

1 right over here to the witness stand. I'll swear you
2 in. Please raise your right hand.

3 (Whereupon the witness is sworn in by
4 the Court.)

5 THE COURT: All right. Sir, you can take
6 the stand. Mr. Phanco, your witness. You may
7 proceed as you like, sir. Whenever you are ready.

8 **OFFICER JESUS AGUIRRE,**

9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION BY THE STATE**

11 BY MR. PHANCO:

12 Q. Good afternoon, Officer.

13 A. Hello.

14 Q. If you could introduce yourself to the jury by
15 telling them your first name and your last name, and when
16 you do so, spell it so the court reporter can get it down.

17 A. Officer Jesus Aguirre. Jesus, J-e-s-u-s,
18 Aguirre, A-g-u-i-r-r-e.

19 Q. And you talk fast and I talk fast, so we just
20 need to keep it in mind for the court reporter.

21 A. Okay.

22 Q. Because we need her to get this all down. Tell
23 the jury how you're employed. What do you do for a
24 living?

25 A. Houston police officer.

1 Q. And what kind of education did you go through
2 to become a Houston police officer?

3 A. Six months academy, and then six months of
4 probationary training, on-the-field training.

5 Q. So, how long have you been with HPD total?

6 A. Twenty years.

7 Q. Tell the jury kind of in that 20-year span,
8 what are some of the assignments that you've had with HPD?

9 A. I started in patrol, then I went to the gang
10 task force when we used to have them.

11 Q. Hold on. Tell the jury a little bit about the
12 gang task force and what your responsibilities were.

13 A. We were marked in uniforms and marked units.
14 We were to proactively work the streets, just basically go
15 out and try to curb some of the gang crime that was going
16 on in the mid to late '90s.

17 Q. So where did you go after gangs?

18 A. I went on a task unit, divisional task unit.

19 Q. Task, what's that?

20 A. That's kind of the same thing, only you're in
21 plain clothes. Just surveillance, a lot of surveillance,
22 trying to catch burglars, that kind of stuff.

23 Q. Then what?

24 A. And then narcotics. My present place where I'm
25 working.

1 Q. How long have you been in the narcotics
2 division?

3 A. Since February of 2008.

4 Q. Seven years?

5 A. Yes, sir.

6 Q. In any of your time in narcotics or with HPD,
7 ever had any problems, as far as being -- disciplinary
8 problems with being written up for lying, or anything like
9 that?

10 A. No, sir, just car accidents.

11 Q. When you were in patrol?

12 A. Both.

13 Q. Okay. So tell the -- because your world is --
14 are you undercover when you work in narcotics?

15 A. Yes, sir.

16 Q. Your world is different than the world of me
17 and the jury. So tell the jury kind of like what a day in
18 your life is like. What do you get up and go do?

19 A. Narcotics officers, generally, we work
20 undercover, of course. We try to identify locations that
21 are selling narcotics, people that are selling narcotics.
22 We attempt to purchase drugs from drug dealers, using
23 ourselves, I mean, making our own buys, or sometimes
24 through confidential informants.

25 Q. You have been in narcotics awhile. You said

1 gangs, some other plain clothes units. How many
2 undercover investigations, or hours would you say that you
3 participated in?

4 A. I've done a couple hundred undercover deals.

5 Q. Okay. So you've got a lot of experience as an
6 undercover officer?

7 A. Yes, sir.

8 Q. What about narcotics, you know, just being
9 around narcotics, buying, selling narcotics, you know, in
10 a legal way; how much experience do you have in those type
11 of things?

12 A. I think pretty much eight years of it. That's
13 more of what I do as the undercover side. Some officers
14 don't do as much undercover in the narcotics division;
15 they don't feel comfortable with it. That's what I do. I
16 consider myself probably one of most --

17 MR. DUNN: Objection, Your Honor,
18 nonresponsive at this point.

19 THE COURT: It's sustained.

20 Q. (By Mr. Phanco) Talk about your experience, how
21 you consider yourself to be.

22 A. Very experienced as an undercover officer.

23 Q. All right. I want to draw your attention to a
24 specific date, which was October 15th of 2014. You
25 recall the date?

1 A. Yes, sir.

2 Q. Did you come into contact with someone you know
3 to be Rigoberto Monrroy?

4 A. Yes, I did.

5 Q. Is that person in the courtroom today?

6 A. Yes, he is.

7 Q. I'd like you to point to him, physically point
8 to him and describe him using an article of clothing that
9 he's wearing.

10 A. The defendant is sitting right there in a
11 blue/gray shirt, with dark pants.

12 THE COURT: He's identified the defendant.

13 MR. PHANCO: Thank you, Your Honor.

14 Q. (By Mr. Phanco) All right. So tell me what
15 happened on this date when you came into contact with the
16 defendant.

17 A. I made contact with a third party, and the
18 purpose of contacting that third party was to attempt to
19 make a purchase of cocaine from the defendant.

20 Q. Okay. Now, I don't want you to go specifically
21 into what anybody said to you, but where did you arrive in
22 order to buy the cocaine from the defendant?

23 A. At the front residence of the defendant.

24 Q. All right. And what was the address?

25 A. I believe it's 2820 Iola.

1 Q. Can you spell that for the court reporter?

2 A. I-o-l-a.

3 Q. Very important question here. What county is
4 that?

5 A. Harris County.

6 Q. And would you say the date again? What was the
7 date?

8 A. 10-15-2014.

9 Q. All right. So you arrive. I want to show you
10 what's been previously marked as State's Exhibits 1 and 2.
11 Take a look at them.

12 A. (Witness complies.)

13 Q. State's Exhibits 1 and 2 --

14 A. Yes, sir.

15 Q. What are they?

16 A. They're the defendant's residence, 2820 Iola.

17 Q. Pictures of those?

18 A. Yes, sir, pictures.

19 Q. Do those two pictures fairly and accurately
20 depict what the defendant's resident looked like on
21 October 15, 2014?

