

1 will be testifying in Federal court in another
2 jurisdiction after today, so he will be unavailable to
3 return.

4 THE COURT: All right. May he be released?

5 MS. GONZALES: Yes, Judge.

6 THE COURT: All right. Thank you very
7 much. You are released.

8 WITNESS: Yes, ma'am.

9 THE COURT: Call your next witness.

10 MR. KEITER: State calls Officer Abe
11 Vanderberry, Your Honor.

12 This witness has been sworn.

13 THE COURT: All right.

14 Officer, if you can set the exhibits on the
15 table, is that --

16 MR. KEITER: Yes, Your Honor, that will be
17 fine.

18 THE COURT: He has been sworn.

19 Mr. Keiter, you may proceed.

20 MR. KEITER: Yes, Your Honor.

21 **ABRAHAM VANDERBERRY,**
22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MR. KEITER:

25 Q. Sir, can you state and spell your name for the

1 jury, please?

2 A. It's Abraham, A-B-R-A-H-A-M Vanderberry,
3 V-A-N-D-E-R-B-E-R-R-Y.

4 Q. What do you do for a living?

5 A. I'm currently employed by the City of Houston
6 as a police officer.

7 Q. How long have you been a police officer?

8 A. 21 years.

9 Q. What made you want to be a police officer?

10 A. I thought it would be a good job to have, and
11 my family comes from law enforcement. So, I joined when
12 I was 20.

13 Q. You didn't do it for the money?

14 A. There's no money in this job.

15 Q. Officer Vanderberry, where were you assigned
16 on November 30th of 2009?

17 A. Currently at that time I was assigned to the
18 special investigations command, narcotics division as a
19 narcotics investigator. I was assigned to a HIDA, which
20 is High Intensity Drug Trafficking Task Force, which is
21 comprised of the FBI, DEA, Customs, HPD, Harris County,
22 Department of Public Safety narcotics service,
23 Immigration and Customs Enforcement and ATF, and it's
24 Alcohol Tobacco and Firearms and Explosive Task Force.

25 Q. Did you work with Lieutenant Ohland from the

1 Department of Public Safety?

2 A. Yes, sir, I did. We were assigned partners.

3 Q. And what kind of training did you have in order
4 to become a part of the narcotics team?

5 A. At that time, we received 80 hours of basic
6 survival school where we go through 40 hours of
7 investigative skills, then we do another 40 hours of
8 what we call the ride, roping and shooting where we
9 practice search warrant entries, covert surveillance,
10 those items. And then we have continually updated
11 training in the division, which I was a part of the
12 training at that time where we, on an average of a year,
13 provide another 40 to 60 hours of training for all
14 officers that are investigators that are assigned to the
15 narcotics division.

16 Q. Prior to November 30th of 2009, had you
17 conducted few or many narcotics investigations?

18 A. Many narcotics investigations.

19 Q. Did you have specialized training in
20 surveillance?

21 A. Yes, sir, I did.

22 Q. Did you have on-the-street experience?

23 A. Yes, sir, I did.

24 Q. Before November 30th of 2009, had you made few
25 or many narcotics arrests?

1 A. Many, sir.

2 Q. How many years had you already been a part of
3 that T-net team?

4 A. I had been in narcotics in 2009, nine years;
5 and I had been assigned to T-net about a year.

6 Q. Over that time, did you develop relationships
7 with informants?

8 A. Yes, sir, I did.

9 Q. And do they just give you information
10 voluntarily?

11 A. There's three types of informants.

12 MR. DAVIS: Your Honor, I object to
13 relevance as well as that answer being nonresponsive.

14 THE COURT: All right. Rephrase the
15 question, please.

16 Q. (BY MR. KEITER) It's just a yes or no. Do you
17 develop a relationship with informants?

18 A. Yes, we do.

19 Q. And do you act on the information that's given?

20 A. Yes, sir, we do.

21 Q. Sometimes does it pan out?

22 A. Yes, sir, it does.

23 Q. Sometimes does it not?

24 A. That is correct.

25 Q. Did you get some information regarding an

1 address in Houston on November 30th of 2009?

2 A. Yes, sir, I did.

3 Q. With that information what was -- what did you
4 do with it?

5 A. I went in and conducted surveillance on the
6 location that I was provided.

7 Q. I'm showing you State's Exhibit No. 2 that's
8 been admitted. Do you recognize the address that you
9 were conducting surveillance on?

10 A. Yes, sir.

11 Q. Where is this location?

12 A. This is 7823 Sarita, which is in the southeast
13 quadrant of the City of Houston.

14 Q. What county and state?

15 A. It is Harris County, Texas.

16 Q. Can you go ahead and circle the actual address
17 you were watching that day?

18 A. (Indicating.)

19 Q. And just for purposes, so that the record is
20 clear, you circled the address right above the letter
21 "A" in State's Exhibit No. 2, with the white car in the
22 driveway?

23 A. That is correct, sir.

24 Q. Officer Vanderberry, where did you set up
25 surveillance?

1 A. At that time, I was currently posted here.

2 Q. Draw a big "X" for us and then circle that "X,"
3 please. And just so the record is clear, you've circled
4 the intersection of Sarita and Fennell Street on State's
5 Exhibit No. 2, right on the grass above, what would be
6 Sarita Street on the right side of the picture. Officer
7 Vanderberry, at that point in time, what vehicle were
8 you in?

9 A. I was in a undercover vehicle. It was going to
10 be a pickup, I'm not sure which one.

11 Q. Which way was your car facing?

12 A. I was facing this way.

13 Q. You remember about what time you got to the
14 address?

15 A. I believe I arrived there in the -- about 1:00
16 p.m. and started surveillance.

17 Q. Was that on November 30th of 2009?

18 A. Yes, sir, it was.

19 Q. How were you able to see that address from your
20 location?

21 A. I was using 10 by 50 Steiner binoculars.

22 Q. Were you able to see everything that happened
23 at that 7823 Sarita?

24 A. Yes, sir.

25 Q. About what time, when you started surveillance,

1 what was the first thing you observed and what time?

2 A. At that time, we -- I saw a lot of foot
3 traffic, vehicular traffic, individuals coming to the
4 door, knocking on the door, just standing outside.

5 Q. And based on your training and experience, what
6 did that indicate to you?

7 A. That indicates that there is a lot of activity
8 going on at the residence and during that surveillance,
9 the people that knocked on the door were never allowed
10 inside that residence. They just stood outside.

11 Q. What does that mean?

12 A. That's highly indicative of narcotics
13 trafficking. In my experience they just don't want you
14 in the house.

15 Q. Why not?

16 A. Because you can see what they have in the
17 house, and currently in the age of the prolific home
18 invasions, a lot of these traffickers try to protect
19 their business interest.

20 Q. At first did anyone answer the door to that
21 residence?

22 A. Yes.

23 Q. Originally, when you first saw someone, did
24 someone else answer the door?

25 A. Yes, an individual was answering the door

1 during the 1 o'clock surveillance.

2 Q. What did you observe?

3 A. From the observations it appeared individuals
4 were handing something to the male, the male would shut
5 the door, come back, hand an item to the buyer, at which
6 time the buyer would secrete whatever was purchased.

7 MR. DAVIS: Your Honor, I object to the
8 reference of buyer; that's speculative and an improper
9 characterization.

10 THE COURT: Overruled.

11 Q. (BY MR. KEITER) You may continue.

12 A. The buyer would secrete the item in the groin
13 area, in the mouth, females they would put it in bras as
14 they left the location.

15 Q. Do you remember about how many of these
16 activities, how many of these transactions were you able
17 to watch?

18 A. There was a number that were going on. At that
19 time, I did not create a surveillance log. I was just
20 doing what we call spot checking to see if there was any
21 relevance to the information that the CI had provided
22 me.

23 Q. At that time, where was Lieutenant Ohland?

24 A. I believe he was still at DPS headquarters.

25 Q. So, were you able to observe some things before

1 Lieutenant Ohland got to the location?

2 A. Yes, sir. I went and did a spot check on the
3 location to see if we needed to mobilize our squad to go
4 out and conduct further surveillance.

5 Q. Did you see anything next to the empty lot at
6 the house?

7 A. Individuals would park there and walk across,
8 nothing highly unusual, just a regular lot.

9 Q. When you saw these transactions, Officer
10 Vanderberry, could you see who was at the front door of
11 the residence?

12 A. Yes, because they would come out past the
13 garage, and I could get a view of that individual.

14 MR. KEITER: May I approach the witness,
15 Your Honor?

16 THE COURT: You may.

17 Q. (BY MR. KEITER) I'm showing you what's been
18 marked as State's Exhibits 4, 5, 6, 7 and 8. Do you
19 recognize them?

20 A. Exhibit 5, I recognize as the 7823 Sarita
21 address.

22 Q. Without saying what they are, do you recognize
23 these?

24 A. Yes, sir, I do except for No. 4.

25 Q. Okay. And 5, 6, 7 and 8, do they fairly and

1 accurately depict the scene as it was on November 30th
2 of 2009?

3 A. Yes, sir, they do.

4 Q. Have they been altered in any way?

5 A. Not to my knowledge.

6 Q. Other than the State's Exhibit sticker?

7 A. No, sir.

8 MR. KEITER: Your Honor, at this time,
9 State will offer State's Exhibits 5, 6, 7 and 8 into
10 evidence. I'll tender to Defense counsel for objection.

11 (State's Exhibit Nos. 5 through 8 offered.)

12 THE COURT: Is there any objection?

13 MR. DAVIS: There's going to be no
14 objection, but I'd like at least an opportunity to look
15 at them.

16 THE COURT: All right. You haven't looked
17 at them previously?

18 MR. DAVIS: There's no objection, Your
19 Honor.

20 THE COURT: State's Exhibits 5 through 8
21 are admitted without objection.

22 (State's Exhibit Nos. 5 through 8
23 admitted.)

24 MR. KEITER: May I show them to the jury,
25 Your Honor?

1 THE COURT: You may.

2 Q. (BY MR. KEITER) Officer Vanderberry, I want to
3 show you State's Exhibit 5. What's on the left-hand
4 side of State's Exhibit No. 5?

5 A. That would be 7823 Sarita.

6 Q. And in this picture, where were you in relation
7 to that house?

8 A. Parked right over there, sir.

9 Q. And for the record, that's toward the
10 right-hand top of State's Exhibit No. 5. So, when you
11 went when you saw these transactions, you said the
12 person would come to the front door of 7823 Sarita or
13 past the garage area, what did you mean?

14 A. They would go to this door right here, sir.

15 Q. And were you able to see who was there?

16 A. Yes, sir.

17 Q. How were you able to see that?

18 A. Through the binoculars and at times the
19 individual would walk out and be in this area, and the
20 lot here and sometimes come out here to vehicles.

21 Q. All right. Do you see the person who would --
22 who was milling about and who answered the door here in
23 the courtroom today?

24 A. Yes, sir, I do.

25 Q. Can you identify them by a piece of clothing

1 that they're wearing?

2 A. Would be the Hispanic male in the plaid blue
3 shirt with pink.

4 MR. KEITER: Your Honor, I'd ask that the
5 record reflect the witness has identified the Defendant?

6 THE COURT: It will.

7 Q. (BY MR. KEITER) When you saw this activity,
8 what did you do?

9 A. At that time I surmised we had enough activity
10 to mobilize a surveillance team. I then drove to DPS
11 headquarters off of 290 and West Road. I met with
12 Sergeant Ohland at that time. And we came back out
13 around 4:00 p.m. with DPS surveillance and set up our
14 DPS surveillance teams, and we came and set up
15 surveillance.

16 Q. Had the Defendant left the location, or was he
17 still there?

18 A. When I left the location, he was still there.

19 Q. Why would you leave? Why wouldn't you keep
20 eyes on him the whole time and make sure?

21 A. We still have to mobilize teams, sir. I have
22 to go and look at the location and pull up, you know,
23 Harris County Appraisal District to see if it's a rental
24 property, who is the owner of it, and then we have to do
25 a, what is considered a tactical plan as far as what the

1 object of this is going to be. So, you have to knock
2 out a op's plan on what the goal and objective of this
3 investigation was to be during the surveillance
4 operation.

5 Q. In other words, y'all don't just go out there
6 and start arresting people and do a bunch of
7 surveillance, there's actually some work that's involved
8 first?

9 A. Yes, sir.

10 Q. Is that also for officer's safety?

11 A. Yes, sir, it is.

12 Q. After you went to DPS headquarters, was the
13 team mobilized?

14 A. Yes, sir, there was.

15 Q. When did y'all get back?

16 A. I believe the report reflects that we arrived
17 around 1600 hours or, I'm sorry, 4:00 p.m. is when we
18 arrived back at the location.

19 Q. Did you take up your same spot of surveillance
20 when y'all arrived?

21 A. Yes, sir, I did.

22 Q. Were you by yourself, or was there anyone else
23 in your car at that time?

24 A. I was by myself.

25 Q. When you set up surveillance at the same

1 location you were at previously, do you know where
2 Sergeant Ohland at the time set up?

3 A. He was roving at the time trying to find a
4 position that he could put down and get eyes on the
5 location. I did not mark or reflect in my notes where
6 the surveillance unit sat down.

7 Q. When you got there, about what time did you
8 start? If you -- did you see other activity at that
9 time?

10 A. We arrived there at 4:00 p.m. at 4:13, I
11 observed two Hispanic males walk to the door, knock;
12 they received no answer.

13 Q. What happened next?

14 A. Continued surveillance at 4:40, I observed
15 another Hispanic male knock on the door with no reply.

16 Q. Were there any cars in the driveway of 7823
17 Sarita Street?

18 A. There were some cars parked on the side lot,
19 but at that time I did not know who they belonged to.

20 Q. After the 4:40 encounter, why not stop any of
21 those people that you saw walking and didn't get an
22 answer, why didn't you stop any of those people?

23 A. Because you do not want to alert the individual
24 at the target residence that surveillance is being
25 conducted. Individuals will call back and say, hey, we

1 left your house; and the police stopped us. So, unless
2 we see some kind of overt transaction, we do not
3 intercede with any active law enforcement.

4 Q. Is that because the focus at that time is on
5 the person in the house and not these other people?

6 A. Correct.

7 Q. After the 4:40 -- after the people at 4:40
8 left, what's the next time you observed someone?

9 A. At 5:19 I then observed a black Dodge Magnum
10 arrive at the residence.

11 Q. Where did it park?

12 A. It went straight to the front.

13 Q. Did it park in the driveway?

14 A. Yes, sir.

15 Q. What happened next?

16 A. A -- Flores exited the driver's side, and a
17 female exited the passenger's side, and she went
18 immediately to the driver's side and Flores entered the
19 residence.

