

1                   THE COURT: Good luck.

2                   THE WITNESS: Thank you.

3                   THE COURT: Call your next witness, please.

4                   MR. LEONARD: State calls Officer Zamora.

5                   THE COURT: Right up here, please, sir. If  
6 you would, please raise your right hand.

7                   (Witness sworn.)

8                   THE COURT: If you would have your seat,  
9 please.

10                   You may proceed.

11                                   **MOISES ZAMORA,**

12 having been first duly sworn, testified as follows:

13                                   **DIRECT EXAMINATION**

14                   Q. (BY MR. LEONARD) Officer, please introduce  
15 yourself to the jury.

16                   A. My name is Moises Zamora.

17                   Q. Okay. And how are you currently employed?

18                   A. I'm employed as a police officer for the City of  
19 Houston.

20                   Q. And do you have any military experience?

21                   A. Yes. Before I joined the police department I  
22 was -- I did three years in the United States infantry.

23                   Q. And what was your assignment in the United States  
24 infantry?

25                   A. I was an infantryman. It was combat arms and I was

1 a sergeant when I got out.

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

4 A. I was commissioned as a police officer in May of  
5 2003. So, coming up on ten years now.

6 Q. And what is your current assignment with the  
7 Houston Police Department?

8 A. I'm assigned to special investigations as a field  
9 agent, narcotics division.

10 Q. Tell the jury a little bit about that.

11 A. Well, in the job that I'm doing now, we call it  
12 general enforcement, which is basically we target all the  
13 narcotics that are already in Houston, anybody dealing  
14 narcotics, sometimes even users, certain problems in the  
15 neighborhoods with people using narcotics, in the corners  
16 and vacant houses, we go target those people, the users and  
17 also the dealers who are dealing to them in the neighborhood  
18 and basically just any of the distribution of the drugs that  
19 are already in Houston. Not so much coming from Mexico or  
20 other towns or so forth. We concentrate on everything that  
21 is already here in Houston.

22 Q. What's -- how do you get into the narcotics  
23 division? Is there, like, an application process or --

24 A. Yeah, it's a rigorous application process. The  
25 position will get posted that narcotics division has

1 vacancies. First thing you've got to do is you've got to  
2 notify narcotics that you're interested in the position.  
3 You have to submit -- excuse me -- a personal resume,  
4 department resume, which consists of all your assignments,  
5 awards, and any discipline that was -- that you've been --  
6 or held accounted for and you've got to submit a writing  
7 sample in the form of an offense report.

8 After you submit that information, it goes up  
9 to a board, they review the information that you've  
10 submitted and then you're called up for an interview. It's  
11 a board, four, five, six people sometimes. You give an oral  
12 interview and then you're given a scenario on a video on  
13 what you would do under those circumstances if you were  
14 in -- if you were a narcotics agent.

15 After you watch the video, the board comes  
16 back in, you give your explanation. They ask you some more  
17 questions regarding your experience and why you think you  
18 should be there. They go through every applicant, doing the  
19 same thing, and then after that the board will convene again  
20 and they'll make their selections process, we think this guy  
21 is good, this guy is good, so forth and so forth. There's  
22 normally quite a bit of people that try to go to narcotics.  
23 It's hard to get in but once you're in, it's a great job.

24 Q. Now, as part of your training and experience, are  
25 you taught how to identify individuals and activities that

1 may be associated with the possession and distribution of  
2 narcotics?

3 A. Yes. Once you're selected for the narcotics -- to  
4 go to narcotics, you have to go through a psychological  
5 evaluation. After the psychological evaluation, you go  
6 through a 80-hour class, which is called -- we call it  
7 survival school. They teach you, in case you don't already  
8 know from working the streets, how to identify certain, I  
9 guess, activity that would be consistent with narcotics  
10 trafficking, how to target certain areas, troubled areas in  
11 the city of Houston by using crime analysis information, how  
12 to make entry. We work as a team, so how to make entry into  
13 a house in case we're running a search warrant. Undercover  
14 weapons carry, for when you're doing undercover work and  
15 you're actually buying narcotics on the street. How to be  
16 able to basically hold your own against somebody in case if  
17 you're being robbed on the street. All this is kind of put  
18 together in about a two-week course and then after that you  
19 go through a field training program while you're in  
20 narcotics with a veteran officer and he kind of fine-tunes,  
21 makes sure you understand everything and you know what's  
22 going on on the street before they cut you on your own.

23 Q. Now, generally as a part of your work and as a part  
24 of your investigation, how do you identify certain areas or  
25 individuals that you believe may be suspected as dealing

1 narcotics?

2 A. One of our source -- one of the sources that we use  
3 is the public. They got what we call the NO-DOPE line. Any  
4 of you guys ever have a problem with -- you suspect  
5 narcotics are being dealt, you can call the NO-DOPE line.  
6 It's anonymous so it's confidential. Eventually that will  
7 make its way back -- narcotics division general enforcement  
8 is divided into the south side -- excuse me -- and the north  
9 side of Houston. Depending on what geographical area you  
10 are in Houston, it will get assigned to a particular squad  
11 and then that's how we know, okay, well, if we get a lot of  
12 complaints in a certain area, certain street or a block, we  
13 know that we need to go out there and do something about it.

14 Another would be actual people that we arrest,  
15 they also give information against penal interest and our  
16 main source is the use of confidential informants.

17 Q. Okay. So, once you've identified an individual in  
18 a place that you believe is involved in narcotics  
19 trafficking, I mean, do you just go out and arrest? How  
20 does that process work?

21 A. Normally if we can identify and pinpoint a specific  
22 house or a specific corner or a specific apartment, per say,  
23 then we go out there. First thing we do is conduct  
24 surveillance, we just go out there and watch, just see  
25 what's going on. If there's a lot of people, bicycles,

1 vehicle traffic, just activity in general coming in and out,  
2 we know that it's not normal for somebody who just lives at  
3 an apartment to have four, five people an hour go in and out  
4 of their apartment, so that's some of the activity we  
5 consider to be consistent with narcotics trafficking.

6 After we conduct our surveillance, if we have  
7 an opportunity, we'll try to get a marked unit to stop maybe  
8 one of the people we believe to be a customer, that way we  
9 can interview them, talk to them about what's going on, they  
10 can make a statement against penal interest regarding what's  
11 going on at that apartment, maybe identify somebody there.  
12 Then our other choice is the use of a confidential informant  
13 to go out there to the spot we suspect they're selling  
14 narcotics and purchase narcotics for us to help us draft the  
15 narcotics search warrant.

16 Q. All right. Now, I want to turn your attention to  
17 October 27th of 2011, and the days leading up to that day.  
18 Were you involved in a narcotics investigation off of 1415  
19 Greens Parkway?

20 A. Yes, I was.

21 Q. Okay. And Apartment No. 6?

22 A. Yes.

23 Q. And what's the name of that apartment complex?

24 A. It's the Fall Lake Apartments.

25 Q. Okay. And is that in Houston, Harris County,

1 Texas?

2 A. Yes, it is.

3 MR. LEONARD: Judge, may I approach?

4 THE COURT: You may.

5 Q. (BY MR. LEONARD) Officer Zamora, I'm going to show  
6 you what's been marked as State's Exhibits 1 through 6.  
7 Would you take a look at those and tell me if you recognize  
8 those.

9 A. I do.

10 Q. And in general what are those photographs, just in  
11 general?

12 A. Looks like a -- it's a map of -- the first one was  
13 a map of Houston, more towards the north side of Houston,  
14 aerial views of the apartment complex where this  
15 investigation took place and street-view pictures of the  
16 target -- the apartment that we were targeting that day.

17 Q. Okay. And do these photographs fairly and  
18 accurately represent the area you conducted your  
19 investigation on on October 27th, 2011?

20 A. They do.

21 MR. LEONARD: Judge, at this time I'm now  
22 tendering to defense counsel State's Exhibits 1 through 6  
23 and offering them into evidence.

24 THE COURT: Any objections?

25 MR. MARTIN: No, Your Honor.

1                   THE COURT: State's 1 through 6 will be  
2 admitted.

3                   MR. LEONARD: Permission to publish?

4                   THE COURT: You may.

5                   MR. LEONARD: Thank you.

6           Q.    (BY MR. LEONARD) Officer, I'm going to show you  
7 State's Exhibit 1. What exactly are we looking at here?

8           A.    That's a map of Houston, street-view map or a  
9 street map of Houston.

10          Q.    Okay. And just for the jury, can you point to them  
11 the general area where this investigation took place, where  
12 1514 -- or 1415 Greens Parkway?

13          A.    It's right where the A's at right here, basically  
14 45 and the Beltway north.

15          Q.    All right. If you tap the screen twice, it will --

16          A.    I think you've got to do it.

17          Q.    Yeah. There we go. State's Exhibit 2, what are we  
18 looking at here?

19          A.    We're looking at a satellite view specifically of,  
20 I guess, the general area where the apartment complex is  
21 located, the Fall Lake Apartments.

22          Q.    Okay. Now, we see a lot of apartments in this  
23 particular aerial view in State's Exhibit 2. Where exactly  
24 is the apartment complex that 1415 -- or the Falls (sic)  
25 Lake Apartments. Let's just --



1           A.    Right there where that A's at right there, it will  
2 say Fall Lake Road leading into it.

3           Q.    Okay.  And what about State's Exhibit 3?  What are  
4 we looking at?

5           A.    That's looking at -- I guess would be, like, the  
6 more corner side of the complex.  This is the target  
7 building right here where we knew Apartment No. 6 was  
8 located and it's still a satellite view, just more of a zoom  
9 in.

10          Q.    Okay.  And on State's Exhibit 2, would you, for the  
11 jury, just circle where the Apartment No. 6 and the Falls  
12 Lake --

13          A.    Okay.  This is the target building here, State's  
14 Exhibit No. 6 would have been -- it's off a little bit.  
15 Right in here.

16          Q.    Okay.  And again, State's Exhibit 3 is just a  
17 close-in of that area?

18          A.    That's correct.

19          Q.    All right.

20          A.    Target apartment would be here.  I'm sorry.  The  
21 screen's off but the one that's closer.

22          Q.    Okay.  What about State's Exhibit 4?  What are we  
23 looking at here?

24          A.    This is a street view of -- if you could -- on the  
25 aerial satellite view, there was a area in the middle.  As

1 you can see, the high-powered power lines, which is right  
2 over here, that's the high-powered power lines. So, this is  
3 the area right over here. Those are your high-powered power  
4 lines. Target complex is here, over here on this side.

5 Q. Okay. I'm going to put them back together. This  
6 may be a little confusing. Okay. Where is the target  
7 apartment on State's Exhibit 4?

8 A. You can't actually see the target apartment but  
9 it's over here on the far end and this is an apartment  
10 that's across from it and this is a high-powered power line  
11 area. Obviously there's nothing there.

12 Q. All right. What about State's Exhibit 5? What is  
13 that?

14 A. That is another street view. You could actually  
15 see the target apartment. It's going to be this door right  
16 here, that red door, second story. Stairwell leads up to  
17 that door and only that door. There's not a door to the  
18 left or right. That's their -- staircase is specifically  
19 for that door.

20 Q. Okay. And just so that we can orient ourselves,  
21 State's Exhibit 4 is essentially the same as State's Exhibit  
22 5; is that correct? It's just that we're looking to the  
23 right?

24 A. That's correct.

25 Q. Okay. So, you get more of the view to the right in

1 State's Exhibit 5?

2 A. That is correct.

3 Q. All right. What about State's Exhibit 6? What  
4 exactly are we looking at here?

5 A. We're looking at the very corner of where that  
6 apartment is located. As you can see, the chain-link fence  
7 is pulled back here. This is the stairwell I was talking  
8 about and then this is the target door right up here to  
9 Apartment No. 6.

10 Q. Okay. And again, State's Exhibit 5 contains the  
11 same view of State's Exhibit 6; it's just a close-up?

12 A. That's correct.

13 Q. All right. All right. Now, let's talk about --  
14 let's talk about October 27th, 2011, and the days leading up  
15 to -- and the days leading up to that investigation. Tell  
16 us about your investigation.

17 A. I received information from a confidential  
18 informant that narcotics were being sold out of this  
19 apartment. When I received the information and I could  
20 pinpoint by just the description of where the apartment was,  
21 I went out there with my partner and we just conducted  
22 surveillance. We just went out there and just watched, to  
23 see what was going on. We saw the layout -- we saw this  
24 layout here. As you can see, the fence was pulled back.  
25 That's one of the signs that we know because they're

1 controlled access apartments, so the gate opens and  
2 closes -- you got to know somebody there, you got to have a  
3 remote to get in or out. We know close to the apartment  
4 where narcotics are being sold, it's not uncommon to find  
5 things like this, the fence pulled back or maybe some of the  
6 wrought iron gate to be tampered with and they pull the bars  
7 out so people can walk in and out without having access  
8 through the main gate or pedestrian gate which you need a  
9 key for. Once we saw that, I found a good place to just  
10 sit, just conduct stationary surveillance, which was across  
11 the -- from the high-powered power lines, I had a straight  
12 view up to the door and I just started watching the traffic  
13 coming in and out. I noted that there was people going up  
14 to the door that would go inside, they weren't in there but  
15 for about a minute or so, they would come back out and they  
16 would leave. I would see cars pull up to the side of the  
17 road, stop. Everybody would access through this open area  
18 right there.

19 So, with that activity alone, I was out there  
20 for 30 minutes or so, I don't know exactly, but it was  
21 enough for me to determine that, okay, I suspected that  
22 that's what's being sold out of there was narcotics.

23 Q. And the activity that you saw, was that consistent,  
24 in your training and experience, with a location that's  
25 being used to distribute narcotics?

1           A.    Yeah, I mean, it was obvious what was going on.  To  
2 me it was.

3           Q.    Okay.  And just for the jury, where were you  
4 observing all of this from?  Obviously you don't want to  
5 tell us exactly where but where were you --

6           A.    No.  It's fine.  I was in this parking lot over  
7 here.  I just pulled my vehicle up there because I had a  
8 straight shot, just -- I mean, it was a straight-line view  
9 and it was the easiest spot for me to be in.  The road,  
10 there's no shoulder or anything so I couldn't just stop in  
11 the middle of the road, it would be obvious, so I just  
12 parked in the apartment complex across from it.

13          Q.    And were you in a City of Houston marked vehicle  
14 with the lights and sirens?

15          A.    No, I was in undercover capacity, just a plain car  
16 and plain clothes.

17          Q.    Okay.  Were you using binoculars or any kind of  
18 seeing device?

19          A.    Yes, I always carry binoculars just to get a closer  
20 look.  Obviously when we're sitting there in the complex,  
21 there's other people coming around, so I can't sit there  
22 with binoculars the whole time because it's obvious they're  
23 going to know that's the police, they're going to let people  
24 know police is out there watching.  So periodically when I  
25 saw something, I pull the binocular up, get a closer view of

1 what was going on, put them back down and that's what I used  
2 the binocular for.

