

1 returned. That's what happened.

2 MR. SANTOS: I have no other questions,
3 sir.

4 REDIRECT EXAMINATION

5 BY MR. SOMERS

6 Q Agent Schmidt, one question I forgot to ask
7 you. We've been discussing Oscar Davila. Do you see
8 him here in the courtroom?

9 A Yes, the gentleman in the orange jumpsuit to my
10 left.

11 MR. SOMERS: May the record reflect the
12 witness has identified the defendant?

13 THE COURT: The record will reflect.

14 Thank you. Appreciate your testimony.

15 Anything else?

16 MR. SOMERS: Deputy Ben Katrib.

17 THE COURT: All right.

18 **BEN KATRIB,**

19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SOMERS

22 Q Deputy Katrib, could you please state your full
23 name for the record?

24 A Ben Katrib.

25 Q Could you spell your last name for the court

1 reporter this morning?

2 A K-A-T-R-I-B.

3 Q Deputy Katrib, how are you presently employed?

4 A With the Harris County Sheriff's office,
5 criminal investigations bureau.

6 Q Back in October of 2011, what was your
7 assignment?

8 A Narcotics division.

9 Q Very briefly tell the Court what your duties
10 and responsibilities were in the narcotics division.

11 A I was assigned undercover assignment. I'm also
12 responsible for doing search warrants, executing the
13 search warrant, raid planning, and I am an instructor
14 certified by the State of Texas. I do instruct the
15 cadets of the academy in narcotics, Texas Health and
16 Safety portion. I also do presentations for the
17 prosecutors in this building about narcotics.

18 Q Have you conducted narcotics investigations on
19 few or many occasions?

20 A Yes, sir, I have.

21 Q Let me turn your attention specifically to this
22 case, State of Texas versus Oscar Davila, October 6,
23 2011. Were you involved in this investigation?

24 A Yes, I was.

25 Q How is it you became involved?

1 A I received a telephone call from Special Agent
2 Mark Schmidt who told me that he had a confidential
3 informant who wanted to do a deal for -- originally it
4 was discussed to, I believe, three kilos of cocaine on
5 the southwest side of town and to proceed to a location
6 near the Alief area to discuss the deal.

7 Q Would this be at a location being 4139 Willow
8 Beach?

9 A Once we arrived at a location in Harris County,
10 Texas, and we briefed about the incident, I learned that
11 the target location would be 4139 Willow Beach.

12 Q Tell the Court what your role was in this
13 investigation.

14 A We -- our role was to basically set up, one
15 unit at best for surveillance. I do the geographic,
16 demographic of the area and we were suited up in raid
17 gear and monitoring the police radio, waiting to find
18 out once -- the plan was for the informant to go in,
19 discuss the deal, and if he does, in fact, see the
20 cocaine, he was to make a phone call to Special Agent
21 Schmidt who would in turn let us know that the cocaine
22 was present and we were -- our plan was to conduct a
23 protective sweep, secure the location, and then secure
24 search warrant for the premises.

25 Q Regarding the informant, to your knowledge, was

1 he wearing a recording device, a wire?

2 A Yes. He was wearing what we refer to as a Kel,
3 which is a live monitoring device that a certain special
4 agent in the group was assigned to monitoring that
5 device and relaying information via the police radio.

6 Q Okay. And very briefly tell us about this
7 street. What is Willow Beach Street like?

8 A Willow Beach Street is, it's a street within a
9 subdivision in the Alief area roughly around the West
10 Park toll road and near Cook Road within the vicinity.
11 It's a tight neighborhood where pretty much, you know,
12 given, basically, the way the street was set up, there
13 was not that many cars that were like, that would travel
14 the streets. So the traffic was light and there weren't
15 that many locations where a car could be placed to
16 provide surveillance from all sides of the street on the
17 residence. And I do remember that day that we did not
18 have air support to have, to monitor the house from the
19 air to see what is going on.

20 Q What observations were made of this house?

21 A The only observations that were made that I'm
22 aware of that came through the police radio were for the
23 front of the house, the driveway up to the garage, and
24 front door area.