20 Q. And when you say "Flores," do you mean the
21 Defendant?

22 A. Yes.

23 Q. How did the Defendant make entry into the
24 house?

25 A. He had keys to the residence.

1 Q. Could you see him make entry with the keys?

2 A. Yes, I watched him unlock the door and go
3 inside.

4 Q. What happened to the black Dodge?

5 A. The Dodge left about a minute later, and
6 surveillance was unable to pick it up after it left.

7 Q. What do you mean unable to pick it up?

8 A. During new surveillance on locations, officers
9 can sometime get directionally challenged as far as
10 north, south, east, west; and as I was giving direction
11 of travel, there was some confusion on the streets and
12 it was able to elude the surveillance.

13 Q. Did you have marked units ready on standby?

14 A. No, we were just doing a take away.

15 Q. What's that mean?

16 A. A take away is we're just going to get the
17 license plate of the vehicle that's leaving.

18 Q. Why would that be important for you?

19 A. You can see who the registered owner of -- who
20 owns the vehicle, if it's a leased vehicle, and if there
21 is any other locations that that vehicle is registered
22 to.

23 Q. But in this case you weren't able to get that?

24 A. No, we were not.

25 Q. Directionally challenged.

1 A. It happens.

2 Q. All right. Officer Vanderberry, what did you
3 do next?

4 A. We maintained surveillance, and at 5:37 Flores
5 exited the residence.

6 Q. Is that the Defendant?

7 A. Yes, it is.

8 Q. Where did he go when he exited the residence?

9 A. He just kind of walked around. He was out
10 there smoking a cigarette.

11 Q. What happened next?

12 A. At 5:41 he walked back into the residence.

13 Q. And what are you reading from?

14 A. My offense report.

15 Q. Have you written few or many reports since this
16 one?

17 A. Many reports, sir.

18 Q. Does that help you refresh your memory?

19 A. Yes, sir.

20 Q. Are you reading that so that you can make sure
21 that you get the exact time that you listed in your
22 surveillance log?

23 A. Yes, sir. This case is from 2009, so we use it
24 to refresh our memory.

25 Q. So, at that point in time, Officer Vanderberry,

1 was the Defendant just milling about outside?

2 A. Yes, sir.

3 Q. You remember about how long he took to smoke
4 his cigarette outside?

5 A. It was about four minutes before he walked,
6 went back inside.

7 Q. Was there any foot traffic or vehicular traffic
8 that came to the residence while the Defendant was
9 outside?

10 A. Not at that time.

11 Q. When he went back inside, what happened next?

12 A. At 6:14, a Hispanic male, who we later
13 identified as Juan Gonzalez, walked to the front door
14 and knocked on the door.

15 Q. What did you observe when Juan Gonzalez knocked
16 on the door?

17 A. It was answered by Flores. There was a
18 hand-to-hand transaction that I observed from Gonzalez
19 to Flores. Flores shuts the door and Gonzalez is just
20 milling about out front, and within, say, a minutes'
21 time, the door opens again. A item is handed from
22 Flores to Gonzalez, and Gonzalez puts it, the item in
23 his left front pocket and leaves the residence.

24 Q. Based on all the surveillance you've done in
25 the past and your training and experience, what did that

1 indicate to you?

2 A. At that time that was indicative that we had a
3 sale. We had an individual that was on foot, and we
4 corroborate that there is drug activity at that
5 location, if we could go ahead and pick that individual
6 up and, in fact, see if that was a narcotics
7 transaction.

8 Q. And in that situation, who was the dealer; and
9 who was the buyer?

10 A. In that situation, Flores was the drug
11 distributor; and Gonzalez was the drug purchaser.

12 Q. Which way did Juan Gonzalez walk?

13 A. He came back from the location. He walked this
14 way. He went to Fennell, then he went down Sarita and
15 actually walked past me.

16 Q. He walked right past your unmarked vehicle?

17 A. Yes, sir.

18 Q. Did you get out and talk to him?

19 A. No, I did not.

20 Q. Why not?

21 A. Because in this situation, I am the eye; and I
22 just broadcast activity. I never go mobile. I never
23 leave the location. I'm strictly set there to do
24 surveillance.

25 Q. Did you radio to other officers to have Juan

1 Gonzalez stopped?

2 A. Yes, sir, I did.

3 Q. And do you remember, do you know or do you
4 remember about when they stopped him? Is it off the
5 map?

6 A. Yeah, it's going to be off the map, sir.

7 Q. And was it immediate or was it -- was it
8 several minutes later? Was it an hour later?

9 A. No, it was going to be several minutes later a
10 marked patrol unit, DPS was able to locate the
11 individuals walking; and a marked HPD patrol car stopped
12 them.

13 Q. And was Lieutenant Ohland handling that part of
14 the investigation?

15 A. Yes, sir.

16 Q. Did you continue to maintain surveillance on
17 7823 Sarita Street?

18 A. Yes, sir.

19 Q. What did you observe happen next at 7823 Sarita
20 Street?

21 A. At 6:40, Flores exited the residence, locks the
22 front door with keys, and then proceeds to get into a
23 Lincoln SUV and leaves the location.

24 Q. Where was that Lincoln SUV parked?

25 A. (Indicating.)

1 Q. And is that the left side of the property --

2 A. Yes, sir.

3 Q. -- if you were looking straight at it?

4 A. Yes.

5 Q. Did you follow the Defendant?

6 A. Yes, sir. At this time, I went mobile because
7 the main target of the investigation was leaving; and
8 the units were tied up with the Mr. Gonzalez' arrest.

9 Q. Which way did the Defendant go?

10 A. He came out, hit Fennell, took Fennell to the
11 service road and the service road out.

12 Q. When you say the "service road," do you mean
13 610 freeway as we see on State's Exhibit 61 -- State's
14 Exhibit No. 1?

15 A. That is correct, sir.

16 Q. Were you maintaining surveillance on the
17 Defendant at the time?

18 A. Yes, sir, as he left and was going down this
19 way, I then pulled off to follow and then went with him.

20 Q. Was he able to make it onto the freeway?

21 A. No, sir, he stayed on the service road the
22 whole way around.

23 Q. Did you observe any traffic violations?

24 A. Yes, sir, at Fennell and the service road,
25 there's a stop sign; he rolled right through the sign,

1 brake lights didn't even come on. He failed to indicate
2 the turn signal and then proceeded onto the service
3 road.

4 Q. Was Lieutenant Ohland able to catch up to you
5 once you got mobile?

6 A. Yes, he did eventually catch up to me while I
7 was asking for additional cover units.

8 Q. Did you have a marked unit get behind the
9 Defendant and eventually stop?

10 MR. DAVIS: I'd object to leading, Your
11 Honor.

12 THE COURT: Don't lead your witness.

13 Q. (BY MR. KEITER) What did you do after you
14 observed the traffic violations?

15 A. I radioed to the marked patrol unit that we had
16 traffic violations and to stop the vehicle.

17 Q. Was the vehicle stopped?

18 A. Yes, sir.

19 Q. What did you do?

20 A. The officers got Flores out of the vehicle. At
21 that time, Ohland and myself put on departmental issued
22 police jackets; and we went up to talk to Flores.

23 Q. All right. We're not going to talk about
24 anything that was said.

25 A. That's fine.

1 Q. Okay. At that point in time after you spoke
2 with the Defendant, did you have a conversation with any
3 other members of the T-net squad?

4 A. Yes, I then spoke to Sergeant Ohland; and he
5 relayed the facts of Gonzalez' arrest to me, that he was
6 in possession of marijuana.

7 Q. And after you found out that Gonzalez was in
8 possession of marijuana, was there an officer by the
9 name of John Huston, who you spoke with?

10 A. Yes, Officer Huston had arrived at the scene;
11 and at that time I ascertained that we had enough
12 probable cause for a search warrant for that residence.
13 I relayed the facts to Officer Huston, who went back
14 downtown to type the search warrant.

15 Q. And where did take -- where did Officer Huston
16 take the search warrant?

17 MR. DAVIS: I object. It calls for a
18 hearsay answer based on hearsay.

19 MR. KEITER: I'll rephrase, Your Honor.

20 THE COURT: All right.

21 Q. (BY MR. KEITER) Did you have a few
22 conversations with Officer Huston?

23 A. Yes, sir, I did.

24 Q. Were you relaying information to Officer
25 Huston?

1 A. Yes, sir, I was.

2 Q. Where did you tell Officer Huston to go, if
3 anywhere?

4 A. He went back to 1200 Travis.

5 Q. All right. Was there eventually a search
6 warrant that was signed?

7 A. Yes, sir.

8 Q. About what time was the search warrant -- about
9 what time did you get a phone call from Officer Huston?

10 A. There were various phone calls going back and
11 forth, but he called me at, I believe, 9:00 p.m. and
12 advised me that the warrant was signed.

13 MR. DAVIS: Your Honor, I object to
14 hearsay.

15 THE COURT: Officer Vanderberry, don't talk
16 about what anybody else has told you.

17 Mr. Keiter, you may ask another question.

18 Q. (BY MR. KEITER) After you spoke with Officer
19 Huston around 9:00 p.m., what did you do?

20 A. We executed a search warrant at 7823 Sarita.

21 MR. KEITER: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 Q. (BY MR. KEITER) I'm showing you what's been
25 marked as State's Exhibits 22 through, up to and

1 including State's Exhibit 47. Have you had a previous
2 opportunity to view these photos?

3 A. Yes, sir, I have.

4 Q. And just glance through them real quickly for
5 me.

6 Do they fairly and accurately depict the
7 scene as it was on November 30th, 2009?

8 A. Yes, sir, they do.

9 Q. Other than the State's Exhibit sticker, have
10 they been altered in any way?

11 A. Not to my knowledge.

12 MR. KEITER: Your Honor, at this time the
13 State offers State's Exhibits 22 up to and including 47,
14 through and including 47.

15 (State's Exhibit Nos. 22 through 47
16 offered.)

17 THE COURT: All right. Is there any
18 objection?

19 MR. DAVIS: May we have one moment, Your
20 Honor?

21 THE COURT: Ladies and gentlemen, we're
22 going to take our morning recess at this time. If
23 you-all will step back to the jury room with Deputy
24 Kaminski, we'll be back with you shortly.

25 THE BAILIFF: Rise for the jury.

1 (Jury exits courtroom.)

2 THE COURT: Be seated, please.

3 (A recess was taken.)

4 (Open court, Defendant present.)

5 THE COURT: Are both sides ready for the

6 jury?

7 MR. DAVIS: Yes, Your Honor.

8 MS. ALLEN: State's ready.

9 THE COURT: All right. Bring them in.

10 THE BAILIFF: Rise for the jury.

11 (Jury enters courtroom.)

12 THE COURT: All right. Be seated, please.

13 Mr. Davis, is there any objection to

14 State's Exhibits 22 through 47?

15 MR. DAVIS: No, Your Honor.

16 THE COURT: All right. State's Exhibits 22

17 through 47 are admitted without objection.

18 (State's Exhibit Nos. 22 through 47

19 admitted.)

20 MR. KEITER: May I show them to the jury,

21 Your Honor?

22 THE COURT: You may.

23 Q. (BY MR. KEITER) Okay. Officer Vanderberry,

24 we're looking at State's Exhibit No. 22, was that the

25 front entrance that evening?

1 A. Yes, sir, it was.

2 Q. Of 7823 Sarita Street?

3 A. Yes, sir.

4 Q. And how did you make entry into the house?

5 A. I used the keys that I took off Mr. Flores when
6 he was arrested.

7 Q. And when you took those keys off of Mr. Flores,
8 did you take anything else off of Mr. Flores?

9 A. Yes, we did.

10 Q. What did you take off the Defendant?

11 A. He had a pendant, Santa Muerte pendant, that we
12 recovered.

13 Q. Have you training and experience in San Muerte?

14 A. Yes, sir, I have.

15 Q. What kind of training have you had with that?

16 A. I've had 24 hours of instruction on San Muerte.

17 Q. And based on that instruction, give the ladies
18 and gentlemen of the jury just a brief description of
19 exactly what San Muerte is?

20 MR. DAVIS: Objection, Your Honor,
21 relevance.

22 THE COURT: Overruled.

23 MR. DAVIS: And objection, again, Your
24 Honor. I'd ask the Court to engage in a balancing. May
25 we approach, Your Honor?

1 THE COURT: You may.

2 (Bench conference.)

3 MR. DAVIS: Of course, I object to the
4 relevance. And I understand the Court's ruling. But
5 I'd ask the Court, I believe that this evidence or any
6 worship of Santa Muerte and what may be meant by a
7 worship of Santa Muerte may be unduly prejudicial and
8 the prejudicial value of such evidence would
9 substantially outweigh any probative value that it has.
10 If he's going to link Mr. -- my client to the house,
11 then the fact that he has a pendant and those items of
12 Santa Muerte inside the house, that's perfectly
13 relevant.

14 THE COURT: Which I think is exactly what
15 the previous witness --

16 MR. DAVIS: This witness has said that,
17 too. But now he's asking about the details of the
18 worship of Santa Muerte, which goes into like these
19 idols and this idolatry and this idol worship. Religion
20 is highly prejudicial. And if someone has a religious
21 belief of value that they worship a pig or something
22 like that, they could be prejudiced against my client
23 and may form a decision based on an improper reason.
24 There's no need for that evidence, given that they find
25 the pendant and they find the items inside.

1 THE COURT: Maybe this wasn't clear, tailor
2 your questions appropriately. The officer has simply
3 indicated that he's received training. In his training,
4 that is significant with regards to people who have,
5 allegedly been dealing drugs.

6 MR. DAVIS: I think, again, that's also 404
7 (b) evidence. Now, the situation is just that it's
8 significant for people who have been dealing with drugs.
9 That's 404 (b) evidence for which we haven't been given
10 any notice at all.

11 THE COURT: First of all, as you stated
12 earlier the fact that there's a shrine in the house,
13 that he's wearing the medallion, I believe is relevant.

14 MR. DAVIS: I agree.

15 THE COURT: I find that the probative value
16 outweighs the prejudicial effect. I'm going to allow it
17 for that purpose. Don't go beyond that.

18 MR. KEITER: Okay. So, just so I'm clear,
19 Your Honor. The evidence that I'm intending to elicit
20 from this witness is that is common among drug dealers.

21 THE COURT: And I think that was the
22 purpose before is that they have training, and they find
23 that regularly.

24 MR. DAVIS: Your Honor, I think at this
25 point that 404 (b) evidence which we haven't gotten

1 notice of --

2 THE COURT: I'll allow that.

3 MR. KEITER: Just for purposes of the
4 record, as far as them not getting a notice, they have a
5 copy of the transcript of the prior trial where this was
6 an issue, and they've had access to the police reports.

7 MS. ALLEN: It's not an extraneous bad act.

8 THE COURT: Right. And I think I've
9 already limited what you can elicit from this witness.
10 I find that the information that we've outlined would be
11 admissible.

12 MR. KEITER: Yes, Your Honor.

13 (End of bench conference.)

14 THE COURT: Mr. Keiter, you may proceed.

15 MR. KEITER: Yes, Your Honor.

16 Q. (BY MR. KEITER) On the key chain of the
17 Defendant that's used to enter the house, was there also
18 a San Muerte saint?