3 Q. Okay. What about video or any sort of recording  
4 device?

5 A. No, we didn't have any cameras or video cameras of  
6 what was going on out there. Like I said, it'd be obvious  
7 with people walking around and stuff, if they see you out  
8 there taking pictures or some kind of video, and the stuff  
9 that we have is not real high tech, so we don't have one of  
10 the small cameras where we can just point and it will record  
11 everything. They're pretty bulky and we don't want to blow  
12 the investigation, you know, the preliminary stages of it.

13 Q. Okay. And using State's Exhibit 5, where would the  
14 people go? Like what would be the path they would travel to  
15 get to the apartment?

16 A. They would either be on foot and use the sidewalk  
17 that you see on there, and they would just walk right  
18 through this hole -- I'm sorry. The hole's right over here.  
19 They would park their cars right here on the side of the  
20 road, maybe a little bit further back -- you can't see it  
21 here -- and they would just walk right up and then go in  
22 there or they would ride their bike and they would just set  
23 it up against the tree or the wrought iron fence, I don't  
24 remember, but they would just leave the bike on the side and  
25 walk right through the hole there and walk right up the

1 apartment, the stairwell, and back out.

2 Q. Okay. Now, this is during your initial  
3 surveillance when you were watching this apartment. You  
4 said you sat there about 30 minutes?

5 A. That's correct.

6 Q. Did you ever see anyone come out of the apartment?

7 A. Not on that -- not on that instance, no, I don't  
8 remember seeing anybody come out.

9 Q. Okay. All right. So, you didn't see anyone come  
10 out. What did you do -- what did you do next?

11 A. After that, my partner and I, we wrapped it up and  
12 we went back and then I got back with the confidential  
13 informant of mine and we talked about what was going on and  
14 I instructed the informant that we were going to go out  
15 there and attempt to purchase narcotics out of that  
16 apartment.

17 Q. Okay. Did you do that?

18 A. Yes, we did. We went back out, took the  
19 confidential informant out there, we made what we call a  
20 controlled buy, which the informant goes to that apartment,  
21 purchases the narcotics, brings the narcotics back to me and  
22 we conduct our field test of it, tag everything, conduct --  
23 do a report and use that information in turn to draft a  
24 search warrant to get back inside that apartment.

25 Q. Okay. Now, when you met with this person, did you

1 give them specific instructions?

2 A. Yes. We meet -- we always do it and we have to do  
3 this for the sake of the investigation, make sure that  
4 everything's controlled. Myself and a partner of mine,  
5 we'll meet with the informant, we'll go to a secluded place  
6 away from vehicle traffic, pedestrian traffic, make sure  
7 there's nobody out there watching. Myself, I'll search the  
8 informant, make sure the informant does not have any  
9 narcotics, money or any contraband on their person. I  
10 provide the informant a -- buy money, city buy money that's  
11 issued to me every month. I provide the informant with that  
12 money, instruct the informant to specifically go to that  
13 location and attempt to purchase the narcotics. The  
14 informant never leaves my sight or my partner's sight at the  
15 time. In this case it was me. I take the informant up  
16 there and I watch the informant go directly to the door,  
17 come back to me and then we drive to a -- more than likely  
18 the same secluded location, the informant would give the  
19 narcotics back to me, I would either recognize them, conduct  
20 a field test, send it to the lab to get tested. Once we  
21 know what it is for sure, then we can draft the search  
22 warrant. After the informant gives me the narcotics, we  
23 conduct another search, make sure they're not keeping  
24 anything, they didn't keep any of the money and make sure  
25 everything's right and then the informant is cut loose at



1 that time.

2 Q. All right. When was the first time you saw the  
3 defendant in this particular case?

4 A. It would have been within the 48 hours that the  
5 search warrant was signed.

6 Q. Okay. Tell me about that.

7 A. I seen the -- I remember specifically seeing  
8 somebody come out of the -- that apartment and I remember  
9 having my binoculars out and I saw them use the key to close  
10 the door to the apartment. So, I figured, okay, well, this  
11 has to be our target because he's --

12 MR. MARTIN: Objection to what he figured,  
13 Your Honor. Not relevant.

14 THE COURT: Sustained.

15 A. Okay. Once I see that, I know somebody's  
16 exercising control of the apartment by using a key, so  
17 that's a person that I'm going to take interest in. We  
18 conduct surveillance of that person, we find that up the  
19 street -- up the street and across there's a convenience  
20 store. That person goes to the convenience store, is there  
21 for a few minutes, walks back, goes back to the apartment,  
22 uses the key and goes inside, obviously using the key to  
23 unlock the door.

24 Q. (BY MR. LEONARD) Okay. Now, the person that you  
25 saw leave the apartment using the key, walk to the

1 convenience store and come back and use a key, do you see  
2 that person here in the courtroom today?

3 A. Yes, I do.

4 Q. Okay. Can you identify him by an article of  
5 clothing that he's wearing?

6 A. Yes, gentleman over here to my right. He's got a  
7 blue, looks like pinstriped shirt.

8 MR. LEONARD: Judge, may the record reflect  
9 this witness has identified the defendant?

10 THE COURT: Can you just do me a favor for the  
11 record and tell me which position: First, second or third?

12 THE WITNESS: He's the third one.

13 THE COURT: Okay. They all have blue shirts  
14 on. I'm sorry.

15 THE WITNESS: I'm sorry. Black male, black  
16 gentleman.

17 THE COURT: All right.

18 MR. LEONARD: Judge, may the record reflect  
19 this witness has --

20 THE COURT: The record will so reflect.

21 MR. LEONARD: Thank you.

22 Q. (BY MR. LEONARD) All right. Now, do you remember  
23 what date this was when you observed this individual?

24 A. It was the date that he conducted the controlled  
25 buy.

1 Q. Okay. All right. Okay. So, once you conducted  
2 the controlled buy, what did you do next?

3 A. After we conducted the controlled buy, we -- I took  
4 the informant back to where he or she lives, dropped the  
5 informant off, went back and just kind of sat out there  
6 again for another little bit, making sure that everything  
7 was still going the way I suspected that it was going to and  
8 I observed the same activity that was consistent, in my  
9 opinion, with narcotics trafficking.

10 Q. Okay.

11 A. Stayed out there for another little bit and left,  
12 then I went back to the office and drafted a narcotics  
13 search warrant based on the incident that had just occurred  
14 and went and got it signed by a magistrate.

15 Q. Okay. Once you got the search warrant signed by  
16 the magistrate, what did you do next?

17 A. After that I meet with my supervisor, I advise him  
18 that I have a search warrant. We get with units that are  
19 going to assist us, uniformed units that are going to assist  
20 us in the execution of this warrant. We have what we call a  
21 briefing. We'll have a big TV such as you can see up here,  
22 we'll bring up pictures very similar to what you guys see up  
23 here. We let them know on the tactical aspect of it, the  
24 entry team, which is the narcotics squad, my squad, we're  
25 going to go up there and we decide the route that we're

1 going to take to have a tactical advantage to getting up to  
2 the target door. And we also decide what areas are going to  
3 be covered by the marked units in their marked police cars  
4 to have police presence, that way there's no question as to  
5 what's going on there; anybody seeing outside the window or  
6 anybody looking, driving by, they can see that it's police  
7 out there and it's not somebody just getting their door  
8 kicked in.

9           Once that's decided, we go out to what we call  
10 a staging location somewheres nearby. Everybody suits up in  
11 their official raid gear that's issued by the City of  
12 Houston for narcotics officers. We get into an unmarked,  
13 which is a -- it's a raid van that we call it, just a big  
14 van. We go to a staging location and we just sit there and  
15 wait.

16           While we're sitting there waiting, we assign  
17 an officer to conduct surveillance at the location before we  
18 go out there.

19           Q.    Okay, Officer Zamora, let me stop you and kind of  
20 chop some of this up a little bit.

21           A.    Yes, sir.

22           *THE COURT:* Mr. Leonard, let me stop you.

23           Ladies and gentlemen, we're going to go ahead  
24 and take our morning break at this time. We will be in  
25 recess until 11:30. If you would like to go downstairs and

1 get something to drink and bring it back up, you're welcome  
2 to do that. We'll probably break for lunch about 12:30.

3 (Jury not present.)

4 (Recess.)

5 (Jury present.)

6 THE COURT: Be seated, please. Mr. Leonard,  
7 you may proceed.

8 MR. LEONARD: Thank you, Judge.

9 Q. (BY MR. LEONARD) All right, Officer Zamora. When  
10 we left off, you were telling the jury that you had just  
11 obtained a search warrant.

12 A. Correct.

13 Q. Okay. What I wanted to do now is kind of, using  
14 State's Exhibit -- State's Exhibit 2, just kind of describe  
15 in general, what was the game plan for executing the search  
16 warrant on Apartment No. 6?

17 A. During the briefing of the search warrant, we  
18 determined that the best route to take into the complex --  
19 we didn't want to drive up directly up into the hole in the  
20 fence because if they look out the window, they're coming  
21 out, they're going to see what's going on and we're not  
22 going to have the -- I guess the element of surprise  
23 anymore. So we figured our best approach, tactical  
24 approach, I knew from surveillance that that was the exit  
25 and I believe the entrance was right in here, but it's one

1 of those where the entrance is just an entrance and the exit  
2 is just an exit so it's kind of like one-way traffic coming  
3 in through there. So, we figured we're going to set up  
4 surveillance and the surveillance was set up across -- over  
5 here in this parking lot, the same place where I could  
6 conduct surveillance because it was the best place. He had  
7 a straight shot.

8 Q. And who's conducting surveillance at the apartment  
9 complex across the street?

10 A. Officer Curtis, another narcotics officer.

11 Q. Okay. Was he in a marked uniform or --

12 A. No, he was in plain clothes and a unmarked car,  
13 just blending in -- as a regular car there. So we figured,  
14 okay, we're going to put Curtis there across the street to  
15 conduct surveillance and once we saw some activity, saw the  
16 person we believed to be the target or any activity into the  
17 apartment, then we would make our decision whether we're  
18 going to execute the search warrant at that time or we're  
19 just going to wait a little longer.

20 And our tactical approach is going to be --  
21 we're going to be coming in from this side up here and we're  
22 going to come down this street here and before we got ready  
23 to come in, we're going to let our surveillance man get into  
24 this complex while they're waiting for somebody to leave or  
25 somebody to come in and somehow stage down here and wait for

1 us because we knew that was an exit gate. So when we come  
2 down, he was to come up, open the gate for us, drive his  
3 vehicle up, wait for the gate to open, back up, let us in  
4 and he was going to come back around and set back up. We  
5 were going to drive our van across here and up here,  
6 dismount right there and hug the front of these buildings  
7 right in here and go up to the target apartment. That way,  
8 if anybody comes out of the apartment, they actually have to  
9 turn all the way back around to see anybody coming and we're  
10 going to be hugging the building so it'd be a little harder  
11 for them to see us.

12 Q. Okay. Now, you say "us." How many people? Is it  
13 just you and a couple other officers?

14 A. No, we have to have at least -- for officer safety  
15 reasons, we have to have at least five narcotics officers  
16 make an entry. In this case it was one, two, three, four,  
17 five, six, including my supervisor that were going to be  
18 making entry.

19 Q. Okay. And what were you guys wearing?

20 A. We're wearing our full raid gear, helmet, heavy  
21 vest marked with "Police" on the front and back, our  
22 tactical -- what we call our tactical rig where our  
23 weapons -- weapon goes.

24 Q. Okay. So, there are six narcotics officers total?

25 A. Correct.

1 Q. Are there any other police officers out there?

2 A. The marked units are there for presence. They were  
3 to pull up to the front on the street side up here and that  
4 way they know -- well, once we got up here, they were going  
5 to go through that hole and just kind of fan out a little  
6 bit, make sure that we turn the lights on in the patrol cars  
7 and that way there's no question about what's going on  
8 regarding the police presence.

9 Q. Were the marked units -- when were they supposed to  
10 appear? Like after you --

11 A. We were going to -- we were going to let them know  
12 by radio. They were just staged out somewheres in the area  
13 and when we made our approach, we let them know, okay, we  
14 call -- we say "start choking up," which they start coming  
15 in a little closer and once we got off on foot and  
16 dismounted up, then we told the units to go ahead and just  
17 bring it in and let them know it's the police because it  
18 wasn't going to take us very long to get from here to here.

19 Q. How many marked units were out there with you that  
20 day?

21 A. I believe it was four, if I'm not mistaken.

22 Q. So, four individual police cars?

23 A. Yes, because we had Watson and Schuster riding  
24 together. Two -- yeah, would have been four units.

25 Q. Okay. And how many uniformed police officers?



1           A.    We had one, two, three, four -- seven uniformed  
2 police officers.

3           Q.    Okay.  So, a total of 13 officers together?

4           A.    Yes.  We had the K-9 that was going to be there  
5 and -- but he just kind of stays back and just waits for the  
6 whole thing to finish before he comes up if the assistance  
7 of a K-9 is going to be needed.  So we had six narcotics  
8 officers, a K-9 on standby and we had the seven uniformed  
9 officers.

10          Q.    So, all of this is discussed and planned before you  
11 go out to the complex, right?

12          A.    That's correct.

13          Q.    Okay.  At what point -- or tell us about when you  
14 actually decide to go out there.  What time did you guys go  
15 out there?

16          A.    It was about 9:00 o'clock when we decided to go  
17 ahead and make entry.  We were already staged at the staging  
18 location.  I had made contact with my cell phone because  
19 we're out of radio range because we're not -- we're nearby.  
20 We're not real -- we're not right on top of the location.  
21 Officer Curtis was in contact with me with his cell phone.  
22 I told him, look, just call me when you see something, let  
23 me know what you see and then I'll discuss it with the  
24 sergeant since I'm the case agent.  My sergeant is obviously  
25 in charge.  We'll discuss it.  We'll go with the decision

1 that we're going to go or not.

2 He calls me at about a few minutes before  
3 9:00, somewhere around 9:00 o'clock and he tells me, Hey,  
4 look, there's a -- I saw a white car arrive at the complex,  
5 I saw two people get out, I -- they caught my attention, I  
6 watched them, they walked along the side of the fence  
7 towards Greens Parkway and they went up to the door. The  
8 guy -- the physical description that you gave me, the male  
9 who opened the door fit that description. And that's what  
10 he told me.

11 I discussed that with my sergeant, said, Look,  
12 I think that's going to be the target, that's who we're  
13 looking for, somebody's inside the apartment, let's go ahead  
14 and go. We made the decision at that time to go ahead and  
15 serve the warrant.

16 Q. Okay. Is this 9:00 o'clock at night or 9:00  
17 o'clock in the morning?

18 A. 9:00 o'clock in the morning, so it's bright  
19 daylight.

20 Q. Okay. This is October 27th, 2011, 9:00 o'clock in  
21 the morning?

22 A. That's correct.

23 Q. Do you remember what the weather conditions were  
24 like on that day? I mean, was it raining? Was it --

25 A. No, it was clear, visibility was excellent.

1 Q. Okay. Did he say if there was -- he said he saw  
2 two people walk up to the target location.

3 A. Correct. It was a male and female's what he told  
4 me.

5 Q. Okay. Tell us what happened next.

6 A. After we made the decision, went ahead --  
7 everything went as planned. We went ahead and made entry  
8 back over here.

