

1 MS. ALLEN: We would recall Officer Abe
2 Vanderberry.

3 MS. GONZALES: Judge, may I have a moment?

4 THE COURT: You may step out if you'd like,
5 but we're going to continue with the trial.

6 MS. GONZALES: All right.

7 THE COURT: Officer Vanderberry, if you'll
8 have a seat, please.

9 Mr. Keiter.

10 MR. KEITER: Yes, Your Honor.

11 THE COURT: You may proceed.

12 MR. KEITER: Yes, Your Honor.

13 May I approach the witness?

14 THE COURT: You may.

15 **ABRAHAM VANDERBERRY,**
16 having been previously sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. KEITER:

19 Q. Officer Vanderberry, I'm showing you what's
20 been marked as State's Exhibit No. 16, do you recognize
21 it?

22 A. That is the drawing of the interior of the
23 residence.

24 MR. DAVIS: Judge, I'm going to object to
25 him testifying to a document isn't in evidence.

1 THE COURT: I think he's attempting to lay
2 the predicate, so I'll allow a few more questions.

3 Q. (BY MR. KEITER) Without going into detail
4 about what it is, Officer Vanderberry, do you recognize
5 it?

6 A. Yes, sir.

7 Q. Is it fair and accurate?

8 A. Yes, sir.

9 Q. Is it how the scene appeared on November 30th
10 of 2009?

11 A. Yes, sir, it is.

12 Q. Except is it to scale?

13 A. It is not to scale, sir.

14 Q. Did you draw it?

15 A. Yes, sir.

16 Q. Did you draw it to the best of your abilities?

17 A. Yes, sir.

18 Q. Other than the State's Exhibit sticker, has it
19 been altered in any other way?

20 A. No, sir.

21 MR. KEITER: Your Honor, at this time,
22 State will offer State's Exhibit No. 16 into evidence
23 and tender to Defense counsel for examination.

24 (State's Exhibit No. 16 offered.)

25 MR. DAVIS: And I'd object to that.

1 Improper predicate, predicate hasn't been laid, Your
2 Honor.

3 THE COURT: Your objection is overruled.
4 State's Exhibit No. 16 is admitted.

5 (State's Exhibit No. 16 admitted.)

6 MR. KEITER: May I show it to the jury,
7 Your Honor?

8 THE COURT: You may.

9 Q. (BY MR. KEITER) Officer Vanderberry, did you
10 draw a picture of the scene of the apartment at 7823
11 Sarita?

12 A. Yes, sir, I did.

13 Q. I just want to go over a couple brief things,
14 see if this slide will help. All right. When we're
15 looking at this picture, can you tell us where the
16 entrance is to the townhouse?

17 A. It would be right here, sir, the door.

18 Q. For purposes of the record, you're marking an X
19 near the bottom of the picture in the center?

20 A. Yes, sir.

21 Q. Now, tell us where did you locate the weapon,
22 the first weapon that we talked about that was near the
23 entryway?

24 A. The Browning High Power was located right here
25 on the end table.

1 Q. Was anyone who was inside for any amount of
2 time able to see that that weapon was there?

3 A. Yes, sir, it was just laying --

4 MR. DAVIS: Objection, Your Honor, calls
5 for speculation as to what someone inside may have --

6 THE COURT: Rephrase your question.

7 Q. (BY MR. KEITER) Was that weapon noticeable by
8 you and the other officers?

9 A. Yes, sir.

10 Q. Was it in plain view?

11 A. Yes, sir.

12 Q. And the bedroom where you found the suitcase,
13 which bedroom was that?

14 A. The suitcase?

15 Q. The folder full of documents of the Defendant.

16 A. That was located in the guest bedroom.

17 Q. And the person that you initially saw in the
18 morning when you were doing your initial surveillance to
19 see and check out the location, is that the same
20 individual that you saw later that day?

21 MR. DAVIS: Your Honor, I'd object to this
22 as not being rebuttal.

23 MR. KEITER: It's in response to the
24 witnesses that Defense has called regarding Miguel Teran
25 living at that location.