25 Q Was there a point where the confidential

1 informant leaves the location?

2 A Yes, there was.

3 Q And what happened when the confidential
4 informant left the location?

5 A Special Agent Mark Schmidt came over the police
6 radio and advised that the informant did leave the
7 location and that what he believed to be two kilograms
8 of cocaine were sitting on the kitchen counter and that
9 was the last place he saw them and that Mr. Davila and
10 Mr. Lopez appeared to be very nervous and in a hurry to
11 do the deal.

12 Q What was the next step in your investigation?

13 A Also, I note in my report that he said that the
14 informant said that they might leave the location.

15 Q Okay. Do you know why the informant made that
16 statement?

17 A To my knowledge, I know, that the informant had
18 prior dealings with Mr. Davila and knew the way
19 Mr. Davila operated. And for him to state those facts
20 that were put out over the radio, he must have sensed
21 that something was out of the ordinary.

22 Q What was the next step that you took?

23 A Next step, given those circumstances, being
24 involved in over a thousand narcotic investigations
25 myself and witnessing firsthand that an amount of

1 narcotics of that volume is often protected by weapons,
2 people often are able to destroy such amount, given the
3 information that there were people related to Mr. Davila
4 in the neighborhood that could have been passed through
5 backyard, we made a decision to go ahead and just do a
6 sweep of the house, do not search for anything, secure
7 it for officer safety and to preserve the evidence only
8 and then secure a search warrant.

9 Q Describe the sweep that you conducted.

10 A Once the signal was given, we made the approach
11 of the residence and right about that time, by the time
12 the go was given and we were making the approach, a Ford
13 Explorer pulled up, later determined to be, I believe,
14 Mr. Davila's wife with her the kids. We went ahead and
15 detained, of course. We did not handcuff Mr. Davila.
16 We did not handcuff Benetiz so they can care for the
17 children. Lopez gave a little bit of resistance by not
18 complying with verbal command and had that fight or
19 flight look on his face, and then after being ordered
20 again to lay down on the ground, he did comply. We
21 secured him in handcuffs, secured Mr. Davila in
22 handcuffs and we only went inside the house, did not
23 open any cabinets, any drawers, just made sure there
24 were no additional people, and existed the premises and
25 stood at the driveway.

1 Q Were any of the drugs ultimately seized in this
2 case seized as a result of the protective sweep?

3 A Absolutely not.

4 Q Okay. And in addition, was a canine involved
5 in this case?

6 A Yes, given the information we had, after the
7 sweep was performed, we felt that we had the right to be
8 where we were, plus we had information from the source
9 that the cocaine came from the Chevy pickup that was
10 parked at the driveway of 4139 Willow Beach. That
11 driveway is within open access of the public, is not
12 obstructed by any gate or fence and normally on
13 narcotics investigations, if we are to do a sneak sniff,
14 we do send a dog anywhere where a person can walk up to
15 the front door, knock, solicit, sell you magazines, or
16 deliver mail, or whatever the case. This truck fit
17 within those, within these terms, so we deployed a
18 canine on the Chevy pickup and we did receive a positive
19 alert for the odor of narcotics. Deputy Curtis
20 confirmed that. I received canine training myself and
21 did observe that, and there is certified by the
22 International Narcotics Detector Dog Association in the
23 detection of the odors of the five major drugs.

24 Q Regarding the warrant and the affidavit to
25 obtain the warrant, did anything from that protective

1 sweep contribute to that affidavit?

2 A No, sir.

3 Q Okay. What was the basis of the affidavit in
4 the search warrant?

5 A The basis of the affidavit and the search
6 warrant were the fact that the within, approximately
7 between two to five minutes from the time the source
8 departed the residence and advised us that two kilograms
9 of cocaine were there, and actually Mr. Davila took a
10 pinch off one of them to tell them it's good stuff and
11 to basically -- we based the warrant on an informant who
12 has been established to be credible and reliable, told
13 us that cocaine was present inside the house, and then
14 we had the right to be where we were when we did the
15 sniff dog on the truck. Based on those, we obtained a
16 search warrant for the residence and the pickup truck.