9 Q. And I'm showing you State's Exhibit 6.

10 A. Can you zoom out -- there.

11 Q. Is that better?

12 A. Yeah, that's better. And we were going to be  
13 coming in from this side. So, this is the buildings we're  
14 going to be hugging. So, we dismounted, we -- the -- we saw  
15 the white car, there was only one white car there that we  
16 figured -- the -- my -- the surveillance officer was talking  
17 about. We dismounted --

18 Q. Okay. Just going to show you State's Exhibit 5.  
19 What's the path that you guys were taking?

20 A. The car was parked out here on this side. Out  
21 here. Out here in this little area right here of the  
22 parking lot, that's where we dismounted and we walked this  
23 line right up here, came all the way up here, came up to the  
24 stairs and then came up the stairs to the door.

25 Q. All right.

1           A.     Before -- when we started coming up the stairs, out  
2 of this window up here -- oh, I don't know what I did.

3           Q.     I did it.

4                     *THE COURT:* I don't either.

5           A.     Do I just hit "exit"? There it goes.

6                     Out of this window up here, Officer Gonzales,  
7 who was in what we call the stack, he was in the -- he also  
8 carries a long gun, what we call a long gun, is an AR-15,  
9 same thing I'm carrying. I carry an AR-15 but I run point  
10 so I'm the first one through the door so I'm essentially  
11 leading the whole team up there.

12                    He's towards the back. His job is, since  
13 we're going to be going up the stairs, we're going to have a  
14 tactical disadvantage, if there was to be an engagement  
15 coming from upstairs to downstairs. Everybody knows  
16 whoever -- tactically whoever's upstairs has a tactical  
17 advantage on whoever's downstairs. So, if somebody --  
18 there's going to be an engagement, it's going to be from  
19 upstairs.

20                    So his job with an AR-15, with a long rifle,  
21 is to make sure he covers the window and covers on the door  
22 while we're making our approach up in case we get surprised  
23 or ambushed, so he stays down here. He sees somebody  
24 looking through the window and he advises that we're  
25 compromised. We know that "compromise" means somebody's

1 looking out the window, somebody knows we're going up there,  
2 so we no longer have the element of surprise.

3 So once we get up here, we're up the stairs, I  
4 cover down on the front door. The moby man, who's the guy  
5 that's got the battering ram, he sits up and he's got to hit  
6 the door four, five times for the door to come open.

7 Officer Lara, who's also in the stack, he's a  
8 designated grenadier. We have what we call a flashbang;  
9 it's a flash noise diversionary device, and it does exactly  
10 what it sounds like. It's a big flash, so it will blind you  
11 and it's got a loud noise. Not loud enough to make people  
12 have hearing loss or ear damage but it's loud enough to  
13 distract and stun somebody so when we get inside, we can  
14 overwhelm whoever's inside and dominate that room for  
15 officer's safety.

16 Q. (BY MR. LEONARD) Okay. Who's carrying the  
17 flashbang?

18 A. Officer Lara's carrying the flashbang.

19 Q. Okay.

20 A. So as soon as the door goes open, the moby man goes  
21 over here and he gets out of the way because he doesn't have  
22 a weapon. So if there's anything going on, he still has the  
23 weapon in his hand. He's got to control it. He can't throw  
24 it and risk hitting somebody. He holds onto that; he gets  
25 out of the way. Officer Lara goes around me, which would be

1 to my left, comes to the doorway, looks, makes sure it's  
2 clear and he drops the flashbang inside.

3 Q. Okay. How long does it take the flashbang to go  
4 off?

5 A. A second or two. I mean, it's pretty much as soon  
6 as you drop it, it might be a one or two count and then the  
7 flashbang, it goes off.

8 Q. Okay. Who's the first person to go in after the  
9 flashbang?

10 A. I'm the first person to go in after the flashbang.

11 Q. Okay.

12 MR. LEONARD: Judge, may I approach?

13 THE COURT: Sure.

14 MR. LEONARD: May I have the officer step  
15 down?

16 THE COURT: Sure.

17 Q. (BY MR. LEONARD) Officer, if you can, step down.

18 A. (Witness steps down.)

19 Q. Officer Zamora, I want you to -- because we don't  
20 have a --

21 THE COURT: Mr. Martin, Mr. Donley, feel free  
22 to move around if you need to.

23 Q. (BY MR. LEONARD) Because we don't have an actual  
24 diagram of the inside of the apartment, if you could, just  
25 draw the jury a sketch of kind of the layout of the

1 apartment and kind of what you see when you're entering the  
2 apartment.

3 A. Okay. So, this would be the stairwell that we're  
4 coming up. This would be the balcony up here. This would  
5 be the front door. This is just railing here. We're  
6 sitting here. I'm the first one to come in here. The  
7 kitchen area is this area right in here. This is the  
8 kitchen area. There's a hallway that leads over this way.  
9 This would be the restroom here and this is a bedroom up  
10 here. Coming into the door --

11 Q. And if you could, just label the rooms: K for  
12 kitchen.

13 A. I'll label them.

14 Q. Okay.

15 A. This is the living room. This would be den area  
16 and the balcony here. So, this is your kitchen, living  
17 room, your restroom or bathroom, this is the bedroom. It  
18 was a one-bedroom. And this is your -- I guess your  
19 den/kitchen area where you would have your breakfast table  
20 or kitchen table. We'll just call it the den area. And  
21 this up here is your balcony. We come through the door --  
22 I'm the first one to come through the door. As soon as I  
23 come in from the kitchen to the living room, there's a  
24 female that's running this way.

25 Q. What -- was she saying anything? Was she --

1           A.    I don't remember her saying anything or anything  
2 specific. I know she was running from here to here, to the  
3 living room. She immediately got down in this area right  
4 here. She just went down to the ground. She figured it's  
5 the police coming in. When we come in, it's: "Police,  
6 search warrant, police, search warrant," make sure everybody  
7 knows it's the police in there.

8           Q.    Okay. Did you feel threatened by this female  
9 running towards you?

10          A.    When she came down and she had her hands up, I'm  
11 still running point. I can't stop right here because my  
12 whole team is still behind me, so I have to keep moving.  
13 That's one of the jobs that I have. If this person does not  
14 appear to be a threat, I have to keep moving through to let  
15 the rest of my team go in and that way not everybody gets  
16 bogged down inside. So once she's in, I continue to flow  
17 and I come towards the den area because I don't see anybody  
18 standing over here.

19                        Here we see a big -- and it's a real good big  
20 size pit bull and when we come in here, it's obvious -- the  
21 dog's kind of running away from us, so it's obvious the dog  
22 doesn't want any part of what's going on. The dog is  
23 scared. It's obvious -- I stay on the dog. Obviously we've  
24 been attacked. Myself, I've been attacked by pit bulls  
25 going into these houses. It seems to be a dog of choice.



1 And we have to shoot these dogs at the time because there's  
2 no other way to restrain them when we're coming in.

3 So I see the dog and the dog is trying to get  
4 out to the balcony. It's actually rolling into the wall  
5 trying to get in there. It's not uncommon after a flashbang  
6 because it's so loud and it stuns them and their sense of --  
7 their hearing is a lot more heightened than human hearing,  
8 so the flashbang to them sounds a whole lot louder than to  
9 us.

10 So you can tell the dog is disoriented, is  
11 kind of trying to push, you know, through the door trying to  
12 get out to the balcony. It doesn't want anything that's  
13 going on here, so when I --

14 Q. What did you do once you saw the dog trying to run?

15 A. Once I saw the dog disoriented and over here, my  
16 attention was drawn by somebody coming from, like, the  
17 bedroom area. There's, like, a little entrance, there's a  
18 entrance here, which would be the bedroom, somebody comes  
19 into this area in here. So, my attention is drawn over here  
20 and now my job is to concentrate on this person here and  
21 whoever's coming in behind me is going to have to take care  
22 of the dog. I don't want to engage the dog because it's  
23 obviously disoriented and trying to get out and a lot of  
24 times they'll stay in the corner and put their head down and  
25 let you know they're not being -- they're not a threat.

1 Q. Did you identify the person that was running  
2 towards you from the other direction?

3 A. Not immediately. I saw a person coming this way so  
4 my attention is drawn this way so I turned this way and I  
5 ordered -- I began giving the person verbal commands, "Get  
6 on the ground, get on the ground." That person in return  
7 complies with the commands. As he's going down, the -- in  
8 training everybody always knows that you don't ever look at  
9 somebody's eyes. You look at somebody's eyes, that's the  
10 only thing you look at. Eyes, they can look at you as bad  
11 as they want, eyes aren't going to hurt you. What's going  
12 to hurt you is going to be their hands or what's in their  
13 hands.

14 Immediately when I identified the person, I  
15 started looking for the hands, see what's in the hands,  
16 whether it be a knife or gun or if he's going to reach out  
17 and grab me or something of that sort.

18 Q. Did you see this person have anything in their  
19 hands?

20 A. Yes, as the person is coming down, I start looking  
21 for the hands, I see the hands as they're coming down with  
22 the right hand or see a pistol or what appears just a big  
23 black pistol in the hand and it's tossed out to one side,  
24 the person goes down. Once I see that, I scream out, "Gun,"  
25 to let everybody know inside that there's a gun present

1 close to a -- close to a suspect.

2 I've got a long rifle so I can't just go up  
3 there and handcuff him because it's a long rifle. So I stay  
4 on this person, I go over here to where the gun is at and I  
5 get a position above the person where the person is on the  
6 ground, I stay on the person until the rest of my team  
7 continues clearing the bedroom over here, the restroom, the  
8 kitchen area. Once everything is secure, I call for  
9 somebody to "go hands," which is somebody come up and  
10 handcuff the suspect.

11 Q. Okay. What do you say specifically?

12 A. Go hands, meaning if somebody was carrying just a  
13 pistol, they can holster their weapon and they can come up  
14 and put handcuffs on the suspect.

15 Somebody else was putting the female into  
16 custody. I've got to check the report on who came over  
17 here, took this suspect into custody. Once the suspect is  
18 into custody, then we just go ahead and leave the pistol  
19 there for the time being. We noticed there was no furniture  
20 inside the apartment, there were no other persons inside the  
21 apartment, so we leave the weapon undisturbed so we can take  
22 scene photos of where everything's at so we just leave the  
23 weapon there undisturbed once we get everything under  
24 control.

25 Q. Okay. And this whole operation, from the time

1 you -- let's say from the time you first kicked the door in  
2 to the time you entered the apartment and had everyone  
3 secured, how long are we talking? Are we talking a couple  
4 of minutes, ten minutes? Five minutes?

5 A. It's a matter of 15 to 20 seconds. It's a  
6 one-bedroom apartment. It's about the size of the  
7 courtroom, I could say. It doesn't take very long for six  
8 people to disperse and secure the whole -- especially when  
9 you don't have any furniture. So it was quick. It went  
10 through pretty quick.

11 Q. Okay.

12 A. And that's the way we're trained is to be dynamic,  
13 to go in there and overwhelm somebody for officer safety and  
14 the preservance (sic) of evidence we got to get in there  
15 quick, take care of business and then once everything's  
16 settled, then we can go back and analyze and talk about what  
17 happened.

18 Q. Okay. Did you recognize either one of the suspects  
19 that you found inside of the apartment?

20 A. Yes. Once we stood the suspect up, I saw that he  
21 was the same person that I observed during my surveillance  
22 to -- going in and out of the apartment.

23 Q. Using a key?

24 A. Using a key. So when we stand him up, you know,  
25 once we -- we call we would dress down, we take off our

1 heavy vests, our helmet, our alarm rifle goes inside the  
2 case, I -- he's just being detained there, so I go up there  
3 and I search him, I find some keys in his pocket and we go  
4 to find out and it is the keys to the front door of the  
5 apartment.

6 Q. Okay. Do you recognize that person here in the  
7 courtroom today?

8 A. Yes, he's the defendant, black gentleman here with  
9 the blue shirt.

10 MR. LEONARD: Your Honor, may the record  
11 reflect this witness has, again identified the defendant, I  
12 guess.

13 THE COURT: The record will so reflect.

14 Q. (BY MR. LEONARD) Okay. What did you do? Did you  
15 begin processing the scene immediately after you had taken  
16 everyone into custody? What did you do next?

17 A. No. Once the scene was secure and everything was  
18 under control, the word that we had received from on the  
19 street -- we had two search warrants that day. We knew that  
20 this was going to be -- we could talk about it a little  
21 later, what we believed to be is it's a stash location. We  
22 knew that more drugs were going to be here and not in the  
23 other apartment that we were going. We were going to go to  
24 another apartment relatively close to this location. We  
25 didn't want -- a lot of times what happens on the street is

1 people start making phone calls, hey, they hit so-and-so's  
2 apartment or they start sending messages and it lets  
3 everybody know if -- for example, if I'm a drug dealer and I  
4 go buy my drugs from this apartment and I know they just hit  
5 his apartment, then I know I've got to get rid of my drugs  
6 because they're probably coming after me. There is a  
7 chance, there is a slight chance but whatever chance exists,  
8 a lot of times they don't want to risk it so they'd rather  
9 just flush the dope and get rid of the dope.

10 Q. So you had another search warrant?

11 A. We had another search warrant that we -- or we  
12 believed that that apartment that we had the other search  
13 warrant for was resupplying out of this apartment, so as  
14 soon as all of this was settled and we know, okay, we have  
15 the target, who we were looking for, we don't have to --  
16 because if we didn't have the person who we believed had  
17 control of that apartment, then we have to set up  
18 surveillance again and try to wait for somebody maybe to  
19 show up eventually and try to get them that way so --

20 Q. Did you eventually leave this apartment?

21 A. Yes. We left this apartment, suited up again and  
22 went down the street and executed the other search warrant  
23 that we believed was getting their resupply from this  
24 apartment.

25 Q. Okay. And you can go ahead and have a seat,

1 actually.

2 A. (Witness seated.)

3 Q. Now, Officer Zamora, tell me about this. How do  
4 you execute a search warrant on Apartment No. 6 in the Falls  
5 Lake Apartments and then just leave? How do you do that?

6 A. Well, we leave an officer, narcotics officer, who's  
7 knowledgeable and we're confident that can hold the scene.  
8 He stays inside. He preserves the scene. He doesn't toss  
9 the apartment or start searching or anything. We assign  
10 somebody, who was Officer Gonzales, he's going to stay there  
11 and he's going to stay there with a marked unit, with some,  
12 like, uniformed officers to just hold the scene.

13 I was the case agent in the investigation and  
14 the way it works is the case agent processes the scene, for  
15 obvious reasons: I'm the one that's going to do the report,  
16 in case there's going to be testifying, it's going to be in  
17 court, it's going to be the case agent. I have to bag and  
18 tag all the evidence, take photographs of all the evidence,  
19 of where it lies, so we asked that officers just preserve  
20 the scene and we leave a marked unit with uniformed presence  
21 so we make sure nobody else goes in there, for obvious  
22 reasons.