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

2 A. Yes, it was, sir.

3 Q. (BY MR. KEITER) And how do you know that?

4 A. The tattoos on the forearms.

5 Q. Were they similar?

6 A. Yes, sir.

7 MR. KEITER: Pass the witness.

8 **CROSS-EXAMINATION**

9 BY MR. DAVIS:

10 Q. You just said tattoos on the forearm. In your
11 report you don't list anything about any tattoos on the
12 forearm; is that correct?

13 A. That is correct. Well, there is tattoos on the
14 suspect's screen, but internally there's not.

15 Q. In your report and on the suspect's screen in
16 terms of the location, there's nothing about tattoos on
17 forearms; isn't that true?

18 A. That is correct.

19 Q. So, you've drawn this diagram from memory from
20 2009?

21 A. Yes, sir.

22 Q. Because in your report -- and you would agree
23 with me, you make your report primarily to aid you and
24 assist you in recalling information, right?

25 A. Correct.

1 Q. You can't testify to some things independently
2 so you use your report?

3 A. Yes, sir.

4 Q. And we've been over this before. Throughout
5 the trial you've been looking at your report and reading
6 from your report?

7 A. Yes, sir.

8 Q. Because you don't remember things?

9 A. It stimulates a recall, sir.

10 Q. In fact, when you first came in, you testified
11 that the cocaine was out in the open on the counter?

12 A. Yes.

13 MR. KEITER: Objection as to argumentative
14 and asked and answered, Your Honor.

15 THE COURT: Overruled.

16 Q. (BY MR. DAVIS) But you corrected yourself when
17 you saw it in your report?

18 A. Yes, sir.

19 Q. Because your recollection was faulty in that
20 regard?

21 A. Yes, sir.

22 Q. And that's an important part of the case,
23 right?

24 A. It is a part of the case.

25 Q. No, I mean, it's an important part of the case

1 where the cocaine was, true?

2 A. It can be looked upon that way.

3 Q. And you didn't have independent recollection of
4 that detail?

5 A. No, sir.

6 Q. And so this diagram you're drawing, you're
7 drawing from memory?

8 A. I'm drawing it from the offense report, sir.

9 Q. In the offense report, you don't give -- you
10 don't draw a diagram in the offense report, do you?

11 A. The location is described in the scene summary,
12 sir.

13 Q. But that wasn't my question, was it?

14 THE COURT: All right. Just ask a
15 question. Don't argue with the witness.

16 MR. DAVIS: I'm sorry. Your Honor, that is
17 a question. My question is that wasn't my question, was
18 it?

19 THE COURT: And that's not a question.

20 Q. (BY MR. DAVIS) Was that my question?

21 A. We've covered a lot of questions. I'd have to
22 have it read back, sir.

23 Q. I understand. You didn't draw a diagram in
24 your report, did you?

25 A. I gave a description of the interior of the

1 residence so a diagram could be drawn if need be.

2 Q. Tell me this, on occasion you draw diagrams in
3 reports; isn't that correct?

4 A. It can be done.

5 Q. It's something that's routinely done when
6 locations and everything may be challenged or may be at
7 issue?

8 A. No, sir. It is not routinely done in the
9 narcotics division.

10 Q. It's something that takes a little extra time
11 to do, would you agree we me?

12 A. It can take some time.

13 Q. Because you've got to sit down and actually
14 measure out where things are, right?

15 A. That is more currently done with homicides,
16 sir.

17 Q. I'm not asking you that. My question is you've
18 got to sit down and measure things out when you draw it
19 in the report; isn't that right?

20 A. Yes, sir. It would have to be that scale.

21 Q. In fact, you have to chart where you're finding
22 each item, true?

23 A. That is correct.

24 Q. You would agree with me, in that kitchen, if
25 you recall, there were many kitchen cabinet drawers,

1 right?

2 A. Yes, sir.

3 Q. There were cabinets drawers across the top?

4 A. Yes, sir.

5 Q. And cabinets drawers across the bottom?

6 A. Yes, sir.

7 Q. And even below those drawers, there are other
8 cabinets that can open?

9 A. That is correct.

10 Q. So, you've got a kitchen with multiple
11 different cabinets, but in your report you only note
12 that you found it in the cabinet; isn't that right?

