fence, a wooden one, and it was right  
10:05:04 23 under my seat. It was -- I mean, it was quick.

10:05:08 24 Q. So that means there were other officers  
10:05:11 25 waiting, right?

10:05:12 1 A. Yes.

10:05:13 2 Q. So it wasn't just the primary partner, Officer  
10:05:16 3 Zapata, doing this, right?

10:05:18 4 A. No, we had other officers scattered throughout  
10:05:21 5 the neighborhood.

10:05:23 6 Q. With all these other officers, nobody had any  
10:05:25 7 surveillance equipment, right?

10:05:26 8 A. No, sir.

10:05:32 9 Q. And 20 to 30 seconds later, your backup  
10:05:40 10 arrives?

10:05:41 11 A. Correct.

10:05:41 12 Q. Mr. Monrroy is still standing there, and you  
10:05:43 13 walk up with the rest of your backup, or do you wait till  
10:05:46 14 they've secured him? How does that work?

10:05:48 15 A. Yes, sir, I basically made a -- I went a couple  
10:05:50 16 of blocks over, made a long block; so however long that  
10:05:54 17 takes, and then I came right back.

10:05:55 18 Q. What was the purpose of you leaving the  
10:05:57 19 premises? 20 to 30 seconds after you make the call, they  
10:06:02 20 were there. Why would you have to leave? Why would you  
10:06:06 21 have to leave and come back?

10:06:07 22 A. Because I wasn't wearing any identification at  
10:06:10 23 the time, sir. I wanted to give myself enough time to get  
10:06:13 24 all my equipment out, come back around. Once I heard  
10:06:15 25 that -- on the radio the officer said, "Hey, the scene is

10:06:18 1 secured, the defendant is in custody," then I felt  
10:06:21 2 comfortable coming back.

10:06:26 3 Q. So at some point you didn't feel comfortable  
10:06:29 4 being in the area, even though it took 20 seconds for  
10:06:32 5 other officers to arrive?

10:06:35 6 A. When I'm involved in an undercover deal, I'm  
10:06:39 7 comfortable; however, when the takedown occurs, just  
10:06:42 8 because something could go wrong, I want to make sure that  
10:06:46 9 I have identification on me so they are not confusing me  
10:06:51 10 for a confidential informant or just another suspect.

10:06:55 11 Q. These officers know you, right?

10:06:57 12 A. Yes.

10:06:58 13 Q. Surely, they wouldn't confuse you with somebody  
10:07:00 14 else if they know you?

10:07:02 15 A. No, sir, I'm not worried about the officers.  
10:07:03 16 I'm worried about any other possible people in the house  
10:07:06 17 that could come out and engage in a gun battle. You have  
10:07:09 18 to be prepared for everything.

10:07:10 19 Q. Fair enough. How many other officers arrived  
10:07:12 20 on the scene?

10:07:13 21 A. 8 to 10, approximately.

10:07:18 22 Q. Approximately 8 to 10. So that's not including  
10:07:22 23 Officer Zapata and yourself, correct?

10:07:25 24 A. No.

10:07:26 25 Q. There's at least 12 or so officers on this

10:07:30 1 scene?

10:07:30 2 A. Approximately, yes.

10:07:32 3 Q. And on the scene at the house, 12 officers all  
10:07:35 4 surrounding Mr. Monrroy, correct?

10:07:37 5 A. No, sir. There's -- there are just various  
10:07:40 6 things going on.

10:07:42 7 Q. They are all in close proximity to Mr. Monrroy  
10:07:44 8 and his home, correct?

10:07:46 9 A. Oh, yes, sir.

10:07:48 10 Q. Is Mr. Monrroy immediately placed in handcuffs?

10:07:51 11 A. Yes, he was, I believe.

10:07:53 12 Q. And when do you walk up to Mr. Monrroy, after  
10:07:58 13 or before he's placed in handcuffs?

10:08:00 14 A. After.

10:08:01 15 Q. And you show him your badge?

10:08:04 16 A. Yes, sir.

10:08:05 17 Q. He says, "Ah, man, I messed up"?

10:08:07 18 A. Yes, sir.

10:08:09 19 Q. And then he says -- then you ask him can you  
10:08:12 20 search his truck?

10:08:14 21 A. Yes, sir. Another officer, I believe, advised  
10:08:17 22 me that he had given consent to search his truck.

10:08:21 23 Q. So you didn't hear him give consent to search  
10:08:23 24 his truck?

10:08:24 25 A. No, sir, but --

10:08:24 1 Q. That's all I need from you at this point.

10:08:26 2 A. Okay.

10:08:28 3 Q. So you didn't hear him give consent. But  
10:08:30 4 you're the one who goes into the truck to search it?

10:08:34 5 A. I asked him directly in Spanish for consent.

10:08:39 6 Q. So he gave consent to somebody else, then you  
10:08:41 7 ask him, then he gives you consent?

10:08:43 8 A. Yes, sir, I did verify in Spanish to make sure  
10:08:46 9 that he understood what -- he understood the question.

10:08:50 10 Q. He says: Yeah, go ahead, and you can search  
10:08:53 11 the truck?

10:08:53 12 A. Yes, sir.

10:08:55 13 Q. With 12 officers surrounding him, right?

10:08:58 14 A. They weren't all around him, no, sir.

10:09:01 15 Q. Where were the other officers?

10:09:03 16 A. They're in the vicinity. He's got a large  
10:09:05 17 property.

10:09:06 18 Q. What is the vicinity? These are my versions of  
10:09:17 19 State's Exhibits 1 and 2.

10:09:21 20 THE COURT: They're on the reporter's  
10:09:25 21 table.

10:09:26 22 MR. PHANCO: I've got them, Judge.

10:09:35 23 Q. (By Mr. Dunn) State's Exhibit 2, which has  
10:09:36 24 previously been admitted, shows the property, right?

10:09:41 25 A. Correct.

10:09:44 1 Q. Why don't you tell us where these 12 officers  
10:09:47 2 were located?