23 Q. And were those your instructions to Officer  
24 Gonzales?

25 A. Yes, those were my instructions for Officer

1 Gonzales.

2 Q. Okay. And how long before you actually returned to  
3 the scene? How long were you gone?

4 A. I don't remember exactly. Hour, hour 15 minutes  
5 maybe by the time we returned back to this apartment.

6 Q. Okay. And is that pretty common? I mean, is that  
7 following Houston Police Department procedures?

8 A. We don't have a set procedure for what we did.  
9 Like we say, we suspected that the other location was  
10 resupplying from here and we wanted to make sure we  
11 processed that scene first once this one was under control.  
12 There's no set standard for what we did. It's just what we  
13 came up with and we feel confident with that tactical plan  
14 and we went with it.

15 Q. Okay. So, what happened once you get back to  
16 Apartment No. 6 in the Falls Lake Apartments? What happens  
17 once you get back?

18 A. Yeah. Once we get back, then I start processing  
19 the scene. My sergeant, he grabbed the camera, he starts  
20 taking scene photos of where everything's at. I do a  
21 walk-through and I take notes of -- mental notes and written  
22 notes as to what's going on, where everything was at. And  
23 once I make the notes of where everything's at, then we  
24 start bagging and tagging evidence.

25 Inside these plastic bags, I write notes as to



1 what was where, what was recovered where. I remember going  
2 into the -- first place we looked is on the kitchen  
3 counter --

4 Q. Okay. Officer, may I approach --

5 MR. LEONARD: I mean, Judge, may I approach?

6 THE COURT: You may.

7 Q. (BY MR. LEONARD) Make this a little bit easier.  
8 I'm going to show you what's been marked as State's Exhibits  
9 7 through 20. Take a look at those photographs and tell me  
10 if you recognize them.

11 A. Yes. They're pictures of the inside of the  
12 apartment, along with evidence that was recovered.

13 Q. Okay. And take a look at State's Exhibits 23, 26,  
14 27 and 28 (sic). Take a look at those and tell me if you  
15 recognize them.

16 A. Yes. They're pictures of the outside of the  
17 apartment and one of a weapon that was recovered inside.

18 Q. All right. And are these photographs fair and  
19 accurate depictions of the scene -- of the apartment, No. 6,  
20 at Falls Lake that you observed on October 27th of 2011?

21 A. Yes, they are, sir.

22 Q. All right.

23 MR. LEONARD: Judge, at this time, I'm now  
24 tendering to defense counsel -- I believe I said 7 through  
25 20 and 23, 26, 27 and 28 (sic) and offering them into

1 evidence.

2 MR. MARTIN: May we approach, Judge?

3 THE COURT: Sure.

4 (At the bench, on the record.)

5 MR. MARTIN: I just need to be careful. You  
6 know, I filed that motion to suppress.

7 THE COURT: Right.

8 MR. MARTIN: And you said that we -- I have no  
9 objection other than what is pending. I just don't want to  
10 waive anything.

11 THE COURT: I understand. So, I guess -- you  
12 know, I don't know what the grounds are for the motion.

13 MR. MARTIN: Just that the affidavit is  
14 insufficient to set out probable cause to support the  
15 warrant.

16 THE COURT: Okay. And I actually, for the  
17 record, received a copy of the warrant from Mr. Martin this  
18 morning, just so I'd have an opportunity to review it. So,  
19 I mean, I guess, the reality is this is something I can take  
20 up really quickly; if you want to make an argument, I can  
21 excuse the jury really fast.

22 MR. MARTIN: I don't need to make -- I just  
23 don't want -- if you want to overrule my motion, that's  
24 fine, I'll say I have no objections other than what I've  
25 already mentioned. I just don't want to waive anything.

1                    *THE COURT:* I understand, but is there  
2 anything else specific about the warrant --

3                    *MR. MARTIN:* No, Your Honor.

4                    *THE COURT:* -- you believe is not sufficient  
5 to --

6                    *MR. MARTIN:* No, Your Honor.

7                    *THE COURT:* Okay. Didn't know if there was  
8 something particular that you were missing -- that was  
9 missing.

10                   *MR. MARTIN:* No, Judge.

11                   *THE COURT:* All right. Based on my review of  
12 the warrant, then I would deny your motion to suppress.

13                   *MR. MARTIN:* All right, Judge.

14                   *THE COURT:* So, I think probably the way to  
15 handle that is just say: Other than my previous objections,  
16 I don't have any other objections. How about that?

17                   *MR. MARTIN:* That's fine.

18                   *THE COURT:* Okay.

19                    *(End of discussion at the bench.)*

20                   *THE COURT:* All right.

21                   *MR. MARTIN:* Other than my previous  
22 objections, we have none at this time.

23                    *THE COURT:* All right. And therefore, State's  
24 Exhibits 20 -- 7 through 20, 23, 26, 27 and 28 (sic) will be  
25 admitted.

1 MR. LEONARD: Permission to publish?

2 THE COURT: Sure.

3 Q. (BY MR. LEONARD) Officer Zamora, I have quite a  
4 few photos here. I just kind of want to go through them  
5 with you. All right. State's Exhibit 27, I think it's  
6 pretty obvious but what are we looking at here?

7 A. Front door to the apartment with the number 6 on  
8 it.

9 Q. Is that the apartment that you entered on this  
10 particular day?

11 A. Yes, it was.

12 Q. All right. State's Exhibit 7, what are we looking  
13 at?

14 A. That's a kitchen counter inside the apartment. To  
15 the left here is a digital scale. Here is a bag that I  
16 suspected to be marijuana.

17 Q. Okay. And is this how you found the scene?

18 A. Yes. Yes, it was just like that, out in the open.

19 Q. Okay. What about State's Exhibit 8? What are we  
20 looking at here?

21 A. This is the den area that -- the living room's down  
22 here. I was explaining to the ladies and gentlemen here,  
23 this is the bedroom back here that you can see where I saw  
24 the suspect coming this way as I was coming this way. Out  
25 here is where the dog ran -- was running to that was trying

1 to get out because this is where the balcony's at so the dog  
2 came this way. As I came here, my attention was drawn this  
3 way, to somebody coming at me this way. I gave verbal  
4 commands to that person to get on the ground. That's the  
5 pistol that came out of their right hand. At that time I  
6 come out this way to where the pistol's at and stay on that  
7 person until somebody handcuffed him but that is the pistol  
8 that came out of Mr. Smalley's right hand.

9 Q. State's Exhibit 9, what are we looking at here?

10 A. That is the kitchen pantry. As you can see over  
11 here to this side, that's the living room that I was talking  
12 about earlier. This is the kitchen pantry. Door was  
13 closed. Door is open now. Up at the very top, you could  
14 see there's some hard powder substance, white up there, kind  
15 of chunk that you could see and this is a beaker, Pyrex  
16 beaker with a whisk, obvious sandwich bags, little bit more  
17 of a powder substance. All the powder substance tested  
18 positive for cocaine content. Other small boxes here. This  
19 is a cigarillo box, cigarillo box, cigarillo box, there's  
20 another baggie here, some baking soda, looks like another  
21 scale here and it looks like a baby bottle back there in the  
22 back but this is all -- and some other powder substance  
23 there. This is all in the pantry.

24 Q. What about 10? What are we looking at?

25 A. That's zooming in to the very top shelf. That's

1 the Pyrex beaker here with the whisk in it and as you can  
2 see, the chunk substance here of what at the scene field  
3 tested positive for cocaine.

4 Q. All right. What about 11?

5 A. We're going shelf by shelf. This is some more  
6 powder cocaine here. This over here was actually ecstasy  
7 tabs and they field tested positive for methamphetamines and  
8 this is a sandwich bag.

9 Q. All right. What about that? Is this --

10 A. Those are the ecstasy pills. You can see the  
11 little round circles that was on the shelf there.

12 MR. MARTIN: Sorry. What exhibit number is  
13 that that you're looking at? Thank you.

14 THE WITNESS: That's No. 12, sir.

15 MR. MARTIN: 12?

16 THE WITNESS: Yes.

17 Q. (BY MR. LEONARD) What about 13? What are we  
18 looking at?

19 A. That's obviously some cash money, a cigarillo box,  
20 some Swisher Sweets back here, just the box, the baby  
21 bottle. Digital scale here, digital scale here and then  
22 we've got the baggie of powder substance there.

23 Q. What about 14? What are we looking at here?

24 A. This is going to be a bottle -- I can't remember  
25 what -- I've got them labeled. That's going to be

1 prescription drugs and these are also going to be  
2 prescription drugs. I don't -- I'm not a -- I guess a -- I  
3 don't know a whole lot about prescription drugs and their  
4 abuse but I know these are some that are commonly abused and  
5 I made notes of them on the bags. If I looked at the bags,  
6 I can tell you what they are.

7 Q. All right. And 15?

8 A. That's the same thing, some more prescription  
9 drugs. These are the ones that you saw in the other  
10 picture. Shelf under that, it's another bag of what I  
11 suspected to be marijuana.

12 Q. All right. 16, what are we looking at?

13 A. These are some cigarillo boxes that were on top of  
14 the refrigerator.

15 Q. All right. 17?

16 A. That's little bits and pieces of cigarillos we  
17 thought they were smoking, not anything that was worth  
18 recovering, I don't think.

19 Q. What about 1? What are we looking at?

20 A. Up on top of the pantry, that cabinet shelf, that's  
21 a shotgun that I recovered that was up there. It was  
22 loaded. I believe it was a 20-gauge shotgun.

23 Q. And is that how you found it?

24 A. Yes, that's the way it was up there and we took it  
25 down to get a better picture of it.

1 Q. Is that -- is 19 a better picture of it?

2 A. Yeah. It was a 20-gauge pump shotgun. That's a  
3 better picture of the shotgun. That way we could see the  
4 pistol grip on it and the actual pump down here.

5 Q. All right. What about State's Exhibit 23? What is  
6 that?

7 A. This is the bedroom where Mr. Smalley was coming  
8 from when I encountered him in the den area. This is the  
9 doorway here. So as soon as I came in -- as soon as you  
10 come in the door, immediately to the right on the ground,  
11 that's a assault-style pistol rifle, modified with a stock  
12 here, is what most people know on the street as an Uzi.  
13 It's a 9 millimeter. This is the clip or the magazine for  
14 it.

15 Q. Okay. Now, we see a lot of stuff that you observed  
16 and took pictures of out in the open. Did you go through  
17 any of the drawers or any of the containers?

18 A. We went through the kitchen drawers that were  
19 already there. Like I said, there wasn't a bed, couch,  
20 table. There wasn't any furniture inside. So, we --  
21 obviously we didn't -- you know, we didn't have anything to  
22 search there. We searched in the closets. There was  
23 nothing in the closets. In the kitchen drawers we did find  
24 some paperwork with the name of --

25 Q. Okay. I want to show you this, State's Exhibit 20.



1 What's this? Is this one of the kitchen drawers?

2 A. That's one of the kitchen drawers and that's just  
3 loose money.

4 Q. And is it -- is that -- is anything unusual about  
5 having loose money just laying out in the drawer like that?

6 A. No. In an apartment where we suspect -- I mean,  
7 that they sell narcotics at or they sell dope out of, it's  
8 not uncommon to just pick a drawer and as you're selling  
9 them, you're just dropping your money in there, you're not  
10 really keeping track of it, you're just dropping it in there  
11 and you'll take care of your counting later.

12 Q. All right. I want to show you what's been marked  
13 as State's Exhibit 40 and 41. I want you to take a look at  
14 those documents and tell me if you recognize them.

15 A. Yes, I do.

16 Q. And are those the exact documents that you  
17 recovered from the apartment on October 27th of 2007?

18 A. These are the exact documents.

19 Q. All right.

20 MR. LEONARD: Judge, at this time I'm now  
21 tendering to defense counsel State's Exhibit 40 and 41 and  
22 offering them into evidence.

23 MR. MARTIN: We have no objections, Judge.  
24 We've seen these before.

25 THE COURT: 40 and 41 will be admitted.

1 MR. LEONARD: Yes. Permission to publish?

2 THE COURT: You may.

3 Q. (BY MR. LEONARD) All right. Where were these  
4 documents found at?

5 A. They were in one of the kitchen drawers. I believe  
6 I annotated where, if you give me one second. Kitchen  
7 drawer to the left of the stove.

8 Q. Okay.

9 A. So -- yeah, there's the stove there. Drawer to the  
10 left.

11 Q. All right. I'm going to show you State's Exhibit  
12 40 and it may be a little hard to see, but was there any  
13 identifying information on here that led you to believe that  
14 this paperwork belonged to the defendant, Mr. Smalley?

15 A. Yes. His name, specifically, is right here, Marcus  
16 Smalley.

17 Q. What about on State's Exhibit 41?

18 A. Yes, also his name, Marcus Smalley.

19 Q. All right. And are you sure these weren't found on  
20 his person?

21 A. No, no, those were found inside the drawer.

22 Q. Okay. Okay. Now, you said you searched  
23 Mr. Smalley's person. What did you find on his person when  
24 you searched his person?

25 A. We found the keys that -- they're the -- I think

1 there's a picture of the keys as well that are on the door.  
2 Once we found -- once I found the keys, I went to the door  
3 to try and make sure it operated. You could see where this  
4 is the damage caused to the door by the battering ram so the  
5 locking mechanism is not operating completely but we went in  
6 there and made sure the key turned back and forth and that's  
7 the key that turned. So, we took the keys in as evidence  
8 and we also -- he had a cell phone that was just constantly  
9 going off on his person.

10 Q. Okay. Okay. And I'm going to show you what's been  
11 marked as State's Exhibit 24 and 25. Take a look at those  
12 photographs and tell me if you recognize them.

13 A. Yes.

14 Q. And in general what are they photographs of?

15 A. Photographs of Mr. Smalley and the female that we  
16 observed go up to the apartment with him.

17 Q. All right. And are these fair and accurate  
18 representations of the defendant and the female as you  
19 observed them on October 27th of 2011?

20 A. Yes, they are, sir.

21 MR. LEONARD: Judge, at this time I'm  
22 tendering to defense counsel State's Exhibit 24 and 25 and  
23 offering them into evidence.

24 THE COURT: Any objections?

25 MR. MARTIN: No, Your Honor.

1                   THE COURT: 24 and 25 are admitted.

2                   MR. LEONARD: Permission to publish, Your  
3 Honor?

4                   THE COURT: Sure.

5           Q.     (BY MR. LEONARD) And what are we looking at in 25?

6           A.     That was the female that was arrested also at  
7 the -- at this apartment along with Defendant Smalley.

8           Q.     Okay. And is that the same female that came  
9 running from the room and dove on the ground?

10          A.     Yes, that's the one that ran from the kitchen into  
11 the living room and just gave up right there on the  
12 ground -- living room floor.

13          Q.     What about 24? What are we looking at?

14          A.     That's a picture of Mr. Smalley there at the scene.

15          Q.     Now, I want to kind of go through some of the other  
16 items that you found. All right. I want you to take a look  
17 at State's Exhibit 35 and tell me if you recognize it.