19 A. Yes, there was.

20 Q. What is in your training and experience the
21 purpose of San Muerte regarding the drug transactions
22 that you'd seen and the activity that you'd seen at the
23 house with this Defendant, did you also find a shrine
24 inside the house?

25 A. Yes, sir, I did.

1 Q. I'm showing you what's been admitted as State's
2 Exhibit No. 45, is that the shrine of San Muerte?

3 A. Yes, sir, it is.

4 Q. And do you see some money here in this exhibit?

5 A. Yes, sir, that is a hundred dollar bill.

6 Q. And in this situation, what did this shrine
7 indicate to you based on your training an experience?

8 MR. DAVIS: Again, Your Honor, I object to
9 relevance as well as object to speculation.

10 THE COURT: Your objection is overruled.

11 A. San Muerte is what drug distributors will use
12 as a saint of protection.

13 Q. (BY MR. KEITER) Explain?

14 A. San Muerte translates to saint death.

15 MR. DAVIS: Objection, Your Honor,
16 relevance.

17 THE COURT: That's sustained.

18 MR. DAVIS: And I'd ask that the jury be
19 instructed to disregard that comment?

20 THE COURT: All right. Ladies and
21 gentlemen, disregard the last comment of the witness.

22 MR. DAVIS: I respectfully move for a
23 mistrial.

24 THE COURT: That's denied.

25 Q. (BY MR. KEITER) When you entered the house,

1 was there anyone there?

2 A. No, sir, it was empty. We had surveillance
3 stay on the house while we were doing the traffic stop.

4 Q. When you made entry, where were you in relation
5 to all the other officers?

6 A. I was the point man, the first to make entry
7 into the residence.

8 Q. What do you do when you first make entry into
9 the residence?

10 A. We knocked and announced our presence numerous
11 times, received no response. I then used the keys to
12 open the front door. Went ahead and opened the front
13 door and once again announced our presence and our
14 intentions. I received no response.

15 Q. At that point in time, was Lieutenant Ohland in
16 front of you with the shield?

17 A. He may have been, yes, sir.

18 Q. And the man with the shield does he usually go
19 in first?

20 A. Yes, or covers the door. It just depends how
21 the op is going. Usually they're there to cover the
22 door.

23 Q. Did you clear the entire house?

24 A. Yes, we did.

25 Q. After y'all cleared the entire house, how do

1 you go about inventorying and searching for what you're
2 looking for?

3 A. At that time since this was my information, I
4 am considered the case agent for this investigation.
5 Officers will go through, and we will start a systematic
6 search of the residence. And officers will say, there's
7 evidence here. I will come, look at it, tag it and then
8 process it.

9 Q. I'm showing you what's been admitted as State's
10 Exhibit No. 24. Do you recognize it?

11 A. Yes, sir, that is a brown manila carrier.

12 Q. Where did you find this brown manila envelope
13 carrier?

14 May I approach the witness, Your Honor?

15 THE COURT: You may.

16 A. That was recovered in the guest bedroom.

17 Q. (BY MR. KEITER) Did you look in -- did you look
18 in that envelope?

19 A. Yes, sir, I did.

20 Q. I'm showing you what's been marked as State's
21 Exhibit No. 58. Do you recognize it?

22 A. Yes, sir, I do.

23 Q. How do you recognize it?

24 A. This is the evidence that was recovered at the
25 scene.

1 Q. Is this envelope the same envelope that we see
2 in the exhibit?

3 A. Yes, sir, it is.

4 Q. And who -- did you take custody of it that day?

5 A. Yes, I did.

6 Q. And who did you give it to that day?

7 A. John Huston, Officer Huston tagged it.

8 Q. And how do you know that?

9 A. Because of his initials that are on the box.

10 Q. And State's Exhibit 58 and its contents, did
11 you go through it there at the scene?

12 A. Yes, I did.

13 Q. How did this make its way -- how did this box
14 in State's Exhibit 58 and its contents make its way to
15 the courthouse?

16 A. This was tagged into the property room. I
17 checked it out and brought it to the courthouse.

18 Q. That day, Officer Vanderberry -- thank you,
19 sir. You can just put that down. Did you go through
20 State's Exhibit No. 58?

21 A. Yes, sir, I did.

22 Q. Did you find documents with anyone's, just
23 general documents with anyone's name on it?

24 A. Yes, sir, I did.

25 Q. And what was the prevalent name in most of the

1 documents that you found?

2 A. Damian Ricardo Flores.

3 Q. Is that the name of the Defendant?

4 A. Yes, it is.

5 Q. What, if anything, did that indicate to you?

6 A. That this was his residence.

7 Q. Where was your main focus of the rest of your
8 investigation done?

9 A. Was in the kitchen.

10 Q. When you entered the house, where was the
11 kitchen?

12 A. It would be to the north of us, as you enter
13 from the front door.

14 Q. When you entered the kitchen, was there
15 anything that immediately caught your attention inside?

16 A. Yes, there was a tray of loose leaf marijuana
17 laid out.

18 Q. Do you remember where exactly that was?

19 A. It was on the kitchen cabinets.

20 Q. When you walked into the house, was there
21 anything that you observed when y'all made entry into
22 the house that caused you some concern?

23 A. Yes, there was a loaded Browning High Power
24 9-millimeter semiautomatic pistol with the hammer cocked
25 back, which was sitting by the sofa.

1 Q. When you say it was cocked back and ready, what
2 do you mean?

3 A. That the hammer was cocked all the way, so all
4 you had to do was drop the safety and pull the trigger.

5 Q. So loaded and ready to go?

6 A. Yes, sir.

7 Q. Is a firearm like that capable of causing death
8 and/or serious bodily injury?

9 A. Yes, sir, it is.

10 Q. I'm showing you -- you've seen State's Exhibit
11 No. 25 and State's Exhibit No. 26. Can you tell us what
12 we're looking at here?

13 A. That is a tray containing loose leaf marijuana.

14 Q. Do you go around and start touching everything
15 first, or is everything photographed first?

16 A. Usually we try to photograph it first and then
17 move everything together to get one shot of all the
18 drugs.

19 Q. Where was the tray of marijuana that we see on
20 State's Exhibit 26 when you came into the house?

21 A. It was on the kitchen countertop.

22 Q. Just like we see in State's Exhibit No. 26?

23 A. Yes, this exactly depicted, sir.

24 Q. Did you locate more marijuana at that time?

25 A. Yes, sir, I did.

1 Q. I'm showing you State's Exhibit 27, is that
2 another baggy of marijuana that you found?

3 A. Yes, sir, that's an individual sale baggy.

4 Q. And how do you know that?

5 A. Because it's small in nature, and they twist it
6 off; and we pay about ten bucks for that on the street.

7 Q. State's Exhibit No. 28, what are we looking at
8 here?

9 A. Those are larger freezer bags containing loose
10 leaf marijuana.

11 Q. Is that marijuana from the tray or no?

12 A. No, that is not. Those were individual baggies
13 in there.

14 Q. In your training and experience, are those
15 fairly large bags?

16 A. Those are quite large, sir.

17 Q. Where were those bags located when you entered
18 the house?

19 A. They were in the kitchen drawers.

20 Q. And did you pull them out of the kitchen
21 drawers to photograph them?

22 A. Yes, sir, we did.

23 Q. Who was searching the kitchen drawers?

24 A. Officer Rosales was in there at the time.

25 Q. Now, when Officer Rosales is searching, does he

1 actually pull anything out?

2 A. He just tells me where it is, and then I
3 removed it.

4 Q. Why?

5 A. Just so I know when I'm writing my report where
6 all items were located.

7 Q. So, are you the only one that's touching the
8 items?

9 A. That is correct.

10 Q. And then you take custody of all the items?

11 A. That is correct.

12 Q. Does that make it easier for you to write your
13 report?

14 A. Yes, sir.

15 Q. State's Exhibit No. 29, is that the same tray
16 that we saw earlier or a different tray?

17 A. It's the same tray, just closer up.

18 Q. Is there anything in particular that you
19 noticed about this marijuana?

20 A. It has already been grounded.

21 Q. What does that mean?

22 A. There are grinders that you can purchase and
23 you put the leaves in and you twist it and it grinds it,
24 and then you're able to load your marijuana cigars or
25 roll your joint, so to speak. If it's already ground,

1 it's a lot easier to process.

2 Q. Is it common for a dealer to do that for you?

3 A. Yes, sir.

4 Q. State's Exhibit No. 30, are we just looking at
5 another bag of marijuana?

6 A. Yes, sir, that is correct.

7 Q. Now, I want to talk about State's Exhibit 32.
8 What are we looking at here?

9 A. That is powder cocaine.

10 Q. How do you know that?

11 A. I did a field test on it.

12 MR. DAVIS: I'd object to any testimony as
13 to the field test, Your Honor.

14 THE COURT: Overruled.

15 Q. (BY MR. KEITER) Where was this cocaine found?

16 A. It was on the top of the kitchen countertop.

17 Q. When you walked in?

18 A. Yes.

19 Q. Was it in -- it wasn't in a drawer?

20 A. I'm sorry. Yes, it was in a drawer. It was a
21 kitchen drawer.

22 Q. Who pointed out the cocaine that was in the
23 drawer?

24 A. Officer Rosales did.

25 Q. When he pointed out the cocaine in the drawer,

1 where was it in the drawer?

2 A. Just right there on the side, the corner.

3 Q. Was it just as we see it in the picture?

4 A. Yes, except that's on the top of the counter.

5 Q. Was it in any container?

6 A. No, it was not. It was just out like that.

7 Q. Based on your training and experience, is this
8 a lot or little cocaine?

9 A. That is a lot of cocaine. It is a mid-level
10 distributive amount.

11 Q. Is that amount more than just for personal use?

12 A. Yes, sir, it is.

13 Q. I want to show you State's Exhibit No. 33, what
14 are we looking at here?

15 A. That is a Arizona fake can.

16 Q. When you say "fake can," we are looking at
17 State's Exhibit 34. Explain what we're looking at?

18 A. It is used to hide jewelry is what it's
19 marketed as. Most of the time we encounter it as drug
20 dealers are using it to secrete their narcotics and
21 drive from point A to point B with it.

22 Q. Do you -- when you were doing narcotics
23 investigations, did you encounter few or many of these?

24 A. Many of those.

25 Q. And in this container, looking at State's

1 Exhibit 35, what do we see that's -- is there anything
2 about this picture that strikes you?

3 A. Up here, above the line is marijuana residue.

4 Q. You know that from your training and
5 experience?

6 A. Yes, sir.

7 Q. Looking in the container was there other
8 marijuana residue?

9 A. This photo doesn't do it justice, but also down
10 there you can see flakes of marijuana residue.

11 Q. Did you locate marijuana in this hidden device?

12 A. No, sir.

13 Q. Based on your training and experience, do
14 dealers or anyone mix their drugs?

15 A. In my time working undercover, you would never
16 see marijuana and cocaine in same containers because the
17 marijuana is so pungent that you can smell it when you
18 walk up to it. Whereas with cocaine, you could not.

19 Q. So, what does that matter?

20 A. Well, if an officer walks up to your car and
21 you have a residue of marijuana and your cocaine is in
22 that container, the officer can smell the marijuana, go
23 through your vehicle and now he's found your cocaine.

24 Q. And if you are a dealer or a user, just someone
25 in possession of drugs, which one would you prefer to be

1 caught with? I mean, you'd rather not be caught with
2 either.

3 MR. DAVIS: Again, objection to relevance.

4 THE COURT: Sustained.

5 Q. (BY MR. KEITER) Officer, I'm showing you
6 State's Exhibit No. 36. What are we looking at here?

7 A. That is a .38 caliber pistol.

8 Q. Where did you locate that?

9 A. It was in the master bedroom, located in the
10 drawer there.

11 Q. Was that also loaded?

12 A. Yes, sir, it had two live rounds in it.

13 Q. I'm going to show you State's Exhibits 37 and
14 38 and see if I can get this in here, State's
15 Exhibit 39. Looking at State's Exhibit 37, what are we
16 looking at?

17 A. That is going to be a magazine, a pistol
18 magazine.

19 Q. What is a pistol magazine?

20 A. It is the device that is used to hold
21 cartridges that fire bullets from your pistol.

22 Q. Have you had training and experience with
23 firearms?

24 A. Yes, sir.

25 Q. Are you an expert in firearms?

1 A. Yes, I am a TCLEOSE certified firearms
2 instructor. I teach firearms and tactics at the police
3 academy, and I'm a graduate of the FBI firearms
4 instructor school.

5 Q. State's Exhibit No. 38, what are we looking at
6 here?

7 A. That is a magazine containing ammunition or
8 cartridges, and it appears to be a 223.

9 Q. When you say "223," what does that mean?

10 A. That is the Brown designation for a rifle
11 cartridge .223 caliber.

12 Q. Is that a larger clip than normal?

13 A. That is a current 30-round standard magazine.

14 Q. Does that go into a rifle or like a handgun?

15 A. It goes into a rifle, sir.

16 Q. Is that a high-powered rifle?

17 A. Yes, sir, it is.

18 Q. Showing you State's Exhibit 39, what are we
19 looking at here?

20 A. Those are various pistol magazines.

21 Q. Are those different magazines for different
22 kinds of weapons?

23 A. Yes, sir.

24 Q. Did you find anything other than the marijuana
25 or cocaine as far as drugs?

1 A. I believe also Xanax was recovered, sir.

2 Q. Showing you State's Exhibit No. 40. Is Xanax a
3 controlled substance?

4 A. Yes, sir.

5 Q. And how did you know that this was Xanax?

6 A. Just because prescription pills are very
7 prevalent right now. And I was working with a
8 prescription pill squad, and by sight that is a Xanax
9 pill carrier with the label removed to tell us who it's
10 prescribed to, and then a call to poison control with
11 the numbers that are on the pills verified that it was
12 Xanax.

13 Q. Where did you find the Xanax?

14 A. It was also in the kitchen drawer.

15 Q. If you know, was it in the same drawer as the
16 cocaine?

17 A. No, I do not recall.

18 Q. State's Exhibit No. 41, was this one of the
19 documents that you located in that folder?

20 A. Yes, sir, it was.

21 Q. And was it the driver's license of the
22 Defendant?

23 A. Yes, sir.

24 Q. And what was the address on that?

25 A. At that time it was carrying 3718 Ripplebrook,

1 Houston, Texas, 77045.

2 Q. Was that a different address than the 7823
3 Sarita Street?

4 A. Yes, sir, it is.

5 Q. And, in fact, did you find other documents in
6 there with even other different addresses, specifically
7 looking at State's Exhibit 43?

