

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 1360299

THE STATE OF TEXAS

THE DISTRICT COURT

VS.

) OF HARRIS COUNTY, TEXAS
)
)
)
) 183RD JUDICIAL DISTRICT

MOTION TO SUPPRESS

On the 23rd day of May, 2013, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Vanessa Velasquez, Judge presiding, held in Houston, Harris County, Texas:

Proceedings reported by machine shorthand.

A P P E A R A N C E S

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VOLUME 1
CHRONOLOGICAL INDEX

MAY 23, 2013				Page
DEFENSE WITNESSES	Direct	Cross	Redirect	Vol.
KEVIN HUNT	5	60	81	1
	Recross	Redirect		
	88	91		
Case dismissed				93
Adjournment for the Day				93
Reporter's Certificate				94

ALPHABETICAL INDEX

	Direct	Cross	Redirect	Vol.
KEVIN HUNT	5	60	81	1
	Recross	Redirect		
	88	91		

EXHIBIT INDEX

DEFENDANT'S				
NO.	DESCRIPTION	OFFERED	ADMITTED	VOL.
1,	photo	29	29	1
2,	photo	29	29	1
3,	photo	29	29	1
4,	photo	35	36	1
5,	consent to search form	57	57	1

1 (Open court, Defendant present, no jury)

2 THE COURT: This is The State of Texas
3 versus . Let the record reflect that the
4 Defendant is present in the courtroom. He's represented
5 by his attorney, Mr. Randy Schaffer. The State is
6 represented by her Assistant District Attorney, Mr. Adam
7 Brodrick.

8 Today is May 23rd, 10:30 a.m. We are here
9 for a Motion to Suppress Evidence.

10 At this time, Mr. Schaffer, it's your
11 motion. You may proceed.

12 MR. SCHAFFER: Thank you.

13 MR. BRODRICK: Your Honor, before we
14 begin?

15 THE COURT: Yes.

16 MR. BRODRICK: It's the State's
17 understanding that this motion is dispositive, meaning
18 that no matter what happens in this case that the
19 Defendant is waiving his right to a jury trial and that
20 this will finish the case one way or the other.

21 THE COURT: That's correct.

22 MR. BRODRICK: It's my understanding also
23 because I'm here, the State and the Defense have now
24 come to an agreement as to what will happen if the State
25 was to win on this. So, I'm not -- under my

1 understanding if the Defendant was to go to you, the
2 Court, for punishment in the event that you deny the
3 Motion to Suppress?

4 THE COURT: Right. That's correct. And
5 that was discussed off the record with Mr. Schaffer.
6 And let the record reflect that the Court knows
7 Mr. Schaffer personally and more importantly knows him
8 professionally and knows Mr. Schaffer to keep his word.
9 And so, that has been resolved.

10 MR. BRODRICK: Thank you.

11 THE COURT: Thank you very much.

12 All right. And let the record reflect
13 also that off the record the Court just swore in five
14 witnesses. There is a witness currently on the stand.
15 His name is Mr. Hunt.

16 You may proceed.

17 MR. SCHAFFER: Thank you, your Honor.

18
19 KEVIN HUNT,
20 having been previously duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SCHAFFER:

23 Q. Please introduce yourself to the Court.

24 A. My name is Kevin Hunt. I'm employed by the
25 Texas Department of Public Safety.

1 Q. How long have you been so employed?

2 A. Since 1997.

3 Q. And what is your educational background?

4 A. Some college. I got hired on to the department
5 while I was still in college.

6 Q. How long have you been with the DPS?

7 A. Going on 16 years.

8 Q. And to what division are you presently
9 assigned?

10 A. Our Criminal Investigations Division.

11 Q. And were you so assigned on September 21st of
12 2012?

13 A. Yes, sir.

14 Q. I want to ask you a couple of questions about
15 what you've done to prepare for your testimony today.
16 Have you read your offense report?

17 A. Yes, sir.

18 Q. And you did prepare the offense report in this
19 case, did you not?

20 A. Yes, sir, I did.

21 Q. Have you reviewed any other documents besides
22 your offense report?

23 A. Officer Bradley's report and the consent to
24 search. Officer Bradley's report and a consent to
25 search documents that were attached to my report.

1 Q. If you don't mind, maybe put the microphone a
2 little bit so you're speaking into it. Thank you, sir.

3 Did you review the Motion to Suppress Evidence
4 that I had filed?

5 A. No.

6 Q. All right. Did you discuss the case with the
7 Prosecutor?

8 A. Yes.

9 Q. And were there other witnesses present during
10 that discussion?

11 A. No, sir.

12 Q. All right. And that was a discussion that took
13 place this morning?

14 A. No, sir.

15 Q. When did it take place?

16 A. Honestly, it was this week over the telephone.

17 Q. And did y'all have any discussion about the
18 issues that would be involved in this hearing?

19 A. Well, we just walked through the case as to
20 what I basically -- the facts that I outlined in my
21 report and what I recall happening on that date.

22 Q. All right. Well, let's get to it then. What I
23 want to talk to you about first is the anonymous tip
24 that got the ball rolling in this case. Did you become
25 aware on September 20th of 2012 that an anonymous

1 tipster had called the DPS in Lufkin?

2 A. Yes, sir.

3 Q. And did you learn that the tipster had spoken
4 to a DPS officer named Warren Kirkland (phn)?

5 A. Yes, sir.

6 Q. And was it your understanding that was on the
7 evening of September 20th, 2012?

8 A. I'm not for sure on what time it happened. I
9 just know that it happened on that date.

10 Q. And is it your understanding that Officer
11 Kirkland did not make any handwritten notes or
12 recordings of that conversation?

13 A. That I'm unaware of.

14 Q. Okay. Officer Kirkland sent an e-mail to you
15 that night, did he not?

16 A. Yes, sir.

17 Q. And it was regarding the anonymous tip,
18 correct?

19 A. Yes, sir.

20 MR. SCHAFFER: And if I may approach the
21 witness briefly, please?

22 THE COURT: Of course, sure.

23 Q. (BY MR. SCHAFFER) I will represent to you that
24 the document I'm showing you is what was provided to me
25 by the former Prosecutor, Anthony Robinson.

1 A. Yes, sir.

2 Q. And ask you just to take a look at it for a
3 second and see if it refreshes your memory that that was
4 the information you received the night before?

5 A. I would take your word on that. I'm very well
6 unaware of what the actual contents of the e-mail were.

7 Q. Do you see that Anthony Robinson sent this
8 information to me on March 14th regarding the response
9 from Agent Kirkland and the documents he found?

10 A. Yes, sir.

11 Q. And just very quickly for the record, the
12 e-mail concerns a tip regarding a transfer of bulk
13 currency en route to Lufkin via Highway 59 for possible
14 arrival this week, correct?

15 MS. EXLEY: Judge, I'm sorry. Can we
16 inspect the document that's being shown?

17 THE COURT: Sure.

18 MR. SHAFFER: It's in your file.

19 MS. EXLEY: We don't have a copy of it
20 right now. If we can take a look at it?

21 Q. (BY MR. SCHAFFER) The e-mail concerned a tip
22 regarding the transfer of currency to Lufkin on Highway
23 59 for possible arrival that week, correct?

24 A. I believe that was the first tip that we had,
25 yes, sir.

1 Q. And the suspects listed are Sidney Wylie (phn)
2 and Trenton Parks (phn), correct?

3 A. That is correct.

4 Q. And the automobile listed is a 2009 Cadillac
5 with a specific license number, correct?

6 A. Yes, sir.

7 Q. And you would agree there's no information in
8 this tip pertaining to C o ,tist there?

9 A. I agree, yes, sir.

10 Q. So, this is the tip you were proceeding on
11 initially, was it not?

12 A. Yes, sir.

13 Q. When you received the e-mail from Agent
14 Kirkland, you had telephone conversations with him, did
15 you not?

16 A. I did.

17 Q. And then on the morning of September 21, which
18 is the morning Mr. Cotton is arrested, you proceeded to
19 commence your investigation, did you not?

20 A. Yes, sir.

21 Q. And you followed the suspect to a location
22 early that morning with Agent Dial King, did you not?

23 A. I did not follow him to that location, no, sir.

24 Q. Did you -- were you and Agent King together?

25 A. No, sir.

1 Q. Okay.

2 A. Agent King arrived to the location prior to me.

3 Q. I'm confusing you. I'm not talking about
4 Mr. Cotton's house. I'm talking about the other
5 suspect.

6 A. We were at the other suspect's house, correct.

7 THE COURT: Which suspect?

8 Q. (BY MR. SCHAFFER) Which suspect were you-all
9 following early that morning?

10 A. I'll be honest with you. I don't know who it
11 was. It was the Cadillac.

12 Q. Either Sidney Wiley or Trenton Parks?

13 A. I have no idea who was driving.

14 Q. Okay. I t

15 no.

16 Q. What time of the morning were you-all following
17 this person?

18 A. Honestly I would have to probably say between
19 9:00 and 10:00.

20 Q. And suffice it to say, the tip did not pan out,
21 did it?

22 A. The tip gave us all the information that we
23 were able to locate the vehicle with the correct license
24 plate and everything. We could not do an enforcement
25 action on it. So, as far as the transportation of the

1 bulk currency, no. And then we received an additional
2 tip.

3 Q. Let's take it one step at a time. The initial
4 tip did not pan out, did it, in terms of finding any
5 drugs?

6 A. We did not follow up any more on that tip.

7 Q. You then notified Agent Kirkland that the tip
8 had not born fruit, did you not?

9 A. We told him that we were breaking off of it
10 because we didn't feel that it was necessary to continue
11 the surveillance.

12 Q. Agent Kirkland called you back later that
13 morning with additional information, did he not?

14 A. Yes, sir.

15 Q. And he still asserted that that information
16 came from that anonymous source?

17 A. Correct.

18 Q. Agent Kirkland gave you directions to a house
19 in a particular neighborhood, did he not?

20 A. That is correct.

21 Q. Told you to turn left and look for a corner
22 house in a circle with the number 5531, correct?

23 A. Yes, sir.

24 Q. Did not know the street name, did he?

25 A. Said it was Cedar something, but he didn't know

1 the entire name.

2 Q. He said it was Cedar something?

3 A. Well, he just said there's "Cedar" in it, but
4 he didn't know the entire name of the street.

5 Q. Well, you and I have discussed this before,
6 have we not?

7 A. Correct.

8 Q. And isn't it true that you told me that you had
9 directions to a house in the neighborhood, but you did
10 not have a street name at all --

11 A. We did not have a complete street name, no, we
12 did not.

13 Q. Did you tell me you had a partial street name?

14 A. I'm not sure on that.

15 Q. Do you have any notes reflecting you had a
16 street name?

17 A. No, sir.

18 Q. Agent Kirkland did not give you any information
19 regarding the suspect, did he?

20 A. No, sir.

21 Q. You didn't have a name, correct?

22 A. No.

23 Q. Did not have a description, correct?

24 A. Correct.

25 Q. Did not know the gender of the suspect,

1 correct?