18          A.     Yes, I do.

19          Q.     Okay. And how do you recognize it?

20          A.     My handwriting is on the bag. As I explained  
21 earlier, when I put stuff in there, I annotate what is in  
22 there. I annotated the FTP means field tested positive,  
23 meaning I tested each item with a field tester and it tested  
24 positive, my initials, and the date up on top sealing the  
25 bag and hadn't been tampered either down here, which is by

1 the crime lab who opens it. So, I know it's mine.

2 Q. Okay. And are these the exact items that you found  
3 in the apartment on that day?

4 A. Yes. I didn't bubble wrap the beakers. We don't  
5 have that but those are the -- those are the items.

6 Q. Okay.

7 MR. LEONARD: Judge, at this time I'm now  
8 tendering to defense counsel State's Exhibit 35 and offering  
9 it and its contents into evidence.

10 MR. MARTIN: We have no objections to this  
11 being introduced into evidence.

12 THE COURT: 35 will be admitted.

13 Q. (BY MR. LEONARD) Officer, if you have a knife on  
14 you, you can go ahead and open that up.

15 A. (Witness complies.)

16 Q. And what is this?

17 A. Those are Pyrex beakers, glass.

18 Q. Okay. I guess I'm not going to pull out all of the  
19 items -- or I'll pull them out and put them back in. What  
20 exactly is this?

21 A. That's a digital scale.

22 Q. And what is this used for?

23 A. It's to measure gram amounts or ounce amounts of  
24 whatever you put on top. Mainly designed for food items for  
25 people who are on a diet. You can only eat so many ounces

1 of a certain meat or something, they put them on there.

2 Q. Okay. What about this?

3 A. That -- that one's actually a modified whisk. It  
4 looks like the tube of a pen with a very small whisk at the  
5 end of it.

6 Q. Okay. What about this?

7 A. That's another digital scale.

8 Q. And what about this item?

9 A. Another digital scale.

10 Q. What are these items?

11 A. Those are just empty plastic baggies, small plastic  
12 baggies.

13 Q. Where were all of these items found again?

14 A. They were all found in the pantry.

15 Q. Okay. And what are these items used for, in your  
16 training and experience?

17 A. In my training and experience, when we go to a  
18 location such as where we were, the scales are used to  
19 measure gram amounts of powder cocaine. The whisk and the  
20 beakers are used to process the powder cocaine into crack  
21 cocaine. It's a process that -- it takes a certain skill.  
22 Not anybody can turn crack cocaine -- or powder cocaine into  
23 crack cocaine.

24 What they do is they'll mix the powder cocaine  
25 with other stuff, such as other cutting agents like baking

1 powder or baking soda and stuff like that. They'll mix it  
2 and they'll mix it with water in a beaker. They heat it up  
3 in order to separate the dilutants out of the cocaine  
4 because if the cocaine is real diluted, it's not going to  
5 become into a rock form.

6           Once it's heated up and everything begins to  
7 separate, I know they shock it with cold water or ice water  
8 and the shock in temperature makes the cocaine come into a  
9 rock form. I don't know if you ever heard on the street  
10 called a crack cookie, well, it comes out, and it looks like  
11 a cookie because that's the shape of the beaker. At the  
12 bottom of the beaker, it's a round beaker, so it will take  
13 the shape of the bottom of the beaker. Once it's settled  
14 and hardens, it will settle at the bottom, they'll pour the  
15 water out and the cookie's left and they take it out and  
16 it's laid out to dry, not because the inside of it's wet,  
17 because it comes out pretty solid but just the outside, it's  
18 still wet, so they just set it up on the counter till it  
19 dries.

20           Q.    Okay.

21           A.    And the whisk is used to just keep mixing it and  
22 mixing it as you're heating it to keep separating the stuff  
23 out of the cocaine.

24           Q.    Okay. And in your training and experience, would  
25 these be considered the tools of the trade for someone who's

1 in the distribution and delivery of cocaine?

2 A. Yes, more specifically if you're in the business of  
3 manufacturing crack cocaine from powder cocaine. What we  
4 find a lot of times is that the person actually dealing the  
5 narcotics is not -- like I said, it takes a certain skill to  
6 be able to do this. We call -- what they call like a street  
7 chemist, so they would hire somebody on the street, and you  
8 know, in some cases give them money or pay them with  
9 narcotics to come to their place and they'll provide all the  
10 utensils and all the materials for them to make the cocaine,  
11 the crack for them because they're just -- like I say, it  
12 takes a certain skill and they're not able to do it right  
13 without messing it up and if you mess it up, an ounce of  
14 cocaine on the street is, you know, 25-plus-hundred dollars  
15 in cash, so you don't want to mess up an ounce of cocaine so  
16 you want to have somebody that knows what they're doing make  
17 it for you and then just pay them out of your own pocket.

18 Q. Okay. I'm going to show you what's been marked  
19 as --

20 *THE COURT:* Mr. Leonard, while you're doing  
21 that, ladies and gentlemen, we're going to go ahead and  
22 break for lunch at this time. If y'all will step back into  
23 the jury room, the bailiff will be with you in just a moment  
24 to take you to lunch.

25 *(Jury not present.)*



1                   (Lunch recess.)

2                   *THE COURT:* Just for the record, the defense  
3 gave the Court a certified copy of the search warrant to  
4 consider based on their motion to suppress. You did not  
5 want to put on any testimony; is that right?

6                   *MR. MARTIN:* That's correct, Judge.

7                   *THE COURT:* Okay. So, we need to make that  
8 Defense Exhibit 1?

9                   *MR. MARTIN:* Yes, Your Honor, just for  
10 purposes of the record and for purposes of a possible  
11 appeal, I'd like to offer into evidence and tender to the  
12 State Defense Exhibit No. 1, which is a certified copy of  
13 the affidavit and the search warrant in this case. And it's  
14 a certified copy of what I gave you earlier to look at.

15                   *THE COURT:* Any objections?

16                   *MR. LEONARD:* No objection from the State.

17                   *THE COURT:* All right. Defense Exhibit 1 will  
18 be admitted for purposes of the record.

19                   *MR. MARTIN:* Yes, Your Honor.

20                   *THE COURT:* Perfect.

21                   *MR. LEONARD:* Judge, one other, I guess,  
22 matter with regards to time. I have the fingerprint expert,  
23 who I think is going to be my next witness, to prove up the  
24 priors, so he's coming over -- I just want to let the Court  
25 know because we'll have to, I guess, fingerprint him and

1 then --

2                   *THE COURT:* Okay. We still got a ways to go,  
3 so we'll just do that at our afternoon break. That will  
4 probably be a good time to do that.

5                   *MR. LEONARD:* Okay. Just wanted to let you  
6 know.

7                   *THE COURT:* Great. Thanks. Appreciate that.  
8                   (*Jury present.*)

9                   *THE COURT:* Mr. Leonard, whenever you're  
10 ready.

11                   *MR. LEONARD:* Thank you, Judge.

12            *Q.* (*BY MR. LEONARD*) All right. Officer Zamora, when  
13 we left off, we were covering some of the items that you  
14 recovered from the apartment. I want to show you what's  
15 been marked as State's Exhibit No. 42. Would you take a  
16 look at that and tell me what that is?

17            *A.* These are a set of keys that I recovered from  
18 Mr. Smalley at the scene.

19            *Q.* Again, where did you recover those items from?

20            *A.* They were in his pants, specifically the front  
21 right jeans pocket.

22            *Q.* Okay. All right.

23                   (*Weapons checked.*)

24                   *THE BAILIFF:* Your Honor, these weapons are  
25 clear.

1                   THE COURT: Thank you.

2           Q.    (BY MR. LEONARD) All right. Officer, I'm going to  
3 show you what's been marked as State's Exhibit 61. Would  
4 you take a look at that and tell me if you recognize it.

5           A.    Yes. This was the weapon that came out of  
6 Mr. Smalley's hand upon making entry.

7           Q.    Okay. And how do you know that that's the weapon  
8 that came out of Mr. Smalley's hand? How do you know that  
9 that's the exact weapon?

10          A.    Serial number. I matched it on the -- under the  
11 evidence screen, so I know that's the same weapon.

12          Q.    Okay. And did you bring these weapons down here to  
13 the courthouse today?

14          A.    Yes, I did.

15          Q.    Okay. And is this the container or the bag that  
16 you brought it in?

17          A.    Yes.

18          Q.    Okay. And does it have any unique markings on it  
19 to let you know exactly what it is?

20          A.    Yes, it does. This is just the regular plastic  
21 bag, just like all the other ones, they'll put the weapon  
22 inside, they'll seal it up on top with evidence tape and  
23 then these are my initials up here. No, these are my  
24 sergeant's -- my sergeant tagged this. I put it -- I  
25 annotated everything in the report and my sergeant took it

1 down, to help out, to the property room; so these are my  
2 sergeant's initials that he tagged it in the property room,  
3 I signed for it and bring it to court.

4 Q. All right. Now I'm going to show you what's been  
5 marked as State's Exhibit 62. Would you take a look at that  
6 and tell me if you recognize it.

7 A. Yes. This is the 20-gauge shotgun that was up  
8 above the pantry when we made entry into the apartment.

9 Q. Okay. And how do you know that that's the 20-gauge  
10 shotgun that you recovered?

11 A. Same thing, the serial number matches to my report.

12 Q. Okay. And did you bring this weapon down here as  
13 well?

14 A. Yes, I did.

15 Q. Was it in this bag?

16 A. Yes, it was.

17 Q. Okay. Finally I'm going to show you what has been  
18 marked as State's Exhibit 63. Would you take a look at that  
19 and tell me if you recognize it.

20 A. Yes. This is the assault pistol Uzi that was  
21 recovered from the bedroom laying on the ground.

22 Q. Okay. And how do you know that that's the same  
23 weapon that you recovered?

24 A. Same thing, serial number matches and I picked it  
25 up this morning from the property room.

1                   MR. LEONARD: Your Honor, at this time I would  
2 now tender to defense counsel State's 61, 62 and 63 and  
3 offer them into evidence.

4                   MR. MARTIN: I just have the same objections  
5 that I had earlier.

6                   THE COURT: Okay. All right. 61, 62 and 63  
7 will be admitted.

8           Q.     (BY MR. LEONARD) And Officer, based on your  
9 training and experience, are State's Exhibit 61, 62 and 63,  
10 are those firearms?

11           A.    Yes, they are.

12           Q.    Okay. Now, I'm going to show you what's been  
13 marked as State's Exhibit 36. Take a look at this and tell  
14 me if you recognize it. Actually let's do this because this  
15 will be easier. I'm going to show you 36, 39 --

16           A.    Do you want me to open these?

17           Q.    Sure. 36, 39. Is that 38?

18           A.    This is 38.

19           Q.    37 and 64. And tell me if you recognize those  
20 items.

21           A.    I do. This is the magazine that was inside the  
22 pistol. This is ammunition that was recovered from the  
23 scene and the ammunition that was recovered from the  
24 magazine of the pistol. These are the shotgun shells that  
25 were recovered from inside the 20-gauge shotgun. This is

1 your magazine for the Uzi-style weapon up here and this is  
2 the 9 millimeter ammunition that was inside the magazine  
3 that was inside the weapon.

4 Q. Okay. And how do you know all those items are the  
5 same items that you recovered from Apartment No. 6 at the  
6 Falls Lake Apartment on October 27th of 2011?

7 A. I have my notes on the bag. I bagged them. 30  
8 live rounds, 9 millimeter rounds to assault rifle. This is  
9 obvious that -- 20-gauge shells and -- to the 20-gauge and  
10 these are two bags inside. One baggie is marked as  
11 ammunition recovered from the scene. The other baggie is  
12 the ammunition that was recovered from inside the magazine  
13 that was in the pistol.

14 MR. LEONARD: Your Honor, at this time the  
15 State would tender to defense counsel State's Exhibit 36,  
16 38.

17 THE WITNESS: This is 37, 38.

18 MR. LEONARD: 37 -- so, 37, 39, 36, 38 and 64.  
19 State would offer these to defense counsel -- or tender  
20 these to defense counsel and offer them and their contents  
21 into evidence.

22 MR. MARTIN: We have the same objection.

23 THE COURT: That objection is overruled.

24 MR. MARTIN: Yes, Your Honor.

25 THE COURT: 36 through 39 and 64 will be

1 admitted.

2 Q. (BY MR. LEONARD) All right. I'm going to show you  
3 what's been marked as -- all right. I'm going to show you  
4 what's been marked as -- you actually --

5 A. It's already marked.

6 Q. There we go. State's Exhibit 43. Sorry. Would  
7 you take a look at that and tell me if you recognize that.

8 A. Yes. This is the Motorola cell phone that was  
9 recovered from Mr. Smalley's person.

10 Q. Okay. And how --

11 A. At the scene.

12 Q. How do you know that's the same cell phone that you  
13 recovered from the defendant?

14 A. It's in my offense report, same serial number and  
15 model number and brand.

16 Q. Okay.

17 MR. MARTIN: Your Honor, at this time I would  
18 now tender to defense counsel State's Exhibit 43 and offer  
19 it into evidence.

20 MR. MARTIN: I have the same objection, Your  
21 Honor.

22 THE COURT: All right. That objection's  
23 overruled. 43 is admitted.

24 Q. (BY MR. LEONARD) Now, when you were there on the  
25 scene, did the cell phone start to ring?

1           A.    Yes, it did.  It started receiving phone calls and  
2 text messages.

3           Q.    Okay.  Were there a lot or a little bit?

4           A.    It was more than normal.  They kept coming in  
5 consistently.  I'm going to say three or four of each.

6           Q.    And I'm going to show you State's Exhibit 28 (sic).  
7 Do you recognize that photograph?

8           A.    Yes, I do.

9           Q.    And just in general, what is the photograph of?

10          A.    This is the photograph of -- this would be the  
11 parking lot of the apartment complex across the street where  
12 I originally set up surveillance that I spoke about earlier  
13 and where the surveillance officer sat at to watch the  
14 apartment.

15          Q.    All right.  Does this photograph fairly and  
16 accurately represent what it attempts to depict?

17          A.    Yes, it does.

18                    MR. LEONARD:  Judge, at this time I'm going to  
19 tender to defense counsel State's Exhibit 28 and offer it  
20 into evidence.

21                    THE COURT REPORTER:  Judge, there's already a  
22 28.

23                    THE COURT:  Yeah.  There's already a 28.  Hang  
24 on.  Let me double-check.  Yeah, I have 28 as a photo.

25                    MR. LEONARD:  Okay.  All right.



1                   THE COURT: Your last one is 64.

2                   MR. LEONARD: Okay. We'll just call this 65.  
3 All right. At this time State would tender State's Exhibit  
4 65.

5                   MR. MARTIN: We have no objection.

6                   MR. LEONARD: And offer it into evidence.

7                   THE COURT: 65 will be admitted.

8                   MR. LEONARD: All right. Permission to  
9 publish?

10                  THE COURT: You may.

11                  Q. (BY MR. LEONARD) What are we looking at on State's  
12 Exhibit 25 (sic)?

13                  A. Looks like three people standing there in the  
14 corner, specifically one who appears to be on the phone.