8 A. Yes, sir, that is the address to 1222 Fleming
9 Drive, Apartment 1006, Houston, Texas, ZIP is 77013.

10 Q. Was there also a 3922 Grapevine address?

11 A. Yes, sir, there was.

12 Q. Is that common for, in your experience, for a
13 dealer to have several different addresses?

14 MR. DAVIS: Objection, Your Honor, to
15 relevance as well as calls for speculation.

16 THE COURT: Overruled.

17 A. Yes, sir, from my time working undercover, a
18 number of the individuals that I would befriend in that
19 capacity carried numerous addresses. One for the
20 family. One for them where they would distribute their
21 narcotics from.

22 Q. (BY MR. KEITER) Would they have other
23 addresses, too?

24 A. Yes.

25 Q. Why?

1 A. It throws, it throws off law enforcement with
2 numerous addresses; and it protects, in their mind,
3 their family from the prolific home invasions that are
4 occurring in Harris County.

5 Q. When you say "prolific home invasions," do you
6 mean that drug dealers are targeted by other home
7 invaders?

8 A. Yes, sir, that is very common.

9 Q. Is drug dealing a dangerous business?

10 A. It is very dangerous.

11 Q. State's Exhibit No. 44, what are we looking at
12 here?

13 A. That is a scale to measure out your narcotics.

14 Q. What did that scale indicate to you?

15 A. That he was a distributor, not a abuser of the
16 narcotics. He was selling them.

17 Q. State's Exhibit No. 47, what are we looking at
18 here?

19 A. That is a picture of Flores, and I can only
20 assume that is a girlfriend or wife. I have no
21 knowledge who she is.

22 Q. Where was this picture located?

23 A. It was in the living room.

24 Q. Was it displayed prominently in the house?

25 A. Yes, sir, it was.

1 MR. KEITER: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 A. You want it opened?

5 Q. (BY MR. KEITER) Yes, sir, if you'll open that,
6 Officer Vanderberry; and we'll mark the -- just for
7 purposes of the record, the bag that I'm asking you to
8 open, Officer Vanderberry, we'll mark as State's Exhibit
9 No. 10?

10 MR. KEITER: Your Honor, at this time I'll
11 ask the bailiff, although it's been previously cleared,
12 to clear State's Exhibits 49 and 50 and its contents.

13 THE BAILIFF: Deputy Kaminski has already
14 cleared these, Your Honor.

15 THE COURT: Ladies and gentlemen, the
16 weapons have been checked and cleared outside your
17 presence earlier today. So, they are clear.

18 Q. (BY MR. KEITER) All right. I'd like to start
19 with State's Exhibit No. 10 that you opened. Can you
20 tell us how did that get to the courthouse today?

21 A. These bags were recovered, transported from the
22 scene. They have my initials, my date. They were
23 sealed and turned in to our crime lab for analysis.
24 They were then brought to the courthouse by Officer
25 Rosales.

1 Q. Is this marijuana old now?

2 A. Yes, it is.

3 Q. Is it dried?

4 A. Yes.

5 Q. Can you still smell it?

6 A. Yes, you can.

7 Q. Is that the kind of odor that marijuana leaves?

8 A. Yes.

9 Q. Does that go back to one of the reasons why you
10 were saying you don't mix your cocaine and your
11 marijuana?

12 A. That is correct.

13 Q. Okay. I'm showing you what's been marked as
14 State's Exhibit 67, 53 and 54. Do you recognize those?

15 A. Yes, sir, I do.

16 Q. How do you recognize them?

17 A. These were the ammunition that was recovered at
18 the scene.

19 Q. And how do you recognize them personally?

20 A. They were sealed and John Huston initialed. I
21 sealed them, Huston initialed them and took them to the
22 property room.

23 Q. So, did you recover everything and then give it
24 to John Huston to take to the property room?

25 A. That is correct.

1 Q. I'm going to show you State's Exhibit No. 48.

2 Do you recognize State's Exhibit No. 48?

3 A. Yes, sir, these are the magazines that were
4 recovered in the residence.

5 Q. How do we know that they're the same magazines?

6 A. Because my initials are on this bag. It was
7 turned over to John and taken to the property room.

8 Q. And how did those magazines get to the
9 courthouse today?

10 A. I checked them out from the property room and
11 brought them to the courthouse.

12 Q. And State's Exhibit 48 and its contents, have
13 they been altered in any way other than the State's
14 Exhibit sticker?

15 A. No, sir.

16 Q. So, you picked them up today, yes?

17 A. Last night.

18 Q. Last night, and they've been in your custody
19 since?

20 A. Correct.

21 Q. And you're the one that brought them to the
22 courthouse today; is that correct?

23 A. Correct.

24 Q. Did you bring all this evidence to the
25 courthouse today?

1 A. I brought all the evidence except the
2 narcotics.

3 Q. And so, as far as the weapons go -- we've
4 talked about State's Exhibit 48. As far as the weapons
5 go, how did those get to court today?

6 A. These were recovered at the scene by myself.
7 Officer Huston transported them to the property room. I
8 picked them up today and brought them -- or picked them
9 up last night and brought them here today.

10 Q. Are they in the same condition as they were on
11 the date in question?

12 A. Yes, they are.

13 Q. How do we know that they're the same weapons?

14 A. Because of the serial number that was
15 obliterated on this one, and it still shows an
16 obliterated serial number.

17 Q. What do you mean "obliterated"?

18 A. There was an attempt to remove the serial
19 number from the weapon.

20 Q. And did you mark this property and take all
21 that information down on November 30th of 2009?

22 A. Yes, sir, I did.

23 Q. The weapon that's in State's Exhibit No. 49, is
24 it capable of causing death and/or serious bodily
25 injury?

1 A. Yes, sir, it is.

2 Q. And State's Exhibit 64 and State's Exhibit
3 No. 57, excuse me, 51, were those in the same box as
4 State's Exhibit 49 and its contents?

5 A. Yes, sir, it was.

6 Q. And how do he know it's the same property that
7 it was on that day?

8 A. This is what I recovered, and Officer Huston
9 initialed and took it downtown.

10 Q. Can you open this exhibit, please?

11 A. (Witness complies).

12 Q. Can you tell us in State's Exhibit No. 64, what
13 did you find?

14 A. This is one of the leather pendants that was
15 removed on the traffic stop with the San Muerte.

16 Q. And that's been labeled as State's Exhibit 66.
17 Was that in State's Exhibit 64?

18 A. Yes, it was.

19 Q. All right. And State's Exhibit 65, was that in
20 State's Exhibit 64?

21 A. Yes, it was.

22 Q. And what are we looking at in State's
23 Exhibit 65?

24 A. These are the keys to the residence, with the
25 San Muerte medallion and the San Muerte key chain.

1 Q. Are those in the same condition as they were
2 when you took them off of Damian Flores on November 30th
3 of 2009?

4 A. Yes, sir, they are.

5 Q. And how do you know that they're the same?

6 A. That was the bag that we put it in. And
7 Officer Huston tagged for me, and it has my name on the
8 booking slip.

9 Q. Okay. State's Exhibit 51, was that also in
10 here in the State's 51, sir?

11 A. Yes, that was also in there.

12 Q. Is that ammunition?

13 A. Those are 19 unfired live rounds that were
14 recovered in the magazine.

15 Q. And again did this come to the courthouse today
16 via you taking it out of the property room?

17 A. Yes, sir, it did.

18 Q. All right. I'm showing you what's been cleared
19 as State's Exhibit No. 50 and its contents and State's
20 Exhibit No. 52. Can you take a look at that?

21 Tell me if you recognize it.

22 A. Yes, these are two .38 caliber pistol rounds
23 unfired, and this is the Taurus .38 caliber pistol.

24 Q. Is the weapon in State's Exhibit No. 50 capable
25 of causing death and/or serious bodily injury?

1 A. Yes, sir, it is.

2 Q. Do you consider it to be a deadly weapon?

3 A. Yes, sir, it is.

4 Q. Along with the weapon in State's Exhibit 49, do
5 you consider that to be a deadly weapon?

6 A. Yes, sir, it is.

7 Q. And as far as State's Exhibit 49 and State's
8 Exhibit No. 50 and their contents, which one is the one
9 that you located on the, on the table in the living
10 room?

11 A. The Browning High Power 9-millimeter that was
12 with the hammer cocked back was in the living room.

13 Q. All right. I'm showing you, Officer
14 Vanderberry, State's Exhibits 59, 61, 60, 62 and 63, do
15 you recognize these?

16 A. Yes, sir. These are the narcotics that were
17 recovered at 7823 Sarita by myself.

18 Q. Well, did all those come in State's Exhibit
19 No. 10?

20 A. Yes, they did.

21 Q. All right. And on November 30th of 2009, did
22 you take physical control of State's Exhibits 59, 60,
23 61, 62 and 63?

24 A. Yes, sir, I did.

25 Q. Did you tag those separately personally

1 yourself instead of Officer Huston?

2 A. Yes, sir. I maintained custody of all the
3 narcotics evidence, went to 1200 Travis and weighed,
4 analyzed the cocaine and tagged into our narcotics
5 lockbox.

6 Q. Why do you do that?

7 A. To keep the chain of custody current, so you
8 don't have five different officers testifying today.

9 Q. Did you give the other -- do narcotics have to
10 be put in the property room somewhere different than the
11 rest of the evidence?

12 A. Narcotics is tagged in a narcotics property
13 storage area. It does not go to the HPD property room.

14 Q. So, did you give Officer Huston some of the
15 evidence and then you took the rest to the --

16 A. Yes, I bagged, in the presence of Officer
17 Huston, the guns, the ammunition, the documents, and
18 then he goes to the property room and tags it into the
19 property room.

20 Q. And do we see your initials on State's
21 Exhibits 59, 60, 61, 62 and 63?

22 A. Yes, my initials are on all of these.

23 Q. And do you date them?

24 A. Yes, sir, I do.

25 Q. And why do you do that?

1 A. If there's any confusion, I can sit here and
2 look and see that these are my initials for November
3 30th, 2009.

4 Q. And who picked up the drugs from -- the
5 narcotics from the property room today?

6 A. Officer Rosales picked up the narcotics today.

7 Q. And you recognize your initials on all these
8 exhibits; is that correct?

9 A. That is correct.

10 Q. Other than some writing that's on the
11 envelopes, do they appear in substantially the same
12 condition as they were on November 30th of 2009?

13 A. Yes, sir, they do.

14 Q. And in State's Exhibit 61, were those pills
15 inside or outside of the pill bottle?

16 A. They were inside the pill bottle.

17 Q. Okay. Did you find some other property inside
18 the residence?

19 A. Yes, sir, under the kitchen sink we found duct
20 tape.

21 MR. DAVIS: Your Honor, I'd object to
22 relevance. May we approach?

23 THE COURT: You may.

24 (Bench conference.)

25 MR. DAVIS: Again, Your Honor, I object to

1 the relevance. I anticipate that the officer is going
2 to testify they found duct tape, gloves and masks that
3 were all consistent with home invasion robberies or
4 something of that nature. I'd object to that as being
5 not relevant to anything.

6 THE COURT: The only thing I've heard about
7 is duct tape. Apparently, Mr. Davis has indicated you
8 have gloves and masks marked?

9 MR. KEITER: Correct, Your Honor.

10 THE COURT: What's the relevance?

11 MR. KEITER: It goes to the intent to
12 deliver. That's something that a dealer would have on
13 hand. It goes to the intent to deliver a controlled
14 substance.

15 THE COURT: Your objection is sustained at
16 this time.

17 (End of bench conference.)

18 Q. (BY MR. KEITER) Officer Vanderberry, at that
19 point in time when you took the narcotics and Officer
20 Huston took the rest of the property, did you then
21 secure the residence?

22 A. Yes, sir.

23 Q. How did you secure the residence?

24 A. With the keys that I used to open it.

25 Q. Are the guns that we spoke about firearms?

1 A. Yes, sir, they are.

2 Q. Officer Vanderberry, did you submit the weapons
3 and all that evidence for fingerprint analysis and DNA
4 analysis?

5 A. No, sir, I did not.

6 Q. We see a lot of that on TV, don't we?

7 MR. DAVIS: Objection to the comment, Your
8 Honor, about seeing it on TV.

9 THE COURT: Overruled.

10 MR. DAVIS: What's relevant is what's done
11 in this case, Your Honor.

12 THE COURT: Overruled.

13 A. Yes, sir, that is very common on all the
14 "CSIs."

15 Q. (BY MR. KEITER) In reality are you lucky to
16 get a car that runs?

17 MR. DAVIS: Objection, Your Honor,
18 relevance as well as calls for speculation.

19 THE COURT: Sustained.

20 Q. (BY MR. KEITER) Why didn't you submit the
21 weapons and all this evidence for DNA testing or
22 fingerprint analysis?

23 A. We had received a memorandum through our chain
24 of command that --

25 MR. DAVIS: Objection to hearsay, anything

1 that memoranda says is not here in court.

2 THE COURT: Overruled.

3 A. That our crime lab was backed up on forensics
4 and to not submit articles if we believe --

5 MR. DAVIS: Again, Your Honor, I'd object
6 to that as being hearsay as well as it violates the
7 Defendant's Sixth Amendment right to confront whoever is
8 saying these things.

9 THE COURT: Overruled.

10 A. If we had cases strong that we believe were
11 strong enough on their merit not to submit for DNA
12 testing and fingerprints.

13 MR. KEITER: Pass the witness, Your Honor.

14 THE COURT: All right, Mr. Davis.

15 **CROSS-EXAMINATION**

16 BY MR. DAVIS:

17 Q. So, you basically just make a judgment call not
18 to submit something for prints; is that right?

19 A. It is vetted through our supervisor.

20 Q. That wasn't my question. My question is, you
21 have to make a judgment call as to whether or not to
22 submit something for prints?

23 MR. KEITER: Objection as to argumentative,
24 Your Honor.

25 THE COURT: Sustained.

1 Q. (BY MR. DAVIS) My question is straightforward.

2 THE COURT: You can answer the question,
3 Officer Vanderberry.

4 A. Yes, I can make an assessment if we need to
5 fingerprint or not fingerprint weapons.

6 Q. (BY MR. DAVIS) And in making that assessment,
7 you went by what you saw in this entire investigation;
8 is that right?

9 A. That is correct.

10 Q. And you showed up at 1 o'clock?

11 A. Yes, sir.

12 Q. On November 30th?

13 A. Yes, sir.

14 Q. 2010?

15 A. 2009, sir.

16 Q. 2009, so 2009 November 30th you show up at 1
17 o'clock?

18 A. Right.

19 Q. And you conduct some surveillance?

20 A. Yes, sir.

21 Q. And you're a distance away, true?

22 A. Yes, sir.

23 Q. Are you using binoculars when you're doing the
24 surveillance?

25 A. Yes, sir.

1 Q. So, you're able to see some things that are
2 going on?

3 A. Yes, sir.

4 Q. And we've seen a couple of photos that have
5 been introduced into evidence of that area. And we saw
6 State's Exhibit No. 6. I'll try to get this clear for
7 you. All right. Here we are. We see this photo?