10:09:49 3 A. I can't tell you specifically, sir; but there's  
10:09:52 4 room in here, there were some outside, I believe.

10:09:55 5 Q. You say, "room in here." What are you  
10:09:56 6 referring to?

10:09:57 7 A. Inside the property. Right on the other side  
10:09:59 8 of this gate, myself and the defendant were talking right  
10:10:03 9 here (indicating). I'm not worried about other officers,  
10:10:04 10 what they're doing. I'm conducting an investigation with  
10:10:08 11 the defendant.

10:10:10 12 Q. And there's only one man outside, right -- I'm  
10:10:15 13 sorry -- one person, one suspect outside at this point,  
10:10:19 14 right?

10:10:19 15 A. Initially, yes, that's correct.

10:10:21 16 Q. And everybody -- all the officers presumably  
10:10:25 17 are outside at this point, correct?

10:10:26 18 A. I believe that to be, yes, sir.

10:10:29 19 Q. And all within close proximity of Mr. Monrroy,  
10:10:31 20 right?

10:10:32 21 A. Yes, sir.

10:10:39 22 Q. Now, granted, you were told by another officer  
10:10:42 23 that he had already given consent to search the truck.  
10:10:47 24 Which officer was that?

10:10:49 25 A. I believe it was Officer Harris.

10:10:50 1 Q. You say you believe. Does that mean it was  
10:10:52 2 Officer Harris?

10:10:54 3 A. Yes, sir, it was Officer Harris.

10:10:57 4 Q. And when Officer Harris received this alleged  
10:11:00 5 consent, you don't know specifically what was said to gain  
10:11:05 6 that consent, correct?

10:11:06 7 A. No, sir.

10:11:07 8 Q. All you know is that Mr. Harris, Officer  
10:11:09 9 Harris, comes to you afterwards and says: Hey, I got his  
10:11:13 10 consent. So you go back to confirm that, right?

10:11:15 11 A. Correct.

10:11:18 12 Q. If Officer Harris said anything threatening to  
10:11:20 13 Mr. Monrroy, you wouldn't have known that, right?

10:11:23 14 A. No, I wouldn't have.

10:11:25 15 Q. You wouldn't know if Mr. Monrroy was asked by  
10:11:27 16 you to search the vehicle was answering in the affirmative  
10:11:33 17 simply based on something Officer Harris said to him,  
10:11:35 18 correct?

10:11:36 19 A. Correct.

10:11:43 20 Q. Now, at this point when you're searching the  
10:11:51 21 truck, has anybody gone inside yet, as far as any other  
10:11:54 22 officers?

10:11:56 23 A. I do not believe so, sir. Like I said, my  
10:11:58 24 attention was focused on the defendant.

10:12:00 25 Q. So when you say your attention was focused,

10:12:01 1 you're not sure if any other officers had gone into the  
10:12:05 2 house, correct?

10:12:06 3 A. No, sir, it is my belief that nobody had gone  
10:12:08 4 in.

10:12:08 5 Q. You just said your attention was focused  
10:12:11 6 elsewhere. So to be fair, you can't be sure that none of  
10:12:14 7 the other officers went into the house at this point,  
10:12:17 8 correct?

10:12:17 9 A. Correct.

10:12:26 10 Q. Now, how long does your search of the truck  
10:12:30 11 take?

10:12:31 12 A. Myself, a couple of minutes.

10:12:34 13 Q. No other officer entered the truck?

10:12:37 14 A. Besides me?

10:12:38 15 Q. Correct.

10:12:39 16 A. After me, I don't know who entered it. I  
10:12:41 17 believe that Officer Harris had looked inside the truck,  
10:12:44 18 but hadn't disturbed anything.

10:12:49 19 Q. Officer Harris. This is prior to you looking  
10:12:53 20 in or after?

10:12:54 21 A. Prior.

10:12:55 22 Q. And Officer Harris didn't find anything in the  
10:12:57 23 truck, did he?

10:12:59 24 A. I don't believe so, sir.

10:13:00 25 Q. Again, when you say "I don't believe," is that

10:13:02 1 a "yes" or a "no"?

10:13:03 2 A. That's I don't believe he found anything  
10:13:06 3 because he didn't hand anything to me.

10:13:08 4 Q. Fair enough. Now, when you -- at some point  
10:13:16 5 you entered the house, right?

10:13:17 6 A. Yes, sir.

10:13:18 7 Q. And, again, you don't know if other officers  
10:13:22 8 had entered into the house before you. At what point do  
10:13:25 9 you enter into the house?

10:13:26 10 A. After our conversation by the truck, after the  
10:13:30 11 transaction had been completed.

10:13:32 12 Q. So, you say after the transaction had been  
10:13:37 13 completed?

10:13:38 14 A. After he was arrested for dealing me cocaine.

10:13:42 15 Q. So you enter the house after he's arrested for  
10:13:45 16 dealing cocaine?

10:13:46 17 A. Correct.

10:13:46 18 Q. And at this point you haven't gotten any  
10:13:48 19 written consent to enter the house, right?

10:13:51 20 A. No, sir.

10:13:51 21 Q. Let's talk about that. You have in State's  
10:13:54 22 Exhibit 22 the consent form for searching the house.

10:14:00 23 However, I don't see any consent form for searching the  
10:14:03 24 truck; is that true?

10:14:04 25 A. No.

10:14:05 1 Q. You were able to secure written -- in some  
10:14:10 2 shape, form, or fashion, you were able to secure written  
10:14:12 3 consent for the home, but you were not able to secure  
10:14:15 4 written consent for the truck, correct?

10:14:17 5 A. Correct.

10:14:19 6 Q. You certainly had the time to have him sign  
10:14:23 7 consent for the truck, as well, correct?

10:14:25 8 A. Yes, sir.

10:14:31 9 Q. So you go inside the house before this consent  
10:14:35 10 is signed, right?

10:14:36 11 A. Correct.

10:14:37 12 Q. And, supposedly, through your testimony you  
10:14:41 13 said that he just says, "Ah, yeah, you can go ahead and go  
10:14:45 14 in the house and search it"?