15                  Q. Okay. And did they have a view -- tell me what  
16 they were looking at from where they were standing.

17                  A. From where that person with the cell phone's at,  
18 he's looking directly at -- it was my sergeant taking the  
19 picture from the doorway of the apartment just straight down  
20 into where they're at.

21                  Q. Okay. And was this around the same time that you  
22 started receiving a lot of activity on the defendant's cell  
23 phone?

24                  A. It was.

25                  Q. Okay. All right. I now want to show you what's

1       been marked as State's Exhibit 30 and 32. Would you take a  
2       look at those and tell me if you recognize them.

3           A.     Yes. These are both bags of suspected marijuana  
4       that I recovered from inside the apartment, one from the  
5       kitchen counter that was just out in the open and one from  
6       the actual pantry when we came in.

7           Q.     Okay. And how do you know that those are the same  
8       bags of what you believed to be marijuana that you  
9       recovered?

10          A.     The notes that I write on the bag. I've got on  
11       here, "top of kitchen counter in plain view," "kitchen  
12       pantry shelf." So, I have notes on the bag itself.

13          Q.     Okay.

14                   MR. LEONARD: Your Honor, at this time State  
15       would tender to defense counsel State's Exhibit 30 and 32  
16       and offer them into evidence.

17                   MR. MARTIN: I have the same objection, Your  
18       Honor.

19                   THE COURT: Those objections are overruled.  
20       30 and 32 are admitted.

21          Q.     (BY MR. LEONARD) All right. Now going to show you  
22       what's been marked as State's Exhibit 46, 45 and 44. Take a  
23       look at those and tell me if you recognize them.

24          A.     I do.

25          Q.     And how do you recognize them?

1           A.    From the pictures that we took at the scene and the  
2 notes that I wrote on every bag in regards to what they are  
3 and where they were found.

4           Q.    Okay.  And where were those items found at?

5           A.    These -- all of these items were -- kitchen pantry.

6           Q.    Okay.

7           A.    These are prescription drugs.

8           Q.    All right.

9                        MR. LEONARD:  Judge, at this time I'm going to  
10 tender to defense counsel State's Exhibit 46, 44 and 45 and  
11 offer them into evidence.

12                      MR. MARTIN:  We have the same objection, Your  
13 Honor.

14                      THE COURT:  And those objections are  
15 overruled.  44, 45 and 46 are admitted.  Right, those three?

16           Q.    (BY MR. LEONARD)  All right.  Now, Officer, I'm  
17 going to show you what's been marked as State's Exhibit 47,  
18 33, 34, and 31.  I want you to take a look at those items  
19 and again tell me if you recognize them.

20           A.    I do.

21           Q.    And what do you recognize them as?

22           A.    The items that were recovered from the shelf, the  
23 powder substance that field tested positive for cocaine  
24 content and this bag of what's now powder that was in pill  
25 form of ecstasy, which field tested positive for

1 methamphetamine, they were all recovered from the kitchen  
2 pantry.

3 Q. And how do you know that?

4 A. I wrote the same notes on every bag, "kitchen  
5 pantry," "kitchen pantry," to let me know and the note's  
6 also on my offense report and it's got the offense report  
7 number also written on there and all the bags were sealed  
8 with my initials and date on there.

9 MR. LEONARD: Judge, at this time I'm going to  
10 tender to defense counsel State's Exhibit 33, 34, 31 and 47  
11 and offer them into evidence.

12 MR. MARTIN: I have the same objection, Your  
13 Honor.

14 THE COURT: Yes. 31 -- those objections are  
15 overruled. 31, 33, 34 and 47 are admitted.

16 Q. (BY MR. LEONARD) All right, Officer. Now, again,  
17 was there anything -- well, let's talk about -- let's talk  
18 about some of the items that you found, specifically State's  
19 Exhibit 31 and -- 31, 33 and 34. Based upon your training  
20 and experience, what did you recognize these items to be?

21 A. To be powder cocaine.

22 Q. Okay. And did you weigh that cocaine?

23 A. Yes, yes, I weighed it as is and this weighed  
24 approximately 4 grams of powder cocaine, this was 2.2 grams  
25 of powder cocaine and this was approximately 210 grams of

1 what all field tested to have powder cocaine content.

2 Q. Okay. And in your training and experience, does  
3 the weight of the cocaine that you observe out in the field,  
4 will that sometimes change when the chemists get an  
5 opportunity to weigh it?

6 A. Yes. Just like anything else, there's moisture  
7 inside of this and with time, the moisture, I guess, would  
8 escape, evaporate -- I'm not sure of the technical word for  
9 it but the weight does drop down a little bit because the  
10 older it gets, the less it will weigh after it breaks down  
11 and the moisture, I guess, escapes from it.

12 Q. Okay. What would be -- in your training and  
13 experience, is this an amount of cocaine that a person would  
14 have for personal consumption or what would a person be  
15 doing with that amount of cocaine based on your training and  
16 experience?

17 A. No, there's no way this would be used for personal  
18 consumption.

19 Q. Why not?

20 A. On the street, the approximate, I guess, single  
21 dose of cocaine from a user would be approximately a tenth  
22 of a gram, which is approximately \$10 worth of cocaine.  
23 This -- just this one alone, which is 4 grams of a powder  
24 cocaine, on the street could very well be valued at about  
25 \$400 worth of cocaine. 210 grams, that's times \$11 a gram,

1 you guys can do the math. That's a lot of cocaine for  
2 personal use.

3 Q. And based on your training and experience, what  
4 would be the street value of approximately 200 grams  
5 cocaine?

6 A. 200 grams cocaine, you just add two zeros times a  
7 hundred, so, about \$20,000 worth.

8 Q. Okay. What specifically about your investigation  
9 led you to conclude that this defendant was involved in the  
10 distribution and the delivery -- that he had the intent to  
11 deliver that cocaine?

12 A. Well, you've got your digital scales, which is  
13 obvious. It's used to weigh out amounts. Grams are money  
14 so you've got to be exact on -- or drug dealers have to be  
15 exact on how much is coming out. There's no estimation  
16 because you want to be exact for the sake of money. The  
17 drug paraphernalia that was found, the beakers and the  
18 whisk, those are commonly used to manufacture powder cocaine  
19 into crack cocaine form. That also leads me to believe that  
20 it's -- if you're manufacturing crack cocaine, it's not  
21 because you want to smoke it. If you're making whole  
22 cookies of cocaine, it's -- the intent to distribute is  
23 obvious to me.

24 The small little baggies, the only reason you  
25 would have small baggies is to put from a large amount to a

1 smaller amount, to distribute smaller amounts of cocaine,  
2 which would be personal use amounts. If you see the baggies  
3 there, if he shows them up, are a lot smaller than the big  
4 ziploc bag here.

5 Q. Okay. And what led you to believe that this  
6 defendant was in possession of this cocaine?

7 A. Well, the fact that I've seen him during my  
8 surveillance use a key to come in and out of the apartment  
9 while we were there on the scene, surveillance officer  
10 observed him and another female walk from a car that arrived  
11 there.

12 MR. MARTIN: Objection to what someone else  
13 observed, Judge. That would be hearsay.

14 THE COURT: Sustained.

15 MR. MARTIN: Ask the jury be instructed to  
16 disregard that.

17 THE COURT: Jury will be instructed to  
18 disregard.

19 MR. MARTIN: Thank you, Judge.

20 A. It was informed to me that --

21 MR. MARTIN: Objection, Judge, that's going to  
22 be hearsay.

23 THE COURT: Sustained.

24 Q. (BY MR. LEONARD) Okay. Without -- without going  
25 into information that you learned from someone else, what

1 did you personally observe about -- through your  
2 investigation that led you to believe that this defendant  
3 was in possession of cocaine?

4 A. In his pocket he had the keys to the apartment that  
5 operated the lock and also personal paperwork with his first  
6 name and last name inside one of the drawers. To me there's  
7 no other reason why his personal paperwork would be there if  
8 he's not exercising control of the apartment.

9 Q. Okay. Now, you're not here to tell this jury that  
10 you actually saw him make a delivery of drugs to someone  
11 else, right?

12 A. No, no, I cannot say that.

13 Q. Okay. And is it common, in your training and  
14 experience, that you have determined that someone is  
15 involved in the distribution and delivery of cocaine, even  
16 though you don't actually observe them make a transaction?

17 A. Yes, of course.

18 Q. Okay. And how is that possible?

19 A. Well, if one person assumes control of an  
20 apartment, and we're talking about thousands and thousands  
21 and thousands of dollars of narcotics, you don't just let  
22 somebody walk into your apartment or walk into your place  
23 and have access to all of this, because it's a lot of money  
24 to be -- if somebody walks away with it, it's a lot of money  
25 to be lost. So, whoever is in there with the cocaine, if



1 there's four, five people inside the apartment, somebody has  
2 to have control of the apartment to be able to control the  
3 amount of narcotics that was inside.

4           There was another person there as well. On  
5 that person we did not find any evidence that we could use  
6 to link that person to the apartment or to the drugs;  
7 therefore, that person was not charged with a crime of the  
8 narcotics that were inside of the pantry because we had  
9 nothing to link that person.

10           Mr. Smalley at the time had the keys. My  
11 surveillance confirmed that it was him coming in and out.  
12 He operated the lock. To me he -- it was obvious that he  
13 exercised control of the apartment.

14           Q.   Based on your investigation, what led you to  
15 believe that he was in possession of the -- of either one of  
16 those firearms?

17           A.   Well, when he was coming at me, when we made entry,  
18 he was coming from the bedroom into the den area, and when I  
19 gave him verbal commands to get down on the ground, he did  
20 and at the time he distanced himself from the pistol, by the  
21 pistol that's here, by it coming out of his right hand,  
22 tossing it out to one side, obviously creating distance  
23 between himself and the pistol. And I observed this. I  
24 mean, it was clear. It's a pretty big gun, small room,  
25 short distance. There's nothing else that was in that room

1 that could have been mistaken for.

2 Q. Okay. In your training and experience, what do  
3 individuals who are in the distribution and delivery of  
4 controlled substance, in this case, cocaine, what's the  
5 purpose of having guns there?

6 A. Well, for protection. You have thousands and  
7 thousands of dollars' worth of cocaine. You're not the only  
8 one that wants it. Down to the street level user, who's an  
9 addict, who knocks grandma over at the grocery store to get  
10 her purse because he wants to get his fix of cocaine all the  
11 way up to street level dealers who buy two or three grams at  
12 a time to distribute, it's easy pickings if you know you can  
13 go in there and just get the cocaine and don't have to pay  
14 for it and then sell it and then you can keep all the  
15 profits. That's why a lot of these locations are secret and  
16 not a lot of people know about what we call the stash  
17 location. Well, it's because the less people that know  
18 about it, the better because the less people know where  
19 you're drugs are at, the more protected they are.

20 Q. Okay. What specifically about the apartment  
21 itself, I guess the inside of the apartment, led you to  
22 believe that it was used or adapted for the delivery of  
23 cocaine?

24 A. The fact that there's no furniture inside, nobody  
25 sleeps there, nobody just hangs out there leads me to

1 believe that the sole purpose of this apartment is to  
2 distribute illegal narcotics.

3 Q. And why is that?

4 A. Nobody lives there. There's no personal hygiene  
5 stuff, there's no beds, there's no couches. The only reason  
6 is people go there to get what they need, it's locked up and  
7 when they need more, I'd imagine they come back for more so  
8 that there's no reason to have a whole apartment if you're  
9 not going to be staying in it unless it's just designated  
10 for what we call the stash location. Normally drug dealers  
11 on the street, they want to distance themselves from where  
12 they lay their head --

13 Q. Let me ask you about that, Officer. Did you ever  
14 do any investigation to determine who was the actual owner  
15 of the apartment?

16 A. No. We were able to find the lease of the  
17 apartment and the name on the lease was not to Defendant  
18 Smalley.

19 Q. Okay. And is that common or uncommon, in your  
20 training and experience?

21 A. That's very common. You're not going -- it's  
22 called what we call the paper trail. You're not going to  
23 leave a paper trail to easily link you to an apartment. For  
24 example, if you've got a car and you're delivering  
25 narcotics, you'll put a paper plate on it that comes back to

1 a miscellaneous name or miscellaneous address. You don't  
2 want to put your personal name and address on there because  
3 it's -- if the cops get your plate, all they have to do is  
4 run it in the system and they'll go knock on your front door  
5 and see what you're doing. So, there's always different  
6 tactics used by drug dealers to distance themselves from a  
7 specific location. Who pays the bills, who pays the light  
8 bill will be under a different person's name, who pays his  
9 or her cell phone would be under a different person's name  
10 or it would be a prepaid phone, a Cricket phone that you  
11 don't have to provide any subscriber information, things of  
12 that nature. The cable bill, that's another one.

13 Q. Okay.

14 MR. LEONARD: And Judge, may I approach?

15 THE COURT: You may.

16 Q. (BY MR. LEONARD) Okay. One other thing I wanted  
17 to cover. State's Exhibit 42, now, you say you found these  
18 keys on the defendant's person?

19 A. That's correct.

20 Q. Okay. And do these keys on State's Exhibit 42, do  
21 they also contain car keys?

22 A. Yes, they do.

23 Q. Okay. And were you able to find the car that works  
24 using those keys there at the apartment complex?

25 A. Yes, we were.

1 Q. Okay. And where did you find that car at?

2 A. It was close to where we dismounted out of the van  
3 where we were guided to by -- or our sergeant drove the van  
4 up there and we parked very, very close to where this car  
5 was at.

6 Q. Okay. And what kind of car was it?

7 A. It was a Plymouth Seabreeze.

8 Q. Okay.

9 A. White in color.

10 Q. Did you check to see if those keys worked to the  
11 car?

12 A. Yes, the keys worked. They operated the door and  
13 the ignition.

14 Q. And you actually started up the car?

15 A. I didn't start up the car. I don't know if  
16 somebody else did but I know for a fact they worked -- they  
17 opened the door and operated the ignition.

18 Q. Okay.

19 MR. LEONARD: I pass this witness.

20 THE COURT: Mr. Martin.

21 MR. MARTIN: Yes, Your Honor.

22 **CROSS-EXAMINATION**

23 Q. (BY MR. MARTIN) Officer Zamora, as part of your  
24 investigation in this matter, do you normally prepare an  
25 offense report?

1           A.    Yes.

2           Q.    That's so you can refresh your memory and go over  
3 it months and months after the incident?

4           A.    Normally I don't read it just to read it.  I wait,  
5 if the case is going to go to trial, and I'll refresh my  
6 memory with it.

7           Q.    That's one of the purposes of the O.R., right?

8           A.    Yes, of course.

9           Q.    All right.  I've got a copy.  Can I just make sure  
10 we have the same thing?  Do you have a copy of your offense  
11 report?  I've seen you looking at something.