13 A. Yes, sir.

14 Q. You're very general in terms of where items are
15 found?

16 A. That is correct.

17 Q. So, if you're more specific, then the jury can
18 know where something is found?

19 A. That is correct.

20 Q. And then three years later, when you're called
21 to testify about it, you can be accurate, true?

22 A. Yes, sir.

23 Q. But when you don't draw a diagram and you don't
24 show where things are, we're left to depend on your
25 recollection?

1 A. Correct.

2 Q. And you've handled thousands of cases, would
3 you agree with me?

4 A. That is correct.

5 Q. In between now and then, you've handled, would
6 you agree with me, there may have been more than 2000
7 cases?

8 A. There was a number, sir. I would agree that
9 it's probably over 1500 cases.

10 Q. And the only way you remember cases for the
11 most part is by looking at your report?

12 A. Yes, sir.

13 Q. And this diagram you're telling us right now
14 you drew from memory three years ago?

15 A. From the description in my report.

16 Q. I understand. Now, you testified yesterday
17 that the report -- I'm sorry, you testified yesterday
18 that the gun was about 15 feet away from the door?

19 A. Yes, sir.

20 Q. Now, we can't really tell that from this
21 diagram because it isn't to scale?

22 A. That is correct.

23 Q. And you haven't established whether or not this
24 can aid and assist the jury in deciding anything in this
25 case. I'm assuming you're saying that it could aid and

1 assist -- you believe that it could aid and assist the
2 jury?

3 A. It's a visual depiction of the scene.

4 Q. All right. And so the gun on the end table was
5 over there in that corner. You don't know who handled
6 it, whose prints or anything were on it?

7 A. That's correct.

8 Q. You didn't check it for prints?

9 A. No, we did not.

10 Q. Did you preserve it for prints?

11 A. It has been set up. It can still be printed,
12 yes, sir.

13 Q. Did you take it to get it printed?

14 A. I have not.

15 Q. You knew the case was going to trial, right?

16 A. Yes, sir.

17 Q. And you've known that for a while, would you
18 agree with me?

19 A. That is correct.

20 Q. You didn't take any of these items to have them
21 printed since we were going to trial?

22 A. Did not.

23 Q. Generally when a defendant is going to trial,
24 he's contesting the evidence, right?

25 A. Yes, sir.

1 Q. In other words, he's saying not guilty.

2 MR. KEITER: Objection, Your Honor, that
3 would call for a legal conclusion on this witness.

4 THE COURT: Well, that objection is
5 sustained.

6 Q. (BY MR. DAVIS) Throughout it all, even though
7 you knew the case was going to trial, and you knew that
8 this was contested, you never had any of the evidence
9 tested?

10 MR. KEITER: Objection as to asked and
11 answered.

12 THE COURT: Overruled.

13 A. That is correct, sir.

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

16 THE COURT: You may.

17 Q. (BY MR. DAVIS) I'm going to show this to you
18 up close and personal.

19 A. Uh-huh.

20 Q. Only because --

21 MS. ALLEN: Could you speak up, Mr. Davis?
22 I can't hear you. Thank you.

23 MR. DAVIS: I can. I'm sorry.

24 Q. (BY MR. DAVIS) I'm going to come up to you
25 close only because I'm not the best with that view

1 finder. Were there any walls in this area?

2 A. No, sir. That was just a bad artist rendition.
3 I'm not a very good drawer.

4 Q. I understand. I'm just trying to make out what
5 some of the stuff is. Now, is this some type of back
6 door?

7 A. No, sir. This was the straight hallway, and
8 this is what the lines were for to depict the hallway
9 and then the doors into the rooms.