10:14:47 15 A. Yes, sir.

10:14:47 16 Q. So this man, with his family inside,  
10:14:50 17 presumably, some other drugs inside, just says: Yeah,  
10:14:55 18 man, go ahead. You can search all my house?

10:14:58 19 A. That is correct.

10:14:58 20 Q. All right. Fair enough. And I believe you  
10:15:09 21 told the State that you asked Mr. Monrroy if he could  
10:15:16 22 speak English or read, correct?

10:15:18 23 A. I asked --

10:15:20 24 Q. "Yes" or "no," sir?

10:15:21 25 A. Repeat the question.

10:15:22 1 Q. Sure. You told the State on direct examination  
10:15:24 2 that you asked Mr. Monrroy if he could speak English or  
10:15:28 3 read, correct?

10:15:29 4 A. Correct.

10:15:29 5 Q. And he said no, correct?

10:15:32 6 A. Correct.

10:15:32 7 Q. So knowing that Mr. Monrroy couldn't speak  
10:15:35 8 English or read, you hand him a consent expecting him to  
10:15:40 9 read this consent; even though it's in Spanish, you expect  
10:15:44 10 him to read this consent and sign it, correct, "yes" or  
10:15:46 11 "no," sir?

10:15:47 12 A. Yes.

10:15:49 13 Q. And you're fluent in Spanish, correct, I'm  
10:15:54 14 assuming?

10:15:55 15 A. Yes.

10:15:56 16 Q. You being fluent in Spanish and this -- this  
10:16:10 17 consent -- what I'm showing you is what's been previously  
10:16:20 18 marked and entered into evidence as State's Exhibit  
10:16:22 19 No. 22. This is the consent form, correct?

10:16:29 20 A. That's correct.

10:16:30 21 Q. That you had Mr. Monrroy sign, right?

10:16:32 22 A. Yes, sir.

10:16:33 23 Q. And even as you were talking to the State on  
10:16:36 24 direct, you got to the word "embargo" and said you didn't  
10:16:41 25 know what that meant, correct?

10:16:43 1 A. I wasn't sure, but --

10:16:44 2 Q. You said on direct that you didn't know what  
10:16:47 3 that word "embargo" meant?

10:16:49 4 A. I believe I said I wasn't sure, but I thought  
10:16:51 5 it meant seizure.

10:16:52 6 Q. Safe to say there are even words on here you --  
10:16:56 7 let me back up a second. You've given this consent form  
10:17:00 8 before, correct?

10:17:01 9 A. I have.

10:17:02 10 Q. And you've had a chance to go over it yourself,  
10:17:04 11 right?

10:17:06 12 A. Yes.

10:17:07 13 Q. And you've been briefed prior to being able to  
10:17:09 14 disseminate, or give this consent form, on what it means  
10:17:13 15 and what it says, right?

10:17:15 16 A. Yes, sir.

10:17:15 17 Q. But even you don't know necessarily what all  
10:17:19 18 the words on the consent form mean, correct?

10:17:23 19 A. I think the only word I had a little problem  
10:17:25 20 with was "embargo."

10:17:28 21 Q. Generally, that means you don't know what every  
10:17:30 22 word on this consent form means, correct?

10:17:34 23 A. No, I do know what it means.

10:17:35 24 Q. You've been trained and you've been briefed on  
10:17:38 25 an explanation of this, right?

10:17:40 1 A. I don't know if I've been trained, but we've  
10:17:42 2 been briefed on it, if that's what you want to call it.

10:17:45 3 Q. Mr. Monrroy, to your knowledge, has never been  
10:17:49 4 briefed on what a consent form looks like; right, or what  
10:17:51 5 it says?

10:17:52 6 A. No, he hasn't.

10:17:52 7 Q. And knowing that he already told you that he  
10:17:54 8 could not read, you being educated and briefed on it, this  
10:17:58 9 language, it's safe to say he might not understand what  
10:18:02 10 all is entailed in this consent form, correct?

10:18:06 11 A. I asked if he could read and speak English, he  
10:18:09 12 said no.

10:18:10 13 Q. So your testimony --

10:18:12 14 MR. DUNN: I'm going to ask to strike that  
10:18:14 15 nonresponsive statement.

10:18:15 16 THE COURT: It's overruled.

10:18:17 17 Q. (By Mr. Dunn) Sir, you were asked if he could  
10:18:19 18 speak English or read, and you said no, he -- or  
10:18:25 19 Mr. Monrroy told you he could not speak English and he  
10:18:27 20 could not read, correct?

10:18:29 21 A. Correct.

10:18:32 22 Q. Now, where was Mr. Monrroy when he signed this  
10:18:39 23 consent form?

10:18:41 24 A. Sitting in the dining room area.

10:18:44 25 Q. And was anybody else in the house with him?

10:18:47 1 A. His family.

10:18:49 2 Q. Who did his family consist of?

10:18:52 3 A. A wife and some kids.

10:18:53 4 Q. How many kids?

10:18:54 5 A. Can I check my report?

10:18:56 6 Q. Absolutely.

10:19:06 7 A. He has Emily Monrroy, born in 2000; Cristy  
10:19:14 8 Monrroy, born in 2004; Maylene Monrroy, in '08; and Lillie  
10:19:19 9 Monrroy, born in 2014.

10:19:22 10 Q. So four children?

10:19:23 11 A. Yes.

10:19:24 12 Q. Was his wife there?

10:19:24 13 A. Yes, she was.

10:19:25 14 Q. Where was his wife?

10:19:26 15 A. Also in the dining room area with us.

10:19:28 16 Q. Where were the children -- was everybody in the  
10:19:31 17 dining room area?

10:19:32 18 A. Yes, sir -- no, the children were in the living  
10:19:35 19 room area sitting down.

10:19:42 20 Q. So when you first came into the house, where  
10:19:45 21 were the children and wife situated?

10:19:50 22 A. When I first observed his wife and children,  
10:19:52 23 they were on the front porch area, and then we all  
10:19:56 24 together walked in the house.