8 A. Yes, sir.

9 Q. All right. Which is State's Exhibit No. 6,
10 which shows the front of Sarita, right?

11 A. That is correct.

12 Q. Now, that's not quite how it appeared in 2009,
13 true?

14 A. I'm not sure when this one was taken.

15 Q. All right. Now, this one was taken of Sarita
16 as well, right? You see that?

17 A. I believe -- can I see that document?

18 Q. Sure, absolutely. This is State's Exhibit
19 No. 8, which is a picture of Sarita, 7823 Sarita and
20 then it's a picture --

21 MR. DAVIS: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 Q. (BY MR. DAVIS) It's a picture that shows a
25 large tree in front of Sarita.

1 A. Yes, sir. This one was taken on Google earth.
2 That was printed out from Google earth.

3 Q. Now, do you know if in 2009 there was that tree
4 present in front of Sarita?

5 A. I believe it was not there, sir.

6 Q. Is your recollection that this tree wasn't
7 present in 2009?

8 A. I'm not recalling that.

9 Q. Um-m.

10 MR. KEITER: Object to the sidebar, Your
11 Honor.

12 THE COURT: Mr. Davis, just ask a question,
13 please, no sidebar comments.

14 MR. DAVIS: Sorry if it appeared that I was
15 making a sound.

16 THE COURT: You may ask a question.

17 MR. DAVIS: Yes.

18 Q. (BY MR. DAVIS) But on this picture there's,
19 like, a driveway that's in front of the residence,
20 right?

21 A. A driveway, sir.

22 Q. You see that? There's a driveway on this side
23 in this picture?

24 A. Yes, the car cover.

25 Q. Yes, sir. And there's a driveway over here as

1 well. If we focus in you can see that. You see that?

2 A. Yes, sir.

3 Q. And on this picture it still has one of the
4 driveways, but the second driveway is gone?

5 A. Second driveway is gone; and I believe the tree
6 is gone, too, sir.

7 Q. Right, the tree has been removed?

8 A. Yes.

9 Q. And in this picture there's a tree. And you
10 would agree with me that tree might obstruct one's view?

11 A. Yes, but it wasn't.

12 Q. I understand. But you would agree with me if
13 that tree had been there, it might obstruct one's view?

14 A. It could if it was there.

15 Q. Now, from the place you were. All these
16 pictures you have, sir, now, when you were there on this
17 particular case; and this picture appears to be taken
18 like from a computer as well. You see that little
19 computer emblem on the side over there? You see that?

20 A. Yes, that is.

21 Q. So, this is a picture that's taken from a
22 computer screen shot as well?

23 A. Yes, sir.

24 Q. And you didn't take these pictures, did you?

25 A. No, sir, I did not.

1 Q. And this picture is another picture that
2 appears to be taken from a sky angle; you see that one?

3 A. Yes, sir, I do.

4 Q. Now, this is not one that you took either?

5 A. No, it is not.

6 Q. It comes from one of those Google programs?

7 A. Yes, sir.

8 Q. In your report you don't note anything about
9 how the front of the place appears in terms of trees or
10 bushes; is that correct?

11 A. That is correct.

12 Q. So, from what we're gathering, you took this in
13 2009; and if I'm incorrect, you've been reading from
14 your report when you've been testifying?

15 A. Yes, sir.

16 Q. Because you don't recall this independently?

17 A. I recall some, not all.

18 Q. Some things but not all details?

19 A. Yeah, it's three years old.

20 Q. And you had an opportunity to review your
21 report prior to testifying?

22 A. Yes, sir, I have.

23 Q. In reviewing your report, you're able to recall
24 some details from looking at the report, right?

25 A. Yes, sir.

1 Q. Most of your testimony has been from you
2 reading that report?

3 A. Yes, sir.

4 Q. Now, being your surveillance -- in your report
5 when you start at 1 o'clock, you don't document how many
6 transactions, alleged transactions you see?

7 A. No, sir, I do not.

8 Q. And in your report, you don't really document
9 who it is you see, either; isn't that true?

10 A. I do, Hispanic males are documented in the
11 report.

12 Q. You document that you see a Hispanic male
13 engaging in transactions?

14 A. Yes, numerous times it's listed in the report.

15 Q. Numerous times?

16 A. Yes, sir, numerous times.

17 THE COURT: Again, Mr. Davis, you don't
18 need to repeat the answer that the witness gives, you
19 may ask questions. No sidebar comments, please.

20 MR. DAVIS: Your Honor, I'm not making any
21 sidebar comments, but I'll abide by the Court's ruling.

22 THE COURT: Thank you.

23 Q. (BY MR. DAVIS) Now, there wasn't an occasion,
24 sir, where you stopped any of those people at 1 o'clock?

25 A. No, there was not.

1 Q. There wasn't an occasion where you went up to
2 them to interview them or anything of that nature?

3 A. Of course not.

4 Q. And, in fact, you testified before that you
5 weren't even sure if there was transactions that
6 occurred. You remember saying that?

7 A. I testified that I was unaware of what was
8 being handed off; that is correct.

9 Q. You were unaware of whether or not there had
10 even been a transaction?

11 A. That is correct.

12 Q. You saw what looked like suspicious activity?

13 A. Correct.

14 Q. That gave you rise to call in and then set up a
15 team to come out there?

16 A. That is correct.

17 Q. And, in fact, you actually drive to the DPS
18 office?

19 A. Yes, sir.

20 Q. How far is the DPS office from there?

21 A. It's 290 and West Road.

22 Q. So 290 and West Road, that's a pretty good
23 distance from this area?

24 A. It's a little bit, yeah.

25 Q. So, you're starting at 1 o'clock; and you drive

1 to the DPS area. And this area Sarita, if I'm not
2 mistaken, off of Broadview or Broadway?

3 A. Broadway, yes.

4 Q. It's off of Broadway and 45 in the south area
5 of the city?

6 A. Correct.

7 Q. And so you drive to Houston, I guess, I don't
8 know what time you drove. What time did you drive, do
9 you remember?

10 A. I don't recall, sir.

11 Q. So, you're there conducting some surveillance
12 starting at 1 o'clock. You drive from Broadview all the
13 way up to 290, to 290 area, and you assemble a team, and
14 you drive back at 4 o'clock?

15 A. Correct.

16 Q. And you arrive at 4 o'clock?

17 A. Correct.

18 Q. So, there's a three hour difference between
19 1 o'clock and 4 o'clock, right?

20 A. Yes, sir.

21 Q. And you got some drive time. Would you agree
22 with me that maybe it took you an hour, hour and a half
23 to do the drive?

24 A. I would not agree with you on that.

25 Q. So, you do not think to drive there and back it

1 took you about an hour?

2 A. I have no idea how long it took me, sir.

3 Q. You're in Houston?

4 A. I'm well aware of where I'm at. I'm telling
5 you I don't know the drive time, sir.

6 Q. I'm really trying to get an idea of how long
7 you did surveillance. You don't know how long you did
8 surveillance at that 1 o'clock period of time, do you?

9 A. No, sir.

10 Q. You don't document that anywhere in your
11 report?

12 A. No.

13 Q. You don't document the number of people you see
14 going there doing transactions that you think may be
15 transactions, right?

16 A. No, sir. All I documented was that they
17 arrived via bicycle, foot and vehicles.

18 Q. So, you leave the scene unattended from 1:00 at
19 least, I'm sorry, sometime after 1:00 and before 4:00,
20 the scene is left unattended?

21 A. That is correct.

22 Q. There are no police officers there watching
23 what's going on?

24 A. That is correct.

25 Q. So, you don't know if there were other people

1 would have come and gone in between that timeframe?

2 A. That is correct.

3 Q. And, in fact, you don't know if Mr. Flores was
4 there that entire time; is that right?

5 A. That is correct.

6 Q. When you come back --

7 A. I can actually tell you he wasn't there because
8 when we came back, I watched him drive up and get out of
9 a car.

10 Q. Exactly. But you don't know when he left or if
11 he was even there early on, do you?

12 A. I would say he was -- I can actually say he was
13 there during the 1 o'clock.

14 Q. Because you saw a Hispanic male?

15 A. Because I saw him come out and go in.

16 Q. Well, no, you testified before that you didn't
17 have a great recollection of this case because it
18 happened in 2009 and using your report to refresh your
19 recollection.

20 A. Yes, sir.

21 Q. And in your report there is nowhere documented
22 at 1 o'clock you identified Mr. Flores?

23 A. No, there's not.

24 Q. All right. So --

25 A. It was later ascertained when the traffic stop

1 that it was the same male I saw at 1 o'clock.

2 Q. Now, that's nowhere in your report?

3 A. There's a lot of things not in my report, sir.

4 Q. I understand. I understand. And we'll talk
5 about those things. But in terms of this fact, in terms
6 of the fact as to what happened at the 1 o'clock, the
7 house was left unattended?

8 A. Yes, sir, it was.

9 Q. Now, you're not aware if someone else went
10 inside the house at that time, are you?

11 A. I have no knowledge.

12 Q. If you had set up a perimeter on the house, you
13 could have determined who else went inside the house,
14 right?

15 A. Yes, sir.

16 Q. If you're trying to establish who had custody
17 and control of the house, it would be important to
18 determine who went inside the house, true?

19 A. No, when you have an individual that has the
20 keys to the residence and he has important documents
21 such as divorce decrees and license plate information
22 and it's in that house, I will make that assertion that
23 it is their residence.

24 Q. Well, there were other identifying information
25 of other people names inside the house?

1 A. I did not see that.

2 Q. There were, in fact, other identifying
3 information with other people names on it in the
4 kitchen; is that right?

5 A. If you have a photo.

6 Q. I mean, you looked at the photo.

7 I want to show you what's in evidence as
8 State's Exhibit No. 29. Do you see that in the
9 upper-hand corner, that spot there, sir?

10 A. It's a social security card.

11 Q. A social security card. And this is the
12 marijuana that you took a picture of, right?

13 A. Yes, sir.

14 Q. And there's that social security card in the
15 corner?

16 A. Uh-huh.

17 Q. Did you see that when you were doing the
18 search?

19 A. I must have.

20 Q. You didn't put that in your report though, did
21 you?

22 A. No, I did not.

23 Q. And that's a document that has a name on it,
24 right?

25 A. It appears it does.

1 Q. It appears it does. We can zoom in a little
2 bit.

3 THE COURT: Again, Mr. Davis, just allow
4 the witness to answer the question; and you may ask
5 another. You don't need to repeat what the witness
6 says.

7 Q. (BY MR. DAVIS) Can you see the name on that,
8 sir?

9 A. It looks like Lewis, and I can't make out the
10 last name or the social security number.

11 Q. It's actually Luis, but if I come closer --

12 MR. KEITER: Objection as to Counsel
13 testifying as to what it is, Your Honor.

14 THE COURT: Thank you. Your objection is
15 sustained. Mr. Davis, please abide by my previous
16 ruling.

17 MR. DAVIS: Yes, Your Honor. May I
18 approach the witness?

19 THE COURT: You may.

20 Q. (BY MR. DAVIS) I've got a copy of this that
21 hasn't been shrunken down that I may be able to show
22 you. I'd have to take a recess to do that because it's
23 on my computer. I don't know if you can see it on that
24 one. Can you see it?

25 A. No.

1 Q. You can't make it out on that picture?

2 A. No, I can't.

3 Q. When we take a break, I'll come back and show
4 you the photo. But there's some identifying information
5 that's in the kitchen that contains a different name,
6 you agree with me, right?

7 A. Sir, we go to a lot of residences that have a
8 lot of identifiers.

9 THE COURT: Officer, just answer the
10 question.

11 A. Yes, sir, there was that in there.

12 Q. (BY MR. DAVIS) And this is right around the
13 area where you find drugs?

14 A. Yes.

15 Q. Now, in that hour timeframe or at least however
16 long it was the time you left between 1:00 and 4 o'clock
17 where we don't know what happened inside the residence,
18 there weren't any other officers that recorded any
19 activity, true?

20 A. That is correct.

21 Q. So, pretty much it's unattended. We don't know
22 what happened?

23 A. That is correct.

24 Q. So, you return at 4 o'clock?

25 A. Yes, sir.

1 Q. And when you return at 4 o'clock, you see foot
2 traffic coming up?

3 A. Yes, sir.

4 Q. People knocking on the door?

5 A. Yes, sir.

6 Q. And we don't know who they were looking for?

7 A. That is correct.

8 Q. We don't know what they were looking for?

9 A. That is correct.

10 Q. But there were maybe three people who knocked
11 on the door and left, right?

12 A. Yes, sir.

13 Q. All right. Now, so you're there; and you're
14 doing this surveillance probably maybe 30 minutes before
15 Mr. Flores arrives?

16 A. Yes, sir.

17 Q. And in the 30-minute timeframe, you see a
18 couple people knock on the door, no one goes inside, no
19 one comes out?

20 A. That is correct.

21 Q. No activity going on?

22 A. That is correct.

23 Q. And prior to that you were there sometime, you
24 don't know exactly how long, but less time you driving
25 all the way up north and driving down from 1:00 to about

1 4:00?

2 MR. KEITER: Objection as to asked and
3 answered, Your Honor.

4 THE COURT: Sustained.

5 MR. DAVIS: All right. I have asked that
6 question. I'm sorry, Your Honor.

7 Q. (BY MR. DAVIS) When you come at 4 o'clock and
8 you're watching, Mr. Flores comes; and he's dropped off,
9 correct?

10 A. That is correct.

11 Q. He goes inside, right?

12 A. Yes, sir.

13 Q. And he's inside for just a few minutes?

14 A. That is correct.

15 Q. And then he comes outside to smoke a cigarette?

16 A. That's correct.

17 Q. He doesn't smoke a cigarette inside the house?

18 A. I do not know his mannerisms inside his house,
19 sir.

20 Q. Well, you're assuming it's his house?

21 A. You said he smoked it inside his house.

22 Q. No, I didn't say that. I said he doesn't smoke
23 a cigarette inside, he comes outside instead of smoking
24 a cigarette inside?

25 A. I thought you said he didn't smoke it inside

1 his house.

2 Q. I didn't say that.

3 THE COURT: Regardless, ask a question.

4 Q. (BY MR. DAVIS) But he comes outside to smoke
5 this cigarette.

6 A. Yes, he did.

7 Q. That doesn't seem strange that someone wouldn't
8 smoke a cigarette inside of the house if it's their
9 house?

10 A. Sir, it's strange to me that somebody sells
11 dope from their house.

12 THE COURT: All right. Officer, you can
13 answer the question that is asked.

14 Q. (BY MR. DAVIS) Do you know people who may
15 visit somebody else's house and smoke and don't want to
16 smoke a cigarette in a friend's house?

17 A. I have a neighbor that smokes outside
18 continuously, sir.

19 Q. I understand. That wasn't my question. Do you
20 know people who visit people's house and who don't want
21 to smoke a cigarette inside of their house?