2 A. Did not know 100 percent positive, no.

3 Q. Did not know the race of the suspect, did you?

4 A. No, sir.

5 Q. Now, isn't it true that neither the anonymous
6 caller nor Agent Kirkland gave you the address of 5531
7 Cedarburg as a location where narcotics activity was
8 taking place?

9 A. They guided me in there via the Google maps
10 that I was using and told me the directions to go, which
11 intel got us to that exact location.

12 Q. Question to you, sir, is did Agent Kirkland
13 tell you that narcotics activity was taking place at
14 5531 Cedarburg?

15 A. He did not give me the address. Said that
16 there was -- he was confident, the source was confident
17 that there was narcotics activity at that location.

18 Q. All right. I'm going to make it as clear as I
19 can. Did you receive information from Agent Kirkland
20 that there had been an anonymous tip on narcotics
21 distribution at 5531 Cedarburg in Houston?

22 A. I can't remember the exact words that Agent
23 Kirkland stated to me. However, he stated that there
24 would either be -- he was confident there would either
25 be narcotics or proceeds from narcotics at that

1 residence.

2 Q. At what residence?

3 A. That residence that he gave me directions to.
4 That had the -- he had the numbers 5531 on a corner lot
5 that they thought that there was "Cedar" in the name of
6 the street.

7 Q. So, you're now saying that he thought "Cedar"
8 was in the name of the street?

9 A. That is -- yes, correct.

10 Q. But when you had a discussion with me in some
11 detail several months ago, you didn't name a street, did
12 you?

13 A. Sir, it was on the phone. I'm not real sure
14 what I told you.

15 Q. You said that Agent Kirkland said to turn left,
16 go down to the first street on the left and that you had
17 circled the first house on the right, 5531, correct?

18 A. I don't recall our conversation.

19 Q. Well, when you wrote in your offense report
20 that on 9-21-12 you received an anonymous tip on
21 narcotics distribution at 5531 Cedarburg in Houston,
22 that really wasn't correct, was it?

23 A. That was the address that we identified, yes,
24 sir. So, it is correct. How he explained it to me on
25 the phone that I'm unaware of. I know that he gave a

1 partial street name. That's how we identified the house
2 through the descriptors of the house. As far as the way
3 it was located on the corner and the numbers, that, I am
4 positive of.

5 Q. So, when you got this additional information
6 from Agent Kirkland, what time would you say it was?

7 A. I'll be honest with you. I wouldn't even have
8 a clue.

9 Q. Well, you're at the house, like, at 11:00
10 o'clock, correct?

11 A. Correct.

12 Q. So, back up from there. If you're at the house
13 at 11:00 o'clock -- and when I say, "the house," I mean,
14 Mr. Cotton's house -- what time was it you think you got
15 the tip?

16 A. If I was guessing, which all I'm doing is
17 guessing, I would say around 10:30.

18 Q. Well, did you make any notes at the time to
19 show what time the information came in?

20 A. No, sir.

21 Q. So, who put the raid team together?

22 A. I made phone calls to certain people and then I
23 also called my supervisor to ask for additional help.

24 Q. And what was your purpose in putting a raid
25 team together where you had an anonymous tip that there

1 was narcotics distribution at some unknown house? Why
2 put a raid team together?

3 A. It wasn't a raid team.

4 Q. What do you call it?

5 A. Assistance from other officers. We had no --
6 as far as a stack or anything like that, it was for
7 assistance in furthering this investigation.

8 Q. Well, was it for assistance in making a show of
9 force sufficient to get consent to search the house?

10 A. No, sir.

11 Q. Was that your goal, to try and get consent to
12 search the house?

13 A. Yes, sir.

14 Q. You did not seek a search warrant, did you?

15 A. I did not.

16 Q. And you did not -- because you did not have
17 adequate information to seek it, correct?

18 A. At that time that the tip came in, no, we did
19 not.

20 Q. All right. How many officers participated in
21 going to Mr. Cotton's house?

22 A. They arrived at various times. I would have to
23 say a total of officers -- a total by the time everybody
24 showed up, I would have to say, I think, eight.

25 Q. All right. We had Dial King from DPS, correct?

1 A. Yes, sir.

2 Q. We had Brian Hebert (phn) from DPS, correct?

3 A. Yes, sir.

4 Q. We had Scott Rosenberry (phn) from DPS,
5 correct?

6 A. Yes, sir.

7 Q. We had Matt Bradley from the Houston Police
8 Department, correct?

9 A. Yes, sir.

10 Q. We had Rick Cuevas (phn) from HPD, correct?

11 A. Yes, sir.

12 Q. And Sergeant Cuevas has his K-9 partner named
13 Dora, did he not?

14 A. That is correct.

15 Q. Do we count Dora as an officer, too? Is that
16 in one of the group of eight or is it --

17 A. No.

18 Q. All right. So that -- counting you, not
19 counting Dora, that makes it six. There were two more?

20 A. Yes, sir. But they took no other action.
21 They were basically outside on the perimeter.

22 Q. For what?

23 A. Just in case somebody would come up while we
24 were at the house.

25 Q. So, they were there to keep other people away?

1 A. While we were inside the house. They showed up
2 at a later time.

3 Q. You say they were there to protect the
4 perimeter while you were inside the house. At what
5 point did you contact them?

6 A. They were contacted immediately. They just
7 didn't show up. They were coming from across town.

8 Q. So, when you went to this address?

9 A. Yes, sir.

10 Q. That you didn't know the name of the street of,
11 your assumption was you were going to be inside that
12 house, correct?

13 A. We -- that was our intent, yes.

14 Q. Okay. Without a warrant, correct?

15 A. We were there to gain consent.

16 Q. Yes. And it took eight of you to do it?

17 A. No, sir.

18 Q. What was -- I want you to tell me the
19 responsibility of each officer. What was Dial King's
20 responsibility?

21 A. He showed up first and put eyes on the house.

22 Q. He had the house under surveillance.

23 A. He had the house under surveillance.

24 Q. Then what is Brian Hebert's responsibility?

25 A. Just to be there to assist as to whatever

1 needed to take place.

2 Q. Scott Rosenberry?

3 A. Same. He showed up later.

4 Q. Matt Bradley?

5 A. He was there to assist with whatever was
6 needed.

7 Q. Rick Cuevas?

8 A. To run his K-9 if needed.

9 Q. Run his K-9 where?

10 A. Where we ran it on the front door.

11 Q. Did you have a warrant for him to do that?

12 A. No, sir.

13 Q. All right. So, if I understand correctly, you
14 did not have the specific address of the house at the
15 time you set up on Mr. Cotton's house, correct?

16 A. That is correct.

17 Q. You didn't have the name of a suspect, correct?

18 A. That is correct.

19 Q. Didn't have a description of a suspect,
20 correct?

21 A. Yes, sir.

22 Q. You did not have an arrest warrant for
23 Mr. Cotton or anybody else, did you?

24 A. No, sir.

25 Q. Did not have a search warrant for the

1 residence, did you?

2 A. No, sir.

3 Q. And had no legal authority to enter that
4 residence at the time you arrived, correct?

5 A. We did not enter that residence at the time we
6 arrived, no, sir.

7 Q. I want to make sure you understand my question.
8 My question was you had no legal authority to enter that
9 residence at the time you arrived?

10 A. No, sir.

11 Q. So, your strategy was to do what is called a
12 knock and talk, correct?

13 A. That's correct.

14 Q. Please explain what a knock and talk is in your
15 book.

16 A. It's when you receive information on possible
17 criminal activity taking place, you go and knock on the
18 door and talk to the person that is at the residence and
19 try to explain to them the details that you have, the
20 facts that you have and whether -- you attempt to gain
21 access to the house for a consent to search.

22 Q. I'm sorry. You turned away from the
23 microphone. I can't hear you. I didn't catch the last
24 part.

25 A. It's an attempt to gain access through a

1 consent to search.

2 Q. All right. So, the goal is to obtain a consent
3 to search the residence, correct?

4 A. Yes.

5 Q. And the reason for having six officers with you
6 when you approach the front door is basically to
7 intimidate the homeowner, isn't it?

8 A. There were not six of us at the front door,
9 sir.

10 Q. Well, how many were at the front door?

11 A. Would be me and then there was other
12 officers -- actually one other officer back behind me at
13 the front door. Everybody else was either around the
14 corner or still in their vehicles.

15 Q. Most of --

16 A. That --

17 Q. Your intent on that occasion was to search the
18 home one way or the other, was it not?

19 A. We felt that there was criminal activity taking
20 place, yes, sir.

21 Q. Based on an anonymous tip that there was
22 narcotics distribution at a home with the address of
23 5531 in a particular neighborhood, correct?

24 A. Being that the anonymous tip was in detail to
25 that specific address, yes.

1 Q. Well, what about the -- what did you know about
2 the tipster?

3 A. Nothing.

4 Q. Do you know if the tipster was reliable when
5 you took the tip -- when the tip was transferred to you?

6 A. I know the person that gave me the information
7 was a reliable source.

8 Q. That was Agent Kirkland?

9 A. Correct.

10 Q. I'm asking you about the tipster that
11 provided --

12 A. I never talked to the tipster. So, I have
13 nothing -- I don't even know anything about the tipster.
14 I got the information from Agent Kirkland. So, I cannot
15 answer anything about the tipster.

16 Q. You had no information as to the tipster's
17 alleged basis for knowledge, did you?

18 A. No.

19 Q. All right. So, your expectation was to knock
20 on the door, tell the person who answered you had
21 information there was narcotics activity there and be
22 invited in to search. That was your expectation?

23 A. In the amount of years that I've been doing
24 this on all knock and talks, that -- or the majority of
25 knock and talks that I have done, if there's no criminal

1 activity or even if there is criminal activity, yeah, we
2 usually are invited into the house.

3 Q. Okay. So, if you expected to be invited in
4 when you knocked on the door, why did you have a K-9
5 unit there?

6 A. In case consent was refused.

7 Q. Okay. So, you were hedging your bets. And in
8 the event that the homeowner refused consent, you were
9 going to use a K-9 unit to try and get consent, correct?

10 A. Not to try and get consent, no, sir.

11 Q. To try and get in the house?

12 A. To get probable cause to obtain a search
13 warrant.

14 Q. Okay. So, the only reason for inviting the K-9
15 unit was in the event you needed to do a preliminary
16 search to then be able to get a warrant, correct?

17 A. That way the K-9 would be there so that we
18 didn't have to wait basically.

19 Q. So, as I said, one way or the other, you were
20 going to get in the house that morning, weren't you?

21 A. We felt that with -- the K-9 would give a
22 positive alert, yes, sir.

23 Q. So, if a homeowner in that situation tells you
24 he doesn't want to talk to you, do you just walk away or
25 do you persist in trying to get in the house?

1 A. That, I don't know. That didn't happen in this
2 case.

3 Q. That's the question I just asked. If a
4 homeowner says, "I don't want to talk to you," do you
5 walk or do you persist in trying to get in the house?

6 A. Depending on the evidence or -- depending on
7 the information that we have -- not evidence,
8 information that we have -- if we feel that there's
9 criminal activity taking place, then we feel it is our
10 duty to further the investigation.