10:19:59 25 Q. Did you direct everybody where they should

10:20:02 1 place themselves within the house?

10:20:04 2 A. I asked the children -- I asked the mother to  
10:20:06 3 please have the children sit in the living room. I was  
10:20:10 4 hoping they wouldn't have to hear too much of what's going  
10:20:12 5 on.

10:20:16 6 Q. How big -- how much space was there between the  
10:20:18 7 dining room area and the living room area where -- how  
10:20:23 8 much space was there between those two spots?

10:20:25 9 A. I don't know. They're adjoining.

10:20:29 10 Q. Safe to say that if you're in the living area,  
10:20:30 11 you can hear what's going on in the dining room area?

10:20:33 12 A. Yes, sir, but I believe the TV was on.

10:20:42 13 Q. Now, at this point you enter the house.  
10:20:45 14 Certainly, you're not the only officer in the house when  
10:20:47 15 you first enter, correct?

10:20:48 16 A. That's correct.

10:20:49 17 Q. And you still hadn't had the consent form  
10:20:58 18 signed, right?

10:20:58 19 A. Correct.

10:20:59 20 Q. How many other officers are in the house before  
10:21:01 21 the signing of the consent form?

10:21:03 22 A. I can only approximate, sir.

10:21:05 23 Q. Do your best.

10:21:07 24 A. Five or six.

10:21:08 25 Q. At least five or six?

10:21:18 1 A. Yes.

10:21:18 2 Q. What are these other officers doing? Are they  
10:21:21 3 standing at attention?

10:21:22 4 A. Not at attention. They are just standing,  
10:21:25 5 standing around.

10:21:25 6 Q. Standing around where?

10:21:27 7 A. The living room, dining room.

10:21:29 8 Q. They're not moving from those areas?

10:21:31 9 A. No, sir.

10:21:40 10 Q. You said you're able to physically observe what  
10:21:46 11 appears to be cocaine on the mantel?

10:21:48 12 A. Correct.

10:21:53 13 Q. Safe to say you don't know when that alleged  
10:21:56 14 cocaine got there, right?

10:21:58 15 A. That's correct.

10:21:58 16 Q. Could have gotten there at the time that  
10:22:00 17 Mr. Monrroy initially went into the home; right, before  
10:22:07 18 his transaction with you?

10:22:09 19 A. Yes, that would be a possibility.

10:22:13 20 Q. And let me back up a second. When you first  
10:22:17 21 encountered Mr. Monrroy, did he pull a gun on you?

10:22:21 22 A. No.

10:22:22 23 Q. Did he -- to your knowledge, did he have a gun  
10:22:25 24 on him?

10:22:25 25 A. No, sir.

10:22:26 1 Q. Certainly, when you arrest someone, you have to  
10:22:28 2 pat them down, right?

10:22:30 3 A. That's correct.

10:22:30 4 Q. And during that pat-down of Mr. Monrroy's  
10:22:33 5 arrest, was there a gun found on him?

10:22:35 6 A. No, there wasn't.

10:22:36 7 Q. Safe to say there wasn't a gun used in the  
10:22:39 8 commission of the delivery to you, this alleged delivery  
10:22:42 9 to you, correct?

10:22:43 10 A. That's correct.

10:22:45 11 Q. There was no firearm at any point used in the  
10:22:50 12 delivery of any controlled substance that might involve  
10:22:53 13 Mr. Monrroy, correct?

10:22:55 14 A. That's correct.

10:23:01 15 Q. Certainly not against the law in the State of  
10:23:02 16 Texas to have weapons in your home, correct?

10:23:07 17 A. There are some circumstances where it is  
10:23:09 18 against the law, but I believe he would have been in his  
10:23:13 19 right to have some.

10:23:15 20 Q. Fair enough. Thank you for that. Now, the  
10:23:40 21 alleged cocaine that you found, or that was delivered to  
10:23:45 22 you, who did the testing on that?

10:23:50 23 A. Someone from the crime lab.

10:23:52 24 Q. Who weighed it?

10:23:53 25 A. I initially weighed it.

10:23:55 1 Q. What did you use to weigh it?

10:23:56 2 A. We have scales in the office.

10:23:59 3 Q. So you didn't weigh it at the scene?

10:24:01 4 A. No, sir.

10:24:03 5 Q. Was anybody with you when you weighed it?

10:24:06 6 A. Other officers were in the office.

10:24:09 7 Q. Was anybody with you?

10:24:09 8 A. No, sir, nobody is looking over my shoulder.

10:24:12 9 Q. And when you weighed it, what kind of machine

10:24:15 10 did you use?

10:24:16 11 A. Just a regular scale anybody can purchase.

10:24:20 12 Q. When you say a "regular," there are several

10:24:22 13 types of regular scales.

10:24:24 14 A. A small digital scale that you use for small

10:24:28 15 amounts of narcotics.

10:24:29 16 Q. Was that scale calibrated?

10:24:31 17 A. No, sir.

10:24:31 18 Q. It was not calibrated. So since the scale was

10:24:40 19 not calibrated, the amount that you got may not have been

10:24:45 20 accurate, correct?

10:24:47 21 A. Normally, it's not.

10:24:49 22 Q. "Yes" or "no"?

10:24:50 23 A. No, it may not have been accurate.

10:25:13 24 Q. And it's your contention that you never -- you

10:25:23 25 or anyone else never threatened Mr. Monrroy that his

10:25:27 1 children would be taken away by CPS if -- if he didn't  
10:25:33 2 sign the consent?

10:25:34 3 A. That's correct.

10:25:35 4 Q. And it's your contention that you didn't  
10:25:37 5 threaten Mr. Monrroy by saying if he didn't sign the  
10:25:39 6 consent form, that you would arrest his wife and take her  
10:25:43 7 along with you?

10:26:00 8 A. That's correct.

10:26:12 9 Q. What does "testigos" mean?

10:26:16 10 A. Witnesses.