17 Q And after obtaining this warrant, did you limit
18 your search to the residence described in the warrant
19 and the vehicle?

20 A Well, once, to expedite the process, it's just
21 a common practice we do, I contacted Investigator Ortiz,
22 gave her the run down over the phone, asked her to start
23 driving downtown while I typed the search warrant from
24 my laptop. I did type the search warrant, emailed it to
25 a prosecutor working intake. Deputy Ortiz took it,

1 presented it to the magistrate Hagstette, I believe, who
2 reviewed and signed it. She contacted me via telephone
3 and told me that the warrant had been signed.

4 Q But regarding the authorization provided by the
5 warrant, such as specifically 4139 Willow Beach and the
6 1996 pickup truck, did that residence and that truck is
7 that what you limited your search to?

8 A Basically the warrant gave us access to the
9 residence, the backyard, and anything included within
10 the residence, from the driveway all the way to the
11 fence of the backyard.

12 Q Where were the drugs ultimately located?

13 A In the backyard.

14 Q And then regarding Oscar Davila, do you see
15 that person here in the courtroom today?

16 A Yes. He's standing right here.

17 Q Could you identify him, point to him?

18 A He's wearing orange jumpsuit and white tennis
19 shoes.

20 MR. SOMERS: May the record reflect the
21 witness has identified the defendant.

22 THE COURT: The record will so reflect.

23 MR. SOMERS: Pass the witness.

24 CROSS-EXAMINATION

25

1 BY MR. SANTOS

2 Q Officer, you testified that none of the
3 information you got from doing the sweep of the house
4 was used to get this warrant; is that correct?

5 A I testified that the sweep did not contribute
6 to the evidence.

7 Q I mean, your dog is doing all this sniffing and
8 all that stuff was part of the sweep, wasn't it?

9 A The dog could have done the sniff without
10 having to do a sweep. That truck was within open access
11 to the public. It was in the driveway, not surrounded
12 by a fence. It's been done many times and warrants get
13 signed all day long with that.

14 Q So if I told you there is drugs in there, you
15 could have run with that and gotten a warrant without
16 having to go into the house; isn't that correct?

17 A The confidential informant stated that he
18 believed that the cocaine came out of the truck but he
19 wasn't inside the truck himself to see if there is more
20 drugs there or not. Originally the deal was for three
21 kilos yet they produced two kilo. There is a kilo
22 discrepancy.

23 Q By the time the CI left at 8:50 you could have
24 sent someone to get the warrant because you had
25 information that the drugs were inside the house?

1 A The drugs could have been moved, destroyed.

2 Q It's a simple "yes" or "no" question. I mean,
3 you knew -- the CI told you the drugs were there. It's
4 8:50. You could have sent somebody to go get a warrant?

5 A That would not be the choice that we elect,
6 especially when he said he's nervous, in a hurry, and
7 they are ready to leave.

8 Q You all decided to go and create an urgency so
9 you could go in the house?

10 A We did not create our own exigent
11 circumstances, sir. There is a big difference. We did
12 not have surveillance on the rest of the house. Again,
13 the neighborhood is tight. We couldn't put more than
14 one car. We did not have air support. We did the best
15 we can with the recourses that we had. And our goal
16 ultimately was not to search, only to preserve the
17 evidence and our safety. And that's what we proceeded
18 with.

19 Q You said the agent left at 8:50 or 8:53, which
20 is what was testified to earlier. You said at one point
21 a vehicle showed up with Mrs. Davila; is that correct,
22 after the CI had left?

23 A Correct.

24 Q So how soon after that vehicle got there did
25 y'all decide to go and search --

1 A No, we literally almost pulled up
2 simultaneously.

3 Q So you all kind of ended up creating the
4 urgency and having to go inside the house because they
5 saw you while you -- you hadn't even ordered a warrant
6 yet?