11 Q. Well, in this case the only criminal activity
12 you had reason to believe to take place came from a
13 tipster you knew nothing about, correct?

14 A. That is correct.

15 Q. So, if the homeowner tells you, "No, I don't
16 want to talk to you, go away," that's when you pull the
17 K-9 up, isn't it?

18 A. We would have run the K-9 on the door at that
19 time, yes, sir.

20 Q. Okay. Otherwise, your K-9 is in the background
21 and out of the way, correct?

22 A. Yes, sir.

23 Q. As it was in this case, correct?

24 A. Yes, sir.

25 Q. All right. Do you ever tell the homeowner,

1 "We'll get a search warrant and come back"?

2 A. Yes, sir.

3 Q. And do you tell them, "If we have to get a
4 search warrant to come back, we'll tear up your house"?

5 A. No, sir.

6 Q. Do you ever tell the homeowner, "We need to do
7 a protective sweep in front of the house to ensure our
8 safety"?

9 A. Yes, sir.

10 Q. Okay. So, one way or the other you're going to
11 tell the homeowner something that's going to get you in
12 that house, aren't you?

13 MR. BRODRICK: Objection, your Honor.
14 Argumentative.

15 MR. SCHAFFER: Let me reask it.

16 Q. (BY MR. SCHAFFER) It's your intent to tell the
17 homeowner something that will get you inside the house,
18 correct?

19 A. The intent is to follow the guidelines that we
20 feel are necessary to get into the house. If consent is
21 received, then we feel that it's necessary to do a
22 protective sweep for safety, also to not destroy any
23 evidence that would be in the house.

24 Q. All right. Now, I think you told us that Agent
25 King arrived at 11:00 o'clock that morning, correct?

1 A. To be honest with you, I don't know what time
2 he arrived there. That's what time I arrived there.

3 Q. Well, maybe we should look at y'all's offense
4 report to refresh your memory. Okay?

5 A. That would be fine.

6 Q. Do you need to see it or -- I'm sorry?

7 A. Yes, sir.

8 Q. Do you have a copy with you?

9 A. No, sir.

10 MR. SCHAFFER: May I get a copy for him to
11 have up there?

12 Q. (BY MR. SCHAFFER) You didn't bring one with
13 you?

14 A. I left it in my desk when I left the office.

15 Q. I'm going to hand you a copy of your report.
16 Take a look at it and ensure that it is your report.

17 Is that your report, sir?

18 A. Yes, sir.

19 Q. If you would look at Page 2, Paragraph 3, does
20 that refresh your memory with regard to what time Agent
21 King arrived?

22 A. Yes, sir. That's correct. He arrived prior to
23 us. So, yeah, at approximately 11:00 a.m. he arrived.

24 Q. And you were there within five or ten minutes
25 later, correct?

1 A. I don't believe it was that soon, no, sir.

2 Q. Well, how long do you think it was before you
3 got there?

4 A. I think probably 15 minutes, 15 to 20 minutes.

5 Q. Okay. So, you were there probably 11:15,
6 correct?

7 A. Yes.

8 Q. And when you arrived you speak to Agent King,
9 do you not?

10 A. Yes, sir.

11 Q. And he tells you he saw someone arrive in a car
12 and parked at the residence, correct?

13 A. Yes, sir.

14 MR. SCHAFFER: If I may approach, please,
15 Judge?

16 THE COURT: Sure.

17 Q. (BY MR. SCHAFFER) I'm going to show you what I
18 have marked as Defense Exhibits 1, 2 and 3, which are
19 just some photos of the area and the house. And I'll
20 ask you a couple of questions about it.

21 A. Yes, sir.

22 Q. Would you take a look at Defense Exhibits 1, 2,
23 and 3, see if you can identify them just in general
24 photos of the areas of the house?

25 A. I can't be certain on that because I've never

1 seen an aerial photo. But that one, yes.

2 Q. All right. So, you're identifying Exhibit 3 as
3 Mr. Cotton's house?

4 A. Yes, sir.

5 Q. And you see that Defense Exhibits 1 and 2 are
6 Google maps that purport to be of 5531 Cedarburg Drive,
7 correct?

8 A. Yes.

9 Q. And you see the circle, do you not?

10 A. Yes, sir.

11 Q. So, do you think it's fair that this is the
12 location of the residence?

13 A. Yes, sir.

14 Q. All right.

15 MR. SCHAFFER: Your Honor, I'd offer
16 Defendant's Exhibit 1 through 3.

17 (Defendant's Exhibit Nos. 1 through 3 offered)

18 THE COURT: Any objection?

19 MR. BRODRICK: No objection.

20 THE COURT: All right. Admitted.

21 (Defendant's Exhibit Nos. 1 through 3 admitted)

22 Q. (BY MR. SCHAFFER) Now, on Defense 3 you see a
23 vehicle parked in the driveway, do you not?

24 A. Yes, sir.

25 Q. And was that the approximate position that

1 Mr. Cotton's vehicle was parked in on September 21 of
2 2012?

3 A. I believe it was on the opposite side of the
4 driveway.

5 Q. But it's in the same driveway?

6 A. Correct.

7 Q. Did you see any other vehicles present at the
8 house?

9 A. No, sir.

10 Q. Did you see any other people at the house?

11 A. No, sir.

12 Q. Did Agent King tell you that he had seen anyone
13 other than the homeowner go inside?

14 A. No, sir.

15 Q. When I say, "the homeowner," he just told you
16 he saw a guy walk inside, right?

17 A. Correct.

18 Q. You had no information when you arrived that
19 anyone other than the homeowner was inside the house,
20 did you?

21 A. I had no information of seeing anybody else go
22 inside the house.

23 Q. And you had no information that anyone in the
24 house was armed, did you?

25 A. I don't believe so.

1 Q. So, you had no information that anyone was in
2 the home at the time Mr. Cotton arrived, did you?

3 A. There was no information about that.

4 Q. All right. So, at the time you arrived, the
5 only person you had reason to believe was in the home
6 was the homeowner, correct?

7 A. Correct.

8 Q. Now, did you videotape or audiotape any of what
9 transpired once you approached the residence?

10 A. No, sir.

11 Q. Why not?

12 A. That's just not our common practice.

13 Q. What, because it gives too accurate a rendition
14 of what occurred?

15 MR. BRODRICK: Objection, your Honor.
16 That's argumentative.

17 THE COURT: Sustained.

18 Q. (BY MR. SCHAFFER) You're telling us you had
19 never videotaped or audiotaped an encounter with a
20 suspect?

21 A. I'm not saying I've never done that as far as
22 an encounter with a suspect. I've done it -- well, I've
23 never done it on a knock and talk or a consent to search
24 or anything else, sir.

25 Q. And so, my question is: Why didn't you record

1 this?

2 A. That's not our common practice.

3 Q. Why? Why isn't it your, quote, "common
4 practice"?

5 MR. BRODRICK: Objection, your Honor, to
6 relevance.

7 THE COURT: Sustained.

8 Q. (BY MR. SCHAFFER) The DPS has recording
9 equipment, does it not?

10 A. Yes, sir.

11 Q. You have a cell phone?

12 A. Yes, sir.

13 Q. Does your cell phone have recording
14 capabilities?

15 A. I'm not real sure. I'll be honest with you.

16 Q. Do you know if any of the officers had cell
17 phones with recording capabilities?

18 A. I do not know that.

19 Q. There was a conscious decision not to record
20 the conversation, correct?

21 MR. BRODRICK: Objection, your Honor, to
22 argumentative into this line of questioning.

23 THE COURT: Overruled, but I get the
24 point.

25 MR. SCHAFFER: Okay.

1 Q. (BY MR. SCHAFFER) This was a conscious
2 decision not to record the conversation, correct?

3 A. It was our common practice not to.

4 Q. You didn't want a recording of what occurred on
5 the porch or how you entered the home and got this
6 consent to search, did you?

7 MR. BRODRICK: Objection, argumentative.

8 THE COURT: Overruled.

9 A. (CONTINUING) Sir?

10 Q. (BY MR. SCHAFFER) I'll ask you again. You did
11 not want to have a recording of what occurred on the
12 porch, did you?

13 A. There was nothing to hide on the porch. We
14 just don't commonly practice recording consents to
15 search.

16 Q. But by not recording this encounter it leaves
17 it to the Judge having to decide whether to take your
18 word or Mr. Cotton's word, doesn't it?

19 A. I just document the facts that happened so that
20 it would be up to the Judge to interpret.

21 Q. And your preference would be or shall I say
22 your common practice would be that you would rather have
23 the Judge having to choose whether to take the word of a
24 police officer versus a person accused of a crime,
25 correct?

1 MR. BRODRICK: Objection, your Honor, to
2 argumentative.

3 THE COURT: Sustained.

4 Q. (BY MR. SCHAFFER) Suffice it to say you did
5 not want the Judge to be able to see and hear what
6 happened on that front porch, did you, sir?

7 MR. BRODRICK: Objection, your Honor,
8 argumentative.

9 THE COURT: Sustained.

10 MR. SCHAFFER: May I have the answer on a
11 bill, please?

12 THE COURT: Sure.

13 What's the answer? "Yes" or "No"?

14 A. (CONTINUING) Can you repeat the question?

15 Q. (BY MR. SCHAFFER) Yes. You did not want the
16 Judge to be able to see and hear what happened on that
17 front porch, did you?

18 A. It wouldn't not bother me at all if the Judge
19 saw or heard anything that happened on that front porch.

20 Q. And you were the one in sole control of whether
21 to report it, weren't you?

22 A. I mean, I made the decision I guess you could
23 say, yes.

24 Q. All right. So, you and Officer Bradley knocked
25 on the door, correct?

1 A. Yes, sir.

2 Q. There are burglar bars on the front door, are
3 there not?

4 A. Yes, sir.

5 Q. And the burglar bars were locked, were they
6 not?

7 A. Yes, sir.

8 Q. And did that indicate to you that that person
9 was not anxious to have other folks in his home?

10 MR. BRODRICK: Objection. Calls for
11 speculation.

12 THE COURT: Overruled.

13 Q. (BY MR. SCHAFFER) What did the burglar bars
14 denote to you?

15 A. There's different ways of interpreting that.
16 Safety, keep people out.

17 MR. SCHAFFER: If I may approach?

18 THE COURT: Sure.

19 Q. (BY MR. SCHAFFER) I'm going to show you what
20 I've marked as Defense Exhibit 4 and ask you does that
21 photo fairly and accurately depict Mr. Cotton's front
22 door with the burglar bars closed as they were when you
23 arrived on September 21, 2012?