22 A. Yes.

23 Q. And they go outside to smoke the cigarette?

24 A. Yes, sir.

25 Q. And so you see Mr. Flores coming outside, he's

1 smoking his cigarette. Now, after he finish the
2 cigarette, he goes back inside?

3 A. Yes, sir.

4 Q. And you see someone come to the door and knock
5 on the door?

6 A. Yes, sir.

7 Q. And you see what appears to be a transaction?

8 A. Yes, sir.

9 Q. And when you make the stop, he find marijuana?

10 A. That is correct.

11 Q. You don't find cocaine?

12 A. No.

13 Q. Or Xanax or any other drugs?

14 A. No.

15 Q. But you do find marijuana on this person?

16 A. That is correct.

17 Q. And after that you get this warrant?

18 A. Yes, sir.

19 Q. Now, at the time you get the warrant -- I
20 should say prior to you getting a warrant, Mr. Flores is
21 seen leaving the residence?

22 A. Yes, sir.

23 Q. And you follow him?

24 A. Yes, sir.

25 Q. Now the residence, 7823 Sarita, is still under

1 surveillance when you leave, though?

2 A. Yes, sir.

3 Q. So, there's an officer still watching 7823
4 Sarita, right?

5 A. Yes, sir.

6 Q. And it's important that you have an officer
7 watching it at all times?

8 A. Yes, sir.

9 Q. Would you agree with me?

10 A. Yes.

11 Q. Because someone could go inside and mess up
12 what's inside?

13 A. That's correct.

14 Q. In other words, if someone else, if there's a
15 period that's unaccounted for, then it's possible that
16 someone else could get inside and take something out?

17 A. Yes, sir. We're more concerned that somebody
18 comes and takes something out of a residence.

19 Q. Yes, sir. And it's also a possibility someone
20 could go in and put something inside, right?

21 A. I have never seen that in my career, 21 years,
22 sir. I've never seen somebody go and put something in a
23 house.

24 Q. Well, part of the reason you haven't is because
25 your protocol is to watch and make sure nobody goes in

1 it?

2 A. That's correct.

3 Q. So, when you're watching to make sure no one
4 goes in, you know no one is going inside, true?

5 A. True.

6 Q. And when you're not watching it and don't know
7 what happened, you can't really say, can you?

8 A. I cannot.

9 Q. And in this particular situation, you're
10 watching the house after Mr. Flores leaves, to ensure
11 the integrity of the scene?

12 A. Correct.

13 Q. And eventually you stop Mr. Flores, and you
14 search him?

15 A. Correct.

16 Q. You searched his car as well?

17 A. Correct.

18 Q. And you don't find cocaine in his car?

19 A. No, we do not.

20 Q. You don't find any cocaine on his person?

21 A. No, we do not.

22 Q. You do find money?

23 A. Right.

24 Q. And you find money consistent with the
25 marijuana transaction that you heard earlier?

1 A. Correct.

2 Q. And you find nothing indicating cocaine on his
3 person?

4 A. Correct.

5 Q. Now, when you go inside, you eventually get a
6 warrant, correct?

7 A. Correct.

8 Q. And when you go inside, there's a gun at the
9 front door?

10 A. Yes, sir.

11 Q. And a gun you said was out in the open and it
12 was -- you were able to see it, right?

13 A. Yes.

14 Q. So anybody in that house would possibly have
15 knowledge that the gun was there if they were looking
16 for it?

17 A. Yes.

18 Q. And even if they weren't looking for it, it's
19 out in the open. It's something that wasn't trying to
20 be concealed?

21 A. It's still visible, yes.

22 Q. There wasn't any indication of who may have
23 carried it, would you agree with me?

24 A. No, sir.

25 Q. But it was there?

1 A. Correct.

2 Q. All right. And it wasn't exhibited during any
3 of the times that you were outside, right?

4 A. No, sir.

5 Q. If you had known that there may have been a
6 gun, you might have approached things differently?

7 A. Could be.

8 Q. But you didn't have any indication that any
9 guns were present?

10 A. No, I did not.

11 Q. So, you go in and you see this gun and you
12 start searching?

13 A. Correct.

14 Q. Now, you, yourself don't find all of the items?

15 A. No, I do not.

16 Q. And in your report you don't list where all the
17 items are actually physically found, do you?

18 A. It is marked in the report like Article 1,
19 10 grams of cocaine, located kitchen drawer, recovered
20 by Officer Vanderberry, tagged at 1200.

21 Q. Right. Now, the cocaine didn't really weigh
22 10 grams, true?

23 A. Sir?

24 Q. The cocaine didn't really weigh 10 grams?

25 A. When I weighed it, it was 10 grams.

1 Q. I understand. You weighed it with all the
2 packaging and everything?

3 A. Yes, sir.

4 Q. Now, sir, in terms of the items in the house,
5 you don't mention anything about the can, do you?

6 A. No, sir.

7 Q. So, your offense report, which you documented,
8 the actual search and the items found in the search
9 don't have any reference to the Arizona can anyplace; is
10 that right?

11 A. No, it's just a can used to conceal narcotics.

12 Q. Yes, sir. But you testified about what
13 narcotics were inside of it earlier?

14 A. I testified that there was residue from
15 marijuana.

16 Q. Yes, sir. You never had this actual can tested
17 to see if it was residue for marijuana?

18 A. No, I did not.

19 Q. And you didn't have it tested to see if it was
20 residue from any drugs; is that right?

21 A. That is correct.

22 Q. And, in fact, sir, you never mentioned this at
23 all in your report?

24 A. No, it's just a photo of the can.

25 Q. Any reason why they would take pictures of this

1 canister along with the cocaine, sir? Everywhere it
2 seems there's cocaine along with the canister?

3 A. I have no idea. I know the can was found, and
4 we usually take photos of those to show other
5 investigators that these are the items that are out on
6 the street.

7 Q. Isn't it true, sir, that that cocaine was found
8 inside of that canister?

9 A. That is not true, sir.

10 Q. I understand.

11 A. Then that can and that dope would have been up
12 here as an exhibit.

13 Q. But, sir, you took pictures of it?

14 A. We did.

15 Q. And you took pictures of it along with the
16 cocaine at the exact same time?

17 A. They put the can there to take a photo, sir, of
18 the dope beside it. You can make whatever leads to that
19 it was in there, but it was not. It would be documented
20 in this report.

21 Q. Yes, sir. And you staged most of the photos
22 that were there as well?

23 A. Staged, I wouldn't -- some were staged, but the
24 majority were taken as they were.

25 Q. Now, a few of the pictures, in terms of the

1 drugs in particular, they were laid out on the counter
2 and staged by officers; isn't that right?

3 A. That one was a staged photo.

4 Q. Now, this one was a staged photo?

5 A. Yes, sir, that was a staged photo.

6 Q. You got the scripture in the middle of all of
7 these drugs?

8 A. That is correct.

9 Q. This is something that you pulled together and
10 you put into evidence, right?

11 A. Yes.

12 Q. And you used this Christian scripture?

13 A. Yes.

14 Q. Christians deal dope, true?

15 A. Correct.

16 Q. People will get arrested who are drug
17 traffickers who are wearing crosses?

18 A. That is correct.

19 Q. And you get people, I don't know about many
20 Buddhas, but you do have Buddhas who deal dope as well?

21 A. Yes, you do.

22 Q. You got people who are engaged in different
23 religious activities who actually are involved in drug
24 trafficking?

25 A. That is correct.

1 Q. And you got a Christian scripture here.
2 Doesn't that seem somewhat inconsistent with Santa
3 Muerte?

4 A. No, sir, it does not.

5 Q. Whenever you see someone wearing a cross and
6 there being a cross in the house, you can say that that
7 person probably owns that house, would that be accurate?

8 A. No.

9 Q. Not at all, right? It's a stretch?

10 A. You asked if that was accurate, I said it's not
11 accurate.

12 Q. And if you got a couple of Christians who may
13 be dealing dope, wearing crosses while they're dealing
14 dope doesn't make all Christians dope dealers?

15 A. I never said that.

16 Q. I know. But I was asking; is that right? It
17 doesn't make all Christians --

18 A. That is correct.

19 THE COURT: All right. Ladies and
20 gentlemen, we're going to recess for lunch at this time.
21 If you'll step back to the jury room with Deputy
22 Kaminski, he is going to escort you to lunch. We will
23 resume testimony probably in about an hour and a half.

24 THE BAILIFF: Rise for the jury.

25 (Jury exits courtroom.)

1 THE COURT: All right. Be seated, please.
2 Before we break for lunch, just a couple of instructions
3 for both the witness and the attorneys. I would just
4 ask that you answer the question that is asked and
5 nothing more. Don't volunteer information. If Mr.
6 Davis needs to follow up with you, he will. Mr. Davis,
7 again, I'd ask that you just be respectful of the
8 process; and there's no reason for you to make comments.
9 And I don't know if you're aware that you're doing it,
10 sometimes people aren't.

11 MR. DAVIS: I'm not aware of it. I'm
12 thinking I'm engaged in the Sixth Amendment
13 cross-examination, but I will do my best to make sure
14 that I don't. If you could gently remind me as you've
15 been doing.

16 THE COURT: I don't want to have to do
17 that. As long as you can just ask your questions,
18 there's no need to comment. You can certainly follow up
19 with an appropriate question when necessary, all right?

20 MR. DAVIS: What time are we coming back,
21 Judge?

22 THE COURT: Why don't you-all come back at,
23 12 -- I'm sorry, 1:45.

24 (A lunch break was taken.)

25 (Open court, Defendant present.)

1 MR. KEITER: Your Honor, may we approach
2 regarding one matter?

3 THE COURT: Yes.

4 MR. KEITER: So as not to waste the jury's
5 time or the Court's time, one issue we wanted to go into
6 was regarding the Motion in Limine and the threats made
7 toward Officer Vanderberry from this Defendant, and
8 specifically that the Defendant when he was being
9 arrested told Officer Vanderberry, do you know who
10 you're fucking with? Do you know what family I belong
11 to? I can have it so you can disappear. We can get you
12 at any time and your family. The State would seek to
13 introduce that evidence as a res gestae statement in
14 consciousness of guilt regarding the crime.

15 MR. DAVIS: Your Honor, we would object to
16 it as being irrelevant. If the Court does find it
17 relevant, we would argue that the probative value of the
18 evidence is clearly outweighed by the prejudice, undue
19 prejudice. Some suggestions of him being violent toward
20 the officer, Your Honor, the jury could potentially find
21 him guilty on that alone, him being aggressive and
22 asserting any violence. It runs the danger of confusing
23 the issues, and the prejudice of this particular
24 information far outweighs any probative value.

25 Yes, and it isn't the case that we're on

1 trial for. He does have another charge for retaliation
2 as the basis for that particular count. There was a
3 request for 404 (b) notice and there wasn't any notice
4 given as to that particular information, but it is in
5 the police report.

6 MS. ALLEN: And it is an indictment.

7 MR. DAVIS: It is an indictment. There is
8 a separate charge. But there wasn't any notice given to
9 us that they want to use that in this particular case.
10 So we'd object to it.

11 THE COURT: All right. I'm going to
12 sustain your objection at this time. If you at some
13 point believe enough information has been introduced
14 that makes it more probative than prejudicial, then
15 reapproach.

16 MR. KEITER: Yes, Your Honor.

17 THE COURT: I assume this conversation took
18 place -- this is off the record.

19 (Discussion between the Court and
20 Attorneys, off the record.)

21 THE COURT: All right. Bring in the jury,
22 please.

23 THE BAILIFF: Rise for the jury.

24 (Jury enters courtroom.)

25 THE COURT: You-all can be seated. We're

1 standing for you.

2 Be seated, please.

3 How was lunch?

4 JURORS: Very good, thank you.

5 THE COURT: Good. Are both sides ready to
6 proceed?

7 MS. ALLEN: Yes, Your Honor.

8 THE COURT: Mr. Davis, you may continue.

9 MR. DAVIS: Thank you, Your Honor.

10 **CROSS-EXAMINATION (CONT'D)**

11 BY MR. DAVIS:

12 Q. Agent Vanderberry, during the course of your
13 investigation of the house, you took some pictures of
14 some photos that were on the wall?

15 A. Yes, sir, some photos were taken.

16 Q. Now, the photographs, you weren't taking those,
17 were you?

18 A. No, I was not.

19 Q. There was a separate officer who was coming to
20 take the photographs?

21 A. Yes, sir.

22 Q. That officer didn't take any wide shots of the
23 wall?

24 A. Not to my knowledge, sir.

25 Q. So, the pictures we have are only pictures that

1 were focused on that appeared to be pictures that had my
2 client in them?

3 A. Yes, sir.

4 Q. There weren't any wide shots taken of the
5 kitchen?

6 A. Not to my knowledge.

7 Q. There wasn't any wide shots taken of the living
8 room?

9 A. Not to my knowledge.

10 Q. In the bedroom you found some items?

11 A. Yes, sir.

12 Q. There weren't any wide shots taken in the
13 bedroom, either?

14 A. Only of the shrine, I believe.

15 Q. But in terms of a wide shot that shows that
16 entire wall?

17 A. Not to my knowledge.

18 Q. And in the bedroom there weren't any wide shots
19 that show what the bedroom looked like?

20 A. That's correct, sir.

21 Q. In fact, there isn't a picture of the dresser
22 in that room?

23 A. No, sir.

24 Q. Now, the pictures of the items that were taken
25 were actually taken, for the most part, after the items

1 had been removed?

2 A. Some were taken with the items in place, others
3 had been moved.

4 MR. DAVIS: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes, you may.

7 Q. (BY MR. DAVIS) Now, this picture is a picture
8 of the item in place, right?

9 A. Yes, sir.

10 Q. I'll go to the view finder if that will help
11 you. Is that okay?

12 A. If the jury can see it, that's fine.

13 Q. Yes, sir. This one is in place, right?

14 A. Yes, sir.

15 Q. And that's a picture of some items that are
16 inside of a closet?

17 A. Yes, sir.

18 Q. There's a case and then there's an expandable
19 folder?

20 A. Yes, sir.

21 Q. Now, these items are not taken in place. We
22 talked about that before about how this photo was
23 staged?

24 A. Yes, sir.

25 Q. And this is a photo of the kitchen area?

1 A. Yes, sir.

2 Q. And this tray, sir, in your report you say that
3 the tray was actually found inside of a drawer; or was
4 it found on the countertop?

5 A. That tray was on the countertop.

6 Q. So, the marijuana was out in the open?

7 A. Yes, sir, on this.

8 Q. And this tray, the marijuana is on it so it can
9 be easily divided up and maybe packaged?

10 A. Yes, sir.

11 Q. And, obviously, in this photo this is the same
12 photo I think at least part of the photo we can see part
13 of the social security card that was on the counter?