7 A We did not create our own exigent
8 circumstances. Our plan was from the get-go to insure
9 that no evidence gets destroyed or lost, and our plan is
10 to obtain a lawful search warrant.

11 Q You testified -- how far was your vehicle that
12 was monitoring to the residence?

13 A I cannot testify to that because I was
14 listening to the police radio.

15 Q You were not in that vehicle?

16 A I was not.

17 Q You said there was light traffic and pretty
18 much it would have been hard for another vehicle to come
19 in there and pick up the drugs and take off; is that
20 correct?

21 A No. I testified to the fact if we were to
22 circle around the neighborhood that we have would have
23 been spotted. We would have stood out because we were
24 in newer model pickup trucks and that's not the kind of
25 peoples that were in that neighborhood.

1 Q So any vehicle that left the residence could
2 have been spotted by you guys, by your surveillance.
3 They could have stopped it.

4 A That is not a one way in, one way out. And if
5 we start stopping every vehicle that leaves the house,
6 that leads suspicion to him. Phone calls can go back to
7 the house, then the whole case is blown. That is not a
8 practice that we do.

9 Q How many officers eventually were on the
10 premises?

11 A I can tell you exactly. Eventually 14.

12 Q Fourteen. And as far as the arrest of Mr.
13 Davila, Mr. Davila was arrested after you found PC,
14 after you found the drugs; isn't that correct?

15 A He was placed in custody once we secured him to
16 preserve the evidence. Then once we obtained the search
17 warrant, prior to even finding the drugs, he had white
18 residue outside of his nose, right on his upper lip that
19 was swabbed and tested positive for cocaine.

20 Q Is that in your report?

21 A Yes, it is. I'll direct you to -- if you go to
22 page seven out of eight, note one.

23 Q Seven out of eight?

24 A Note one. Prior to finding the cocaine,
25 Investigator Ortiz spoke with Mr. Davila in my presence.

1 I observed a white substance in and around the nose of
2 Mr. Davila. I swabbed at small amount of said substance
3 on the outside of the nose of Mr. Davila and I
4 conducted a chemical field test for, using the ADA test
5 kit, at that time which time displayed a positive result
6 for cocaine. This confirmed to me that the story of the
7 CS was true, that he took a pinch off the cocaine
8 because it's on his nose.

9 Q So what you saying, you arrested him after the
10 drugs were found?

11 A He was not free to leave the minute we went and
12 secured the location.

13 Q The paragraph you just read mentions Officer
14 Ortiz. So Officer Ortiz had already come back?

15 A She came back with the warrant, yes, sir.

16 Q So you had -- so your testimony is that he was
17 arrested. Is it after the drugs was found you had
18 probable cause to arrest him?

19 A The word arrest, when you're meaning arrest,
20 are you referring to him being not free to leave or are
21 you talking about being charged, because there is a big
22 difference. He wasn't free to leave from the get-go.
23 He was only charged once we found the drugs.

24 Q Do you know the difference between detaining
25 somebody for purposes of your investigation and

1 arresting somebody after you have probable cause? Do
2 you know the difference in that?

3 A Yes, I do.

4 Q Did you arrest him after you had the drugs and
5 you had probably cause?

6 A Pretty much, yes.

7 Q Okay. So that report that you have, is
8 everything in there pretty accurate? In other words,
9 the information in that report is something that you
10 remembered there, writing it the day you were there, and
11 it's pretty accurate; isn't that correct?

12 A Yes, sir.

13 Q Can you look at your page -- can you look at
14 page two in your report?

15 A Okay.

16 Q Right before it says arrested two, right above
17 it, it says arrested and it says Mr. Davila was arrested
18 at 2200; isn't that correct?

19 A Okay.

20 Q Right. Okay. So that was the time you
21 arrested him after you found the drugs; is that correct?

22 A No. In our system, which I brought the call
23 slip -- I'm glad I did -- because that often comes up.
24 Give me one second. Okay. You see this is the call
25 slip that shows the case number was drawn at 23:24. And