22 A. Yes, it does.

23 MR. PHANCO: I ask that State's Exhibits 1
24 and 2 be admitted into evidence. Tendering to
25 opposing counsel for inspection.

1 THE COURT: Any objection to 1 and 2?

2 MR. DUNN: No objection, Your Honor.

3 THE COURT: All right. They're admitted.

4 (Whereupon State's Exhibit Nos. 1 and
5 2 are admitted into evidence.)

6 MR. PHANCO: May I publish to the jury,
7 Your Honor?

8 THE COURT: You may.

9 Q. (By Mr. Phanco) So on the screen to your left,
10 you can actually draw on it like a football kind of. I'd
11 like you to show us by circling which house is the
12 defendant's house.

13 A. (Witness complies.)

14 Q. You stated that you arrived at that house in
15 order to purchase cocaine from the defendant?

16 A. Correct.

17 Q. Where did you park?

18 A. I think the other picture will show better, but
19 I'll do my best here.

20 Q. Please.

21 A. (Marking).

22 Q. All right. I'm going to show you what's
23 been -- go ahead and double click the left corner.

24 A. (Witness complies.)

25 Q. There you go. So this is a view -- and this is

1 State's Exhibit 2 for the record. This is a view coming
2 the opposite way from the house again. Circle the house
3 on this view.

4 A. (Witness complies.)

5 Q. And kind of circle the area where you're
6 parked.

7 A. (Witness complies.)

8 Q. All right. Now, tell the jury kind of what
9 you're wearing, what you're parked in, what kind of car
10 you're driving, that kind of thing.

11 A. I believe I was in a very old van, beat up van,
12 and I was dressed very day labor-ish looking.

13 Q. And you stated that you were there to buy
14 cocaine?

15 A. Yes, I was.

16 Q. Tell us how you came into contact with the
17 defendant at his residence.

18 A. The defendant arrived in his pickup truck and
19 pulled into the driveway and parked in the driveway.

20 Q. Show us where he parked.

21 A. (Witness complies.)

22 Q. Tell us what happened next.

23 A. I observed him get out of the truck. He
24 glanced over at me. I was in the -- parked in the van
25 still. I observed him walk into the residence, and then

1 after a few minutes, he walked back out.

2 Q. All right. Now, when you say he glanced over
3 at you, how were you parked? We see that fence there.
4 How do you see him? Like, what's your line of sight?

5 A. Okay. This right here would be the front of my
6 van.

7 Q. Okay.

8 A. So I could see -- I could see -- I left him
9 just enough room so he could pull into his driveway. I
10 didn't want to block his driveway.

11 Q. So you weren't hindered by the fence or
12 anything like that?

13 A. No.

14 Q. So you see the defendant, the same man you
15 identified in the courtroom today?

16 A. Yes.

17 Q. Pull in with his truck, get out. What happens
18 next?

19 A. Like I said, he glanced over at me. And he
20 walks into the residence and then comes right back out.
21 He leaves his truck running. Once he comes back out, he
22 comes to his truck and he opens the door, and he looks at
23 me again. At that point I exit the van.

24 Q. Okay. Now, how long was he in the house before
25 he came back out?

1 A. A couple of minutes.

2 Q. Describe to the jury whether he was holding
3 anything, if you saw him with anything in his hand when he
4 went into the house.

5 A. No, it didn't appear he had anything in his
6 hand.

7 Q. What about when he came back out of the house?

8 A. It appeared that he had something in his right
9 hand.

10 Q. And tell us what happens after you get out of
11 your car.

12 A. I walk over to his truck, by his front
13 passenger door, which was still open, and he hands me the
14 cocaine that we had agreed buying.

15 MR. DUNN: Objection, Your Honor, to the
16 characterization of cocaine at this point.

17 THE COURT: It's overruled.

18 Q. (By Mr. Phanco) So he hands you what you
19 believe to be cocaine?

20 A. A plastic bag containing what I believe to be
21 powder cocaine.

22 Q. How much did you pay for this?

23 A. One hundred dollars, with a one-hundred-dollar
24 bill.

25 Q. All right. When he hands it to you, does the

1 defendant say anything?

2 A. No. He seemed a little apprehensive, like a
3 lot of --

4 MR. DUNN: Objection, Your Honor, after
5 "no." Nonresponsive after "no."

6 THE COURT: Restate your question, please.

7 Q. (By Mr. Phanco) Did he say anything to you and
8 how did you -- what was your feeling on his reaction to
9 selling you cocaine?

10 MR. DUNN: Objection to how he felt. It's
11 irrelevant, Judge.

12 THE COURT: It's overruled.

13 A. He didn't say anything to me. I started the
14 conversation up. I shook his hand, introduced myself. He
15 appeared to be a little apprehensive talking to me.

16 Q. (By Mr. Phanco) Okay. Tell us what happens
17 next. Now, you've got cocaine in your hand.

18 A. Yes, sir.

19 Q. What do you do next?

20 A. Like I said, I introduce myself, then I asked
21 him if we could trade phone numbers, cell phone numbers,
22 so I wouldn't have to go through the third party anymore.
23 And --

24 Q. Let me ask you this: When you're meeting with
25 him and he's handing you the cocaine and you hand him the

1 hundred-dollar bill, are you -- do you have a recording
2 device, video recording or audio recording?

3 A. No.

4 Q. Tell the jury why. Is that standard?

5 A. No. Some federal agents do that. In HPD, it's
6 not standard.

7 Q. And why is that?

8 A. To me, it's an officer safety thing.

9 Q. Describe to the jury what the officer safety
10 issue is. Talk about your experience.

11 MR. DUNN: Objection, Your Honor. This is
12 a personal question, not a policy question. I object
13 to the relevance of it at this time.

14 THE COURT: It's overruled.

15 MR. DUNN: And, also, this witness has not
16 been positioned as an expert to testify as to why the
17 HPD did not have recording equipment as part of the
18 standard operating procedure.

