

1 THE COURT: Sure. Go right ahead.

2 MR. LEONARD: In Cause No. 1180613, the State
3 of Texas versus Marcus Smalley, in the 232nd District Court
4 of Harris County, Texas, judgment of conviction by court;
5 waiver of jury trial. The Judge presiding was the Honorable
6 Mary Lou Keel. The date the judgment was entered was
7 May 26th of 2009. The offense for which the defendant was
8 convicted was theft from person. The degree of the offense
9 was a state jail felony. The defendant pled guilty, was
10 sentenced to 8 months state jail and this judgment was
11 entered -- signed and entered on May 26th of 2009.

12 THE COURT: You may proceed with Officer
13 Curtis.

14 MR. LEONARD: Thank you.

15 **DEWAYNE CURTIS,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 Q. (BY MR. LEONARD) Good afternoon, Officer.

19 A. How you doing?

20 Q. Would you please introduce yourself to the jury?

21 A. I'm Officer Dewayne Curtis.

22 Q. How are you currently employed?

23 A. I work for the narcotics division, Squad No. 10.

24 Q. Okay. So is that with the Houston Police
25 Department?

1 A. With the Houston Police Department.

2 Q. How long have you been with the Houston Police
3 Department?

4 A. Almost eight years.

5 Q. Tell the jury a little bit about your training and
6 experience.

7 A. Basically this is my -- entering my eighth year. I
8 worked southeast patrol for a year, I worked northeast
9 patrol for another year, I worked investigator first
10 responder for a year and a half, then I worked the northeast
11 divisional tactical team for a year and a half and I been
12 employed the last two and a half years with the narcotics
13 division.

14 Q. And what are some of your assignments and duties
15 with the narcotics division?

16 A. Right now personally I work undercover street-level
17 investigations. I also conduct and execute search warrants
18 and also handling confidential informants and following up
19 possible leads that go into our NOC center, which is the
20 narcotics operational control center. Citizens call in and
21 then from that point forward, we take the information that
22 they give and follow up on it.

23 Q. Have you also had training and experience
24 conducting undercover surveillance?

25 A. Before we are allowed to actually begin the

1 narcotics division, they send us to narcotics school. So,
2 basically what that teaches us, everything from the
3 hand-to-hand transactions to the search warrants and then
4 telling and also surveillance schools.

5 Q. I want to turn your attention to the reason you're
6 here today, October 27th of 2011.

7 A. Yes, sir.

8 Q. Were you at work that day?

9 A. Yes, sir.

10 Q. Okay. Tell the jury a little bit about your
11 assignment for that day.

12 A. That day, basically what it is, our case agent had
13 a search warrant that day and what they do is before they
14 execute a search warrant, they want to make sure that the
15 apartment is occupied by somebody's -- fitting the
16 description of their possible suspect. So, I go out there
17 ahead of time. They give me the location, what I'm looking
18 for and any other pertinent details that I may need to know
19 to make a judgment on whether for them to begin the
20 execution of the search warrant and that day I assisted the
21 case agent, he gave me the location, he showed it to me
22 ahead of time before we staged up. Once everybody staged
23 up, I went over there, looked at the particular location
24 using the details that he gave to make a determination if
25 they should execute the search warrant or not.

1 Q. Okay. What kind of details did he give you in
2 terms of the description of the person you were looking for?

3 A. It was a real vague description. It was a black
4 male. It wasn't a clothing description. It was just a
5 general description on age, height and weight.

6 Q. Did you know -- did you have any idea where this
7 black male may be going?

8 A. To the particular targeted location.

9 Q. Right. So, you knew where the target location was?

10 A. Yes.

11 Q. All right.

12 MR. LEONARD: Judge, may I approach?

13 THE COURT: You may.

14 Q. (BY MR. LEONARD) All right. Let me show you some
15 photographs here. I'll show you State's Exhibit 2. Does
16 that look familiar?

17 A. Not that aerial view.

18 Q. Okay. All right. Let's try this then. State's
19 Exhibit 4. Does that area look familiar?

20 A. Yes, sir.

21 Q. All right. Now, on this particular day, can you
22 show us the general area where you were conducting
23 surveillance at?

24 A. You want me to just point to it?

25 Q. Actually if you touch on the screen right there to

1 your right. To your right.

2 THE COURT: Your right. Up here. Turn this
3 way.

4 A. Okay. Basically --

5 Q. (BY MR. LEONARD) If you touch on the screen, it
6 will draw on the screen.

7 A. Okay. This open field is what separated the two
8 apartment complexes and this -- on this side is where I sat
9 to look across. I had a straight direct shot to the
10 stairwell that led up to the apartment that was over to the
11 right-hand side.

12 Q. Okay. Can you see the apartment here in State's
13 Exhibit 5?

14 A. Yes.

15 Q. All right. Now, approximately what time did you
16 arrive -- did you arrive there?

17 A. I can't give you approximate time of what time of
18 day it was.

19 Q. Was it early morning?

20 A. It was mid-afternoon time.

21 Q. Okay. Did you make it there before the narcotics
22 team executed the search warrant?

23 A. Yes. I normally go out there at least -- we don't
24 have a time frame. It's from the time I get there till I
25 determine that someone is at that location but I always go

1 out there before them and they don't start coming that
2 direction until I radio -- if I'm in radio range, I radio.
3 If they're too far out, I have to call the case agent or the
4 sergeant to let them know what's going on before they head
5 that way.

6 Q. Okay. And what's your purpose of -- what's your
7 purpose of being out there? Are you the eyes of the
8 operation?

9 A. Yeah, they actually call it being the eye. So,
10 it's to give them heads-up on any dangers that may occur or
11 any multiple suspects at the location so they won't be
12 walking in -- it's going to be walking in blind because you
13 can't never tell exactly what's inside but if anybody enters
14 or exits, it's my responsibility to let them know.

15 Q. Okay. Did you provide the case agent with a
16 heads-up or a notification that someone was headed towards
17 the target apartment?

18 A. Well, I gave them the heads-up that someone had
19 exited a vehicle and actually entered the apartment.

20 Q. Okay. Tell us about that. What exactly first
21 called your attention to someone?

22 A. I was told by the case agent that it was a
23 informant involved and he stated that --

24 Q. Okay. Without going into what anyone said --

25 A. Okay, yeah. I gave them a heads-up that a white

1 vehicle pulled into the parking lot and someone fitting the
2 description of the suspect exited, walked up the stairs,
3 appeared to use what appeared to be a key, unlocked the door
4 and go in.

5 Q. All right. Did you see what kind of vehicle that
6 person arrived in?

7 A. It was a white Chrysler Sebring.

8 Q. All right. Where would that car have been from
9 where you were parked in the picture that we're looking at
10 here?

11 A. Well, from where I was parked, it was more over to
12 a parking lot to this side.

13 Q. Okay. So, you actually saw someone get out. Was
14 it one person or two persons?

15 A. I saw a young man and a young lady.

16 Q. Okay. Could you see their face?

17 A. I can see a face but I wasn't really clear on the
18 descriptions of the face.

19 Q. Okay. So, you couldn't identify the exact person?

20 A. No, I couldn't, no.

21 Q. Okay. When they got to the door, could you see if
22 they used a key?

23 A. From the distance I was, it appeared they used a
24 key but like I say, I couldn't give you a definite yes that
25 it was a key.

1 Q. Okay. But you did see a male and a female walk to
2 the target location and enter the apartment?

3 A. Yes, sir.

4 Q. What did you do at that point?

5 A. I didn't radio; I called the case agent, let them
6 know someone made entry into the location and that they can
7 come on, execute the search warrant because it was occupied
8 at that time.

9 Q. Okay. And what did you do once you called the case
10 agent?

11 A. I remained looking at the apartment to see if
12 anybody else came up or came out and once they got close,
13 the gate was -- the entrance gate was closed so I had to
14 leave my location, drive into this apartment complex and let
15 them in through the exit gate.

16 Q. Okay. How did you get to the exit gate to let the
17 narcotics team into the entrance gate?

18 A. I had to leave the area I was, exit, go over to
19 this apartment complex and I actually went through the
20 entrance gate. As I was coming to the entrance gate,
21 another car was pulling in front of me so that's how I was
22 able to gain access to the complex and then I just drove
23 around to the back to where the exit gate was, pulled up to
24 it, it opened. At that time the raid van was pulling up and
25 was able to enter.

1 Q. Okay.

2 A. And I just got out the way from that point.

3 Q. How long were you -- how long did it take you to
4 travel from Point A to Point B, which is the exit gate, to
5 let the narcotics team in?

6 A. Approximately two to four minutes.

7 Q. Okay. Did you have any other involvement in this
8 particular investigation?

9 A. No. Basically at that point I stayed back out the
10 way and they take care of everything else.

11 MR. LEONARD: Pass the witness.

12 THE COURT: Mr. Martin.

13 MR. MARTIN: Yes, Your Honor.

14 **CROSS-EXAMINATION**

15 Q. (BY MR. MARTIN) Officer Curtis, do you remember
16 who the case agent was in this matter?

17 A. Yes, sir, Officer Moises Zamora.

18 Q. Okay. And when was it that he would have gotten
19 with you to, you know, ask you or tell you to go be the eye?

20 A. It all depends. Sometime they get with me the day
21 before or the day of. On this particular case it was the
22 day of, that morning.

23 Q. When you went in -- I believe you set up -- made a
24 mark on the left-hand side of the screen there?

25 A. Yes, sir.

1 Q. And the apartment is where you made the mark on the
2 right-hand side?

3 A. Yes, sir.

4 Q. Did you park on the street or in some sort of
5 parking lot?

6 A. It's in the parking lot.

7 Q. And were you by yourself?

8 A. Yes, sir.

9 Q. Were you using binoculars or anything --

10 A. Yes, sir, we have City-issued binoculars.

11 Q. Okay. About how long did you set up on that
12 apartment before you saw somebody come?

13 A. It was about 45 minutes. I can't give you a exact
14 time. That was about approximate.

15 Q. Sure. I believe you told us that -- you testified
16 you only had a vague description of a black male --

17 A. Yes, sir, I didn't have a photo of him or anything
18 like that.

19 Q. Okay. And then when you saw two people come, you
20 did, you know, notify -- as the eye, you told the raid team
21 and I guess they said, Well, let's go now, and you had to
22 drive around to open the exit gate?

23 A. Exactly.

24 Q. Do you have an idea, can you tell me how far it is
25 from where you were parked to the apartment you were

1 watching?

2 A. From where I drove around or just straight across?

3 Q. No, just straight. The distance -- when you had it
4 under surveillance, how far from you sitting in your car to
5 the apartment?

6 A. I can't give you an exact but it's approximately
7 about 200, 250 feet, somewhere in between there.

8 Q. Okay. And you could not identify the people as
9 they went into the apartment?

10 A. No, sir, I can't.

11 Q. All right. And from the distance you were at, you
12 couldn't tell if they used a key or not to get in?

13 A. It appeared that they used a key. I didn't see a
14 knocking motion or anything like that. It appeared that
15 something was stuck in the door or turned and then the
16 handle.

17 Q. Of course you took no part in the actual raid or
18 the gathering of evidence?

19 A. No, sir. Once they begin the raid, I get back and
20 it's all on them after that.

21 Q. All right. Thank you, Officer Curtis.

22 MR. MARTIN: Pass the witness, Your Honor.

23 MR. LEONARD: Nothing further from this
24 witness.

25 THE COURT: All right. May this witness be

1 excused?

2 MR. LEONARD: He may, Judge.

3 THE COURT: Is that okay?

4 MR. MARTIN: Yes, ma'am.

5 THE COURT: On call?

6 MR. MARTIN: Yes.

7 THE COURT: Thank you, Officer. You're free
8 to go. Don't discuss your testimony with anybody else.

9 Call your next witness, please.

10 MR. LEONARD: State calls Sergeant Gonzales.

11 THE COURT: Come on up, Sergeant. If you
12 would, please raise your right hand to take the oath.

13 *(Witness sworn.)*

14 THE COURT: You may proceed.

15 MR. LEONARD: Thank you.

16 **DENNIS GONZALES,**

17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 Q. *(BY MR. LEONARD)* Sergeant, please introduce
20 yourself to the jury.

21 A. Sergeant Dennis S. Gonzales.

22 Q. How are you -- well, it's obvious how you're
23 employed. How long have you been with the Houston Police
24 Department?

25 A. 12 years.