14 A. Yes, sir.

15 Q. Now, these items, these packages of marijuana,
16 were not out in the open, were they?

17 A. They were removed from drawers.

18 Q. So, they were actually packaged in different
19 drawers?

20 A. Yes, sir.

21 Q. You didn't do the removing of the items?

22 A. On these I removed, yes, sir.

23 Q. So, you removed these from the drawers?

24 A. Yes.

25 Q. So, in terms of setting them out, you sat them

1 out on the table?

2 A. Yes, I just put them out there.

3 Q. So, while they were in the drawers, no photos
4 were taken of them in the drawers?

5 A. Not to my knowledge, sir.

6 Q. And in your report you don't note any details
7 as to where they were in any particular drawers?

8 A. That is correct. It just says they are in
9 kitchen drawers.

10 Q. You don't know which drawer what item is in?

11 A. No, sir.

12 Q. And, in fact, you don't note that you're the
13 one that removed them from the drawers; isn't that
14 right?

15 A. In the article it does say recovered by Officer
16 Vanderberry.

17 Q. I see. So, where it says recovered by Officer
18 Vanderberry, that would be an indication that you were
19 the one?

20 A. Yes, sir.

21 Q. Okay. Thank you. Now, there weren't any items
22 or any trays with cocaine spread out on it and divided
23 up with like a razor or anything?

24 A. Not to my knowledge, sir.

25 Q. There wasn't any small packages of cocaine

1 then?

2 A. No, sir.

3 Q. And when you got there, cocaine wasn't out in
4 the open being divided up?

5 A. No, sir.

6 Q. I want to talk to you a little bit about the
7 expandable folder that had the documents inside?

8 A. Yes, sir, right there.

9 Q. Now, in that photo that I showed you, let me go
10 back there. That had the case on it, now did you bring
11 that case?

12 A. No, sir.

13 Q. Did you inventory the contents of that case?

14 A. No, sir.

15 Q. So, there's a case that's found inside that
16 closet, but we don't know what was inside it?

17 A. Well, I can say that I believe there was
18 nothing that pertained to this investigation inside that
19 case; or it would be here.

20 Q. Did you make that decision?

21 A. Yes, sir.

22 Q. Okay. You didn't note anyplace in your report
23 as to what the contents of that case was, did you?

24 A. No, I did not.

25 Q. You didn't place anyplace in your report about

1 looking through it and finding or cataloging what was in
2 that case?

3 A. No, sir, I did not.

4 Q. Do you think it might have been pertinent to
5 your investigation if there were some documents inside
6 of this case that had somebody else's name on it?

7 A. That would be pertinent, sir, but I can't tell
8 you if that case was empty.

9 Q. I understand. But my question to you is, do
10 you think it would be pertinent if there were documents
11 inside of the case that had someone else's name on it?

12 A. Yes, sir, it would be.

13 Q. But you've already testified that you found
14 identifying documents in a house that you didn't
15 categorize?

16 A. That is correct.

17 Q. So, how do we know that there aren't
18 identifying documents in that case that had somebody
19 else's name with the Sarita address on it?

20 A. Because I would have brought that because that
21 would have been another link to an individual that could
22 testify about who owned that residence.

23 Q. But you had a social security card that had
24 someone's social security number on it and a name,
25 right?

1 A. Yes, I did.

2 Q. You didn't do any follow-up investigation as to
3 that person?

4 A. No, I did not.

5 Q. You didn't do any follow-up investigation as to
6 the social security number, either?

7 A. No, I did not.

8 Q. And inside the folder that you brought, I had
9 an opportunity to look at it yesterday, you guys made it
10 available for me.

11 A. Uh-huh.

12 Q. And inside this folder there is a bunch of
13 other documents that show different addresses on it?

14 A. Yes, sir.

15 Q. For example, this shows Mr. Flores as having
16 3922 Grapevine, right?

17 A. Yes, sir, it does.

18 Q. And I think there's a picture of his ID that
19 shows, is it Ripplingbrook?

20 A. Ripplebrook.

21 Q. An address with Ripplebrook on it?

22 A. Yes, sir.

23 Q. There are some paycheck stubs from different
24 jobs that has Mr. Flores' name on it?

25 A. Yes, sir.

1 Q. Here's one from Lewis Equipment Company?

2 A. Uh-huh.

3 Q. And then there are a couple of other documents
4 in here. Would you agree with me that all the documents
5 look pretty old?

6 A. This is in '07. This is an '08.

7 Q. That's in March of '08?

8 A. Yes, sir.

9 Q. And the other one is what, January of '08?

10 A. Yes, sir, of '08.

11 Q. Some more paycheck stubs from a cleaning
12 company, looks like a payroll check stub; is that right?

13 A. Yes, sir, it is; and that is a '06.

14 Q. In '06 and it shows, doesn't show an address,
15 shows the 3922 Grapevine address?

16 A. Yes, sir.

17 Q. Here's some more, it looks like these also have
18 some more paycheck stubs I guess, right?

19 A. Yes, sir, they are.

20 Q. Looks like that one is from a different
21 company. This one was from Pilgrim's Cleaners. This
22 one is from Lewis Equipment Company. This one is in,
23 the Pilgrim's Cleaners one was -- when was it? In '06.
24 That one is in what year, sir, those two paycheck stubs?

25 A. These two are showing, this is '07, sir, 11/07.

1 Q. 11/07. All right. Now, these also show a
2 Grapevine address?

3 A. That is correct.

4 Q. Are you aware, sir, that Ripplebrook is about
5 five streets over from Grapevine?

6 A. No, sir, I was not.

7 Q. You're aware that both of those addresses are
8 in the Hiram Clark area?

9 A. I did know they were in the Hiram Clark area,
10 yes, sir.

11 Q. Are you also aware that -- have you done any
12 investigation and determined that Mr. Flores' family
13 members also have those same addresses associated with
14 their driver's license?

15 A. I have not.

16 Q. Are you aware that Mr. Flores' family lives at
17 each of these different addresses or have lived at each
18 of these different addresses at the same time he did?

19 MR. KEITER: Objection, Your Honor.

20 THE COURT: Your objection is sustained.

21 Q. (BY MR. DAVIS) So, you haven't done any
22 investigation to determine the extent of these
23 particular addresses and association with Mr. Flores?

24 A. No, sir.

25 Q. So, you don't know whether or not these are

1 legitimate addresses or drug fronts?

2 A. That is correct.

3 Q. And you came in and you testified that drug
4 dealers move around a lot of different places?

5 A. That is correct.

6 Q. Is it possible that a family might want to move
7 to a larger house or a better house at some point in
8 time and change addresses?

9 A. It could be.

10 Q. Now, in all the documents you found, there
11 wasn't anything showing that Mr. Flores was receiving
12 mail at 7823 Sarita?

13 A. I would have to go through those documents.

14 Q. I have a couple other questions I can ask you.
15 Let me give you a moment to look through those.

16 MS. ALLEN: Your Honor, we'll stipulate
17 that none of the documents in that exhibit that was
18 marked with whatever number it was were addressed to
19 Mr. Flores at the Sarita address.

20 THE COURT: All right. Are you comfortable
21 with that, Mr. Davis?

22 MR. DAVIS: That's fine, Judge, just for
23 the sake of time.

24 THE COURT: All right.

25 Q. (BY MR. DAVIS) In fact, there are some

1 documents in there that's written to other people; isn't
2 that correct?

3 A. Excuse me?

4 Q. There are documents in here that are other
5 people's, that have other people's names on them?

6 A. I'd have to see those.

7 MR. DAVIS: I'll take a moment and show
8 them to him, Judge. They're in evidence, I can always
9 just use them that way.

10 THE COURT: I think you just did, Mr.
11 Davis.

12 MR. DAVIS: All right. I only have a few
13 more questions.

14 Q. (BY MR. DAVIS) Well, when you were sitting
15 outside and you were engaged in surveillance, you were
16 present when a car pulled up with Mr. Flores in it,
17 true?

18 A. Dodge Magnum, yes, sir.

19 Q. Yes, sir. And you were also there when there
20 were other cars that were parked in the area?

21 A. Yes, sir.

22 Q. At no point did you write down the license
23 plate tags?

24 A. I was not in an advantage point because of the
25 corner to knock off a license plate.

1 Q. I understand. So, in essence, you didn't get
2 any license plates?

3 A. That is correct.

4 Q. All right. Now, when you were leaving the
5 scene, in other words, when you were leaving from doing
6 your initial surveillance and driving up to 290, you
7 could have drove past and jotted down a couple license
8 plates, true?

9 A. If they were still out there at that time.

10 Q. Well, according to your testimony you were
11 saying when you left, the person who was a suspect was
12 still at 7823 Sarita?

13 A. That is correct.

14 Q. You did your investigation. You started at
15 1:00, and then at some point you left to set up this
16 team. And when you left, the person is still there,
17 right?

18 A. Yes, sir.

19 Q. And it was your testimony that there were
20 vehicles in the driveway?

21 A. Yes, sir.

22 Q. And as driving by you could have taken down
23 some license plates?

24 A. That is field craft, sir, sometimes we don't
25 want to spook a location because there's a new vehicle

1 driving around. So, I just ascertained that it was
2 easier to leave the location.

3 Q. If you had gotten some of the license plate
4 numbers, you could have ran those license plates to see
5 if the people were associated with that address?

6 A. Yes, sir, you can.

7 Q. You could have found out what address they were
8 associated with?

9 A. Yes, sir, you can.

10 Q. It would have given you additional evidence
11 that you could have collected to say, hey, this guy is
12 associated with this address?

13 A. That is correct.

14 Q. But we don't have any of that?

15 A. No, we don't.

16 Q. And we don't have any fingerprints?

17 A. We do not.

18 Q. Just like with the items that may have been in
19 that red case, you made the decision that they weren't
20 relevant?

21 A. Yes, sir.

22 Q. And you made a decision that fingerprints
23 weren't relevant?

24 A. Yes, sir.

25 MR. DAVIS: May I have one moment, Your

1 Honor?

2 THE COURT: You may.

3 Q. (BY MR. DAVIS) Agent Vanderberry, there's no
4 pictures of a gun that was at the front door?

5 A. It appears not, sir.

6 Q. So, we don't have any photos of that item being
7 where it was; is that right?

8 A. That is correct.

9 Q. We got pictures of the clips that are in the
10 bedroom?

11 A. Yes, sir.

12 Q. But the actual gun according to -- I think, is
13 it your testimony, sir, that you're saying that you
14 found the gun --

15 A. Yes, sir.

16 Q. -- in the living room?

17 A. Yes, sir.

18 Q. And is it your testimony that gun was out in
19 the open in the living room?

20 A. Yes, sir.

21 Q. And it was cocked and had the hammer?

22 A. Yes, sir.

23 Q. But there were no fingerprints obtained off the
24 gun?

25 A. I did not have fingerprints lifted.

1 Q. I understand. In terms of the gun being in the
2 position it was in, where exactly was it?

3 A. It was to the, as you're facing the TV, there's
4 a couch and there's a side table and the gun was sitting
5 right there on the side table.

6 Q. How close was it to the door, the front door?

7 A. If this was the door, I would say the couch and
8 area is right there at the edge of the table where
9 you're at.

10 Q. So, if you're at the door, the couch was about
11 right here?

12 A. Yes, sir.

13 Q. Would you say just for the record that that's
14 about 15 feet, 20 feet maybe?

15 A. I'd go with that.

16 Q. Which one?

17 A. 15.

18 Q. 15, okay. So, about 15 feet away from the
19 door, there was a gun?

20 A. Yes, sir.

21 Q. Now, at the time you go in, it's nighttime?

22 A. Yes, sir.

23 Q. So, when you go in generally you're going in
24 with flashlights?

25 A. Yes, sir.

1 Q. And you're kind of looking around while inside?

2 A. Yes, sir.

3 Q. And so you're looking around and eventually you
4 discover a gun 15 feet away from the door next to a
5 sofa?

6 A. Yes, sir.

7 Q. And nobody takes a picture of it?

8 A. That is correct.

9 MR. DAVIS: I don't have any other
10 questions, Your Honor.

11 THE COURT: Is there anything further of
12 this witness?

13 MR. KEITER: Yes, Your Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. KEITER:

16 Q. Officer Vanderberry, as far as fingerprint or
17 DNA analysis, who all are capable of requesting that
18 information?

19 MR. DAVIS: Objection, Your Honor,
20 relevance.

21 THE COURT: Overruled.

22 A. The case agent, which is myself can request
23 prints. The prosecuting office of Harris County can
24 request prints. The --

25 MR. DAVIS: Again, objection, this is

1 improper burden shifting.

2 THE COURT: Your objection is overruled.

3 A. The Defense can also request prints and DNA.

4 Q. (BY MR. KEITER) Did any of those three options
5 request fingerprints or DNA analysis?

6 A. No, sir, they did not.

7 MR. KEITER: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 Q. (BY MR. KEITER) I'm showing you what's been
11 marked as State's Exhibit No. 9. Do you recognize it?

12 A. Yes, sir, I do.

13 Q. Is it fair and accurate?

14 A. Yes, sir, it is.

15 Q. Has it been -- other than the State's Exhibit
16 sticker, has it been altered in any way?

17 A. No, sir.

18 MR. KEITER: At this time, Your Honor,
19 State will offer State's Exhibit No. 9 into evidence.
20 I'll tender to Defense counsel for examination.

21 (State's Exhibit No. 9 offered.)

22 MR. DAVIS: There's no objection.

23 THE COURT: State's Exhibit No. 9 is
24 admitted without objection.

25 (State's Exhibit No. 9 admitted.)

1 MR. KEITER: May I show it to the jury,
2 Your Honor?

3 THE COURT: You may.

4 Q. (BY MR. KEITER) What are we looking at here in
5 State's Exhibit No. 9, Officer Vanderberry?

6 A. This is a photo of Flores kissing the stomach
7 of a unknown woman.

8 Q. Is that, when you say "Flores," are we talking
9 about the Defendant?

10 A. That is the Defendant, sir.

11 Q. And if there were pictures of other individuals
12 in the house or on the wall, would you have noted that?

13 A. Yes, sir, I would have.

14 Q. Would you have made sure that those photos were
15 taken of those pictures?

16 A. Yes, sir.

17 Q. Were there photos of anyone else in the
18 residence?

19 A. No, sir.

20 Q. Realistically could y'all have done a better
21 job of taking better photographs?

22 A. Yes, we could have.

23 Q. Are you an expert photographer?

24 A. No, I'm not.

25 Q. Is any on your staff an expert photographer?

1 A. No, they are not.

2 Q. Just because there's not a picture of it does
3 that mean that the gun wasn't where you said it was?

4 A. It does not, sir.

5 Q. Looking at State's Exhibit No. 11, did you also
6 collect that from the property room?

7 A. Yes, sir, I did.

8 Q. Has it been altered in any way?

9 A. Only the State's Exhibit.

10 Q. Is it in the same condition as it was on
11 November 30th of 2009?

12 A. Yes, sir, it is.

13 Q. If there had been, Officer Vanderberry, if
14 there had been documents in that case that was
15 underneath this folder, would you have tagged those?