19 THE COURT: It's overruled.

20 Q. (By Mr. Phanco) Go ahead.

21 A. The reason I don't wear recording devices or
22 cameras or anything because I've actually been patted down
23 on a narcotic transaction, and that's the last thing you
24 want to do is be found with some type of recording device.
25 The narcotics traffickers are known to have weapons, and

1 they could mistake you for a confidential informant or a
2 police officer and not care and shoot you.

3 Q. Why not record on -- you had a phone, I assume?

4 A. Yes, sir, I believe I had a phone.

5 Q. Why not record it on your phone or something
6 like that?

7 A. Well, sometimes the narcotics traffickers will
8 say -- they've done this. They'll say, give me your
9 phone, and I'll put my number in. But I know what they
10 are doing. They are looking through the phone. So we
11 have to make sure our phones have nothing to do with
12 police related, anything like that. They have to be clean
13 of all of that.

14 Q. So you're having this conversation and he hands
15 you the cocaine. Tell us what happens next.

16 A. After I asked him for a cell phone number, he
17 said, "No." He goes, "Just keep going through the third
18 party." And at that time I said, "Okay." And I basically
19 said, "Goodbye," and I walked back and got back in my
20 truck -- in my van.

21 Q. Now, a couple of quick summaries on this first
22 part. You -- who were the only two people in the driveway
23 during this transaction?

24 A. Me and the defendant.

25 Q. The defendant who you identified in court

1 today?

2 A. Yes.

3 Q. Did anybody -- at any point in time, did
4 anybody else come to the driveway?

5 A. No.

6 Q. Just the two of you?

7 A. Yes.

8 Q. Did you bring -- did you bring today the
9 cocaine that was sold to you, the 2.8 --

10 A. Yes, I did.

11 Q. -- in the driveway? Can you take that out?

12 A. (Witness complies.)

13 MR. DUNN: Again, Judge, I'll object to the
14 characterization of it being cocaine at this time.
15 There's nobody who has testified to the
16 authentication of that.

17 THE COURT: All right. Ladies and
18 gentlemen, it's what the officer believed to be
19 cocaine.

20 Q. (By Mr. Phanco) I'm going to mark this as
21 State's Exhibit 20. And if you could look at it, tell the
22 jury kind of how you identify it as you being the one who
23 tagged it into evidence and all of that.

24 A. It's got my handwriting, initials, case number,
25 everything.

1 Q. What about the date?

2 A. Yes, I put the date on there also.

3 Q. Do you seal it in the evidence bag?

4 A. Yes, I do.

5 Q. Again, that will be State's Exhibit 20 for the
6 record. So now you go back to your car. What do you do
7 when you're on your way back to the car?

8 A. I give the bust signal.

9 Q. What does that mean?

10 A. That means that a deal has been made and the
11 defendant needs to be arrested.

12 Q. Tell the jury kind of what kind of bust signal
13 you give.

14 A. Scratch my head on the way out.

15 Q. All right. And when you do that, who comes?
16 Do you turn around and go back to the defendant?

17 A. No.

18 Q. What happens?

19 A. No, I drive off.

20 Q. And what are you doing while you're driving
21 off?

22 A. As I'm driving off, after I gave the bust
23 signal, my partner was watching me. I got my police radio
24 and I immediately gave the description and last known
25 location of where the defendant was standing.

1 Q. And what happens next?

2 A. The uniformed officers arrive on the scene to
3 arrest the defendant.

4 Q. And then what do you do?

5 A. I basically circle the block, and once
6 everybody -- once the uniformed officers are on scene, I
7 arrive to continue the investigation.

8 Q. Okay. So when you say you arrive to continue
9 the investigation, how long were you gone?

10 A. A couple of minutes.

11 Q. And tell the jury what you do from here.

12 A. I immediately walk up to the defendant who's
13 still standing by his truck. Of course, there's a
14 uniformed officer with him, and I identify myself as a
15 police officer at this point to him.

16 Q. Tell us what you say.

17 A. I just say, "Hey," you know, "I'm a police
18 officer." I show him my badge and my ID, and he kind of
19 just dropped his head and said, "I messed up."

20 Q. Now, did he say it, in English or Spanish?

21 A. No, Spanish. He spoke Spanish during the whole
22 deal.

23 Q. You and he?

24 A. Yes.

25 Q. So he hangs his head and says, "I messed up"?

1 A. Yes.

2 Q. What did you do?

3 A. At that point the -- I think the uniformed
4 officer advised me that --

5 Q. Real quick, don't go into specifically what the
6 uniformed officer said. Just tell me what you did next.

7 A. I went to the truck because a consent had been
8 given to search the truck, and I looked. Right on the
9 front seat was my one-hundred-dollar bill. And I just --
10 my intention wasn't to completely search the truck, but I
11 opened up the center console and I saw an additional two
12 smaller bags of cocaine in the console.

13 Q. When you talk about consent to search his
14 vehicle, after he hung his head and said, "I messed up,"
15 did you ask him if you could search his vehicle?

16 A. Yes, I did.

17 Q. What did he say to you?

18 A. He said, "Yes, go ahead."

19 Q. Now, when you asked to search his vehicle, did
20 you threaten to take his family into custody if he didn't
21 give that to you?

22 A. No.

23 Q. Did you threaten to arrest anybody else?

24 A. No.

25 Q. Did you threaten to beat him up?

1 A. No, sir.

2 Q. Anything like that?

3 A. No, sir.

4 Q. And the reason why I'm asking you these
5 questions, it goes back to -- it kind of dovetails with my
6 original question. Have you ever been written up for
7 lying or anything like that?

8 A. No, sir.

9 Q. So when you're telling this jury, that's your
10 20 years of experience telling the jury that you didn't
11 threaten him or any of that stuff?