12          A.    Yes, I have it here.

13          Q.    How far does yours go?  Can you tell me the last  
14 page in yours?

15          A.    The very last page?

16          Q.    Yes, sir.

17          A.    That I have in mine is 2.028.

18          Q.    Okay.  I don't have that much yet.

19                    *MR. MARTIN:*  Can I go up there and look at  
20 that, Judge?

21                    *THE COURT:*  Sure.  Do you have a newer one or  
22 more recently-run one, let's put it that way.

23          Q.    *(BY MR. MARTIN)*  Officer Zamora, I believe you ran  
24 this warrant on October 27th, right?

25          A.    Excuse me?

1 Q. You actually ran the warrant on October 27th; is  
2 that right?

3 A. That's correct.

4 Q. All right. Can you tell me how many days before  
5 that date, going backwards from the day you ran the warrant,  
6 that you received information that made you go out and, you  
7 know, develop your interest in this particular apartment?

8 A. I can't tell you exactly. Two or three days  
9 before.

10 Q. All right, sir. And when was it that you went -- I  
11 believe, if I got your testimony right from this morning,  
12 you went out and you yourself set up surveillance; is that  
13 correct?

14 A. That's correct.

15 Q. All right. Were you by yourself?

16 A. No.

17 Q. All right. Were you with another officer or  
18 partner?

19 A. Yes. I was with a officer, partner of mine,  
20 Officer Lara.

21 Q. All right. And would that be standard protocol for  
22 you guys to go out and set up at least two of you together?

23 A. Yeah, yeah, it's for officer safety. You don't  
24 want to go out there by yourself.

25 Q. Okay. Is this when y'all parked across the street

1 where you had a clear view of the apartment?

2 A. I parked across the street, yes.

3 Q. Okay. Was Officer Lara with you or was he in a  
4 different car?

5 A. No, he was in a different car and if I remember  
6 correctly, he did some fixed surveillance and he did some  
7 where he was mobile and vice versa, I did some where I was  
8 mobile and I was fixed.

9 Q. Okay. About how long were y'all out there that  
10 day?

11 A. I want to say maybe about 30 minutes, give or take.

12 Q. Did you make note of that in your offense report  
13 anywhere about the 30 minutes you were out there that day?

14 A. No.

15 Q. And after that day of 30 minutes of surveillance,  
16 did you do any more surveillance before you contacted your  
17 confidential informant?

18 A. No.

19 Q. Would you have contacted the confidential informant  
20 the same day as the 30 minutes of surveillance?

21 A. It's possible. I mean, what I can tell you is I  
22 contacted the confidential informant within 48 hours of when  
23 the warrant was signed.

24 Q. Okay. Well, I'm not -- do you remember how long it  
25 was after you did 30 minutes of surveillance that you



1 contacted your CI?

2 A. I don't remember exactly but it was that same day.

3 Q. Okay. Was it the same day that you do the  
4 surveillance and contact your CI that you set up the  
5 controlled buy you told us about?

6 *THE WITNESS:* I don't know if I can answer  
7 that, Judge, for protection of the informant. I don't want  
8 to get into specifics on specific dates.

9 *MR. MARTIN:* He's testified in front of this  
10 jury about this, Your Honor.

11 *THE COURT:* Answer the question, please.

12 A. Say it again.

13 Q. *(BY MR. MARTIN)* Did you contact your CI the same  
14 day you did the surveillance?

15 A. I believe so. I can't tell you yes or no because I  
16 don't remember but if I believe -- if I remember correctly,  
17 it was the same day.

18 Q. But you made no notation in your offense report?

19 A. No, I didn't.

20 Q. All right. Was the controlled buy that you set up  
21 with this CI, was it the same day that you contacted them or  
22 was it later?

23 A. I'm sorry. Say it again?

24 Q. You set up a controlled buy involving this CI,  
25 confidential informant?

1 A. Yes.

2 Q. In this particular apartment?

3 A. Yes.

4 Q. Was that the same day that you called the CI?

5 A. I conducted surveillance the same day that I  
6 contacted the surveillance (sic) and we set up the  
7 controlled buy.

8 Q. Okay.

9 A. So, yes, I contacted him, conducted surveillance  
10 and we conducted the controlled buy.

11 Q. All on the same day?

12 A. Yes.

13 Q. All right. And then sometime after that -- all  
14 right. Did you have any -- did you make any notes in your  
15 offense report about you watched the controlled buy take  
16 place?

17 A. No, it's not in my offense report.

18 Q. Okay. And based on what the confidential informant  
19 tells you after the controlled buy, you go and get with the  
20 magistrate to get the search warrant issued that you told us  
21 about.

22 A. That's correct.

23 Q. And in the affidavit that you prepared to get a  
24 search warrant, you put in there some information that your  
25 confidential informant gives you.

1           A.    That's correct.

2           Q.    Okay.  And this affidavit you swear to and it's  
3    filed with the magistrate or Judge who issues the search  
4    warrant?

5           A.    After I return it, yes.

6           Q.    All right.  But you present the affidavit to a  
7    Judge of some type and that Judge reviews it and if he or  
8    she feels it's appropriate, they sign the search warrant?

9           A.    Yes, sir.

10          Q.    And that's what happened in this case?

11          A.    Yes, sir.

12          Q.    And that's the search warrant you guys used -- you  
13    executed to search this apartment?

14          A.    That's correct.

15          Q.    All right.  Do you recall if your confidential  
16    informant mentioned to you any furniture being in the  
17    apartment?

18                    *MR. LEONARD:*  Your Honor, I'm going to object  
19    to hearsay.

20                    *THE COURT:*  Sustained.

21          Q.    *(BY MR. MARTIN)*  Do you recall if the confidential  
22    informant gave you any description of the inside of the  
23    apartment that is different than your testimony today to  
24    this jury about what was in that apartment?

25                    *MR. LEONARD:*  Your Honor, I'm going to object

1 to what any other witness said that's not --

2 *THE COURT:* Your question is yes or no, right?

3 *MR. MARTIN:* It would be yes or no.

4 *THE COURT:* Right. Not what anybody told you  
5 but yes or no, were you given any different information,  
6 right? Isn't that your question?

7 *MR. MARTIN:* Yes. I'll -- yes. So far.

8 A. If I could look at the affidavit, it would be on  
9 there.

10 *MR. MARTIN:* All right. With your permission,  
11 I'd like him to look at the affidavit and specifically see  
12 if you see -- if I may ask a question or two.

13 Q. (*BY MR. MARTIN*) Do you see your confidential  
14 informant mentioning any piece of furniture being in that  
15 apartment at the time of the controlled buy?

16 A. No, I didn't put anything in here whether the  
17 informant mentioned any furniture inside.

18 *MR. MARTIN:* May I approach the witness, Your  
19 Honor?

20 *THE COURT:* Sure.

21 *MR. MARTIN:* Can I get the affidavit back?

22 Q. (*BY MR. MARTIN*) Mine is marked up.

23 A. Yes, sir.

24 Q. But this is the same affidavit, right? It's a  
25 copy.

1 A. Yes.

2 Q. All right. Look on the second page right there.  
3 It's on your copy. You may want to check yours. Does it  
4 talk about there being a table?

5 A. Yes.

6 Q. Okay. So, the confidential informant described  
7 there being at least one piece of furniture in there during  
8 the controlled buy?

9 A. That's correct.

10 Q. And that would be different from the way it was  
11 when you executed this search warrant?

12 A. That's correct.

13 Q. And in your affidavit, I believe you asked the  
14 Judge for what's known as a no-knock warrant.

15 A. That's correct.

16 Q. And in fact, the Judge authorized such a warrant  
17 for you; is that correct?

18 A. That's correct.

19 Q. Could you tell the jury, please, what is a no-knock  
20 warrant?

21 A. No-knock warrant is when the Judge or magistrate  
22 authorizes us to go up to the door, force entry and go  
23 inside, for several circumstances: The target inside we  
24 believe to have weapons, gang member, certain circumstances  
25 as far as fortifications getting up there, we believe that

1 the evidence was going -- would be destroyed. If a no-knock  
2 warrant is authorized, we can just go up, force entry and go  
3 inside.

4 If it's the -- the other would be  
5 knock-and-announce and it means we would have to go up  
6 there, knock on the door, unless other circumstances arise,  
7 we just knock and announce our presence, police search  
8 warrant, and if somebody comes to the door, we make entry.  
9 If circumstances arise, then we force entry inside.

10 Q. During the 30 minutes that you had this place under  
11 surveillance, how many customers, if you want to call them  
12 that, did you see approach the front door, come and go?

13 A. I don't remember exactly but it's three or four.

14 Q. All right. And did you make a notation of that in  
15 any offense report anywhere?

16 A. No.

17 Q. And in going to the execution of the warrant  
18 itself, you talked about how y'all -- I may not use the  
19 right words, so correct me -- how y'all got together  
20 somewhere, the tactical team, I believe.

21 A. Yeah, correct, we got together, conducted a  
22 briefing.

23 Q. Okay. At any time, the date of the execution of  
24 the warrant, did you see Mr. Smalley come up to that  
25 apartment before y'all went in?

1 A. I didn't, no.

2 Q. Okay. So, you cannot tell us what time he got to  
3 that apartment or how he got there?

4 A. No. Some information was relayed to me but I can't  
5 tell you that I saw it.

6 Q. Okay. So, you have no personal knowledge, is how I  
7 should ask you, of when he got there. You're relying on  
8 what someone said to you.

9 A. Yes, I am reliant.

10 Q. All right. And you described for us how y'all  
11 were -- again, I don't know the -- how y'all were making --  
12 you were approaching the apartment. And I think there were  
13 at least six narcotics officers; is that right?

14 A. Yes.

15 Q. And would y'all have been in what I hear referred  
16 to as raid gear, the helmets, the heavy vests? You had an  
17 AR-15; someone else had an AR-15?

18 A. That's correct.

19 Q. And you're clearly marked as police officers,  
20 right?

21 A. That's correct.

22 Q. I mean, anybody who sees you knows that y'all are  
23 police officers?

24 A. Yes, I would imagine so.

25 Q. Okay. Well, I mean, you're dressed in, I don't

1 know, fatigues or combat gear, something like that. Is  
2 there any markings or writing that says "Police," "HPD,"  
3 something like that?

4 A. Yes. The front and back of our vest has a patch  
5 that says "police" on the front and back.

6 Q. Okay. So anyone who saw that, if they assumed you  
7 were, you know, legitimate and not bad guys faking it would  
8 know you were police officers?

9 A. Yeah, that along with the multiple marked police  
10 cars and officers in uniform that we had out there with us.

11 Q. Okay. All right. And you said at some point, was  
12 it Officer Gonzales -- stop me if I'm wrong -- let you guys  
13 know someone was in the window of the target apartment and  
14 you -- as you put it, the element of surprise had been lost.

15 A. That's correct.

16 Q. Who was it that notified you of that?

17 A. It was Officer Gonzales. Basically he just -- not  
18 me specifically but he lets everybody know in the group that  
19 we've been compromised.

20 Q. I believe you testified he stayed -- he was in a --  
21 stayed back some so that he could see the apartment; is that  
22 right?

23 A. That's correct.

24 Q. And I think he had, I think, a long gun, an AR-15  
25 or something?



1 A. That's correct.

2 Q. So, if we got all these pictures out, where would  
3 he be while you -- as you guys were going up the stairs?

4 A. He would be, I guess, at the bottom of the stairs  
5 just kind of off a little bit.

6 Q. Would he be away from the wall so that he could  
7 look up and see the windows?

8 A. Yes, of course.

9 Q. Okay.

10 A. Yeah, his job is to cover the window and the door.

11 Q. All right.

12 A. So, he would have -- he'd be in a position where he  
13 could directly observe the door or the window.

14 Q. Okay. So, he might be some distance back from the  
15 wall so he can see everything.

16 A. Correct.

17 Q. If the jury rail there was the wall of the  
18 apartment and you guys are here going up the stairs, he's  
19 going to be back here somewhere so he can see.

20 A. Correct.

21 Q. All right. And how does he let -- does he scream  
22 or do you guys have some sort of electronic microphone?

23 A. No, he didn't scream but in a loud enough voice  
24 lets us know you're compromised.

25 Q. Okay. So, when you hear that word, that phrase or

1 whatever it is, you know that the people in the target  
2 apartment know the police are coming.

3 A. That's correct.

4 Q. Are y'all still going up the stairs when Officer  
5 Gonzales makes this known to you?

6 A. Yes, sir, we are.

7 Q. All right. If you can recall, how much time went  
8 by after he let you know we've been compromised till the guy  
9 with the battering ram -- what do you call it? The moby?

10 A. We call it the moby man, but, yes, it's a battering  
11 ram.

12 Q. What do you call it?

13 A. Moby.

14 Q. Okay. How long after Officer Gonzales lets you  
15 know you've been compromised does the guy with the moby get  
16 to the door?

17 A. However long it takes us to get to the stairs. We  
18 were at the base of the stairs five seconds, ten seconds.

19 Q. Y'all had not gotten on the stairs yet when your  
20 presence was known to the people in the apartment?

21 A. I don't remember specifically what -- you know,  
22 number one or number two steps. We were somewheres near the  
23 stairs or just starting to go up the stairs.

24 Q. Fair enough. Okay. And then y'all have to go up  
25 the stairs and the guy with the moby has to hit the door.

1           A.    That's correct.

2           Q.    And I believe you said he hit it about five or six  
3 times?

4           A.    Four to five.

5           Q.    Okay.  And I'm assuming this makes a loud noise  
6 when you're hitting the door.

7           A.    Yes, it does.

8           Q.    And can you just describe for me how long it takes,  
9 just hit -- you don't have to hit it that hard but just  
10 boom, boom, something like that?

11          A.    Okay.  It fits in two hands so he's got to hit the  
12 door, bring it back and hit it again.  So, I guess if  
13 he's -- I mean, this guy, he was quick, so it'd be boom,  
14 boom, boom, and did that four to five times till the door  
15 came open.

16          Q.    Okay.  And obviously this makes a noise.  Someone  
17 in the apartment's going to hear this banging.

18          A.    I'd imagine so, yes.

19          Q.    Okay.  And then y'all use -- what do you call the  
20 thing?  The flash thing?  What do you call it?

21          A.    Noise flash diversionary device, shortly known as  
22 flashbang.

23          Q.    Flashbang.  Okay.  And you have some -- not the  
24 moby guy but yet another -- the grenadier?  Is that the  
25 word?

1           A.    We call it an assigned grenadier, which is a person  
2 who deploys the flashbang.

3           Q.    Okay.  So, does the door, after the guy with the  
4 moby hit, does it fly open or does it just -- how does  
5 that -- I mean -- in this case do you remember what  
6 happened?  Did the door fly open?

7           A.    The door opens.  I can't tell you if it flew open.  
8 Sometimes they open a little slower than others.  Sometimes  
9 it just swings wide open.  The door came open.

10          Q.    Is it usually the doorjamb that breaks?

11          A.    Normally right around the locking mechanism, the  
12 holes in the frame, which is where the bolt would go in, it  
13 would break there and that's when the door comes open.