24 A. Yes, sir.

25 MR. SCHAFFER: Offer Defense 4, please.

1 (Defendant's Exhibit No. 4 offered)

2 THE COURT: All right.

3 Any objection?

4 MR. BRODRICK: No objection.

5 THE COURT: All right. Thank you very
6 much.

7 It's admitted.

8 (Defendant's Exhibit No. 4 admitted)

9 Q. (BY MR. SCHAFFER) Were your guns drawn?

10 A. No, sir.

11 Q. Did you have guns?

12 A. Yes, sir.

13 Q. Did all the officers have guns?

14 A. I would hope so, but I'm not sure.

15 Q. All right. Why didn't you draw your gun?

16 A. Didn't feel the need to.

17 Q. Because you were just doing a friendly knock
18 and talk, correct?

19 A. Correct.

20 Q. Mr. Cotton opened the door, did he not?

21 A. Yes, he did.

22 Q. But he did not open the burglar bars, did he?

23 A. Not at first.

24 Q. And you told him, "We're here to do" -- I'm
25 sorry. "We're here due to a tip regarding narcotics

1 activity," correct?

2 A. Yes, sir.

3 Q. You didn't tell him what the tip was, did you?

4 A. I can't remember exactly what the conversation
5 we had was, but I told him that we were there to
6 investigate narcotics.

7 Q. Well, you didn't have anymore information than
8 that, did you?

9 A. No.

10 Q. So, if you told him anything else you would
11 have had to make it up, correct?

12 A. Uh-huh.

13 Q. I'm sorry?

14 A. That's correct.

15 Q. He said, "There's nothing here," didn't he?

16 A. He did.

17 Q. And you said, "we want to talk to you about
18 it," correct?

19 A. Yes, sir.

20 Q. You told him to come outside, correct?

21 A. Yes, sir.

22 Q. And he started to shut the door, did he not?

23 A. I don't recall that.

24 Q. You don't recall him starting to shut the door?

25 A. No, sir.

1 Q. And you don't recall saying something to him
2 about what would happen if he shut the door?

3 A. Not if he shut the door, no, sir.

4 Q. So, you told him to come outside, did you not?

5 A. No, we didn't tell him to come out. We asked
6 him to come outside.

7 Q. Did you tell him he didn't have to?

8 A. No.

9 Q. At some point did he unlock the burglar bars
10 and come outside?

11 A. Yes.

12 Q. And did you-all continue a conversation on the
13 front porch?

14 A. Yes.

15 Q. And so we're clear about this, he did not
16 invite you-all in the house, did he?

17 A. At one point he did. He said he would rather
18 continue --

19 Q. Wait a minute. We're talking about right now.
20 Let's take it in order. At the point where you said,
21 "Come outside," he did not invite you in the house, did
22 he?

23 A. When I asked him to come outside, he
24 voluntarily unlocked the doors and came outside and we
25 continued the conversation outside.

1 Q. Would you answer my question, please? He did
2 not invite you inside the house at that time, did he,
3 sir?

4 A. No.

5 Q. Was he under arrest?

6 A. No, sir.

7 Q. Was he free to leave?

8 A. Yes.

9 Q. Your conversation with him on the front porch
10 then involved a matter of him giving you consent to
11 search the house, correct?

12 A. We --

13 Q. That's a "Yes" or "No."

14 A. We discussed that. Yes, sir.

15 Q. And he refused to give consent at that time,
16 didn't he?

17 A. I believe that is correct.

18 Q. All right. So, after he refused to consent to
19 a search on your knock and talk, did you-all just say,
20 "Thank you, sir; have a nice day," and walk away?

21 A. No, sir.

22 Q. At that point you called for Sergeant Cuevas
23 and his K-9 partner, Dora, correct?

24 A. Yes, sir.

25 Q. And the purpose in calling them was to do a dog

1 scent search on the front porch, correct?

2 A. Yes.

3 Q. And to try and develop probable cause to get
4 into the house, correct?

5 A. Yes, sir.

6 Q. You did not have a warrant for a dog scent
7 search on that front porch, did you?

8 A. No, sir.

9 Q. Did not attempt to obtain a warrant for that,
10 did you?

11 A. No.

12 Q. And, in fact, did not have probable cause to
13 obtain a warrant, did you?

14 A. Not at that point, no, sir.

15 Q. And you did not smell an odor of controlled
16 substance or marijuana on the front porch, did you?

17 A. Not at that time.

18 Q. At any time did you smell an odor on the front
19 porch?

20 A. I did not, no.

21 Q. All right. So, Sergeant Cuevas and Dora come
22 up on the front porch, do they not?

23 A. Yes, sir.

24 Q. And then Sergeant Cuevas runs Dora around the
25 front door and up and down the front porch, does he not?

1 A. I didn't watch the dog run. I'm sorry.

2 Q. And at some point Sergeant Cuevas tells you
3 that Dora alerted to the odor of narcotics, correct?

4 A. I don't know that he directly told me or
5 whether he directly told Officer Bradley. But, yes, the
6 information was relayed to me, yes.

7 Q. All right. That there had been a positive
8 alert, correct?

9 A. Correct.

10 Q. Now, you would agree with me that the front
11 porch is outside the residence, is it not?

12 A. Yes, sir.

13 Q. And that the fact that if indeed there was an
14 odor that Dora alerted to on the front porch, it would
15 not mean that it came from inside the residence, would
16 it?

17 A. I cannot testify to anything of the alertness
18 of the dog.

19 Q. Well, by the mere fact that the dog is run
20 outside the house, that means there's an odor outside
21 the house, correct?

22 A. Whether it be outside or actually on the
23 house -- Dora, I can't -- don't know.

24 Q. I guess you'd have to ask Dora, huh?

25 A. I guess you would have to ask the K-9 officer

1 that is trained to do that.

2 Q. So, once Sergeant Cuevas got the word to you
3 that Dora had given a positive alert, then isn't it true
4 that Officer Bradley asked Mr. Cotton, "Is anyone else
5 inside"?

6 A. I believe that is correct.

7 Q. He said, "No. Just me." Correct?

8 A. Yes, sir.

9 Q. Isn't it true that Officer Bradley then said,
10 "We need to check the house to make sure no one is
11 inside that could harm us or destroy evidence"?

12 A. Yes, sir.

13 Q. And Officer Bradley then asked Mr. Cotton the
14 question, "Do you understand," correct?

15 A. Yes, sir.

16 Q. And Mr. Cotton nodded his head up and down,
17 correct?

18 A. That's correct.

19 Q. Now, what Officer Bradley in essence was
20 telling Mr. Cotton is that you-all needed to do a
21 protective sweep for officers' safety and preserve any
22 evidence, correct?

23 A. I don't know about the preserving of any
24 evidence, but we needed to do a protective sweep to make
25 sure that there were no other persons in the house that

1 would be able to either harm us or destroy evidence.

2 Q. Okay. And that was based on the K-9's positive
3 alert, correct?

4 A. Correct.

5 Q. Are you aware of any legal basis for telling a
6 person that you have a right to enter his house to do a
7 protective sweep for officers' safety on a knock and
8 talk?

9 A. At that time that the K-9 gave a positive
10 alert, we had probable cause to believe that there was
11 narcotics inside that house or at one time had been
12 inside that house. Whether it still be there or not, we
13 felt that there were still narcotics inside that house
14 and felt that we needed to do a protective sweep to make
15 sure that there were no other persons inside that house
16 that could destroy evidence or cause harm to us.

17 Q. So, it's your understanding the law permits you
18 to do what you told Mr. Cotton you were going to do,
19 correct?

20 A. Yes, sir.

21 Q. All right. Do you know what a protective sweep
22 is?

23 A. Yes, sir.

24 Q. Isn't it true that a protective sweep is a
25 quick and limited search of a premises incident to an

1 arrest and conducted to protect the safety of the
2 officers or others?

3 A. At that time there was no arrest.

4 Q. Yes. That's my point. Are you aware of --
5 well, let's first agree on that. Mr. Cotton was not
6 under arrest, correct?

7 A. That is correct.

8 Q. Do you-all -- and when I say, "you-all," I mean
9 the Texas Department of Public Safety. Do you-all
10 follow the law set forth by the United States Supreme
11 Court? Do y'all recognize that as binding authority on
12 your conduct?

13 A. Yes, sir.

14 Q. Do you take courses in searches and seizures to
15 learn what you can legally do and not do?

16 A. Yes, sir.

17 Q. All right. My question to you is: Do you
18 understand as an officer with 16 years of experience
19 that a protective sweep is a quick and limited search of
20 a premises incident to an arrest and conducted to
21 protect the safety of the officers or others? Is that
22 your understanding of the law?

23 A. I would have to refresh my memory. But at that
24 time that we had the probable cause to believe there was
25 narcotics in there, Mr. Cotton was not free to leave.

1 He was going to be detained until the investigation.

2 Q. You told me just a second ago he wasn't under
3 arrest?

4 A. He was not under arrest.

5 Q. All right. So, I want you to answer my
6 question.

7 A. Yes, sir.

8 Q. You're out there enforcing for law handed down
9 by the Supreme Court on September 21 of 2012, correct?

10 A. Yes, sir.

11 Q. My question to you, sir, is: Was it your
12 understanding of that law that a protective sweep is
13 authorized other -- in circumstances other than when you
14 have arrested someone?

15 A. At the time the protective sweep that we did we
16 felt we were legally bound to do so, yes, sir.

17 MR. SCHAFFER: If I may approach the
18 witness, Judge?

19 THE COURT: Sure.

20 Q. (BY MR. SCHAFFER) I want to show you a United
21 States Supreme Court case decided in 1990 called
22 Maryland versus Buie, B-u-i-e. Maryland versus Buie,
23 Supreme Court, 1990, correct?

24 A. Yes, sir.

25 Q. Are you familiar with this case?

1 A. No, sir.

2 Q. It's written by Justice Byron White. Do you
3 know who Justice Byron White is?

4 A. No, sir.

5 Q. Probably at that time the most conservative
6 Judge on the United States Supreme Court.

7 MR. BRODRICK: Objection, your Honor, to
8 relevance.

9 THE COURT: Sustained.

10 Q. (BY MR. SCHAFFER) Would you read the Court the
11 first sentence of --

12 MR. BRODRICK: Objection.

13 THE COURT: What's your objection?

14 MR. BRODRICK: It's outside the record.
15 It's relevancy. It's -- I don't know how he can testify
16 to this case law. I don't know if the case has been
17 cited, if it's current. I don't know what the case is.

18 THE COURT: Well, you want to take a look
19 at it?

20 MR. BRODRICK: Sure.

21 THE COURT: And do you mind showing it to
22 the Prosecutor?

23 MR. SCHAFFER: I don't mind.

24 THE COURT: All right.

25 MR. BRODRICK: For the purposes of the

1 record, what is this question going to be about that?

2 THE COURT: I don't know.

3 MR. SCHAFFER: I just asked the question.

4 THE COURT: Whether or not he's familiar
5 with that law?

6 MS. EXLEY: And he said "No."

7 MR. SCHAFFER: I'll ask the questions.
8 Thank you. I don't have to justify it to you.

9 MS. EXLEY: I'm just trying to move things
10 along, Mr. Schaffer.

11 Q. (BY MR. SCHAFFER) Let's be clear. Y'all are
12 out there enforcing the law given to us by the United
13 States Supreme Court, correct?

14 A. Yes, sir.

15 Q. You recognize that as the law of the land,
16 correct?

17 A. Yes, sir.

18 Q. And it applies to all officers, correct?

19 A. Yes, sir.

20 Q. Even DPS officers, correct?

21 A. Yes, sir.

22 Q. And so, it is helpful for an officer to know
23 what the law is if he's going to be out there enforcing
24 it, isn't it, sir?