12 A. That's correct.

13 Q. And he gave you consent to search his car only
14 at this point?

15 A. Yes.

16 Q. And you found a 100-dollar bill?

17 A. Yes, sir.

18 Q. And some drugs?

19 A. Yes.

20 Q. What did you find related specifically to the
21 drugs?

22 A. Two individually wrapped -- I consider them \$20
23 worth of cocaine baggies.

24 Q. Did you bring that today?

25 A. Yes, sir, I did.

1 Q. Take that out and explain to the jury how you
2 mark that to memorialize taking it into custody at that
3 time.

4 A. Same way. The description is written right
5 here, two baggies, and where they were recovered from,
6 with my initials and the date.

7 Q. And they are sealed in an evidence bag?

8 A. Yes, they are.

9 Q. And where did you get those drugs today?

10 A. From the crime lab.

11 Q. Okay. And when you talk about that, are they
12 in a secure location --

13 A. Yes, they are.

14 Q. -- for you to check them out?

15 A. I'm sorry?

16 Q. No. I will mark that for record purposes as
17 State's Exhibit No. 21. If you could keep State's
18 Exhibit 21. In your experience as a police officer in
19 narcotics, does the way that the packaging of the drugs
20 found in the car signal anything to you with what his
21 intent was with those drugs?

22 A. Yes.

23 Q. What is that?

24 MR. DUNN: Objection, Your Honor. Calls
25 for a legal conclusion.

1 THE COURT: All right. The question was,
2 based on your experience, does he believe it was
3 intent to deliver.

4 MR. PHANCO: I think I said -- I hope I
5 said, based on your experience, based on the way it's
6 packaged, what did you believe he was going to do
7 with those drugs?

8 THE COURT: All right. I'll allow it.

9 A. I believe he was going to sell them, distribute
10 them.

11 Q. (By Mr. Phanco) Why is that?

12 A. Because as many deals as I've done with cocaine
13 traffickers, this is a common way of wrapping them.

14 Q. How were they wrapped? Describe the wrapping.

15 A. They take the corner of a sandwich bag and they
16 cut it, they weigh it, they pour the cocaine in there, and
17 then they just close the little plastic bag, which is how
18 these things are.

19 Q. And how much -- how much is that worth, a
20 little corner?

21 A. These are probably maybe half a gram each.

22 Q. How much are we talking?

23 A. I think this is \$40 worth.

24 MR. DUNN: Objection, Your Honor, calls for
25 speculation. He said, "I think." He doesn't know.

1 THE COURT: All right. So you're asking
2 how much does it weigh or how much is it worth?

3 MR. PHANCO: I'll move on, Judge.

4 THE COURT: Okay. Thank you.

5 MR. PHANCO: No problem.

6 Q. (By Mr. Phanco) How many different individual
7 baggies did you find in his car?

8 A. Two.

9 Q. In addition to the individual baggie that he
10 sold you?

11 A. Correct.

12 Q. Now, what do you do now?

13 A. At that point, I walk over to him and I start
14 telling him, "Hey, man," in Spanish, "I believe you got
15 more drugs in the house."

16 Q. Okay. What happens?

17 A. He tells me once again -- appears to be very
18 defeated. Tells me, "Man, all I got in there is a couple
19 of ounces. Go in there and get them."

20 Q. This is important. He says, "I got a couple of
21 ounces. Go in there and get them." Had you asked to go
22 into his house?

23 A. At this point, no.

24 Q. When you said, "I believe that you have some
25 drugs in the house," did he contemplate that statement?

1 Did he think about it for a while?

2 A. No, it kind of came -- I mean, it was almost
3 instantaneous as soon as I finished that.

4 Q. Did you at any point before he said, "Go in
5 there and get them," threaten to arrest his family?

6 A. No.

7 MR. DUNN: Judge, just a moment. Can we
8 approach?

9 THE COURT: Yes, sir.

10 (Whereupon counsel approached the
11 bench out of the hearing of the jury.)

12 MR. DUNN: I don't want to bring this up in
13 front of the jury, but the State is putting the
14 cocaine right in front of them as to publish them to
15 them without actual permission from the Court. I ask
16 that it be put back into the bag at this point during
17 the course of this witness' testimony, or at least
18 removed from their presence.

19 THE COURT: No. It is what it is.

20 MR. DUNN: Okay.

21 (Whereupon the following proceeding is
22 held in the hearing of the jury.)

23 THE COURT: Let's proceed.

24 Q. (By Mr. Phanco) So we're on this, he says: "Go
25 inside and get a couple of ounces"?

1 A. Yes.

2 Q. So I think I was asking, did you ever threaten
3 to arrest his wife?

4 A. No.

5 Q. Before he was able to blurt it out, did you
6 threaten to arrest his kids?

7 A. No.

8 Q. Call CPS on --

9 A. No.

10 Q. Hold on. Let me finish my question. Did you
11 say: I'm going to call CPS on you?

12 A. No.

13 Q. Did you threaten to beat him up?

14 A. No.

15 Q. Did you say anything other than, "I believe
16 there are drugs in the house"?

17 A. No, that was it. That's all I told him.

18 Q. What happens next?

19 A. Then I asked him, "Who is in the house?" And
20 he says, "My wife and kids." And he continues on to say,
21 "But my wife doesn't know anything about this. She has
22 nothing to do with this."

23 Q. Did you believe him?

24 A. Not really.

25 MR. DUNN: Objection, Your Honor.

1 Relevance.

2 THE COURT: Sustained.

3 MR. DUNN: I ask that the jury be
4 instructed to disregard.

5 THE COURT: Disregard whether or not he
6 believed the statement.

7 MR. DUNN: And I'd ask for a mistrial.

8 MR. PHANCO: Can we approach on that,
9 Judge?

10 THE COURT: No. It's overruled. Let's
11 proceed.

12 Q. (By Mr. Phanco) So, you didn't threaten
13 anything to him or his family personally?

14 A. No.

15 Q. So you go and you say "Who's inside the house?"
16 And he tells you that it doesn't have anything to do with
17 his wife and kids. What happens next?

18 A. At that point I ask him, "Will you allow me to
19 search your house and recover those narcotics?"

20 Q. This is the first time you actually ask for
21 consent?

22 A. Yes.

23 Q. But he'd previously given it to you?

24 A. For the truck.

25 Q. Right. What I'm saying is that he had already

1 told you to go in and get them?