10:26:16 11 Q. There were two other witnesses to Mr. Monrroy's  
10:26:19 12 signing of the consent form?

10:26:33 13 A. Yes, sir.

10:26:33 14 Q. This is consent for you and Mr. Zapata to  
10:26:37 15 search the house, right?

10:26:39 16 A. That's correct.

10:26:42 17 Q. Who found the alleged cocaine in the attic?

10:26:48 18 A. I believe it was Officer Martinez, Eddie  
10:26:51 19 Martinez.

10:26:51 20 Q. Which is somebody that's not named as part of  
10:26:54 21 the Consent to Search, correct?

10:26:56 22 A. That's correct.

10:26:58 23 Q. And where else was -- aside from the amount in  
10:27:04 24 the attic, where else was cocaine found?

10:27:08 25 A. Fireplace mantel and dining room.

10:27:10 1 Q. And who found -- who found the alleged cocaine  
10:27:18 2 in the dining room?

10:27:19 3 A. I did.

10:27:21 4 Q. Who found the alleged cocaine on the fireplace?

10:27:27 5 A. I did.

10:27:27 6 Q. Even though this alleged lawful Consent to  
10:27:33 7 Search was for you and Mr. Zapata, there were other people  
10:27:38 8 not given permission to look around the house and  
10:27:42 9 search -- to actually look around the house and search,  
10:27:46 10 correct?

10:27:46 11 A. That's correct.

10:28:08 12 Q. You also talked in direct about Santa Muerte.  
10:28:11 13 Do you recall that?

10:28:16 14 A. Yes, I do.

10:28:16 15 Q. You said Santa Muerte is the patron saint for  
10:28:20 16 drug dealers, and that's how you know -- it signifies drug  
10:28:22 17 dealers, correct?

10:28:23 18 A. That's correct.

10:28:23 19 Q. Isn't it true that Santa Muerte is the God for  
10:28:27 20 health, or saint for health, for protection and used by  
10:28:31 21 many people within the Mexican culture?

10:28:35 22 A. In my experience, it's been mostly used by drug  
10:28:38 23 traffickers.

10:28:39 24 Q. So is that a "no," sir?

10:28:42 25 A. Repeat question.

10:28:43 1 Q. Isn't it true that Santa Muerte is a saint, is  
10:28:46 2 a patron saint for those seeking health, protection, a  
10:28:54 3 number of other positive allocations?

10:29:03 4 MR. PHANCO: I would object to speculation.  
10:29:04 5 He's already stated in his experience.

10:29:06 6 THE COURT: Well, he can testify as to his  
10:29:09 7 knowledge, and other than that -- so you can testify  
10:29:16 8 as to your knowledge regarding Santa Muerte.

10:29:19 9 A. In my experience, the Santa Muerte is used by  
10:29:24 10 drug traffickers to pray for protection from drug dealers  
10:29:27 11 and police.

10:29:33 12 Q. (By Mr. Dunn) Quite honestly and quite frankly,  
10:29:34 13 you don't know why Mr. Monrroy had Santa Muerte in his  
10:29:39 14 home, do you?

10:29:40 15 A. No.

10:29:42 16 Q. It's safe to say that your characterization  
10:29:43 17 could be wrong of why Mr. Monrroy would have Santa Muerte  
10:29:51 18 in his home, correct?

10:29:52 19 A. Yes, sir.

10:29:58 20 MR. DUNN: Pass the witness, Judge.

10:29:59 21 THE COURT: Redirect?

10:30:00 22 MR. PHANCO: Thank you, Your Honor.

23 **REDIRECT EXAMINATION BY THE STATE**

10:30:02 24 BY MR. PHANCO::

10:30:02 25 Q. On the -- you were going to get a search

10:30:10 1 warrant taken -- you told the jury if he had not given you  
10:30:14 2 a consent, you would have gone to get a search warrant. I  
10:30:16 3 forgot to ask you. At any point in time, did you threaten  
10:30:19 4 him to go get a search warrant?

10:30:21 5 A. No.

10:30:21 6 Q. Did you tell him you were going to do it if he  
10:30:23 7 didn't consent?

10:30:24 8 MR. DUNN: Objection, Your Honor, asked and  
10:30:25 9 answered.

10:30:25 10 THE COURT: It's overruled.

10:30:26 11 A. No, sir.

10:30:26 12 Q. (By Mr. Phanco) Never did any of that?

10:30:27 13 A. No.

10:30:28 14 Q. I want to talk about this -- there are 10  
10:30:30 15 officers on the scene. Do you call as many officers as  
10:30:34 16 you can as a show of force to show if you mess with us --

10:30:37 17 MR. DUNN: Objection, leading.

10:30:38 18 THE COURT: It's overruled.

10:30:39 19 A. Absolutely.

10:30:40 20 Q. (By Mr. Phanco) Okay. And why is that? Is it  
10:30:41 21 to bully them into a consent?

10:30:44 22 A. No.

10:30:44 23 Q. Tell the jury why that is.

10:30:46 24 A. It's -- we want to go home, and drug  
10:30:49 25 traffickers are commonly known to have firearms. I myself

10:30:53 1 have been involved in a shootout in a drug house. So  
10:30:57 2 we're going to bring manpower with us.

10:30:59 3 Q. All right. Did you know who was in that  
10:31:01 4 house --

10:31:02 5 A. No.

10:31:03 6 Q. -- when you first made contact with the  
10:31:05 7 defendant?

10:31:06 8 A. No, I did not.

10:31:07 9 Q. Did you want people there to back you up?

10:31:11 10 A. Of course, yes.

10:31:13 11 Q. Did you know what kind of firepower he had in  
10:31:16 12 the house?

10:31:16 13 A. No, I did not.

10:31:19 14 Q. You stated that he didn't have a weapon on him,  
10:31:22 15 right?

10:31:22 16 A. Correct.

10:31:24 17 Q. Later on in your search -- and you said you had  
10:31:34 18 five or six guys go in the house with you, right --

10:31:37 19 A. Yes, sir.

10:31:37 20 Q. -- when you went to get the consent form?

10:31:41 21 A. Yes, approximately.

10:31:41 22 Q. Did you bring five or six guys in order to  
10:31:44 23 bully him?

10:31:45 24 A. No.

10:31:45 25 MR. DUNN: Objection, Your Honor, asked and

10:31:46 1 answered.

10:31:47 2 THE WITNESS: That's sustained.

10:31:48 3 Q. (By Mr. Phanco) Specifically, did you bring  
10:31:49 4 people into the house to bully him?

10:31:52 5 MR. DUNN: Objection, Your Honor, asked and  
10:31:53 6 answered.

10:31:54 7 THE COURT: Overruled.

10:31:55 8 Q. (By Mr. Phanco) Go ahead.

10:31:55 9 A. No, sir.

10:31:56 10 Q. Why did you bring five or six guys into the  
10:31:58 11 house with you when you got the consent?

10:32:00 12 A. Officer safety.

10:32:01 13 Q. At that point in time, had anybody made sure  
10:32:03 14 that there was nobody else in the house with firearms or  
10:32:06 15 anything like that? In other words, was it secure to you?

10:32:09 16 A. It was not secure to me.

10:32:11 17 Q. Did you want people there to back you up?

10:32:12 18 A. Yes.

10:32:13 19 Q. Does a picture like this -- does that bother  
10:32:20 20 you as a police officer going inside of that house?

10:32:22 21 MR. DUNN: Objection, Your Honor,  
10:32:22 22 irrelevant as to what bothers him.

10:32:24 23 THE COURT: Overruled.

10:32:24 24 A. Yes, it does.

10:32:25 25 Q. (By Mr. Phanco) Why?

10:32:27 1 A. Because it's a weapon used for deadly force.

10:32:31 2 Q. All right. Tell me and tell this jury what was  
10:32:33 3 inside of that weapon ready to be fired?

10:32:36 4 MR. DUNN: Objection, Your Honor, outside  
10:32:37 5 the scope, one; two, it's irrelevant.

10:32:40 6 THE COURT: It's overruled.

10:32:40 7 A. Live rounds.

10:32:41 8 Q. (By Mr. Phanco) All right. So tell the jury  
10:32:46 9 why you brought five or six guys into the house with you  
10:32:49 10 when you had him sign the consent form?

10:32:51 11 MR. DUNN: Objection, Your Honor, asked and  
10:32:52 12 answered.

10:32:53 13 THE COURT: It's overruled.

10:32:54 14 A. Per officer safety backup.

10:32:56 15 Q. (By Mr. Phanco) Any of them sit at the table  
10:32:58 16 with you and threaten him?

10:32:59 17 A. No.

10:32:59 18 Q. Any of you threaten his wife?

10:33:01 19 A. No.

10:33:01 20 Q. Hold his kids in the living room in some sort  
10:33:04 21 of fashion that would be threatening?

10:33:17 22 A. No.

10:33:17 23 Q. You stated that the firearms, he was -- in your  
10:33:21 24 view, he has a right to have firearms in his home, right?

10:33:24 25 A. Yes.

10:33:24 1 Q. And you stated that it is not illegal to have  
10:33:27 2 firearms in your home. You can have it for protection?

10:33:30 3 A. Correct.

10:33:31 4 Q. Specifically, there were two firearms found in  
10:33:34 5 his room, correct?

10:33:35 6 MR. DUNN: Objection, leading.

10:33:36 7 THE COURT: It's overruled.

10:33:37 8 A. Yes, there was.

10:33:38 9 Q. (By Mr. Phanco) And where was this one found?

10:33:39 10 A. That's the one, I believe, in the speaker box  
10:33:41 11 upstairs in the loft.

10:33:43 12 Q. Okay. And in your experience and training as a  
10:33:48 13 police officer, do you feel that all these firearms were  
10:33:51 14 there for his own protection, or do you believe in your  
10:33:54 15 training and experience it was there to protect his drug  
10:33:57 16 trade?

10:33:58 17 MR. DUNN: Objection, calls for  
10:33:58 18 speculation, outside the scope of cross-examination,  
10:34:00 19 and it's irrelevant to this case.

10:34:04 20 THE COURT: All right. He's doing direct  
10:34:05 21 examination, and it's relevant to the issue of the  
10:34:13 22 State's burden. So I'm going to permit it. Restate  
10:34:16 23 your question, sir.

10:34:18 24 Q. (By Mr. Phanco) You had stated that, yes,  
10:34:19 25 people can have firearms for their own personal use and

10:34:23 1 protection. Do you believe in the manner and means in  
10:34:25 2 which you found the firearms in the defendant's home, that  
10:34:29 3 he was using those firearms also to protect his drug  
10:34:32 4 trade, that includes the drugs and, potentially, money he  
10:34:35 5 had in that house?

10:34:35 6 A. I believe so.

10:34:36 7 Q. Why is that?

10:34:39 8 A. Based on their location, where they were at,  
10:34:41 9 they were loaded. As you can see, that one is next to the  
10:34:45 10 cut and the currency. It all leads me to believe that's  
10:34:52 11 what they were for.

10:34:53 12 Q. And is a firearm a deadly weapon?

10:34:57 13 A. Yes, it is.

10:34:58 14 Q. All right. Going to the consent form that you  
10:35:01 15 had him sign, the defense attorney was talking to you  
10:35:04 16 about -- he said he couldn't read and, you know, but you  
10:35:07 17 gave him the form anyway. Explain to the jury what you  
10:35:10 18 meant when you said he couldn't read.

10:35:13 19 A. What I meant?

10:35:14 20 MR. DUNN: Objection, Your Honor, that  
10:35:15 21 calls for speculation, what he meant by what he  
10:35:18 22 couldn't read. He doesn't know unless he asked him:  
10:35:21 23 What do you mean by you can't read?

10:35:23 24 THE COURT: It's overruled. You may  
10:35:24 25 proceed.

10:35:25 1 MR. PHANCO: I'll rephrase it, Judge.

10:35:26 2 Q. (By Mr. Phanco) In other words, what did you  
10:35:28 3 mean when you asked him, "Can you read?"

10:35:30 4 A. Basically, I was asking him if he could read  
10:35:33 5 and understand English. I wanted to make sure to get him  
10:35:38 6 the right form in the correct language.

10:35:39 7 Q. Because the consent form's in what languages?

10:35:41 8 A. English, Spanish, and Vietnamese.

10:35:46 9 Q. And what did -- did he make a request as to  
10:35:49 10 what form he wanted?

10:35:52 11 A. What I asked him --

10:35:54 12 MR. DUNN: Objection, Your Honor,  
10:35:54 13 nonresponsive. It's a "yes" or "no" question.

10:35:56 14 THE COURT: It's sustained.

10:35:57 15 A. I asked him --

10:36:00 16 THE COURT: Restate your question.

10:36:01 17 Q. (By Mr. Phanco) What did he say as far as what  
10:36:03 18 kind of form he wanted?

10:36:05 19 A. Spanish.

10:36:06 20 Q. So he requested that from you?

10:36:08 21 A. Yes.

10:36:08 22 MR. DUNN: Objection, leading.

10:36:10 23 THE COURT: It's overruled.

10:36:11 24 Q. (By Mr. Phanco) And did it appear to you --  
10:36:14 25 what did he do when he got the form? Did he tell you he

10:36:17 1 didn't understand it?

10:36:19 2 A. No.

10:36:19 3 Q. Did he just sign off right away?

10:36:21 4 A. No.

10:36:22 5 Q. What did he do?

10:36:23 6 A. It appeared to me that he was reading it.

10:36:39 7 Q. You said that you've been in the narcotics

10:36:41 8 division for a bit, and you've done a lot of

10:36:44 9 investigations like this?

10:36:46 10 A. Yes.

10:36:46 11 Q. Not just your own investigation, but have you

10:36:49 12 participated in your partner's and other people's

10:36:51 13 investigation?

10:36:51 14 A. Yes, I have.

10:36:52 15 Q. Have you been there multiple times, or have you

10:36:56 16 had experience a lot with dealing with defendants at their

10:37:04 17 homes?

10:37:04 18 A. Yes, I have.

10:37:06 19 Q. Have you been there again with other officers,

10:37:08 20 say, like 10 officers like in this case?

10:37:11 21 A. Yes.

10:37:12 22 Q. And have you in your experience had people tell

10:37:14 23 you, no, and not consent?

10:37:16 24 A. Yes, I have.

10:37:18 25 Q. And did you beat a consent out of them at that

10:37:22 1 point?

10:37:22 2 A. No.

10:37:22 3 Q. What did you do?

10:37:24 4 A. Left.

10:37:25 5 Q. What would you go do at that point?

10:37:28 6 MR. DUNN: Objection, Your Honor. This  
10:37:29 7 isn't about what he would do in any other case. This  
10:37:32 8 is about what he has or has not done in this  
10:37:34 9 particular case. It holds no relevance.

10:37:37 10 THE COURT: It's overruled.

10:37:39 11 Q. (By Mr. Phanco) Go ahead.

10:37:39 12 A. If I had probable cause, I would draft a  
10:37:42 13 warrant; if I didn't, it would be the end of it.

10:37:45 14 Q. You stated on -- I can't say, you know, the  
10:37:49 15 shrine thing?

10:37:50 16 A. Yes, sir.

10:37:51 17 Q. Do you -- sure, it could be there for any  
10:37:55 18 purposes, right?

10:37:56 19 A. That's correct.

10:37:57 20 Q. In your experience, have you found those  
10:38:00 21 before?

10:38:00 22 A. Yes, I have.

10:38:02 23 Q. And where have you found them?

10:38:03 24 A. In places where we're conducting narcotics  
10:38:06 25 investigations.

10:38:07 1 Q. And have you ever seen a shrine like that  
10:38:13 2 outside of the scope of a narcotics investigation where  
10:38:16 3 someone who is involved in a narcotics trade?

10:38:19 4 A. I have seen them in --

10:38:21 5 MR. DUNN: Objection, nonresponsive after  
10:38:22 6 "I have seen them."

10:38:24 7 THE COURT: Well, the answer then is, yes,  
10:38:25 8 and then you need a follow-up question.

10:38:28 9 Q. (By Mr. Phanco) Explain your answer.

10:38:29 10 A. I have seen them in places where we're  
10:38:32 11 conducting narcotics investigations and no narcotics were  
10:38:35 12 found; but, mostly, I've seen them in places where  
10:38:39 13 narcotics have been found.

10:38:41 14 Q. Thank you.

10:38:42 15 MR. PHANCO: I pass the witness.

10:38:43 16 THE COURT: Recross?

10:38:45 17 MR. DUNN: Yes, Judge, briefly.

18 **RECROSS-EXAMINATION BY THE DEFENSE**

10:38:47 19 BY MR. DUNN::

10:38:48 20 Q. Now, let's go back. We'll start off with the  
10:38:52 21 reading and the writing, the consent, sir. You asked  
10:38:58 22 Mr. Monrroy if he could speak English, correct?

10:39:03 23 A. Correct.

10:39:04 24 Q. You asked him if he could read. Did you make a  
10:39:07 25 differentiation between, can you read English or can you

10:39:10 1 read Spanish?

10:39:12 2 A. No, sir.

10:39:13 3 Q. So when he said -- when you asked, "Can you  
10:39:15 4 read?," his universal answer was, "No," correct?

10:39:20 5 A. No. I asked him if he could read English. He  
10:39:24 6 said, "No."

10:39:25 7 Q. Well, you just said seven seconds ago you did  
10:39:29 8 not make a differentiation between reading English or  
10:39:32 9 Spanish, correct?

10:39:34 10 A. I asked him if he could read or speak English,  
10:39:37 11 and he said, "No."

10:39:39 12 Q. The question that I'm asking you, when you  
10:39:42 13 asked Mr. Monrroy if he could read, did you make a  
10:39:45 14 differentiation between English and Spanish?