25 A. Yes, sir.

1 Q. Would you read the first sentence of Justice
2 White's opinion in Maryland versus Buie.

3 A. "A protective sweep is a quick and limited
4 search of the premises incident to an arrest and
5 conducted to protect the safety of police officers or
6 others."

7 Q. Now, that case was handed down 22 1/2 years
8 before your search, wasn't it?

9 A. Approximately, yes, sir.

10 Q. And you weren't aware of it, were you?

11 A. No, sir.

12 Q. And you didn't follow it, did you?

13 A. I followed the guidelines that I felt that I
14 had been trained upon, yes, sir.

15 Q. Which do not trump the law from the United
16 States Supreme Court, do they?

17 A. No, sir.

18 Q. So, suffice it to say that DPS never trained
19 you that a protective sweep is limited to a quick search
20 of an area after you've arrested someone, did they?

21 A. You can -- I was trained that you can do a
22 protective sweep at the moment that you feel that -- for
23 protection and/or to preserve evidence from being
24 destroyed.

25 Q. You had no information anyone was in the house,

1 did you?

2 A. No, sir.

3 Q. Now, you're also aware a protective sweep is
4 limited to places where a person can be found, correct?

5 A. I am aware, yes, sir.

6 Q. Because you're looking for people, not
7 evidence, correct?

8 A. That is correct.

9 Q. So, we've already established Mr. Cotton was
10 not under arrest at the time Officer Bradley told him
11 that y'all need to enter the house to do a protective
12 sweep, correct?

13 A. He was not under arrest. He was being
14 detained.

15 Q. Well, you told us a minute ago. I mean, I
16 asked you this question not two minutes ago, and you
17 said he was free to leave.

18 A. At the time he came outside, that is correct.
19 And that was your question.

20 Q. Now you're saying he's being detained?

21 A. Once we had the K-9 sniff with a positive
22 alert, yes, sir, he was not free to leave at that time.

23 Q. Okay. But we're clear that he was --
24 Mr. Cotton was not under arrest after the positive
25 alert, was he?

1 A. No, sir. He was being detained.

2 Q. All right. So, if I understand correctly, you
3 approached the front door and y'all's guns are not
4 drawn, correct?

5 A. Correct.

6 Q. You're not invited in, correct?

7 A. Correct.

8 Q. Mr. Cotton comes outside, correct?

9 A. Correct.

10 Q. You have no search warrant for the home,
11 correct?

12 A. That is correct.

13 Q. No arrest warrant for Mr. Cotton, correct?

14 A. That is correct.

15 Q. And you say you need to enter the home to
16 conduct a protective sweep for officers' safety when you
17 didn't even have your guns drawn?

18 A. We didn't have our guns drawn until we entered
19 the house.

20 Q. And all that had occurred between you knocking
21 on the door and entering the house with your guns drawn
22 was this K-9 has given a positive alert on the front
23 porch outside the house, correct?

24 A. The positive alert is -- we felt we needed to
25 be inside the house to do a protective sweep to preserve

1 evidence or from people that could be inside the house.

2 Q. So, when Officer Bradley asked Mr. Cotton, "Do
3 you understand" and Mr. Cotton nods his head, yes, that
4 he understands, correct?

5 A. Yes, sir.

6 Q. So, you entered the home based on your telling
7 Mr. Cotton that you had a right to enter the home,
8 correct?

9 A. Correct.

10 Q. All right. So, who goes in the home the first
11 time?

12 A. Officer Bradley and myself, I believe.

13 Q. From the time you knock on the front door to
14 the time you enter the home, how long would you say had
15 gone by.

16 A. That, I'm very unsure of.

17 Q. And at the time you entered the home, your gun
18 was not drawn, was it?

19 A. When we entered the home, yes, our gun was
20 drawn.

21 Q. Anywhere in the offense report that indicates
22 that?

23 A. No, sir.

24 Q. That's something that just came to you since
25 we've been talking about this, correct?

1 A. No, sir.

2 Q. All right. Now, are you with Officer Bradley
3 during the protective sweep?

4 A. I cannot remember whether I'm with him or -- I
5 know Mr. Cotton was inside the home.

6 Q. Well, just a minute. I asked you a simple
7 question. Were you with Officer Bradley when you did
8 the protective sweep? You don't remember?

9 A. I don't know exactly where in the house I was
10 at that time.

11 Q. Did you go in the house with Officer Bradley?

12 A. Yes, sir.

13 Q. And according to the report, Officer Bradley
14 smelled an odor of marijuana and saw marijuana clippings
15 on the laundry room floor, correct?

16 A. Yes, sir.

17 Q. Now, y'all took a bunch of photos at some point
18 that morning, didn't you?

19 A. Correct.

20 Q. Of virtually everything in the house, correct?

21 A. I believe so, yes, sir.

22 MR. SCHAFFER: May I see them please,
23 Adam? Do you have the colored ones?

24 MR. BRODRICK: Sure do.

25 Q. (BY MR. SCHAFFER) I'm just going to ask you to

1 flip through these photos if you would and point out the
2 ones to me that shows the marijuana clippings on the
3 laundry room floor.

4 A. I can't be specific as to which ones are
5 detailing it because there was not a close-up of it.
6 But I know that there was clippings on the laundry room
7 floor.

8 Q. You've got what, 40 or 50 colored photos in
9 there?

10 A. Yeah -- that, I don't know. I didn't take the
11 photos, sir.

12 Q. All right. You just looked at them, have you
13 not?

14 A. Correct.

15 Q. You can't --

16 A. There's not a close-up -- you are correct.
17 There's not a close-up of the clippings on the floor.

18 Q. There's not a photo that depicts marijuana on
19 the laundry room floor, is there, other than what you
20 later found in the bags?

21 A. No. There was evidence outside the bags.

22 Q. There's not a photo depicting it, is there,
23 sir?

24 A. There's a photo that has -- marijuana butt on
25 the outside of the bag, yes, sir.

1 Q. That's not on the laundry room floor, is it?

2 A. That's the laundry room floor.

3 Q. You want to show me where you see marijuana on
4 the laundry room floor?

5 A. That's what I said. It was on the bag, not on
6 the floor.

7 Q. Okay. So, y'all take Mr. Cotton inside the
8 house, don't you?

9 A. He says that he would feel better off inside
10 the house. So, yes, we take him inside the house.

11 Q. And at that point you asked him where the
12 marijuana was, didn't you?

13 A. I don't know that we specifically asked him
14 where it was. But I know we told him that we found some
15 clippings.

16 Q. Well, isn't it true that you told him that if
17 he would point out where the marijuana was, y'all
18 wouldn't have to take his house apart looking for it?

19 A. We told him it would make it a lot easier.

20 Q. What you communicated to him is he could tell
21 you where it was or y'all could start dumping stuff
22 looking for it, right?

23 A. I can't remember the exact terminology that we
24 used.

25 Q. So, when you said, "make it easier," what you

1 were conveying to him is getting his house torn up,
2 correct?

3 A. No, sir.

4 Q. When you asked him where it was, he told you
5 the PlayStation box, did he not?

6 A. Yes, sir.

7 Q. And you asked him where else, correct?

8 A. I believe so.

9 Q. And there was, like, maybe a trash bag in the
10 laundry room or something like that that had marijuana
11 in it?

12 A. The only place he pointed out that I recall is
13 the PlayStation box.

14 Q. Didn't you also find some in a garbage bag in
15 the laundry room?

16 A. We did.

17 Q. So, after you found the marijuana, you renewed
18 your request to Mr. Cotton for consent to search the
19 home, correct? Paragraph 7?

20 A. Right. I'm reading it, sir.

21 That is correct.

22 Q. All right. So, you asked -- you had asked for
23 consent outside and he said "No," correct?

24 A. Correct.

25 Q. Then once you got inside and found the

1 marijuana, you asked him to sign it again, correct?

2 A. That's what's depicted in my report, yes, sir.

3 Q. Well, that would be correct, wouldn't it?

4 A. I would think so.

5 Q. All right. And you're giving him the consent
6 form inside the residence was the result of the dog
7 search -- the scent search, correct?

8 A. Correct.

9 Q. It was the result of you telling him y'all had
10 the right to enter his home to do a protective sweep for
11 officers' safety, correct?

12 A. Officers' safety and destruction of evidence,
13 yes, sir.

14 Q. And it was also the result of having already
15 found the marijuana that you were asking for consent to
16 search for, correct?

17 A. We had located marijuana.

18 Q. Okay.

19 MR. SCHAFFER: Adam, may I see the consent
20 form, please?

21 If I may approach, Judge?

22 THE COURT: Sure.

23 Q. (BY MR. SCHAFFER) Let me show you Defense
24 Exhibit 5 and ask if you can identify this as the
25 consent to search form that Mr. Cotton signed?

1 A. Yes, sir.

2 MR. SCHAFFER: Offer Defense 5 for
3 purposes of this hearing?

4 (Defendant's Exhibit No. 5 offered)

5 THE COURT: All right.

6 Any objection?

7 MR. BRODRICK: I have no objection, your
8 Honor.

9 THE COURT: All right. Thank you.

10 (Defendant's Exhibit No. 5 admitted)

11 Q. (BY MR. SCHAFFER) I just want to ask you a
12 couple questions -- do you remember where in the house
13 Mr. Cotton signed the form?

14 A. At the kitchen table, I believe.

15 Q. And the form was signed at 11:47 a.m., was it
16 not?

17 A. That's what it says on there, yes, sir.

18 Q. And I think you told us that you had hit the
19 door around 11:15, correct?

20 A. I don't recall saying that.

21 Q. You arrived at 11:15?

22 A. Correct.

23 Q. You hit the door, what, five minutes later?

24 A. No, sir. I can't say how many minutes later it
25 was. It wasn't immediately when we got there.

1 Q. So, you had the consent form signed probably
2 within 30 minutes of the time you hit the front door,
3 correct?

4 A. I would say probably we hit the front door as
5 far as making contact with him, probably around 11:25 --

6 Q. So, 20 -- I'm sorry. Twenty-two minutes later,
7 correct?

8 A. Yes, sir.

9 Q. Then y'all proceeded to search the rest of the
10 house while Mr. Cotton was under guard, correct?

11 A. Correct.

12 Q. And, of course, he is under arrest at this
13 point, isn't he?

14 A. He is.

15 Q. And we have some marijuana in the PlayStation
16 box, correct?

17 A. Yes, sir.

18 Q. We have some marijuana in some trash bag in the
19 laundry room, correct?

20 A. Yes.

21 Q. We have some cash in the bedroom, correct?

22 A. Yes, sir.

23 Q. And y'all seized marijuana and the cash, did
24 you not?

25 A. We did.

1 Q. After you arrested Mr. Cotton, you advised him
2 of his rights?

3 A. Yes, sir.

4 Q. And that was the first time you advised him of
5 his rights, wasn't it?

6 A. I believe so.

7 Q. Okay. So, at the time you questioned
8 Mr. Cotton in the house and asked him where the
9 marijuana was, you had not advised him of his rights,
10 had you?