2 A. Oh, yes, sir. Yes, sir.

3 Q. But you're now asking?

4 A. Now, I'm starting to -- or I want to make sure
5 that he understands what I'm asking him.

6 Q. All right. What happens when you ask for
7 consent?

8 A. He said, "Yeah, sure, go ahead. Go in there
9 and get them."

10 Q. What happens next?

11 A. At that point I asked him would -- does he
12 speak English, or does he know how to read. He says,
13 "No." So I got a Spanish version of a Consent to Search
14 form, and I walked him into his residence, along with --
15 his family also followed us inside.

16 Q. Okay. And what did you do once you got inside?

17 A. I sat him down at the dining room table, and
18 his wife was standing right next to him. I presented him
19 with the form. I explained to him what this form meant.
20 I asked him to read it. He took it in his hands and he
21 appeared to be reading it. I'm not sure if he read it all
22 or not. I filled out the top portion of it where it's
23 just got the date, address, basically, and what officers
24 were going to search. And after he read it, he signed the
25 bottom portion where his signature goes.

1 MR. PHANCO: May I approach, Your Honor?

2 THE COURT: You may.

3 Q. (By Mr. Phanco) I'm showing you what's been
4 marked as State's Exhibit No. 22.

5 A. Yes, sir.

6 Q. Tell me what State's Exhibit No. 22 is.

7 A. It's a Consent to Search form.

8 Q. All right. And is it the Consent to Search
9 form that was signed by the defendant on October 15, 2014?

10 A. Yes.

11 Q. And what does it give you consent to search?

12 A. His residence.

13 Q. With what address?

14 A. 2820 Iola.

15 Q. Has it been tampered with in any way since you
16 obtained that Consent to Search from the defendant?

17 A. No.

18 MR. PHANCO: I ask that State's Exhibit
19 No. 22 be admitted into evidence. Tendering to
20 opposing counsel for inspection.

21 THE COURT: That's the Consent to Search
22 form?

23 MR. PHANCO: Yes, Your Honor.

24 THE COURT: All right. Other than the
25 objection that you made prior to trial, anything;

1 just a running objection?

2 MR. DUNN: Running objection as it being a
3 hearsay document, Judge.

4 THE COURT: That's overruled. It's
5 admitted over your objection.

6 (Whereupon State's Exhibit No. 22 is
7 admitted into evidence.)

8 MR. PHANCO: May I publish it to the jury,
9 Your Honor?

10 THE COURT: You may.

11 Q. (By Mr. Phanco) Go ahead and click the left
12 corner.

13 A. (Witness complies.)

14 Q. All right. If you could, it's in Spanish, that
15 top part, read us the top part in English, please.

16 A. Translate it?

17 Q. Please.

18 A. It's just voluntary consent to search, and not
19 sure what "embargo" means. I think it means to seize.

20 MR. DUNN: I object to this witness
21 testifying as to translation at this point. If he
22 can't accurately testify as to each and every word on
23 it, then he is the improper person to be able to use
24 as translator.

25 THE COURT: Well, it's my understanding

1 that he's the one that gave this statement and signed
2 the statement. So I will let him testify to it and
3 what he believe it says.

4 MR. PHANCO: Thank you, Judge.

5 Q. (By Mr. Phanco) If you could circle the top
6 portion that you filled out.

7 A. (Witness complies.)

8 Q. And you're asking for consent to search what?

9 A. 2820 Iola.

10 Q. Does it explain that to him?

11 A. Yes, it does.

12 Q. Show us where.

13 A. Right here where I marked the X, and it says in
14 Spanish -- it says residence located at 2820 Iola,
15 Houston, Texas.

16 Q. All right. Did he sign this form giving you
17 consent to search the residence?

18 A. Yes, he did.

19 Q. Where is that?

20 A. (Marking on the screen.)

21 Q. All right. Now, when you handed the defendant
22 this form, did he immediately sign it or did he take time
23 to read it?

24 A. It appeared he took a few minutes to read it.

25 Q. Okay. Did it appear as if he was reading it?

1 A. It looked like it. Yes, he did.

2 Q. When you handed him this form, did you have
3 your gun drawn?

4 A. No, sir.

5 Q. Did you have CPS on the phone to call on his
6 kids?

7 A. No.

8 Q. Had you threatened to arrest his wife?

9 A. No.

10 Q. Had you threatened to harm him in any way?

11 A. No, I didn't.

12 Q. What about did you ever say to him: You can
13 sign it or I'm going to get a search warrant anyway?

14 A. No, sir.

15 Q. Did you physically do something to him --

16 A. No.

17 Q. -- to make him sign it?

18 A. No.

19 Q. Did you forge his signature?

20 A. No, I didn't.

21 Q. What did you do after you gave him the consent
22 form?

23 A. After I -- after I gave it to him?

24 Q. Uh-huh.

25 A. What did I do?

1 Q. Right.

2 A. I let him read it and --

3 Q. I'm sorry. Badly worded. After he signs it,
4 hands it back to you, what do you do?

5 A. At that point, we just -- we inform him of what
6 we are fixing to do is start searching the residence. And
7 we begin the -- actually, I was -- we waited on a K-9, a
8 narcotics K-9 to arrive. We had him already coming after
9 he gave me the verbal consent outside of the residence,
10 but we weren't going to allow anybody to search until the
11 consent was signed.

12 Q. Did anybody find any drugs before the consent
13 was signed?

14 A. Yes.

15 Q. Where was it?

16 A. As you walk in through his house, you walk in
17 through the living room; to the right was a fireplace
18 mantel, and you could see what appeared to be some large
19 balls, I guess. I believe them to be cocaine, and the
20 other officers also did.

21 Q. And you saw that when?

22 A. As we were walking in to sit him in his dining
23 room area.

24 Q. To get the consent?

25 A. Yes, sir.

1 Q. It's very important. Before you got him to
2 sign the consent, did you walk over there and seize those
3 drugs?

4 A. No, I did not.

5 Q. Did you go and verify whether they were drugs?

6 A. I didn't, no, sir.

7 Q. Did anybody walk over there and tamper with
8 that evidence before you had that signed consent --

9 A. No, sir, I did not see anybody do that.

10 Q. Wait until the end of the question for the
11 court reporter. Did you walk over or in any way tamper
12 with those drugs before the Consent to Search form was
13 signed?

14 A. No.

15 Q. Anybody do that?

16 A. No, sir.

17 Q. So he signs the Consent to Search form and you
18 begin searching the residence?

19 A. Yes, sir.

20 Q. Now, I want you to kind of go in order of how
21 you found -- of what you found in that house. All right.
22 Tell us what you found through that search.

23 A. Okay. Since we had seen the narcotics on the
24 mantel, that's the first thing I went to, and I recovered
25 those.

1 Q. All right. Now, for this testimony, what I'm
2 going to do is I'm going to show you what's been
3 previously marked as State's Exhibits 3 through 19. I
4 want you to look at each one of those.

5 A. (Witness complies.) Okay.

6 Q. All right. What are those?

7 A. Pictures of the scene that night.

8 Q. And did -- were those pictures taken during the
9 search of the residence?

10 A. Yes.

11 Q. Do they fairly and accurately depict the
12 residence and the things that you found therein on the
13 night of October 15, 2014?

14 A. Yes, they do.

15 MR. PHANCO: At this time, Your Honor, I
16 ask that State's Exhibits 3 through 19 be admitted
17 into evidence. Tendering to opposing counsel for
18 inspection.

19 MR. DUNN: Judge, I have several
20 objections.

21 THE COURT: All right. Go ahead and state
22 your objection, sir.

23 MR. DUNN: First and foremost, Officer
24 Aguirre is not the one to actually take these
25 pictures, and it appears from these pictures that

1 each picture was taken at a different section of the
2 house. I'm going to assume he cannot be the one to
3 authenticate the veracity, if these are accurate
4 photos of where everything was supposed to have been
5 at that time.

6 Next, Judge, on State's Exhibit, I believe,
7 No. 7, there appears to be, as part of that picture,
8 some written language on there. I would object to
9 that.

10 THE COURT: Can I see that?

11 MR. DUNN: I would object to hearsay.

12 THE COURT: Okay.

13 MR. DUNN: Also State's Exhibits No. 9, 10,
14 11 and 15, I don't see how they hold any relevance to
15 the case at bar.

16 MR. PHANCO: If Your Honor would like to
17 hear argument on that, I'm prepared.

18 THE COURT: Well, the statement was these
19 are true and accurate pictures of the scene as he saw
20 it on that evening. And so I'm going to --

21 MR. DUNN: Unless this particular witness
22 went to each of those spots posing a picture, then he
23 can attest to that. We can certainly have the State
24 ask that question.

25 THE COURT: It's all right. I'm going to

1 overrule your objection. I'm going to admit them,
2 and your objections are on the record.

3 MR. DUNN: Yes, Judge.

4 MR. PHANCO: May I publish them to the
5 jury, Your Honor?

6 THE COURT: Yes, sir. So -- I'm sorry.
7 State's Exhibit 3 through 19 are admitted.

8 (Whereupon State's Exhibit Nos. 3-19
9 are admitted into evidence.)

10 Q. (By Mr. Phanco) Go ahead and click the left
11 corner.

12 A. (Witness complies.)

13 Q. I'm going go through the first couple real
14 quick. What is this a photo of?

15 A. The photo of the residence.

16 Q. What is it showing?

17 A. The address, 2820.

18 Q. Does the address on the house that you searched
19 match the address on the consent form?

20 A. Yes, it does.

21 Q. I'm going to show you what's been marked as
22 State's Exhibit No. 4. Tell us about State's Exhibit
23 No. 4. What are you looking at here?

24 A. Those are the four large powder cocaine rocks
25 that are on the fireplace mantel.

1 MR. DUNN: Again, I'll make a running
2 objection at this time, so I don't inconvenience the
3 Court, to the characterization as anything as cocaine
4 at this time until it's been substantiated.

5 THE COURT: Was there any kind of
6 presumptive test or anything like that done?

7 MR. PHANCO: Yes, Your Honor.

8 THE COURT: Let's do that so then we can --
9 if there was.

10 Q. (By Mr. Phanco) You're stating that this was
11 cocaine. Did you do any kind of presumptive test on this?

12 A. Yes, I did.

13 Q. What was the result of that test?

14 A. It field-tested positive for cocaine.

15 THE COURT: All right. You may proceed.

16 MR. PHANCO: Thank you, Your Honor.

17 Q. (By Mr. Phanco) Go ahead and -- you said
18 something interesting that I don't think --

19 MR. DUNN: Objection to side-bar.

20 THE COURT: Sustained.

21 Q. (By Mr. Phanco) Why do you say powder, rock?
22 It seems it doesn't match up. You said those are two
23 powder cocaine rocks, or four powder cocaine rocks.

24 A. Powder cocaine is used to make crack cocaine.
25 Powder cocaine is generally not smoked, it's sniffed,

1 injected. Crack cocaine is actually smoked in a variety
2 of ways.

3 Q. What are we looking at here?

4 A. Even though it looks hard and chunky, it's
5 considered powder cocaine.

6 Q. How do they get this hard, chunky stuff into a
7 fine powder?

8 MR. DUNN: Objection. This witness has not
9 been qualified as an expert to testify to that
10 matter.

11 THE COURT: He can testify as to his
12 knowledge and experience.

13 A. Generally, you would take a razor blade or
14 something and just begin to chop it up.

15 Q. (By Mr. Phanco) Got it. So you find these four
16 items. Did you bring those items today?

17 A. Yes, I did.

18 Q. Can you take those out and tell us how you took
19 them into evidence and how you marked it to preserve it
20 for the evidence?

21 A. Same way. I put the date and the --
22 actually -- no, this one, I believe my partner, who sits
23 right next to me, packaged them for me.

24 Q. Did you initial it as taking it and checking it
25 into evidence?

1 A. No, but he did.

2 Q. Put that one aside.

3 A. Okay.

4 Q. I'm going to mark that just for the record as
5 State's Exhibit No. 23. And who is the officer that took
6 that into custody?

7 A. I believe it's Mark -- I took it into custody,
8 but the officer, he helped me pack it up, put this one in
9 the bag.

10 Q. Who was that?

11 A. Mark Zapata.

12 Q. Next, I'm going to show you -- you said that
13 you found those four bags of cocaine?

14 A. Yes.

15 Q. Tell me, did you find anything else up on the
16 mantel?

17 A. I believe there was some currency.

18 Q. I will show you what's been marked as State's
19 Exhibit No. 5, State's Exhibit No. 5.

20 A. Yes.

21 Q. What is it?

22 A. That is a plastic bag that contains currency
23 that was on top of the fireplace mantel.

24 Q. State's Exhibit No. 6. Do you know what
25 State's Exhibit No. 6 is?

1 A. Yes, sir. I believe that also was on the
2 fireplace mantel. It's believed to be a jar containing
3 more currency.

4 Q. State's Exhibit No. 7?

5 A. Yes, that also was on the fireplace mantel.

6 Q. All right. So you found cocaine and you found
7 two buckets of money?

8 A. Yes, sir, and the plastic bag containing the
9 currency.

10 Q. You found that on the mantel. Tell me where
11 you go next, and what do you find?

12 A. From there I think -- I believe I went into the
13 bedroom where I was informed that a gun had been recovered
14 from a bedroom drawer.

15 Q. Okay. Did you go to the bedroom before the
16 dining room or --

17 A. I believe I did.

18 Q. Okay. So you go to the bedroom. And you say
19 that a gun had been recovered from where?

20 A. From one of the bedroom -- from a dresser
21 drawer in the master bedroom.

22 Q. Okay. And those weapons that were found in the
23 dresser drawer, what kind of weapon was it?

24 A. I believe that was a Glock.

25 Q. Okay. And who took that into custody?

1 A. I did.

2 Q. And who marked it as evidence?

3 A. I'm sorry.

4 Q. Sure.

5 A. I kept it until when we met back at the office,
6 and then my partner actually took the guns -- or the gun
7 back to the property room and put it into the property
8 room.

9 Q. Who was that partner?

10 A. Mark Zapata.

11 Q. What else did you find in the bedroom?

12 A. Some more money, I believe.

13 Q. Where did you find it?

14 A. In the -- I believe in the same dresser drawer
15 where the gun was. It was another -- some more currency.

16 Q. I will show you what's marked as State's
17 Exhibit No. 13.

18 A. Yes.

19 Q. What is that?

20 A. The currency that was found in the dresser
21 drawer.

22 Q. State's Exhibit 14?

23 A. I think that's a close-up, sir.

24 Q. Okay. Find anything else in the bedroom?

25 A. I believe I found another pistol.

1 Q. Okay.

2 A. Beretta, I believe.

3 Q. Where did you find that?

4 A. In the master bedroom closet on the top shelf.

5 Q. I'll show you State's Exhibit No. 12. What's
6 that?

7 A. The Beretta pistol.

8 Q. The two pistols that were in the bedroom, you
9 know what kind -- are they ready -- are they ready to be
10 fired? Tell us what kind of shape they were in.

11 A. Yes, sir, they were loaded with live
12 ammunition.

13 Q. All right. So there's no drugs in the bedroom,
14 just money and guns?

15 A. Correct.

16 Q. Tell me where you go next.

17 A. I believe from there I went to the dining room
18 table.

19 Q. Okay.

20 A. And I do not recall, but I remember somebody
21 saying -- one of the officers said, "Hey, appears to be
22 more cocaine in this" -- there was a cardboard sandwich
23 box, something -- a sandwich bag, box, and stuffed in it
24 was what appeared to be more cocaine.

25 Q. Did you recover that cocaine?

1 A. Yes, I did.

2 Q. I'll show you what's been marked State's
3 Exhibit No. 8. Okay. What is that?

4 A. That's the cocaine that was in the box.

5 Q. All right. That was on the dining room table?

6 A. Yes.

7 Q. Did you bring that with you today?

8 A. Yes, sir.

9 Q. How did you memorialize taking that into
10 custody?

11 A. I marked it, and initialed it, and dated it.

12 Q. All right. Mark it as State's Exhibit No. 24.
13 All right. So that's the dining room. Anything else in
14 the dining room, living area?

15 A. No, sir.

16 Q. Okay. I'm going to show you what's been marked
17 State's Exhibit No. 9. You tell me in your experience
18 what this is, tell the jury as well.

19 A. That is a shrine.

20 Q. To what?

21 A. To --

22 MR. DUNN: Objection, Your Honor,
23 relevance.

24 THE COURT: All right. He can -- based on
25 his experience in narcotics, narcotics investigation,

1 lay your foundation for his knowledge.

2 MR. PHANCO: Sure.

3 Q. (By Mr. Phanco) Have you --

4 THE COURT: It's overruled pending a
5 foundation.

6 Q. (By Mr. Phanco) You've been a narcotics officer
7 for how long?

8 A. Since 2008, February.

9 Q. Have you done few or many narcotics
10 investigations?

11 A. Many.

12 Q. Are you familiar with the behaviors of
13 narcotics dealers and traffickers?

14 A. Yes.

15 Q. Have you gone inside of their homes before?

16 A. Yes.

17 Q. Do you have experience investigating narcotics
18 traffickers and drug trafficking organizations and the
19 types of things that you find in their home and what
20 they're used for?

21 A. Yes.

22 MR. PHANCO: Your Honor, may I proceed?

23 THE COURT: You may.

24 Q. (By Mr. Phanco) So tell the jury, in your time
25 as a narcotics officer, what are these shrines?

1 A. That is the patron -- the Santa Muerte saint,
2 and narcotics traffickers pray to this saint for
3 protection.

4 Q. Protection from what?

5 A. Police and other drug dealers.

6 Q. Where did you find this?

7 A. In the dining room.

8 Q. And when you say it's a shrine, I'm going to
9 show you what's been marked as State's Exhibit No. 10,
10 which is like -- kind of like a full view. Describe to
11 the jury what they are seeing here.

12 A. It's the bigger version of the shrine. That's
13 the complete shrine right there.

14 Q. Is that why you took photos of this because you
15 found it relevant?

16 A. Yes.

17 Q. I'm going to show you State's Exhibit No. 11.
18 What's that?

19 A. The same thing. It's a prayer to the saint,
20 and that appears to be a picture that was on the wall.

21 Q. Same area, dining room, living room area?

22 A. Yes.

23 Q. All right. So that's everything you find in
24 the dining room with the drugs and the shrine?

25 A. Yes.

1 Q. Where do you go next?

2 A. From there I work my way up to -- they had like
3 a little loft, attic/loft upstairs above the living room
4 area, and I was informed a large speaker box had been
5 found up there.

6 MR. DUNN: Objection, Your Honor. Calls
7 for hearsay.

8 THE COURT: All right. He can testify as
9 to -- I mean, if it's not offered for the truth of
10 the matter asserted, then it is not hearsay. If it's
11 just explaining his -- what he did, then that's fine.

12 MR. PHANCO: I'll do you one better, Judge.

13 Q. (By Mr. Phanco) Without going into specifically
14 what somebody told you, where did you go and investigate
15 next?

16 A. To the attic/loft upstairs.

17 Q. What item did you feel could potentially be
18 concealing drugs or drug money and things?

19 A. There was a large speaker box up there.

20 Q. I'll show you what's been marked State's
21 Exhibit No. 15. What about the speaker box sticks out in
22 your mind as something is up with it?

23 A. If you look at -- can I write on it?

24 THE COURT: Yes.

25 A. If you look at this speaker right here, it's

1 not flush against the actual box. It's not secured.

2 Q. (By Mr. Phanco) Did you open it up?

3 A. Yes, sir.

4 Q. What did you find?

5 A. There was some currency, another firearm, and I
6 believe there was some cocaine cut.

7 Q. Okay. I want to talk to you about that,
8 State's Exhibit 16. Go ahead and double click the left
9 corner.

10 A. (Witness complies.)

11 Q. Circle all the items you found.

12 A. Currency, that's cocaine cut, and this is the
13 firearm.

14 Q. All right. Now, you keep calling it cocaine
15 cut. What the heck does that mean?

16 A. It's just substance they use to take pure or
17 purer cocaine and basically thin it out to maximize their
18 profits.

19 Q. So it's not cocaine?

20 A. No, that wasn't cocaine.

21 Q. It's not a controlled substance at all?

22 A. No, sir.

23 Q. Let me ask you this, though: In your
24 experience as a narcotics officer, someone who possesses
25 cocaine cut, as you call it, what do you believe their

1 intent is to do with their drugs?

2 A. To distribute it.

3 Q. Okay. Is there any reason if -- again, in your
4 experience as a narcotics officer, is there any reason for
5 someone who is going to personally usual drugs to use this
6 while they're doing it?

7 A. No, sir.

8 Q. I'll show you State's Exhibit No. 17. What's
9 State's Exhibit No. 17?

10 A. That is a bag of currency that was inside the
11 speaker box.

12 Q. Okay. You know what I forgot? Did you bring
13 the -- did you take into custody the cocaine cut, as you
14 call it?

15 A. Yes, I did.

16 Q. How did you memorialize taking it into custody?

17 A. I initialed, and put the date, case number on
18 it.

19 Q. Did you bring it to court today?

20 A. Yes, I did.

21 Q. I'll mark it for the record State's Exhibit
22 No. 25. Do you see your initials and date on it?

23 A. Yes, I do.

24 Q. And for the record, so that the jury is clear,
25 this is not cocaine?

1 A. That is not cocaine.

2 Q. That is State's Exhibit No. 25.

3 THE COURT: State's 25?

4 MR. PHANCO: Yes.

5 THE COURT: Is there a record for 24? What
6 is 24?

7 MR. PHANCO: State's Exhibit 24 is going to
8 be the cocaine that was recovered from the table, the
9 dining room table.

10 THE COURT: All right. Got it.

11 MR. PHANCO: That was taken into evidence
12 by this witness.

13 THE COURT: Okay.

14 Q. (By Mr. Phanco) So you get the cut. You get
15 the money. There's a gun in the speaker box. Is that
16 loaded?

17 A. Yes, sir, it was.

18 Q. Ready to be fired?

19 A. Yes, sir.

20 Q. All right. Did you find anything else in the
21 house?

22 A. Up in the same attic area, there was a PVC pipe
23 that appeared to be plugged at both ends. And inside that
24 PVC pipe was a large amount of currency.

25 Q. I show you what's marked as State's Exhibit 18.

1 How did you get into the pipe to get the money out?

2 A. Other officers did.

3 Q. Okay.

4 A. My supervisor directed somebody to break it
5 open.

6 Q. This is the money that was inside?

7 A. Yes, sir.

8 Q. That's State's Exhibit 19. What's that?

9 A. The money that was inside the pipe.

10 Q. So all told from the house, how much money did
11 you recover?

12 A. Let me look at the exact amount.

13 MR. DUNN: Judge, just to be clear, I need
14 to know what he's looking at.

15 THE COURT: What are you referring to, your
16 notes?

17 THE WITNESS: Offense report, sir.

18 THE COURT: Okay.

19 A. \$142,897.

20 Q. (By Mr. Phanco) All right. And in reference to
21 your offense report, at what date and time did you make
22 the offense report?

23 A. I believe I started it the night of 10-15; I
24 think I finished it the following day.

25 Q. Does it memorialize what happened on the date