10:39:48 15 A. Yes, I did.

10:39:49 16 Q. So you're changing your answer now?

10:39:52 17 A. Yes, sir. I misunderstood the question.

10:39:53 18 Q. Fair enough. So -- so you said, "Can you speak  
10:39:57 19 English?" He says, "No." And you said, can you speak or  
10:40:01 20 can you read -- can you read Spanish or can you read  
10:40:06 21 English? What were your exact words to Mr. Monrroy?  
10:40:11 22 Because you said before -- you said before that your exact  
10:40:15 23 words to Mr. Monrroy were, "Can you speak English and can  
10:40:19 24 you read?" So now are you changing your answer as to what  
10:40:23 25 you said to Mr. Monrroy?

10:40:24 1 A. No, sir. I asked him, "Can you read and speak  
10:40:26 2 English?" And he said, "No."

10:40:29 3 Q. So, we reverse the order and you've put read  
10:40:33 4 first now, correct?

10:40:36 5 A. Sir, I do not remember in what order. But  
10:40:38 6 those were the two questions -- those two items were asked  
10:40:42 7 of him.

10:40:43 8 Q. Safe to say that the way you ask the question  
10:40:45 9 is very important in this particular type of scenario,  
10:40:48 10 correct?

10:40:48 11 A. Correct.

10:40:48 12 Q. And safe to say if he interprets what you say  
10:40:50 13 in one way, he's going to answer the way he interprets,  
10:40:55 14 correct?

10:40:55 15 A. Correct.

10:40:55 16 Q. So if you don't make a differentiation between,  
10:40:58 17 do you read English or Spanish, he may take that to mean,  
10:41:02 18 do you read -- do I know how to read in general, correct?

10:41:06 19 A. Correct.

10:41:07 20 Q. So the question is, did you make a  
10:41:09 21 differentiation between reading Spanish and reading  
10:41:11 22 English?

10:41:14 23 A. No, sir.

10:41:20 24 Q. You said that Mr. Monrroy, when he was at the  
10:41:23 25 table, he looked -- he was sitting there looking at the

10:41:27 1 paper, correct?

10:41:27 2 A. That's correct.

10:41:28 3 Q. Certainly, if he didn't know how to read, he  
10:41:31 4 could have just been looking at the words trying to figure  
10:41:34 5 out what it all meant, correct?

10:41:35 6 A. That's correct.

10:41:38 7 Q. Might have been embarrassed to ask you guys:  
10:41:40 8 Can you explain to me what I'm doing right now, correct?

10:41:43 9 A. That's correct.

10:41:45 10 Q. All we know is that he wrote his name out,  
10:41:47 11 right?

10:41:48 12 A. Correct.

10:41:49 13 Q. He didn't even sign it. He wrote it in print,  
10:41:55 14 not in signature form, correct?

10:41:58 15 A. Correct.

10:42:04 16 Q. You know what kind of education Mr. Monrroy  
10:42:06 17 has?

10:42:07 18 A. No, I do not.

10:42:07 19 Q. Do you know if he ever went to school?

10:42:17 20 A. No, I do not.

10:42:18 21 Q. Let's go to the guns. You just told the State  
10:42:24 22 that the guns that were found and the manner in which they  
10:42:27 23 were found usually mean and denote that they're there for  
10:42:34 24 protection and in the use of delivery of controlled  
10:42:37 25 substances, correct?

10:42:40 1 A. I don't think I said "in the use of delivery of  
10:42:43 2 controlled substances."

10:42:44 3 Q. What did you say?

10:42:45 4 A. They're used for protection of their product.

10:42:48 5 Q. Fair enough. And when Mr. Monrroy gave you  
10:42:52 6 this bag of alleged cocaine, did he have a gun on him to  
10:42:56 7 protect his alleged product?

10:42:59 8 A. No, he didn't.

10:43:03 9 Q. The guns at his house might not have been for  
10:43:05 10 the protection of that product because they weren't used  
10:43:08 11 when he was in his interaction with you, correct?

10:43:10 12 A. That's correct.

10:43:10 13 Q. It might just be guns that he owns or his  
10:43:13 14 family owns, correct?

10:43:14 15 A. That's correct.

10:43:15 16 Q. We can't dictate where Mr. Monrroy keeps his  
10:43:18 17 guns, can we?

10:43:19 18 A. No.

10:43:30 19 Q. Just to be clear, you have already stated that  
10:43:31 20 Mr. Monrroy did not use a gun in the commission of the act  
10:43:34 21 of which he was charged today, correct?

10:43:37 22 A. That's correct.

10:43:48 23 MR. DUNN: No further questions, Judge.

10:43:49 24 THE COURT: Any rebuttal?

10:43:52 25 MR. PHANCO: No.

10:43:52 1 THE COURT: You may step down, sir. Call  
10:43:53 2 your next witness, please.

10:43:56 3 MR. PHANCO: The State calls Mariam Kane,  
10:44:01 4 Your Honor.

10:44:47 5 THE BAILIFF: This witness has not been  
10:44:48 6 sworn in.

10:44:49 7 THE COURT: All right, ma'am. Come  
10:44:50 8 forward. I'll swear you in. Please raise your right  
10:44:58 9 hand.

10 (Whereupon the witness is sworn in  
11 by the Court.)

10:45:02 12 THE COURT: You may proceed when you are  
10:45:09 13 ready, sir.

10:45:09 14 MR. PHANCO: Thank you, Your Honor.

15 **MARIAM KANE,**  
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION BY THE STATE**

10:45:11 18 BY MR. PHANCO::

10:45:12 19 Q. Good morning, Ms. Kane.

10:45:13 20 A. Good morning.

10:45:15 21 Q. If you could, tell us your name and spell it so  
10:45:18 22 the court reporter can get it down.

10:45:20 23 A. My name is Mariam Kane, M-a-r-i-a-m. Last name  
10:45:25 24 K-a-n-e.

10:45:26 25 Q. And explain to the jury what you do for a