11 A. I don't remember what time we advised him of
12 his rights and exactly at what point in time it was.

13 Q. Excuse me, sir. You told me just a moment ago
14 that you advised him of his rights after you arrested
15 him, correct?

16 A. It was after we found the marijuana, yes.

17 Q. All right. So, my question is pretty simple.
18 At the time you questioned him and asked him where the
19 marijuana was, you had not advised him of his rights,
20 had you?

21 A. I don't believe so.

22 Q. Well, the answer is "No," isn't it?

23 A. Without -- I mean, I cannot tell you exactly
24 what we did. I just know what took place at the kitchen
25 table. I believe it was immediately after we found the

1 marijuana. So, that would be my guess that's when it
2 took place, yes, sir.

3 Q. After he signed the consent form?

4 A. I believe so. I'm not sure.

5 MR. SCHAFFER: I'll pass the witness.

6 Thank you, sir.

7 THE COURT: All right. Let's take a
8 10-minute break, please.

9 (Short recess)

10 (Open court, Defendant present, no jury)

11 THE COURT: All right. Let's proceed.

12 State, you may proceed.

13 MR. BRODRICK: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. BRODRICK:

16 Q. Agent Hunt, I want to take us back to when you
17 first arrived at the house.

18 A. Yes, sir.

19 Q. You said that Dial King was there before you;
20 is that correct?

21 A. Yes, sir.

22 Q. And then you arrived 15 or 20 minutes later?

23 A. I believe that to be --

24 Q. Somewhere in there?

25 A. Yes, sir.

1 MR. BRODRICK: Your Honor, may I approach?

2 THE COURT: Yes.

3 (At the bench, off the record)

4 (Open court, Defendant present, no jury)

5 Q. (BY MR. BRODRICK) I'm showing you what is
6 marked and admitted as Defendant's Exhibit No. 3, which
7 you've identified as the house that you approached; is
8 that right?

9 A. Yes, sir.

10 Q. It appears --

11 MR. BRODRICK: Your Honor, may I approach?

12 THE COURT: Sure, of course.

13 Q. (BY MR. BRODRICK) Will you just point on that
14 screen next to you and just touch the screen and show
15 the Court where the vehicle was parked?

16 A. As far as Mr. Cotton's?

17 Q. That's correct. Thank you.

18 A. Here (indicating).

19 Q. And it appears there's a sidewalk or walkway
20 that goes directly in front of the house; is that
21 correct?

22 A. Yes, sir.

23 Q. And it appears there's also, like, a stone path
24 that cuts across the grass right there; is that right?

25 A. That's what it appears, yes, sir.

1 Q. How did you approach the house when you walked
2 up? Do you remember?

3 A. I do not -- I do not recall exactly.

4 Q. When you first walked up to the house, you said
5 earlier that you and Officer Bradley first approached
6 the house together, correct?

7 A. Yes, sir.

8 Q. Was it just the two of you that first time?

9 A. Yes, sir.

10 Q. But there were other officers and agents that
11 were around; is that correct?

12 A. Correct.

13 Q. Do you recall looking at that photograph where
14 any of those other agents or officers were standing?

15 A. Specifically, I know there were some where the
16 wooden fence is, back behind the wooden fence.

17 Q. Right over here?

18 A. Yes, sir.

19 Q. Were they around this wooden fence or were they
20 in front of it?

21 A. To be honest with you, I don't know. I just
22 know they were down by the corner. I know there were
23 still people inside the vehicles and some hadn't even
24 shown up yet.

25 Q. So, approximately how many people, how many

1 officers and agents would have been there when you first
2 knocked on the door?

3 A. I think five or six.

4 Q. And --

5 A. I don't think at this time --

6 MR. SCHAFFER: Pardon me.

7 Nonresponsive.

8 THE COURT: Sustained.

9 Q. (BY MR. BRODRICK) You recall how many officers
10 when you knocked on the door?

11 A. I think five.

12 Q. Were all of you -- were all of them standing in
13 plain view of the front door area?

14 A. That, I do not know. I don't believe so, no.

15 Q. But you weren't in a big group that went up to
16 the front door, right?

17 MR. SCHAFFER: Objection to the leading.

18 THE COURT: Sustained.

19 Don't lead, please.

20 Q. (BY MR. BRODRICK) Were you in a big group as
21 you went up to the front door?

22 A. No, sir.

23 Q. Were all of you -- were you dressed in plain
24 clothes?

25 A. We had on police shirts.

1 Q. What do police shirt look like?

2 A. It's a T-shirt that says "Police" on it. And
3 if they weren't wearing that, then they would have had a
4 badge draped around their neck on a lanyard or
5 something.

6 Q. And you mentioned, did they have weapons, guns?

7 A. I hope so. I don't know that everybody had an
8 exposed weapon, but I would hope that they had a weapon,
9 yes, sir.

10 Q. But generally speaking, it's standard practice
11 for officers to carry guns in holsters on their side,
12 correct?

13 A. Yes, sir.

14 Q. You would expect that to be the case here?

15 A. Yes, sir.

16 Q. To your knowledge, when you approached that
17 door did any of the officers or agents including
18 yourself, have their weapons drawn?

19 A. No, sir.

20 Q. Showing you Defense Exhibit 4.

21 A. Yes, sir.

22 Q. This is the front door area, correct?

23 A. That is correct.

24 Q. Are these the burglar bars you were talking
25 about?

1 A. Yes, sir.

2 Q. And is this the lock?

3 A. Yes, sir.

4 Q. When you first approached the front door, just
5 tell the Court, what did you do?

6 A. Knocked on the door.

7 Q. Did you knock -- do you recall if you knocked
8 on -- kind of rattled the bars or did you reach through
9 and knock on the door?

10 A. That, I don't know. I know we knocked on the
11 actual wooden door itself. But I know we didn't rattle
12 the bars or anything like that.

13 Q. So, if you knocked on the bars there on the
14 door, then there's no plexiglas or anything on the other
15 side of those bars, right?

16 A. There's none.

17 Q. So, you just reached through and knocked on the
18 door; is that right?

19 A. Yes, sir.

20 Q. Do you recall approximately how long it took
21 for Mr. Cotton to come to the door?

22 A. I don't -- I don't recall it being any great
23 length of time.

24 Q. So, it wasn't an amount of time that would
25 stand out in your mind now?

1 A. No, sir.

2 Q. When he first answered the door, what did you
3 do?

4 A. Explained to him that we were with the police.
5 I told him I was with the State police and that we had
6 received an anonymous tip as to this location that
7 brought us to this location about narcotics trafficking.

8 Q. And it's you and Officer Bradley, correct?

9 A. Yes, sir.

10 Q. And were you doing the talking or was Officer
11 Bradley?

12 A. I was.

13 Q. And what did the Defendant do when you said
14 that?

15 A. Honestly, I don't exactly remember what he said
16 at that time.

17 Q. Did -- is it safe to say that y'all had some
18 kind of conversation?

19 A. Yes, sir.

20 Q. You just don't remember specifically what he
21 said?

22 A. Exactly.

23 Q. What -- did the Defendant stay inside the
24 house?

25 A. Yes, sir.

1 Q. The whole time?

2 A. No, sir.

3 Q. Tell the Court how that happened. When did he
4 come outside?

5 A. At one point we asked him to come outside. We
6 asked him for his driver's license and everything like
7 that. And he was reluctant to open the burglar bars at
8 first and then he went and got his key and he got his
9 key and unlocked the burglar bars. Then we -- or he
10 walked outside.

11 Q. So, to your knowledge there was nobody else in
12 the house?

13 A. At that time I did not know. But at that time,
14 no, I did not know.

15 Q. But he got the keys?

16 A. He got the keys.

17 Q. And he unlocked the door, the burglar bars?

18 A. Yes, sir.

19 Q. You said that you got his ID from him; is that
20 right?

21 A. Yes, sir.

22 Q. Why did you do that?

23 A. To identify him.

24 Q. And did you identify him?

25 A. Yes, sir.

1 Q. And who did you identify him to be?

2 A.

3 Q. him here in this room today?

4 A. Yes, sir.

5 Q. Will you point him out to the Court and just
6 describe an article of clothing he's wearing?

7 A. He's sitting on the far right as I'm looking at
8 him wearing a suit with a tan shirt.

9 MR. BRODRICK: Your Honor, may the record
10 reflect that this witness has identified the Defendant?

11 THE COURT: It will.

12 MR. BRODRICK: Thank you, Judge.

13 Q. (BY MR. BRODRICK) So, after you got his
14 identification, what happened then?

15 A. We had a conversation outside. I explained to
16 him how we got there and that a tip led us there to
17 investigate narcotics trafficking. Asked him, said,
18 "Hey, this is -- we would like to ask you for consent to
19 search the house and see what if any kind of illegal
20 activity that might be going on here."

21 At first he denied, then he said, "Okay."
22 Then we told him that we were going to run the K-9 on
23 the front door. And if it was a positive alert, then we
24 were going to obtain a search warrant.

25 Q. And did he ever ask how long that would take?

1 A. I don't know that he asked. I just -- I know I
2 told him that it would be a couple hours probably.

3 Q. In your experience, could it take a couple
4 hours to get a search warrant?

5 A. Oh, yes.

6 Q. Can it sometimes take longer than that?

7 A. Yes, sir.

8 Q. So, you were telling the truth, right?

9 A. Yes, sir.

10 Q. What happened next?

11 A. The K-9 gave a positive alert. I'm going to
12 refresh my --

13 Q. Sure. Take your time.

14 A. When Officer Bradley asked Mr. Cotton if
15 anything or anybody else was inside the residence,
16 Mr. Cotton said, no, he was the only one there. And
17 then Officer Bradley explained to him that we needed to
18 do a protective sweep.

19 Q. When you -- generally in your experience, when
20 you're standing on a knock and talk like this and the
21 person that answers the door says, "There's nobody
22 here," do you just take their word for it?

23 A. No, sir.

24 Q. Why not?

25 A. Same reason we don't take their word for there

1 not being any illegal drugs. They're not there to
2 incriminate themselves as far as any illegal activity
3 that's going on.

4 Q. Has it been your experience that people that
5 actually are hiding something are very forthcoming at
6 the door?

7 A. Not usually.

8 Q. Do you recall when Dora, the K-9, actually came
9 up?

10 A. Not specifically, no.

11 Q. Was it during your conversation with the
12 Defendant?

13 A. Yes, but we were not specifically at the front
14 porch. We had walked -- there's a little half brick
15 wall as you can see in that picture. Then we walked
16 around toward the carport.