10 Q. So, is there something in this area?

11 A. No, sir.

12 Q. Okay. But you've got an area -- I'm not trying
13 to critique your drawing, I'm just trying to figure it
14 out.

15 A. Yes, sir.

16 Q. So, this is actually just one wall?

17 A. Yes, that would be like the --

18 Q. So, the space in the middle isn't meant --

19 A. There is no space; that's correct.

20 Q. Now, the closet that you found the items --
21 where would the closet be in the room?

22 A. The closets were not listed in the report, so I
23 did not draw them.

24 Q. So, you didn't know where they were?

25 A. I can't recollect, sir.

1 Q. Okay. All right. Now --

2 MR. DAVIS: May I have one moment, Your
3 Honor?

4 THE COURT: You may.

5 Q. (BY MR. DAVIS) Now, you were asked some
6 questions about what happened earlier in the day. You
7 took good detailed notes in your report, right?

8 A. I took notes, yes, sir.

9 Q. And you know, of course, we may quibble about a
10 detail that may have been in the report; but,
11 nevertheless, in your report you document that you saw a
12 Hispanic male earlier that morning, right?

13 A. Yes, sir.

14 Q. And you said you saw a Hispanic male engaging
15 in hand-to-hand transactions?

16 A. Correct.

17 Q. Now, your report never identifies or never says
18 that that person you saw earlier was Damian Flores;
19 isn't that true?

20 A. That is correct.

21 Q. It isn't until you come to court that you draw
22 a conclusion that the person you saw that morning was
23 the same person, I'm sorry, not morning, the person you
24 saw at 1 o'clock was the same person that you saw after
25 4:00; isn't that right?

1 MR. KEITER: I object to the form of the
2 question, Your Honor, and that the Defense counsel is
3 calling for a conclusion based on what he's saying to
4 this witness.

5 THE COURT: Rephrase your question, Mr.
6 Davis.

7 MR. DAVIS: Yes.

8 Q. (BY MR. DAVIS) You agree with me, basically,
9 that in your report, you never identify or never say
10 that the person you saw after 1 o'clock was Damian
11 Flores, correct?

12 A. Yes, sir.

13 Q. And it isn't any place in your report, a
14 supplement or any other reports, that they're one in the
15 same?

16 A. No, sir, there's not.

17 Q. It isn't until you come to testify today that
18 we have anything on record with you saying that; isn't
19 that true?

20 A. That is correct.

21 Q. And you're doing this based on your
22 recollection from three years ago?

23 A. Yes, sir.

24 Q. And based on your report that you use and rely
25 on?

1 A. Yes, sir.

2 Q. And it just so happens to fit in to what you
3 need to happen in the case, doesn't it?

4 MR. KEITER: Objection as to Counsel
5 testifying.

6 THE COURT: It's sustained.

7 MR. DAVIS: Your Honor, there's one matter
8 I'd like to take up. May we approach briefly?

9 THE COURT: You may approach.

10 (Bench conference.)

11 MR. DAVIS: I don't have an idea, nothing
12 has been disclosed to us, and only thing I have a matter
13 outside the presence of jury with this witness.

14 THE COURT: Why don't you just tell me what
15 it is?

16 MR. DAVIS: It is some issue about him
17 being removed from the force. It was mentioned the
18 other day. I don't know about it.

19 MS. ALLEN: He wasn't removed from the
20 force. There were allegations.

21 THE COURT: Ladies and gentlemen, please
22 step back to the jury room. We'll have to wait for, I'm
23 sorry, we'll wait for Deputy Reddick, I mean Deputy
24 Kaminski to get back.

25 (End of bench conference.)

1 THE COURT: All right. If you'll step back
2 to the jury room with Deputy Reddick, we'll be with you
3 shortly.

4 THE BAILIFF: All rise for the jury.

5 (Jury exits courtroom.)

6 THE COURT: Be seated, please.

7 All right. Did you want to approach the
8 bench?

9 (Bench conference.)

10 MR. DAVIS: And, Judge, I don't know what
11 it is; and that's why I asked to do it outside the
12 presence of the jury out of respect for the Court. And
13 we were given some indication that there was some issue
14 with the officer. I don't know what it is. I've never
15 had any Brady notice or anything of that nature, so I'm
16 not sure what it is.