16 A. Yes, I would have.

17 Q. What exactly is the difference between noting
18 the social security card on the kitchen counter versus
19 those documents that would have been in the closet to
20 you in your professional opinion?

21 A. In my opinion, documents that are close and
22 personal to you, you're going to keep. They're going to
23 be kept in a location that you have access to if it is
24 your residence.

25 Q. Okay. But the social security card of someone

1 else was there on the kitchen counter, have you seen
2 that before in other drug search warrants that you've
3 executed?

4 MR. DAVIS: Objection, Your Honor,
5 relevance.

6 THE COURT: Sustained.

7 MR. KEITER: Your Honor, it goes to the
8 explanation as to why the social security card based on
9 the cross-examination of Defense counsel.

10 THE COURT: I sustained the objection.

11 Q. (BY MR. KEITER) Would you be surprised -- were
12 you surprised to find a social security card there?

13 A. No, I was not.

14 Q. Why not?

15 MR. DAVIS: Objection, again, Your Honor,
16 testimony is irrelevant.

17 THE COURT: Overruled.

18 Q. (BY MR. KEITER) Why were you not surprised to
19 find a social security card with someone else's name
20 there?

21 A. We see that most common when we do search
22 warrants that --

23 MR. DAVIS: Objection, that's
24 nonresponsive.

25 THE COURT: Overruled.

1 A. That individuals will trade gas cards, driver's
2 license, social security cards for narcotics and will
3 come back with the money and be able to get their
4 collateral, which is social security, driver's license,
5 gas cards, credit cards back from that individual.

6 Q. (BY MR. KEITER) When you followed the
7 Defendant and you peeled off surveillance, was there
8 anyone else left to watch the house?

9 A. Yes, two, one FBI agent and another T-net
10 officer maintained surveillance on the residence.

11 Q. If someone had tried to approach that house, or
12 enter the house, what would they have done?

13 A. They would have been detained.

14 Q. As far as you were concerned at that time, were
15 you preparing a search warrant to execute on that house?

16 A. Yes, sir.

17 Q. Would you at any point have left that house
18 unattended?

19 A. No, sir.

20 Q. The Defense counsel asked you if you found any
21 cocaine in the car when you pulled the Defendant over.
22 Did you find any marijuana in the car when you pulled
23 the Defendant over?

24 A. No, sir, I did not.

25 Q. Was the Defendant wearing any items on his

1 head?

2 A. Yes, he had a pair of sunglasses.

3 Q. What kind of sunglasses?

4 A. They were Ray-Bans.

5 Q. Were they aviators?

6 A. Yes, sir.

7 Q. Did you observe the Defendant wearing those
8 through the course of your surveillance during the day?

9 A. Yes, he would come out from the location and it
10 was bright that day, and he would have the aviator
11 sunglasses.

12 Q. When you're taking evidence from a house as
13 part of a search warrant, do you try to take every
14 single thing; or do you try to take as little as
15 possible in order not to be invasive?

16 A. We try to take what we need to substantiate our
17 case. We do not take every item from a residence.

18 Q. The Defense counsel talked to you about the
19 scripture on the -- putting the scripture with the drugs
20 and how that wasn't consistent or may have been
21 consistent with San Muerte. And you gave a yes or no
22 answer. Can you explain that in a little more detail as
23 far as San Muerte goes?

24 A. It is the belief that any symbol can give you
25 luck. I've been on numerous warrants where San Muerte,

1 Jesus Christ crucifix, and Buddha were all in the same
2 house.

3 Q. What do you need luck for?

4 A. To not get caught by the police.

5 Q. And I want to go back to having more than one
6 residence. Did that cause you any discomfort the fact
7 that the Defendant has numerous addresses?

8 A. No, sir.

9 Q. In fact, does that do the opposite for you?

10 A. Yes, that is common business practice.

11 Q. As far as keeping your family in one location
12 having your drug house in another?

13 A. Yes, sir.

14 Q. Is that for their protection?

15 A. That is for the -- yes, the dealer's family's
16 protection that they're not at the same residence with
17 the narcotics.

18 Q. Which are drug dealers more likely to get at
19 their drug house --

20 MR. DAVIS: Objection, Your Honor, calls
21 for speculation.

22 THE COURT: Sustained.

23 Q. (BY MR. KEITER) In your experience and
24 training, do drug dealers usually get their mail at the
25 drug house?

1 MR. DAVIS: Again.

2 THE COURT: Sustained.

3 Q. (BY MR. KEITER) At any point during any time
4 that you conducted surveillance at this location, did
5 you see any other person ever enter or exit 7823 Sarita
6 Street?

7 A. Only one person entered and exited when the
8 surveillance was being conducted.

9 Q. And tell the ladies and gentlemen of the jury
10 who that one person was?

11 A. Damian Ricardo Flores.

12 Q. And based on all your surveillance that you did
13 on that day, can you give us an estimate about how much
14 time this Defendant spent at that location? If you need
15 to refer back to your surveillance notes --

16 A. Surveillance was established at 1 o'clock,
17 unsure what time I left, probably I would say within an
18 hour, so 2 o'clock I may have left that location. I
19 then returned at 4 o'clock, and Flores arrived at 5:19.

20 Q. And he left at what time?

21 A. And he left at 6:40.

22 Q. So is that several hours?

23 A. Yes, sir.

24 MR. KEITER: May I approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 MR. KEITER: At this time State will offer
3 State's Exhibit No. 58 into evidence. I'll tender to
4 Defense counsel for examination.

5 (State's Exhibit No. 58 offered.)

6 MR. DAVIS: Your Honor, I didn't know he
7 was going to introduce the whole folder. If I could
8 have a moment just to look through it just to make sure,
9 but I'm probably not going to have an objection to it.

10 THE COURT: All right. Why don't we just
11 hold on that? Go ahead and proceed with any additional
12 questions. Once you've had time to review it, you can
13 let me know.

14 MR. DAVIS: Thank you. I'll just set it
15 over here if that's okay.

16 THE COURT: That's fine.

17 MR. KEITER: Pass the witness, Your Honor.

18 THE COURT: All right. Is there anything
19 further?

20 MR. DAVIS: Very briefly, Your Honor.

21 **RE CROSS-EXAMINATION**

22 BY MR. DAVIS:

23 Q. Now, sir, you just testified that you left at
24 about 2 o'clock?

25 A. I would imagine that I would have stayed there

1 maybe an hour.

2 Q. All right. So you started surveillance from
3 1:00 to 2:00. You got one hour and you leave. And
4 while you're gone, you don't know anything that
5 happened?

6 A. That is correct.

7 Q. So, you come back and you said Mr. Flores --
8 you come back at 4:00?

9 A. Yes, sir.

10 Q. And Mr. Flores isn't there?

11 A. That is correct.

12 Q. And he doesn't arrive again until 5:19?

13 A. Yes, sir.

14 Q. And then he leaves at 6:40?

15 A. Yes, sir.

16 Q. So, while you're there, you see him present for
17 one hour, at least, is what you're estimating?

18 A. Yes, sir.

19 Q. And then again for about an hour and
20 twenty minutes, actually to be exact an hour and
21 twenty-one minutes?

22 A. Yes, sir.

23 Q. And he asked you was that several hours.
24 That's only 2 hours and 21 minutes?

25 A. That's several, sir.

1 Q. I'm sorry. So, your definition of several is 2
2 hours and 21 -- several hours is 2 hours and 21 minutes?

3 A. Several to me would be a couple hours, and that
4 two hours would be several to me.

5 Q. So, not like several, seven, but just two hours
6 would be just what you observed?

7 A. Yes, sir.

8 Q. And so while you're there that second time you
9 come up, you allege you see one transaction, true?

10 A. Yes, sir.

11 Q. And from none of these several hours, these
12 2 hours and 21 minutes that you observed and see that
13 Mr. Flores may have been there, who you believed Mr.
14 Flores had been there, hadn't seen anything in terms of
15 transactions of cocaine?

16 A. Excuse me again on that?

17 Q. None of the time that you were there conducting
18 your observation did you see anything that you were able
19 to establish was a transaction of cocaine?

20 A. I saw what appeared to be hand to hand, but
21 those individuals were never stopped. And I have no
22 idea if they were purchasing narcotics.

23 Q. And the people -- the person who you believed
24 was purchasing narcotics, what you found was marijuana?

25 A. That's correct.

1 Q. And when you went inside, what you found
2 packaged up at least in form to be sold was marijuana?

3 A. Yes, sir, and cocaine and the Xanax.

4 Q. My question is in terms of being packaged to be
5 sold, the marijuana was out on the tray, right?

6 A. Yes, sir.

7 Q. And usually when someone is selling dope, they
8 divide the dope up and package it to sale?

9 A. That is correct.

10 Q. When you went inside the residence, the only
11 drug that you found in the form that it could have been
12 sold -- because this is all contemporaneous until you do
13 your investigation?

14 A. Yes, sir.

15 Q. In other words, you're doing your
16 investigation, you want to get in the house right after
17 somebody has been in there, right?

18 A. Yes, sir.

19 Q. Because a person can't anticipate the police
20 are coming?

21 A. That is correct.

22 Q. You can catch the house how they have it,
23 right?

24 A. Yes, sir.

25 Q. It helps you establish what their intent was?

1 A. Yes, sir.

2 Q. So, if you go in right after somebody who was
3 supposedly dealing dope, he's going to leave it how he
4 has it when he's doing his dealing?

5 A. That is correct.

6 Q. And you want to catch him like that so you can
7 see what they were doing?

8 A. Yes, sir.

9 Q. And in this particular situation, the drugs you
10 found in a position to be sold was marijuana; isn't that
11 true?

12 A. Cocaine can be sold in the bag that it was in,
13 sir.

14 Q. You just testified that that wasn't a usable
15 amount of cocaine?

16 MR. KEITER: Excuse me, Your Honor. That's
17 a misstatement of what the witness said.

18 THE COURT: The jury will recall what the
19 witness testified to.

20 Q. (BY MR. DAVIS) You testified that that wasn't
21 an amount that was indicated as a user?

22 A. That is true; but you can buy 10 grams of
23 cocaine on the street, sir.

24 Q. You find only one package of 10 grams of
25 cocaine, right?

1 A. That is correct.

2 Q. You're trying to suggest, because you don't
3 charge him with just possession, you charge him with
4 possession with intent to distribute?

5 A. That is correct.

6 Q. And you charge him with possession with intent
7 to distribute cocaine?

8 A. That is correct.

9 Q. True?

10 A. Yes, sir.

11 Q. But what you find in a packagable form wasn't
12 cocaine; isn't that right?

13 A. It was in a package form, which we saw; and
14 it's a totality of the facts with the scale, and
15 individual baggies that are used for sale, sir.

16 Q. Now, the baggies you found weren't small
17 baggies used for trafficking cocaine; isn't that true?

18 A. There was other baggies. There was not a photo
19 taken of those.

20 Q. The testimony and what your report seems to
21 indicate, I don't think your report has anything about
22 what kind of baggies you found, right?

23 A. That is correct.

24 Q. But there is another report that was completed
25 by Officer Ohland, true?

1 A. Yes, he did.

2 Q. You had an opportunity to review that?

3 A. I've never seen that report, sir.

4 Q. Are you aware that in that report he talks
5 about Ziploc baggies, large Ziploc baggies being
6 recovered?

7 A. I have not seen that report.

8 Q. Do you think it might be important, if you're
9 trying to establish that someone is dealing cocaine,
10 that there be some evidence of some small baggies of
11 cocaine present?

12 A. Sir, we're -- you can sell that bag that he
13 has, you can break that bag down, you have a scale to do
14 the measurements for that. The totality of those facts
15 lead me to believe that's possession with intent to
16 distribute.

17 Q. That scale was never dusted or tested to see if
18 it had any cocaine residue on it?

19 A. It was not.

20 Q. There's no plate, no tablet, no place drawn
21 where someone could divvy up cocaine?

22 A. There's plates in the house.

23 Q. Now, you're looking at intent, one of the
24 reasons you're looking at intent -- there's plates in
25 every house?

1 A. Yes.

2 Q. You're looking at intent -- you're looking at
3 intent based on you seeing trafficking of people, true?

4 A. Yes, sir.

5 Q. Meaning there's a bunch of transactions going
6 on?

7 A. That is correct.

8 Q. And the amounts you find -- or at least the
9 amount of information or evidence you find isn't huge
10 amounts of cash, would you agree with me?

11 A. Almost \$600.

12 Q. \$600, exactly. Ten ounces of cocaine cost way
13 more than \$600, would you agree?

14 A. Ten ounces cost a lot, sir.

15 Q. And 10 grams cost more than \$600, too; wouldn't
16 you agree with me on that?

17 A. It depends on how it's broken down.

18 Q. Your testimony was that 1 gram of cocaine sells
19 for a hundred dollars?

20 A. Yes, sir.

21 Q. So, you got a thousand dollars' worth of
22 cocaine, is what you're testifying, in a package?

23 A. Yes, sir.

24 Q. So, some guys out there selling 10-gram
25 packages of cocaine, he's going to have a significant

1 amount of cash on hand?

2 A. Not necessarily.

3 Q. All right. I understand. In that house you
4 don't find --

5 MR. KEITER: I object to sidebar?

6 MR. DAVIS: I'm sorry, Your Honor. I
7 didn't mean that. I will withdraw that, and I will
8 refrain from that.

9 THE COURT: Thank you.

10 Q. (BY MR. DAVIS) Now, inside the house you don't
11 find large amounts of cash?

12 A. We do not.

13 Q. In his car you don't find large amounts of
14 cash?

15 A. We did not.

16 Q. You find \$500, right?

17 A. Almost 6.

18 Q. Almost \$600?

19 A. Yes.

20 Q. And you testified to some of it being in small
21 denominations?

22 A. I never testified to the denominations, sir.

23 Q. I think you testified -- you didn't testify to
24 what the exact denominations were, but you testified
25 that it was in small denominations. You got it in your

1 report?

2 A. It's in the report. I don't ever remember
3 testifying to the denominations.

4 Q. I understand. I'm not trying to misstate your
5 testimony, but it was in small denominations?

6 A. Yes, sir. We had eight 20s, one 10, five 100s.

7 Q. \$500 bills?

8 A. Uh-huh.

9 Q. Is what you have in your report?

10 A. Yes, sir.

11 Q. All right. I'll take a look at that.

12 MR. DAVIS: I don't have anything else,
13 Your Honor.

14 THE COURT: All right. Officer
15 Vanderberry, you may step down.

16 May this officer be released?

17 MR. DAVIS: Can he remain subject to being
18 recalled?

19 THE COURT: You are subject to recall.

20 Thank you.

21 WITNESS: Not a problem.

22 THE COURT: Call your next witness.

23 MS. ALLEN: Officer Rosales.

24 THE COURT: Officer Rosales, if you'll have
25 a seat on the witness stand, please.