17 Q. Would you just get up and point on the big TV
18 screen?

19 MR. BRODRICK: Can you see?

20 THE COURT: Yeah, I can see.

21 Q. (BY MR. BRODRICK) Would you point on that
22 screen where you were, where all this was happening?

23 A. We were up here up underneath the front part of
24 the carport (indicating).

25 Q. So, you were underneath the carport when what?

1 A. The K-9 was run.

2 Q. Okay. And you were there. Who was there with
3 you?

4 A. I believe it would be Officer Bradley.

5 Q. And the Defendant?

6 A. Oh, yes. Yes.

7 Q. Do you recall how the K-9 got to the front of
8 the house?

9 A. I know he just walked straight up.

10 Q. Do you know what path of travel he took?

11 A. I believe it came from the side over by the
12 fence.

13 Q. So, up the fence line there towards the front
14 door?

15 A. Yes, sir.

16 Q. The fence line by the street?

17 A. Yes, sir.

18 Q. And so, he didn't come up the driveway?

19 A. I know he came from the side -- where the wood
20 privacy fence is.

21 Q. Okay. So, once Dora came up, what happened
22 then?

23 A. I mean, I was still engaging with Mr. Cotton.
24 Sergeant Cuevas ran his K-9. Then he advised Officer
25 Bradley that a positive alert had been indicated.

1 Q. And then at that point what did you talk to Mr.
2 Cotton about?

3 A. I believe we advised him that the K-9 gave a
4 positive alert to the presence of drugs. Advised him at
5 that time that we were going to seek a search warrant.
6 And advised him that, hey, it will take a little while.
7 I don't remember exactly if I told him two hours or
8 several hours or exactly the length of time that I told
9 him.

10 Q. Did you tell him what he was going to have to
11 do while you were waiting?

12 A. We told him he would not be able to go back
13 into his house.

14 Q. And at that point was he detained?

15 A. He was detained at that point.

16 Q. He was detained?

17 A. Yes, sir.

18 Q. So, how did he react to this? Do you recall?

19 A. I mean, to me, nothing out of the ordinary
20 stands out so --

21 Q. So, what happened next?

22 A. Officer Bradley advised him that, hey, we were
23 going to go and do a protective sweep of the residence
24 and everything. And that's when Mr. Cotton nodded his
25 head. That's when we went in and Officer Bradley saw

1 the clippings of the marijuana. I believe we came
2 outside at that point --

3 MR. SCHAFFER: Pardon me.

4 This is not responsive.

5 THE COURT: Sustained.

6 Q. (BY MR. BRODRICK) Based on his nodding his
7 head up and down, was it your belief at the time that he
8 was consenting to doing the protective sweep?

9 A. Yes.

10 Q. Once -- who did the protective sweep?

11 A. I know Officer Bradley and myself were in
12 there. I believe Agent Hebert was in there as well.

13 Q. Do you recall when you were doing the
14 protective sweep, where was the Defendant?

15 A. I believe at that time he was still outside.

16 Q. When you were doing the protective sweep, at
17 that point do you have your guns drawn?

18 A. Yes.

19 Q. Why?

20 A. In case there's something inside that house,
21 somebody inside that house that could inflict harm on us
22 while we're inside the residence.

23 Q. So, is that actually what you're looking for
24 during the protective sweep is a person?

25 A. Bodies, yes, sir.

1 Q. Did -- once you entered the house to do the
2 protective sweep, could you smell anything?

3 A. Yes, sir.

4 Q. What could you smell?

5 A. Raw marijuana.

6 Q. How do you know it's raw marijuana?

7 A. Just from my training and experience in dealing
8 with it, you can tell that it's raw marijuana.

9 Q. How long have you been doing this?

10 A. Going on 16 years.

11 Q. So, you've got some experience?

12 A. Yes, sir.

13 Q. Have you had experiences like this in the past?

14 A. Yes, sir.

15 Q. So you recognize the smell of raw marijuana?

16 A. Yes, sir.

17 Q. So, at that point what do you do?

18 A. I know we go back outside and talk to
19 Mr. Cotton and advise him of what we had or what we had
20 observed inside there. And sometime at that point when
21 we were outside talking, he said he would rather go
22 inside of his residence. So, we allowed him to go
23 inside and we go with him.

24 Q. Do you recall why he said he wanted to go
25 inside?

1 A. That, I'm not real sure.

2 Q. And again, why did you go with him when he went
3 inside his residence?

4 A. We had reason to believe that there was
5 criminal activity being -- taking place inside that
6 residence.

7 Q. So, during that protective sweep what did you
8 seize specifically?

9 A. Me, myself, I don't know that I saw anything.
10 I smelled the raw marijuana. I know Officer Bradley
11 advised me that he saw the clippings.

12 Q. And at that point do you feel like you have
13 probable cause?

14 A. Yes, sir.

15 Q. And so, what did you do then?

16 A. Advised him that we're going to go get a search
17 warrant and that he's not going to be free to go
18 anywhere. He's going to be detained until the
19 investigation reveals whether there is criminal activity
20 or not criminal activity taking place.

21 Q. And what happens then?

22 A. Sometime right around there he takes us to a
23 PlayStation box and says, "It's right there."

24 Q. So, he -- okay. So, let me back up.

25 When you first go in and you're talking to

1 him, where are you inside the house?

2 A. The kitchen.

3 Q. The kitchen?

4 A. Well, we started out, there's a little -- I
5 don't know if it's living area or foyer, a little room
6 in the front door. That leads into the kitchen and then
7 a hallway and the dining room where the dining room
8 table is. And then around would be another bedroom. I
9 say bedroom. It's a big room looks like it might have
10 been a converted garage that leads back into the laundry
11 room.

12 Q. So, when you're having this conversation with
13 the Defendant, you just said you were in the where?

14 A. Well, the kitchen and the dining room butt up
15 to one another. And that's where he was sitting at a
16 chair there at the dining room table.

17 Q. So, that's where this whole conversation takes
18 place?

19 A. Yes, sir.

20 Q. Okay. So, as he's sitting there talking to
21 you, you said he just leads you to the marijuana?

22 A. I can't remember exactly what we told him. We
23 told him we saw clippings there, we smell it. We have a
24 strong belief that it is there. And said he can point
25 it out to us if he would like to or we're going to get a

1 search warrant and we're going to search the house.

2 Q. And then what did he do?

3 A. He took us to the PlayStation box.

4 Q. At some point -- this is the -- Defendant's
5 Exhibit No. 5, the consent to search form?

6 A. Right.

7 Q. Do you recognize that signature?

8 A. That's Mr. Cotton's signature.

9 Q. Did you watch him sign that?

10 A. Yes, sir.

11 Q. And do you see -- is your signature anywhere on
12 this page?

13 A. Yes, sir.

14 Q. Where is that?

15 A. On the bottom line under "Witnesses" or the
16 last --

17 Q. Right here?

18 A. Yes, sir.

19 Q. And whose signature is this?

20 A. Officer Bradley's.

21 Q. Is this your name right here?

22 A. Yes, sir.

23 Q. And you listed someone whose been given consent
24 to search?

25 A. Yes, sir.

1 Q. Was that consent ever withdrawn?

2 A. No, sir.

3 Q. Was Mr. Cotton, was he in the house as the
4 search was going on?

5 A. He was sitting at the -- in that chair at the
6 table the entire time.

7 Q. So, could he see the front door from where he
8 was?

9 A. I believe so.

10 Q. So, he could have seen every officer and agent
11 that came in and left the house. Is that fair to say?

12 A. Yes, sir.

13 Q. Could he have also seen that K-9 come in?

14 A. Yes, sir.

15 Q. But your testimony is he just got up and took
16 you straight to the marijuana?

17 A. To the PlayStation box, he did.

18 Q. And once he told you that, what did you do?

19 A. I think at that point before we continued any
20 other -- before we continued a search of the house or
21 anything, we asked him for a consent again. At that
22 time he pointed out the marijuana to us. We believed
23 there was more. And then asked him for consent to
24 search of his house. At that time he signed the consent
25 to search form.

1 Q. And then what happened?

2 A. We continued -- we started the search of the
3 house.

4 Q. You say started. How long did the search take?
5 Do you recall?

6 A. I believe we were there, I'm just guessing, but
7 I think until 1:00 o'clock.

8 Q. In the morning?

9 A. No. Afternoon.

10 Q. Afternoon? So, a couple hours?

11 A. Yes, sir.

12 Q. Was he there -- the Defendant there the whole
13 time?

14 A. Yes, sir.

15 Q. Did he ever to your knowledge withdraw his
16 consent?

17 A. No, sir.

18 Q. When he was signing the consent form, who was
19 there with him?

20 A. I know Officer Bradley and I witnessed it.
21 That's why we put our signatures on there.

22 Q. Do you recall whether or not any other officers
23 were there at that time?

24 A. That, I do not.

25 Q. Did you and Officer -- at that time had you

1 finished conducting the protective sweep?

2 A. Yes, sir.

3 Q. And did you find anyone else in the house?

4 A. No, sir.

5 Q. So, at that point in time when he had signed
6 that consent form, did you have your weapons drawn?

7 A. No, sir.

8 Q. Did you -- was there any -- did you have him in
9 any type of a physical hold or any type of coercive
10 physical act?

11 A. No, sir.

12 Q. So, you didn't have him in an arm bar or
13 anything like that?

14 A. No, sir.

15 Q. Did he ever tell you that he didn't want to
16 sign the consent form?

17 A. Not to my recollection, no, sir.

18 Q. Did he cooperate with your investigation?

19 A. Yes, sir.

20 Q. Going back to when you're outside in the
21 driveway, did you tell the Defendant that you were going
22 to do a protective sweep or did you ask him if you could
23 do a protective sweep?

24 A. I'm not exactly sure what words were used by
25 Officer Bradley.

1 Q. Okay. So, Officer Bradley was the one that
2 said that?

3 A. Correct.

4 Q. But you -- but based on that head nod, you felt
5 like he was giving consent to do the protective sweep?

6 MR. SCHAFFER: Object to the leading.

7 THE COURT: Sustained.

8 MR. SCHAFFER: The suggested answers
9 they're feeding him.

10 THE COURT: Keep going.

11 Q. (BY MR. BRODRICK) Did you believe that the
12 Defendant had given you consent to do the protective
13 sweep?

14 A. Yes, sir.

15 MR. BRODRICK: Pass the witness.

16 THE COURT: All right.

17 Redirect or -- yeah, redirect?

18 REDIRECT EXAMINATION

19 BY MR. SCHAFFER:

20 Q. You spoke to the Prosecutors over the break we
21 had a few minutes ago, did you not?

22 A. Yes.

23 Q. And one of the things the Prosecutor told you
24 in that conversation was that it was important to take
25 the position that you-all asked for consent to do a

1 protective sweep instead of telling Mr. Cotton that you
2 were going to do a protective sweep, correct?

3 A. I did not take it as that, no, sir.

4 Q. They did discuss that issue with you, did they
5 not?

6 A. We talked about the positioning of the people
7 is what we talked about, sir. We didn't talk about the
8 consenting to a protective sweep.

9 Q. Well, let's be clear on a couple of things.
10 Do you recall me asking you earlier this morning, "After
11 the dog alerted, was Mr. Cotton under arrest," and you
12 said, "No," correct?

13 A. That is correct.

14 Q. I asked you if he was free to leave and you
15 said, "No," correct?

16 A. That is correct.

17 Q. And then I showed you -- you said that he was
18 free to leave, correct?

19 A. Not after the dog sniffed, no, sir. If I did
20 say that then that was misspoken of me. After the dog
21 sniff gave a positive alert, he was being detained
22 because of the investigation that we felt the
23 investigation we were doing, feeling that there was
24 criminal activity being -- taking place in that
25 residence.