17 MS. ALLEN: There were allegations made of
18 misconduct by Officer Vanderberry. They were
19 investigated by Federal Government. They were
20 investigated by the internal organization of HPD. They
21 were all found to be unfounded, and he was cleared of
22 any allegations of misconduct and he was allowed his --
23 what's it called, a 13 transfer or --

24 THE WITNESS: It is a Method B transfer.

25 MS. ALLEN: Which is a voluntary transfer

1 to another division when you're in good standing. But
2 there were allegations out there.

3 MR. DAVIS: I don't know the subject of the
4 allegations, Judge. Probably with a few minutes, if I
5 could talk to him off the witness stand, I might be able
6 to find out some of that to see if it's even worth going
7 into.

8 THE COURT: We'll recess for five minutes
9 for you to, I guess, talk with the Prosecutor and the
10 witness in an attempt to resolve the issue.

11 MS. ALLEN: I'll let Justin do that, and
12 I'll run downstairs and get that case. So, it might
13 take me a little more than 5 minutes because of the
14 elevators, Judge.

15 (A recess was taken.)

16 (At the bench.)

17 THE COURT: We are on the record outside
18 the presence of the jury. We recessed earlier so that
19 both the State and the Defense would have an opportunity
20 to, I guess for lack of a better word, investigate with
21 a witness some allegations that had been allegedly made
22 against the witness, the information, my understanding,
23 was provided to the Defense --

24 MR. DAVIS: Just now.

25 THE COURT: -- by the Prosecutors. And just

1 so that we're clear, from the State, could you please
2 proffer for the Court the information that you provided
3 to the Defense?

4 MS. ALLEN: That last week I filed a Motion
5 in Limine asking that we approach the bench before any
6 discussion of allegations made against Officer
7 Vanderberry regarding misconduct.

8 THE COURT: All right. And did you give
9 the Defense any additional information regarding any
10 allegations?

11 MS. ALLEN: I did not.

12 THE COURT: All right. And, Mr. Davis, I
13 think we recessed earlier to give you an opportunity to
14 talk to the witness regarding those allegations; and you
15 wanted to put something on the record?

16 MR. DAVIS: Your Honor, I talked to the
17 witness today, and I discovered from talking to the
18 witness and to the Prosecution that there was an
19 allegation that the witness had removed items from the
20 scene. They had removed the items from a crime scene
21 was the allegation, and there was some suggestion by the
22 witness that he had been cleared, he had been exonerated
23 by it. There wasn't an IAD investigation, and the Feds
24 apparently looked into it because he had some cases
25 pending in front of the Federal court.

1 THE COURT: I think he's on a Federal task
2 force.

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: So, he's employed by the
5 Federal Government.

6 MR. DAVIS: So, they had to look at that as
7 well, and he hadn't been prosecuted for it; but that
8 information was not provided to the Defense. And it's
9 my contention that that's Brady material, and the
10 Defendant is being denied due process by not having that
11 information prior to this trial to develop it and
12 investigate it to try to present it because this
13 witness' credibility is at issue in the case. And if
14 he's been accused, a no bill can be used to attack
15 someone's credibility in a case. Yes, it can. A no
16 bill can be used. Even if he had been no billed or
17 exonerated, it is an allegation that goes to his
18 credibility that could have been used to attack his
19 credibility that we were denied. And we suggest, Your
20 Honor, we respectfully move for a mistrial because the
21 Defendant has been denied due process by not receiving
22 this information sooner.

23 MS. ALLEN: First of all, Your Honor, I did
24 provide the information to them. Secondly, I spoke with
25 Brad Hart, who is the chief of our drug section in the

1 special prosecution's unit of the District Attorney's
2 Office, who works very closely with these units and with
3 the Federal Government, and he informed me that the Feds
4 in the investigation made the determination that there
5 was no Brady issue regarding the allegation against Abe
6 Vanderberry.

7 THE COURT: All right. Is Officer
8 Vanderberry still employed with the Houston Police
9 Department?

10 MS. ALLEN: Yes, ma'am.

11 THE COURT: And --

12 MS. ALLEN: And in good standing.

13 THE COURT: Is there anything further?

14 MR. DAVIS: No, Your Honor. I guess the
15 court is denying our Motion at this time?

16 THE COURT: Your Motion for mistrial is
17 denied.

18 MR. DAVIS: And we'd ask for an opportunity
19 at least to go into that area with the officer on
20 cross-examination.

21 THE COURT: That's denied.

22 MR. DAVIS: And, Your Honor, can we at
23 least make a Bill of Exception, or the Court thinks
24 that's unnecessary?

25 THE COURT: I think you've proffered the

1 information that you've received and the conversation
2 that you've had with the officer. Is there anything in
3 addition to that that you'd like to put on the record?

4 MR. DAVIS: I would like to cross-examine
5 the officer. I request a bill to cross-examine the
6 officer to the extent of his testimony, make that a part
7 of the record.

8 THE COURT: And I think just for our
9 purposes, I gave you the opportunity to go talk to him;
10 and you've proffered that information for the record,
11 the result of your conversation with the officer.

12 MR. DAVIS: Some of it was given to me by
13 the prosecution, Your Honor. But he affirmed that while
14 in the back as well. But I'd like to at least have an
15 opportunity to make a Bill to cross-examine him on the
16 record so that the Court can make a ruling from his
17 testimony.

18 THE COURT: I'm satisfied with the
19 information that you provided for the record, regarding
20 the fact that there was an allegation, that the
21 allegation was unsubstantiated or, I guess, has already
22 been investigated and he was not prosecuted; is that
23 correct?

24 MR. DAVIS: I think he says that, Your
25 Honor, or at least he told me that outside.

1 THE COURT: Okay. And that he's still
2 employed with the Houston Police Department?

3 MR. DAVIS: I believe that is correct, Your
4 Honor.

5 THE COURT: Is there anything in addition
6 to that?

7 MR. DAVIS: I'd just like to put it on the
8 record and have him do that in front of the Court under
9 cross-examination to make that Bill of Exception.

10 THE COURT: I think what you've proffered
11 is sufficient.

12 MR. DAVIS: For the record, Your Honor, are
13 you denying my request?

14 THE COURT: I've given you an opportunity
15 to talk to the witness and explore that with the
16 witness. I am satisfied that the record is sufficient
17 with regards to the information that you received from
18 that witness.

19 MR. DAVIS: So, the Court, just for the
20 record, is denying my request?

21 THE COURT: I'm denying your request to
22 call the witness back in to cross-examine him in that
23 area.

24 MR. DAVIS: I'd like to do that for
25 purposes of making a Bill.

1 THE COURT: I understand.

2 MR. DAVIS: Is the Court denying --

3 THE COURT: Your Bill of Exception is the
4 proffer that you just made.

5 Are we ready for the jury? And the jury is
6 waiting. Let's bring them in.

7 MS. GONZALES: Judge, if I may, I have
8 something because I was there when Mr. Davis was
9 questioning this officer. He was evasive. He didn't
10 allow us to go into much. What we got was from the
11 Prosecutor. Judge, it's my feeling that they
12 transferred him because of something, they could be
13 protecting him. I think for not allowing us to go into
14 it, it may be reversible error.

15 THE COURT: All right. Thank you, Ms.
16 Gonzales.

17 (A recess was taken.)

18 (Open court, Defendant present.)

19 THE COURT: Are both sides ready for the
20 jury?

21 MS. ALLEN: State is ready.

22 MR. DAVIS: We're ready.

23 THE COURT: Let's talk about, while we're
24 waiting, is there anything additional with regards to
25 the Charge, the deadly weapon instruction?

1 MS. ALLEN: Nothing from the State, Your
2 Honor.

3 MS. GONZALES: No, Your Honor, nothing from
4 Defense, just what we've proposed.

5 THE COURT: All right.

6 THE BAILIFF: Ready for the jury, Judge?

7 THE COURT: Yes.

8 THE BAILIFF: Rise for the jury.

9 (Jury enters courtroom.)

10 THE COURT: Be seated, please.

11 Mr. Davis, you may continue.

12 MR. DAVIS: Thank you, Your Honor, very
13 briefly.

14 Q. (BY MR. DAVIS) Agent Vanderberry, why didn't
15 you take any pictures of the gun on the end table?

16 A. I was not over the photography of the scene,
17 sir.

18 Q. You were the officer in charge of the scene,
19 right?

20 A. Yes, sir.

21 Q. And you testified earlier that you staged some
22 of the items so that they could be photographed?

23 MR. KEITER: Objection as to asked and
24 answered and repetitious, Your Honor.

25 THE COURT: Overruled.

1 Q. (BY MR. DAVIS) And you testified -- or do you
2 need me to repeat that question?

3 A. No, sir. Items were staged. That was not
4 under my direction.

5 Q. When you testified earlier, you testified and I
6 showed you the photos, showed you the picture with the
7 scripture and all of the drugs around the scripture, you
8 remember that?

9 A. Yes, sir, I do.

10 Q. You testified that you staged that photo?

11 A. It was a staged photo, sir.

12 Q. So, now is your testimony that you weren't the
13 one that staged the photo?

14 A. I did not put that all together, no, sir.

15 Q. So, you're the agent in charge of the scene and
16 so you go through and all of these officers are coming
17 to testify. You're aware that they all testified they
18 don't move items, they leave it for you?

19 A. Yes, on the tagging process, sir.

20 Q. And you're aware that they also stated they
21 don't collect the items or move them even that they
22 leave that for you to do?

23 A. I was unaware of their testimony, sir.

24 Q. When you testified on direct examination
25 yesterday, you testified that you went around and

1 collected all the items so the chain of custody could
2 remain with you?

3 A. Yes, sir, I did.

4 Q. So, you're the person that's collecting and
5 controlling all the items?

6 A. Yes, sir.

7 Q. Right?

8 A. Yes, sir.

9 Q. So this item that's over there, you're
10 collecting and controlling it, true?

11 A. I bag it yes, sir.

12 Q. You know, every officer that's testified here
13 today --

14 MR. KEITER: Objection as to violation of
15 the Rule, Your Honor.

16 THE COURT: That's sustained.

17 MR. DAVIS: I wasn't going to ask about the
18 testimony, Your Honor.

19 THE COURT: And your question isn't going
20 to be an appropriate question, either. So, ask another
21 question, Mr. Davis.

22 Q. (BY MR. DAVIS) Are you aware that the officers
23 that come in --

24 MR. KEITER: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. DAVIS: I'm not going to talk about the
2 testimony, Your Honor. I'm actually going to ask him a
3 different type of question, but I'll ask it a different
4 way.

5 THE COURT: Ask a question.

6 Q. (BY MR. DAVIS) You're not in any of the photos
7 that were taken?

8 A. Not to my knowledge, sir.

9 Q. Did you know that Officer Ohland --

10 MR. KEITER: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q. (BY MR. DAVIS) You looked at all the photos
13 that were taken that day?

14 A. I have not.

15 MR. KEITER: Object to relevance, Your
16 Honor, and asked and answered.

17 MR. DAVIS: It's relevant, Your Honor, as
18 to who was taking the photographs because he's not in
19 any of the photos.

20 THE COURT: The objection is sustained.

21 Q. (BY MR. DAVIS) The other officers who have
22 been here today, are you aware that each of them are in
23 a photograph?

24 MR. KEITER: Objection, Your Honor, as to
25 relevance.

1 THE COURT: Sustained.

2 Q. (BY MR. DAVIS) Now, a lot of times when you
3 have a crime scene, you may call a crime scene analyst
4 to come out and analyze the scene, right?

5 A. It has never been done in my career, sir.

6 Q. All right. So narcotic officers, in your
7 career, you've never called a crime scene analyst out to
8 take photographs or analyze the scene?

9 A. That is correct.

10 Q. So, usually when you have a crime scene, you're
11 the main person controlling it, not someone else from
12 outside?

13 A. Correct.

14 Q. Bottom line is, no pictures were taken of that
15 firearm?

16 A. That is correct.

17 Q. So, we can only rely on what you're telling us
18 in terms of its location?

19 A. Yes, sir.

20 MR. DAVIS: One moment, Your Honor? No
21 questions.

22 THE COURT: All right. Is there anything
23 further?

24 MR. KEITER: Nothing further from this
25 witness, Your Honor.