14          Q.    The grenadier, if I'm saying that right, his job,  
15 at that moment anyway, is to toss, if you're going to use  
16 such a device, into the apartment?

17          A.    Correct.  Yeah, his job is to go up to the door and  
18 visually see, make sure that there's not going to be a kid  
19 right there or a person laying down right there on the door.  
20 We don't want to deploy there because it could harm  
21 somebody.  So, if the doorway is clear, he doesn't throw it  
22 or tosses it or deploys it all the way inside, it's like  
23 he's throwing a football.  It's just inside the door where  
24 he just lets it drop and that's loud enough to really shake  
25 up the whole apartment.

1 Q. All right. When he deploys it, do y'all step back  
2 and close the door?

3 A. No, the door swings inside, so we're not going to  
4 reach inside and try to close the door.

5 Q. Okay. So, you -- he puts it on the floor just  
6 inside the doorway and steps back and then, boom?

7 A. Yes.

8 Q. And it's just a loud noise.

9 A. With a flash.

10 Q. And a flash of light?

11 A. Correct.

12 Q. If you were in the living room and looking, would  
13 it temporarily blind you or something?

14 A. Yes. That's the purpose.

15 Q. Okay. So, you guys at least divert your eyes or  
16 something so you don't get blinded?

17 A. Yeah, we just look away because the force that  
18 comes up, there's some debris that could be pieces of the  
19 door. You don't want to stand directly in the doorway  
20 because when we drop it there, we could get pieces of wood  
21 from the frame or just debris that's there that could get  
22 shot back at us, even though we were wearing protective  
23 clothing and protective eyewear.

24 Q. Okay. And after that you would be the first one  
25 in?

1           A.    Yes, sir.

2           Q.    Now, this flashbang, there's no smoke or gas or  
3 anything; it's just noise and a light?

4           A.    No, there's some gas.  Obviously a chemical  
5 reaction that makes the explosion so there would be some gas  
6 and some smoke.

7           Q.    Do y'all wear masks of any kind?

8           A.    No, it's not anything that's going to keep us from  
9 being able to go inside and, you know --

10          Q.    Okay.

11          A.    It's not going to keep -- it's not going to blind  
12 us or keep us from breathing.

13          Q.    Okay.  And as you go in, obviously I don't know  
14 about it.  Are you moving pretty fast or are you just  
15 walking -- how are you moving?  You're the lead guy in?

16          A.    Well, my job is to move what we call pretty  
17 dynamic, so I've got to be quick.

18          Q.    Okay.

19          A.    Like I explained earlier, I can't stand at the door  
20 and look around because there's a whole team of officers  
21 behind me that in case I need help, they've got to get in.  
22 So I've got to get in one way or another.

23          Q.    Okay.

24          A.    So, it's an immediate, I guess, quick assess of  
25 what's going on right at the entryway and then we have to

1 start moving. We don't run directly through the middle of a  
2 room. Our tactics show that, you know, we'll hug a wall  
3 and, for example, if I go in and I go to the right, then the  
4 guy behind me knows that if he sees me go right, he's got to  
5 go left and I've got to trust that he's going to go left and  
6 cover my blind side.

7 Q. All right. How far was it from the front door,  
8 say, to the bedroom door where Mr. Smalley came out of?

9 A. About from here to the end of the jury box maybe.

10 Q. That far?

11 A. Yes, sir.

12 Q. I believe in the offense report you described him  
13 as running out of the room.

14 A. Yes.

15 Q. You had gotten by the woman and realized she was  
16 not a threat to you.

17 A. That's correct.

18 Q. And you're still going farther into the apartment?

19 A. Yes.

20 Q. And I believe you testified that he -- you noticed  
21 him coming out of the bedroom.

22 A. Correct.

23 Q. Was he running?

24 A. It appeared to me that he was running, yes.

25 Q. And would that naturally alert you in that

1 situation, you would turn and face him?

2 A. Of course.

3 Q. I'm assuming with your weapon?

4 A. Yes.

5 Q. All right. And did you issue a command to him, get  
6 down, something?

7 A. Yes.

8 Q. All right. Did -- I believe you told us you don't  
9 look at their eyes; you look at their hands. Did you see  
10 that gun in his hand --

11 A. Well, we don't focus directly on their eyes. We  
12 see the person coming, next thing we do is start looking at  
13 their hands.

14 Q. Okay. And so he was running or coming out of the  
15 bedroom with the gun in his hand and that's when -- did you  
16 see the gun before you gave him a command of any kind?

17 A. I don't remember seeing the gun. I remember seeing  
18 the gun -- when I told him to get down and he's getting  
19 down, I found his hands and that's when I seen the gun  
20 coming out.

21 Q. Okay. So, the gun was in his hands when you saw  
22 it?

23 A. Yes, it was in his right --

24 Q. As he's going to the floor?

25 A. It was in his right hand.



1 Q. All right. And there's nobody else but he and  
2 LaTasha Wesley, I believe, in the apartment?

3 A. That's correct.

4 Q. So, if somebody, whoever was in the window that  
5 your fellow officer alerted you to, it would have been him  
6 or Ms. Wesley who looked out and saw you guys.

7 A. That's correct.

8 Q. And once you secure everything, once you make sure  
9 it's just these two, you've got everything under control,  
10 you left somebody there and I think you went and ran another  
11 warrant somewhere and at some point y'all came back.

12 A. That's correct.

13 Q. And the place is still as it was when y'all went in  
14 and took control of it.

15 A. That's correct.

16 Q. All right. And that's when you find all the items  
17 we've talked about here and you took all the pictures that  
18 you were -- that have been introduced into evidence.

19 I believe all of the -- not the marijuana.  
20 All of the other controlled substances, if I got it right  
21 from your notations on these bags and your testimony and the  
22 pictures, all of that stuff was in the kitchen pantry?

23 A. That's correct.

24 Q. And the kitchen pantry was closed. You had to open  
25 the door to take the pictures for us.

1 A. That's correct.

2 Q. Okay. There was some marijuana out on the counter  
3 in plain sight?

4 A. That's correct.

5 Q. And the scales, were they likewise in the pantry?

6 A. There was some in the pantry and there was one on  
7 the countertop.

8 Q. Okay.

9 A. If I remember correctly from the picture, and next  
10 to the marijuana.

11 Q. How much cash money was recovered?

12 A. I don't think we recovered any cash money. Any  
13 cash money was -- it wasn't anything -- a large amount that  
14 we could seize. I believe the money, we gave it back to  
15 Mr. Smalley when he was booked in.

16 Q. The money in the drawer that you took a picture of?

17 A. Yes.

18 Q. How much was there?

19 A. I don't remember how much was there.

20 Q. What did you do with it?

21 A. I believe we gave it back to Mr. Smalley. I  
22 don't --

23 Q. Do you have it noted in your offense report what  
24 you did with that money?

25 A. No, I don't.

1 Q. Why would you give -- I mean, isn't that drug  
2 money? Isn't that what you're telling this jury, that's  
3 drug money?

4 A. Do you know how much it costs to -- the court  
5 process to seize money?

6 Q. My question to you, Officer: Did you testify to  
7 this jury that's drug money?

8 A. I testified that I believe it was drug money, yes,  
9 sir.

10 Q. Okay. All right. Are these all the photographs  
11 you took?

12 A. I believe so.

13 Q. Did you take a photograph -- I mean, you took  
14 pictures showing where stuff was when you found it, right?

15 A. Correct.

16 Q. All right. Did you take a picture of these two  
17 pieces of paper with his name on it and where you found  
18 them, like in a drawer like you testified to?

19 A. No.

20 Q. Why not? Why not take a picture of the only  
21 paperwork that has his name on it?

22 *THE WITNESS:* I don't think I can answer that,  
23 Judge. I can answer to you but not out loud.

24 *(At the bench, on the record.)*

25 *MR. MARTIN:* This is a key item that ties -- I

1 mean, if you want to excuse the jury and ask him what he  
2 means by that, I have no problem with that but this is a key  
3 piece of evidence that ties my guy to this apartment and  
4 this dope and he doesn't want to answer why he didn't take a  
5 picture of it.

6 *MR. LEONARD:* He did take pictures of the  
7 court reset and of the cell phone. I have these pictures.  
8 I just hadn't introduced them because we had the actual  
9 items.

10 *MR. MARTIN:* Well, I'd like to see them. I  
11 mean, I just asked, Were these all the pictures you took, he  
12 said yes; now there's more pictures.

13 *MR. LEONARD:* He said he believed so.

14 *MR. MARTIN:* Well, I'd like to see those  
15 pictures.

16 *THE COURT:* Do you have them?

17 *MR. LEONARD:* (Nods head affirmatively.)

18 *THE COURT:* Have they been in the file?

19 *MR. LEONARD:* Yeah, they've been in the file.

20 *THE COURT:* Okay. So, if you want to look at  
21 them, I'll let you look at them.

22 *MR. LEONARD:* Actually the picture that I  
23 have, in all fairness, I redacted because we had a  
24 discussion earlier about whether or not the bond paper was  
25 going to come in; so, in an abundance of caution, I redacted

1 some information off the pictures that I planned to  
2 introduce. So, I mean, I have those pictures here but I can  
3 print the originals if he would like to see the originals,  
4 so, it's either way.

5 *MR. MARTIN:* I would like to see the pictures  
6 where they say he's got these bond papers out of a drawer in  
7 the kitchen or in the apartment.

8 *MR. LEONARD:* I don't know if they show them  
9 actually in the drawer but he does take pictures of the bond  
10 papers.

11 *MR. MARTIN:* I'd still like to see them.

12 *THE COURT:* Okay. Will you show him the  
13 pictures? I guess what we just need to figure out is, since  
14 there was some stuff he knew you were going to object to, so  
15 he redacted out of the pictures, do you want the original  
16 pictures or do you want the --

17 *MR. MARTIN:* We had never talked about it.  
18 And then I told him, just introduce the originals of the  
19 green papers, I have no problem with that. Introduce those.  
20 That's why they're in evidence.

21 *THE COURT:* Just show him the pictures. Maybe  
22 it will solve that.

23 *(End of discussion at the bench.)*

24 *THE COURT:* Ladies and gentlemen, can I have  
25 you step in the jury room for just a few minutes?

1                                    (Jury not present.)

2                                    (Recess.)

3                                    (Jury present.)

4                                    THE COURT: Be seated, please.

5                                    Mr. Martin, you may proceed.

6                    Q.    (BY MR. MARTIN) Officer Zamora, I believe when you  
7 were talking about the bond papers, the green bond papers  
8 with Mr. Smalley's name on it, and did you find those in a  
9 kitchen drawer? Is that what you put in your offense  
10 report?

11                   A.    That's correct.

12                   Q.    And later y'all took pictures of those bond papers  
13 there at the scene; is that right?

14                   A.    That's correct.

15                   Q.    But you did not take pictures of them in the drawer  
16 you first found them like the money or the drugs. You moved  
17 them and then took pictures of them somewhere; is that  
18 right?

19                   A.    Correct. Well, the documents came in in another  
20 picture we were taking of a cell phone. We didn't take a  
21 picture of them inside the drawer next to the money, that's  
22 correct.

23                   Q.    Wait a minute. I'm sorry.

24                   A.    Yeah, we didn't take the documents out and  
25 purposely photograph them elsewhere in the apartment.

1 Q. Okay. So, where did you recover them from?

2 A. From the kitchen drawer.

3 Q. All right. The kitchen drawer.

4 A. Yes.

5 Q. All right. Do you have a picture of those pieces  
6 of paper in the kitchen drawer?

7 A. No.

8 Q. Okay. You do have a picture y'all made later that  
9 day along with them and the cell phones?

10 A. Correct, but we zoomed in on the name.

11 Q. I understand.

12 A. Yes, sir.

13 Q. I'm just asking. That's all I'm trying to verify.  
14 The picture is not where the green papers were first found.

15 A. Correct.

16 Q. All right. And I believe you said -- you talked  
17 about what normally happens in stash houses like this, that  
18 sort of thing, but did you make an attempt to find a written  
19 lease for this particular apartment, Unit No. 6?

20 A. Yes.

21 Q. And did y'all go to the apartment manager or  
22 someone like that or?

23 A. We informed the apartment manager when we were done  
24 with the investigation, turned custody over but we didn't  
25 get with the apartment manager regarding anything of the

1 person who was on the lease.

2 Q. All right. Did you look at a written lease or find  
3 a written lease?

4 A. Yes, there was one inside the apartment.

5 Q. Okay. And it wasn't in the Marcus Smalley name?

6 A. No, it was not.

7 Q. All right. Was the electricity on in the  
8 apartment?

9 A. Yes, it was.

10 Q. All right. Did you make any effort to see who was  
11 paying the light bill there, so to speak?

12 A. No, we didn't.

13 Q. Okay. Because as, I believe you testified, no  
14 self-respecting dope dealer's going to put it in his own  
15 name, anyway?

16 A. I would imagine he wouldn't, no.

17 Q. Okay.

18 MR. MARTIN: May I have just one moment, Your  
19 Honor?

20 THE COURT: Sure.

21 Q. (BY MR. MARTIN) I believe you testified, again,  
22 based on your experience, that these guns would be for  
23 protection and you went on to talk about it was protection  
24 from people in the drug business or drug users even; is that  
25 correct?



1           A.    Yes, sir, that's correct.

2           Q.    I mean, I understand what you do is dangerous but  
3 these guns like this, they're not necessarily there just for  
4 protection from police; they're for protection from other  
5 drug dealers?

6           A.    Yes, that's correct.

7           Q.    All right.  And I believe you testified towards the  
8 end that after y'all -- you secure everything, get the keys,  
9 did you yourself go down to some white car to see if the  
10 keys you recovered in State's Exhibit 42, did -- was it you  
11 yourself that went down to see if these keys worked in the  
12 car?

13          A.    Some of the other officers were down there but I  
14 went down there and made sure since I was the case agent.

15          Q.    Okay.

16          A.    I've got to make sure the keys work.

17          Q.    Okay.  And did you note that in your offense  
18 reports somewhere?

19          A.    I don't think I did, no.

20          Q.    All right.

21          A.    No, I didn't.

22          Q.    And going back very briefly, Officer, please, to  
23 the 30-minute surveillance.  Did you see many people go to  
24 and from the door that got your suspicions up?

25          A.    Yes, as a matter of fact, I remember one

1 specifically.

2 Q. Uh-huh.

3 A. That was a bit out of the ordinary, I guess I could  
4 say.

5 Q. I believe you testified -- I don't know if you saw  
6 this or would this just be normal routine: They could walk  
7 to the place, go through the hole in the fence, ride their  
8 bike, park their car. Did you see all of that or is that  
9 just what you normally see? Were you talking about your  
10 general experience?

11 A. No, there was at least one of each. We saw  
12 multiples, but both pedestrian traffic, bicycle traffic and  
13 vehicle traffic.

14 Q. All right, sir. Thank you, Officer.

15 MR. MARTIN: I'll pass the witness, Your  
16 Honor.

17 THE COURT: Mr. