

1 Officer Aguirre.

2 THE COURT: All right, Mr. Aguirre. You
3 may proceed.

4 **OFFICER JESUS AGUIRRE,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION BY THE STATE**

7 BY MR. PHANCO:

8 Q. The drugs that you found on the mantel place,
9 you stated earlier that they were in plain view?

10 MR. DUNN: I'm going to object to this line
11 of questioning. This is not in rebuttal.

12 THE COURT: Well, it is rebuttal, sir.

13 MR. DUNN: There was a specified type of
14 rebuttal that the State said that --

15 THE COURT: The State can rebut anything
16 presented by the defense.

17 MR. DUNN: Yes, Judge.

18 Q. (By Mr. Phanco) And you stated they were in
19 plain view?

20 A. Yes, they were.

21 Q. Did you believe you had probable cause to
22 arrest the defendant's wife?

23 A. Yes, I did.

24 Q. Okay. Now, why did you choose not to?

25 A. Basically, two reasons. The first one is the

1 defendant claimed that the drugs were his when he gave me
2 that initial statement saying, hey, these are my drugs.
3 Leave my wife alone; and number two, just out of
4 compassion for the kids, I felt really bad for them.

5 Q. Okay. Now, at any point in time before the
6 consent form was signed, did you ever bring up calling
7 CPS, or doing anything to the defendant's kids?

8 A. No, I did not.

9 Q. Did you ever speak to the wife about problems
10 with CPS?

11 A. No, I do not recall ever mentioning anything
12 about CPS.

13 Q. Did you ever have a conversation with the wife
14 about the probable cause for you to arrest her?

15 A. Yes, I did.

16 Q. Now, I want you to explain to the jury when
17 that took place specifically and what you spoke to her
18 about; not what she said, but what you spoke to her about.

19 A. I basically -- toward the end of the
20 investigation when we're sitting around, I admonished her
21 for putting --

22 Q. Real quick. You say at the end of the
23 investigation. Are you saying after the consent form?

24 A. Yes, after the consent form.

25 Q. After you found everything?

1 A. Yes, correct.

2 Q. Keep going.

3 A. I admonished her for putting her family in this
4 position. I advised her that a lot of times drug dealers'
5 residences get invaded by other drug dealers looking to
6 rob them for weapons and money. And I told her it was a
7 bad position to put your family in. And I also told her,
8 "You could also get arrested for these type of things. I
9 mean, they're in your house right in front of -- in my
10 plain view." And she basically said she understood.

11 Q. And did you talk to her about what would happen
12 if she were arrested, as far as what would happen to her
13 kids?

14 A. I don't recall ever talking about what would
15 happen to her kids. I do tell -- I do remember telling
16 her, "You could be arrested and charged just like your
17 husband is currently being arrested and charged."

18 Q. Did you talk to any one of the daughters?

19 A. I did, to the oldest one.

20 Q. And why did you talk to her?

21 A. Well, during -- like I said, toward the end of
22 the investigation, we had a little time while we were
23 wrapping everything up. I asked the daughter -- I don't
24 even remember how we came across this conversation, but I
25 said, "What school -- what high school do you go to?" And

1 it just so happen she said she went to High School for Law
2 Enforcement, which is where I went to. And I told her --
3 I started telling her, "Don't take the path of your
4 parents." I said, "Take your own path." If I remember --
5 recall her, she said she wanted to be a police officer.
6 And I said, "Wow, that's great." I said, "But there are
7 two paths in life, take the correct one," and she was kind
8 of in agreement, nodding in agreement.

9 Q. So you had this conversation with the both of
10 them well after the -- well after finding the drugs and
11 the consent form with the defendant?

12 MR. DUNN: Objection to leading.

13 THE COURT: Do not lead. Sustained.

14 MR. PHANCO: I pass the witness, Your
15 Honor.

16 THE COURT: Cross?

17 MR. DUNN: Yes, Judge.

18 **CROSS-EXAMINATION BY THE DEFENSE**

19 BY MR. DUNN:

20 Q. Officer Aguirre, it's your testimony now that
21 you talked to Ms. Talavera about the possibility of
22 arresting her?

23 A. Yes.

24 Q. Isn't it true that on your direct testimony a
25 couple of days ago that you said that you had never spoken

1 to either Mr. Monrroy or Ms. Talavera about the mention of
2 any kind of arrest of Ms. Talavera or taking away her
3 children?

4 A. No, sir. I think --

5 Q. That's not true?

6 A. No, sir, that's not true.

7 Q. So it's your testimony today that you never
8 said -- that you made no mention of ever arresting
9 Ms. Talavera?

10 A. I believe the question that was asked of me was
11 threaten to arrest before the consent.

12 Q. On direct testimony did you ever say that you
13 made no mention of the possibility of Ms. Talavera's
14 arrest?

15 A. Once again, sir, I think my response was I did
16 not threaten to arrest her.

17 Q. Today your testimony has changed to now after
18 the fact you talked to her about the possibility of her
19 arrest?

20 A. Yes, sir. This was well after the consent was
21 obtained.

22 Q. Isn't it true that you -- that you called --
23 the DA's office was called and the request was made for
24 charges to be brought up on Ms. Talavera?

25 A. No, sir, I did not -- I did not call the DA and

1 request charges on her.

2 Q. There's no person on that task force that
3 called the DA's office and asked for charges to be brought
4 up by Ms. Talavera?

5 MR. PHANCO: I object to the relevance,
6 Your Honor.

7 MR. DUNN: Judge, may we approach?

8 THE COURT: No. It's overruled.

9 Q. (By Mr. Dunn) Go ahead and answer.

10 A. No, sir. It's my belief that nobody called on
11 the scene the DA to get charges on anybody.

12 Q. So if the DA, the district attorney, or the
13 assistant district attorney that took the charges were to
14 testify that he was also asked about accepting charges on
15 Ana Talavera, and he refused those charges, would that be
16 a lie?

17 A. I'm sorry. Repeat the question.

18 Q. Sure. If the ADA that accepted the charges on
19 Mr. Monrroy --

20 MR. PHANCO: Your Honor, may we approach?

21 THE COURT: Well, it assumes facts not in
22 evidence. So I'm not going to permit the question.

23 MR. DUNN: Judge, may we approach?

24 THE COURT: No.

25 Q. (By Mr. Dunn) Who was the ADA that took the

1 charges, sir?

2 MR. PHANCO: Your Honor, I object to the
3 relevance.

4 THE COURT: Sustained.

5 Q. (By Mr. Dunn) Did you make the call to the ADA?

6 A. Yes, sir.

7 Q. What did that call to the ADA consist of, sir?

8 MR. PHANCO: Objection to hearsay, Your
9 Honor.

10 THE COURT: Sustained.

11 Q. (By Mr. Dunn) What did you say to the ADA?

12 MR. PHANCO: Objection to the hearsay, Your
13 Honor.

14 THE COURT: Sustained.

15 MR. DUNN: Pass the witness, Judge.

16 THE COURT: You may step down, sir. State?

17 MR. PHANCO: The State rests, Your Honor.

18 THE COURT: All right. Defense?

19 MR. DUNN: We would request rebuttal
20 evidence, Judge.

21 THE COURT: I'm sorry, but you don't have
22 the right to rebuttal. The defense close, the State
23 close. Ladies and gentlemen, tomorrow morning we're
24 going to -- the case is rested for today. Tomorrow
25 morning you will return at 9:00 and we'll hear

1 closing arguments and then I will give you the case.

2 (The jury exits the courtroom.)

3 MR. DUNN: Before the Court adjourns, we'd
4 like to put something on the record.

5 THE COURT: Go ahead.

6 MR. DUNN: Judge, we'd like to make a
7 proffer to this Court. So far as the testimony of
8 Officer Aguirre is concerned, he has just testified
9 that he made no mention to the ADA that was on duty
10 to take the charges against Mr. Monrroy, about the
11 possibility of charging Ms. Talavera. Consequently,
12 the ADA that took the charge is the prosecutor trying
13 the case today, Mr. Phanco. Mr. Phanco has said to
14 counsel, as well as to this Court, I believe, that he
15 refused to take charges in regards to Ms. Talavera
16 when asked by the narcotics agency.

17 We believe that Mr. Aguirre's testimony is
18 in direct contravention to the conversation that has
19 been had by the State in regards to this matter. We
20 believe that he's perjured himself at this point.

21 THE COURT: Who has?

22 MR. DUNN: Mr. Aguirre.

23 THE COURT: No, he hasn't.

24 MR. DUNN: We would ask then to have
25 Mr. Phanco take the stand outside the presence of the

1 jury to that effect.

2 THE COURT: Not today. We will start --
3 you've made your record. And tomorrow morning what
4 we will do is we will read the jury charge. In fact,
5 we will talk about the jury charge now if your record
6 is finished.

7 MR. DUNN: It is finished, Judge.

8 THE COURT: Have you guys had an
9 opportunity to review the charge?

10 MR. PHANCO: Yes, Your Honor. The only
11 thing that I -- I didn't see the lesser included in
12 the copy that was given to me.

13 THE COURT: There was not a lesser included
14 given in there. A lesser included would be
15 appropriate because it's a question of fact whether
16 or not there was consent. The jury could find that
17 there was no consent to search, and then -- but then
18 the only -- the hand-to-hand transaction was prior to
19 the search.

20 MR. PHANCO: Yes, Your Honor.

21 THE COURT: So a lesser included is
22 appropriate if that's what you want.

23 MR. PHANCO: So the question is do we want
24 to put in delivery of a controlled substance and
25 possession with intent to deliver as two different

1 ones, or should we just do it as a delivery and a
2 possession. I think you're right, the possession is
3 the only lesser included. Delivery is not a lesser
4 included of possession.

5 THE COURT: Well, this is a possession with
6 intent to deliver.

7 MR. PHANCO: So it would be just possession
8 with intent to deliver between 1 to 4 grams because
9 that would be the appropriate lesser included.

10 THE COURT: Yes, of 2.8.

11 MR. PHANCO: So PCS with intent to deliver,
12 1 to 4.

13 THE COURT: Any objection to the lesser --
14 to the lesser of 2.8?

15 MR. DUNN: We would object simply because
16 we don't believe that it's been qualitatively
17 established, the 2.8, based on the testimony given to
18 the weights by Officer Aguirre and Ms. Kane as to the
19 process of weighing those. And we would say that it
20 has not been clearly established that a specific
21 weight amount for the purportedly delivered substance
22 to Officer Aguirre has been established.

23 THE COURT: Okay. I'm not sure if I
24 understand your objection to the lesser. You're
25 saying there wasn't --

1 MR. DUNN: Sufficient evidence to show an
2 exact amount to bring it down to the range of 1 to 4.

3 THE COURT: 2.8 is between 1 and 4.

4 MR. DUNN: 2.8, I understand that.

5 THE COURT: That's why I'm not following
6 you.

7 MR. DUNN: What I'm saying is there was
8 testimony given by Ms. Kane, the forensic analyst,
9 and Officer Aguirre as to weights and measures, and
10 there was some controversy as to the exact amount of
11 the weights, and we raise that as an issue. We would
12 argue --

13 THE COURT: It's a fact question, though.

14 MR. DUNN: I'm just making the objection.

15 THE COURT: Okay. All right. Okay.
16 That's overruled.

17 MR. DUNN: As far as the defense is
18 concerned, again we would ask that you enumerate, as
19 well, both the residence and the truck. And -- and I
20 understand that -- actually, I'll waive that.
21 Well --

22 THE COURT: The problem with the truck is
23 that there is no -- there's nothing -- there's no lab
24 on anything that was found in the truck. So I'm not
25 going to let the State argue that in the 4 to 200, or

1 whatever -- or the 4 to 200 because there's no lab on
2 it.

3 MR. DUNN: The only other thing the defense
4 would comment on is the language for the actual
5 verdict. We would ask that some language be included
6 to specifically denote if the jury has found
7 suppression of the items located in the house valid,
8 because as it's written, it's guilty or not guilty.
9 But the reason -- the reason for the not guilty is
10 important, as has been brought up by the State.

11 THE COURT: It's important to who?

12 MR. DUNN: It's important to this whole
13 case and the adjoining quasi criminal case that's
14 associated with it.

15 THE COURT: I'll tell you again, I'm not
16 trying a seizure case. I'm trying a possession case.

17 MR. DUNN: I understand.

18 THE COURT: That's my charge. And if the
19 jury says that it was not consent, then it wasn't --
20 then that's -- it wasn't consensual. There's no
21 difference, as far as I know.

22 MR. DUNN: Okay.

23 THE COURT: And, you know, I don't know
24 what else to say. Okay. So any other objections?
25 So we have a lesser in here.

1 MR. DUNN: There are two different --

2 THE COURT: What you got, Mr. Parrish?

3 MR. PARRISH: Your Honor, there are two
4 different --

5 THE COURT: Oh, yeah. No, no, no, I saw
6 it. She gave me both. I'll read the long one. I'm
7 sorry.

8 MR. PARRISH: No objection to the long one,
9 Your Honor.

10 THE COURT: Anything else, Mr. Parrish, Mr.
11 Dunn?

12 MR. PARRISH: That's it, Your Honor.

13 MR. DUNN: Not at this time, Judge.

14 THE COURT: Okay. I think there's also the
15 page where testimony -- we don't need that anymore.
16 Make sure that's out of here. So I'll give you guys
17 a fresh copy tomorrow of the lesser. Then tomorrow
18 we'll try to -- I will get final objections on the
19 charge, on the prepared charge, and then if there are
20 objections, then they will be on the record and we
21 will go forward.

22 (Whereupon the Court adjourned for the
23 day.)

24

25

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, Mary M. Mills, Official Court Reporter in and for
4 the 228th District Court of Harris, State of Texas, do
5 hereby certify that the above and foregoing contains a
6 true and correct transcription of all portions of evidence
7 and other proceedings requested in writing by counsel for
8 the parties to be included in this volume of the
9 Reporter's Record in the above-styled and numbered cause,
10 all of which occurred in open court or in chambers and
11 were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$_____ and was
17 paid/will be paid by Harris County.

18 WITNESS MY OFFICIAL HAND this the 14th day of
19 September, 2015.

20 /s/Mary M. Mills, CSR
21 Texas CSR 2309
22 Official Court Reporter
23 228th District Court
24 Harris County, Texas
25 1201 Franklin Street, 16th Floor
Houston, Texas 77002
Phone: (713) 755-0025
Expiration: 12/31/2015

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MR. DUNN: [145] 8/14 9/6 9/11 9/23 31/22 35/5 38/13 39/12 39/17 40/2 43/23 46/22 47/8 47/23 48/22 56/7 66/6 66/13 66/24 67/11 68/7 68/14 69/6 69/13 69/22 70/1 70/8 70/21 85/18 96/17 97/24 98/14 99/5 101/19 102/9 104/19 105/9 105/18 105/25 106/2 106/18 106/21 107/2 107/6 108/21 110/18 114/25 115/19 115/23 116/3 116/19 117/4 117/16 117/23 122/7 122/19 129/8 131/2 132/18 132/21 142/8 142/10 150/6 150/14 151/5 152/1 152/15 153/10 155/23 156/15 157/16 158/3 159/17 160/5 161/23 162/6 162/25 163/6 164/21 164/25 165/10 165/18 166/2 166/9 166/18 167/2 167/24 168/7 168/22 169/3 170/21 172/17 174/2 176/3 176/14 176/20 177/20 179/8 179/16 182/1 182/19 183/1 183/5 183/22 183/25 184/19 184/25 185/21 186/2 187/5 187/10 187/22 188/4 188/7 188/9 188/11 188/19 190/7 190/24 192/9 192/12 192/16 195/11 195/16 197/6 197/22 198/14 198/18 199/2 199/5 199/21 199/23 200/6 201/14 201/25 202/3 202/6 202/13 202/16 203/2 203/11 203/16 203/21 203/25 204/12 MR. PARRISH: [10] 17/21 27/4 28/6 28/13 28/16 28/21 29/20 204/2 204/7 204/11 MR. PHANCO: [91] 8/1 8/8 8/11 8/17 9/22 10/4 10/15 11/24 17/18 27/7 28/20 29/22 29/25 32/19 41/13 43/7 43/13 43/20 46/5 46/18 47/14 47/17 47/20 48/19 65/19 66/15 67/19 68/9 68/19 69/3 93/1 93/6 98/3 98/7 99/8 108/25 110/7 111/2 113/9 113/14 113/19 113/24 115/2 115/16 122/18 132/15 150/16 150/18 151/11 154/24 163/24 170/19 171/15 171/20 172/8 176/16 177/22 179/18 180/7 180/10 180/16 180/21 180/24 181/10 181/14 181/17 181/20 182/16 183/10 183/15 186/11 186/14 188/1 190/13 190/16 190/18 191/4 191/8 191/24 195/13 197/4 197/19 198/1 198/7 198/11 198/16 200/9 200/19 200/22 201/6 201/10 THE BAILIFF: [10] 10/1 10/6 30/1 43/10 43/17 45/5 70/4 116/10 132/24 142/5 THE COURT: [262] THE WITNESS: [12] 28/11 46/7 133/4 133/7 133/9 133/12 133/15 133/20 133/22 134/5 134/9 134/12	-AND [1] 2/7 . .40 [2] 6/6 45/16 / /s/Mary [1] 205/20 0 0025 [1] 205/23 01-15-00644-CR [1] 1/5 1 1-4 [1] 98/13 10 [10] 18/8 22/22 22/22 57/3 57/5 72/18 108/20 164/5 164/9 165/22 10:30 [1] 68/23 11 [1] 22/22 11:00 to [1] 114/13 12 [5] 22/22 42/7 46/1 57/3 57/5 12/31/2015 [1] 205/24 1201 [2] 2/4 205/22 13 [1] 49/5 1445254 [1] 1/3 14th [1] 205/17 15 [12] 11/11 32/7 32/22 49/14 73/7 73/19 74/22 75/1 118/8 119/5 143/9 150/9 15-year-old [3] 114/16 116/4 177/10 150 [1] 179/1 15th [2] 73/24 143/17 16 [6] 3/3 66/22 72/6 108/12 114/11 177/5 16th [2] 1/14 205/22 18 [1] 102/24 19 [3] 96/9 103/4 161/7 1923 [1] 2/5 1998 [1] 177/5 2 2.8 [5] 201/10 201/14 201/17 202/3 202/4 2.8 grams [1] 155/5 20 [2] 155/3 155/4 200 [2] 202/25 203/1 200 grams [1] 143/7 2014 [10] 11/11 32/7 32/22 49/14 73/8 73/19 74/22 75/1 119/6 143/9 2015 [4] 1/14 3/3 205/18 205/24 21 [1] 164/9 22 [4] 60/12 92/3 92/15 148/7 228TH [3] 1/8 205/3 205/21 2306 [1] 2/10 2309 [1] 205/20 24061991 [1] 2/9 24070413 [1] 2/3 24075487 [1] 2/8 27 [3] 8/3 8/10 8/11 28 [2] 44/13 46/20 28-33 [1] 47/13 2820 [4] 34/16 74/6 74/9 74/23 29 [4] 45/8 45/9 45/11 46/20	30 [10] 18/10 18/12 18/16 18/21 45/8 45/9 45/10 46/20 53/16 53/19 300 [1] 178/9 31 [4] 45/14 45/15 45/16 46/20 32 [3] 45/17 45/20 46/21 33 [4] 45/17 45/21 46/21 47/13 35 [4] 46/2 46/3 46/6 46/21 35-37 [1] 47/14 36 [3] 46/10 46/13 46/21 37 [4] 46/10 46/14 46/21 47/14 377-5783 [1] 2/11 3:00 [1] 150/9 4 4 grams [4] 155/22 156/2 156/3 201/8 430 [3] 51/17 52/2 52/3 45 [4] 53/10 53/11 53/16 53/19 4:00 [1] 75/19 4:30 in [1] 75/19 5 5'8 [1] 174/12 5-7 [1] 176/20 5783 [1] 2/11 5800 [1] 2/5 6 600 [1] 2/4 6:00 [3] 75/7 75/20 75/20 6:30 [1] 75/7 6th [1] 135/18 7 713 [2] 2/5 205/23 755-0025 [1] 205/23 755-5800 [1] 2/5 77002 [1] 205/23 77002-1923 [1] 2/5 77004 [1] 2/11 8 832 [1] 2/11 9 9-millimeter [6] 6/5 6/7 6/8 46/4 46/7 46/13 9:00 [1] 198/25 A A-n-a [1] 71/19 ability [1] 187/25 able [14] 53/20 61/9 61/9 66/11 74/16 74/19 74/20 76/16 92/12 102/15 125/9 139/21 153/7 154/10 about [140] 11/5 12/13 12/13 15/16 18/10 18/12 22/19 23/25 26/21 26/21 26/25 27/23 31/2 32/1 33/17 38/3 38/23 49/19 63/16 66/3 74/24 74/25 75/3 75/6 75/7 75/19 79/20 83/24 86/19 91/1 91/12 91/25 95/3 95/14 95/16 95/19 96/6 96/9 99/15 100/3 101/9 101/24 102/19 102/22 103/7 103/15 103/22 107/15 107/23 108/19 109/16 110/10
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