1 Q. Actually you changed your testimony after I
2 showed you the Supreme Court decision in Maryland versus
3 Buie, didn't you?

4 A. That -- no, sir.

5 MR. SCHAFFER: With the Court's
6 permission, may I have the court reporter look up the
7 officer's testimony with regard to that matter which we
8 did over the break for us anyway?

9 THE COURT: Okay. Sure, Mr. Jalufka.

10 Q. (BY MR. SCHAFFER) Let's be precise in our
11 terminology. He was not under arrest after the dog
12 alert, was he?

13 A. Correct.

14 Q. So, your protective sweep was not conducted
15 pursuant to an arrest, was it?

16 MR. BRODRICK: Objection, your Honor, to
17 leading.

18 THE COURT: Overruled.

19 Q. (BY MR. SCHAFFER) Your protective sweep was
20 not conducted pursuant to an arrest, was it?

21 A. No, sir.

22 Q. All right. Now, I want to go back over a
23 couple of aspects of the conversation with Mr. Cotton
24 outside the house --

25 A. Yes, sir.

1 Q. -- before y'all went in. You told the
2 Prosecutor that you told him that y'all would seek a
3 search warrant and it would take a couple of hours,
4 correct?

5 A. Yes, sir.

6 Q. That is nowhere in the report, is it?

7 A. I don't believe it is.

8 Q. And isn't it true that that conversation about
9 getting a search warrant and taking a couple of hours
10 occurred inside the house after y'all had found the
11 marijuana you were trying to get him to sign the consent
12 to search?

13 A. I know for a fact I stated outside. Very well
14 positive I -- possible, I'm sorry, that it stated inside
15 as well.

16 Q. But it's not in your report that you stated it
17 outside, is it?

18 A. It is not.

19 Q. All right. Now, you told the Prosecutor -- you
20 were pretty precise when I asked you what y'all said to
21 Mr. Cotton on the front porch, weren't you, when we
22 talked initially?

23 A. I believe so.

24 Q. Then you talked to the Prosecutors over the
25 break, correct?

1 A. Yes.

2 Q. And now you're saying you're not sure what
3 Officer Bradley said to Mr. Cotton about a protective
4 sweep. That's what your testimony is now, correct?

5 A. I don't know the exact words he said, no, sir.

6 Q. Well, but you do know the exact words. You
7 prepared your report, didn't you?

8 A. No, I did not know my exact words when I
9 prepared my report.

10 Q. You didn't claim you didn't know the exact
11 words when I questioned you earlier this morning, did
12 you, sir?

13 A. Sir, I'll be honest with you, I don't know the
14 exact words. I can tell you that we advised Mr. Cotton
15 that we were going to do a protective sweep.

16 Q. Let's stop there. Officer Bradley advised
17 Mr. Cotton that you were going to do a protective sweep,
18 correct?

19 A. I believe so. I'm not --

20 Q. Well, you just told me that under oath, didn't
21 you?

22 A. I did.

23 Q. All right. And most certainly it would be true
24 if you told me that under oath, wouldn't it?

25 A. That's what I believe he said. I'm not

1 sure --

2 Q. So, he told him y'all were going to do a
3 protective sweep. He didn't ask for permission to do
4 one, did he?

5 A. Sir, I don't remember the exact words. That's
6 my belief of what I believe he said.

7 Q. All right. If we look at Paragraph 6 of your
8 report, tell me if I'm reading this correctly. "Officer
9 Bradley explained to Cotton that Agents, Officers needed
10 to check the residence to be sure nobody else was inside
11 that could harm Agents, Officers or destroy any possible
12 evidence." Correct?

13 A. Yes, sir.

14 Q. And you heard him say that, did you not?

15 A. Yes, sir.

16 Q. Because you were standing right next to him,
17 correct?

18 A. Correct. I was.

19 Q. And it was not a question at that point, was
20 it? It was a statement of what you-all were going to
21 do, correct?

22 A. We were advising him what we were going to do,
23 correct.

24 Q. And you then wrote in your report, "Cotton
25 indicated that Cotton understood by nodding Cotton's

1 head up and down." Correct?

2 A. Yes, sir.

3 Q. So, when you wrote the report you had a very
4 clear understanding that what Mr. Cotton was basically
5 acknowledging is that he understood that you-all said
6 you were coming in to do a protective sweep, correct?

7 A. He understood that -- the actions that we were
8 taking, yes, sir.

9 Q. And when you told the Prosecutors a few minutes
10 ago that it was your understanding that he was
11 consenting to the protective sweep, that was based on
12 the conversation y'all had where they explained it was
13 important for you to say that, correct?

14 A. They didn't advise me that it was important for
15 me to say that. That was my understanding that
16 Mr. Cotton not once ever said, "No, you are not going to
17 do a protective sweep." In the conversation we had
18 during the break, did not they -- they did not advise me
19 any of my testimony, no, sir.

20 Q. But it was clear when you wrote your report all
21 he was acknowledging is that he understood that y'all
22 said you were going to do something, correct?

23 A. He understood what we were doing, yes, sir.

24 Q. And you were going to do it whether he wanted
25 you to or not, correct?

1 A. We were going to do a protective sweep.

2 Q. Like I said, you brought the K-9 dog. You were
3 going to be in the house that morning, weren't you?

4 A. We felt that we could get a search warrant,
5 yes, sir.

6 Q. Supreme Court law be damned, right?

7 A. We felt that we had -- we were going to be able
8 to get a search warrant, sir.

9 Q. So we're also clear about this, Mr. Cotton was
10 not free to leave when you questioned him inside the
11 house about the marijuana, correct?

12 A. He was not free to leave.

13 Q. He was not free to leave when he signed the
14 consent to search, correct?

15 A. He was not free to leave.

16 Q. And he was not advised of his rights until
17 after he signed the consent to search, correct?

18 A. I believe so. That's correct.

19 MR. SCHAFFER: That's all I have. Thank
20 you.

21 THE COURT: All right.
22 Anything else?

23 MR. BRODRICK: Just briefly, Judge.

24 THE COURT: All right.
25

1 RECROSS-EXAMINATION

2 BY MR. BRODRICK:

3 Q. Just so we get the timing down, after the dog
4 sniff was Mr. Cotton detained or arrested?

5 A. Detained.

6 Q. After the protective sweep was Mr. Cotton
7 detained or arrested?

8 A. Arrested.

9 Q. Did he give you -- did he sign the consent form
10 when he was detained or arrested?

11 A. Arrested.

12 Q. Did you tell him that he had to sign the
13 consent form?

14 A. No, sir.

15 Q. Did you tell him, in fact, that you were going
16 to go get a search warrant?

17 A. Yes, sir.

18 Q. So, if you were going to go get a search
19 warrant, did he have to sign the consent form?

20 A. No, sir.

21 Q. And at that point would a Judge have to rule on
22 probable cause to issue your search warrant?

23 A. Yes, sir.

24 Q. So, effectively did you tell him you were going
25 to take this to a Judge and ask?

1 A. Yes, sir.

2 Q. You said you found marijuana, right?

3 MR. SCHAFFER: Repetitious. Also,
4 leading.

5 THE COURT: Sustained.

6 Q. (BY MR. BRODRICK) Was it a usable quantity?

7 A. It was more than a usable quantity.

8 Q. How much was it? Do you recall?

9 A. Approximately 16.2 pounds.

10 Q. Did I ever tell you to say anything in this
11 hearing?

12 A. No, sir.

13 Q. Did I ever insinuate that you should testify in
14 some way?

15 A. No.

16 Q. Did I ever offer you anything to testify in
17 this hearing in any way?

18 A. No, sir.

19 Q. If I had, would you have done it?

20 A. No, sir.

21 Q. Is it worth your career to lie on a suppression
22 hearing for marijuana?

23 A. No, sir.

24 Q. Is it worth your career to lie ever?

25 A. No, sir.

1 MR. BRODRICK: No further questions.

2 THE COURT: All right.

3 REDIRECT EXAMINATION

4 BY MR. SCHAFFER:

5 Q. To be clear about one final point, you told Mr.
6 Cotton inside the house that if he didn't sign the
7 consent form, you-all would go get a search warrant and
8 it would just delay the process, right?

9 A. I don't know exactly the words, the exact words
10 that I used. I did tell him that we would go get a
11 search warrant.

12 Q. And he would be just sitting there waiting for
13 it, correct?

14 A. Correct.

15 Q. And it was at that point he signed the consent,
16 correct?

17 A. I don't know why he signed the consent -- or
18 when he signed the consent, whether it was immediately
19 after that. We did advise him that he could give
20 consent or we could go get a search warrant.

21 MR. SCHAFFER: That's all. Thank you.

22 THE COURT: All right. Thanks a lot. You
23 can step down.

24 Call your next, please.

25 MS. EXLEY: Can we take a brief recess and

1 approach?

2 (At the bench, off the record)

3 (Open court, Defendant present, no jury)

4 MS. EXLEY: While the witness was
5 testifying, since he said that he didn't know what words
6 Officer Bradley used when there was this protective
7 sweep issue, in an effort to clarify it, I went outside,
8 pulled Officer Bradley away from all of the witnesses
9 and asked him specifically, "When you were about to do
10 the protective sweep with the Defendant and you were
11 about to go in, describe to me exactly how that
12 conversation went down. What words did you use?"

13 And Officer Bradley described to me that
14 they were standing on the lawn, that the door was open
15 to the house and that what he said to the Defendant was
16 was that, "We need to do a protective sweep of your
17 home."

18 I asked Officer Bradley specifically, I
19 said, "Did you say we need to do a protective sweep of
20 your home, or did you ask him, 'Can we do a protective
21 sweep of your home?'"

22 And Officer Bradley's response was, we --
23 "I told him that we need to do a protective sweep of his
24 home, at which point he nodded his head, which I
25 interpreted to be consent."

1 I just explained to Officer Bradley that
2 there could be some question about that because rather
3 than it being a request, it sounded more like you
4 telling him what you were about to do.

5 And so that based on that, I had some
6 concerns and that we were going to go ahead and dismiss
7 the case.

8 MR. SCHAFFER: Well, I appreciate you
9 stating that for the record. I would ask, though, since
10 we have a Motion to Suppress on file that you go ahead
11 and sign the order granting the Motion to Suppress so
12 we'll have a ruling. And then they can go ahead and
13 dismiss the case and we'll be done.

14 THE COURT: Okay. Granted.

15 MR. SCHAFFER: Thank you.

16 (Proceedings adjourned)

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1 THE STATE OF TEXAS)

2 COUNTY OF HARRIS)

3 I, Billy Jalufka, Official Court Reporter in
4 and for the 183rd District Court of Harris County, State
5 of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

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

15 WITNESS MY OFFICIAL HAND on this, the 3rd day
16 of June, 2013.

17 /s/Billy Jalufka

18 Billy Jalufka, Texas CSR No. 6587
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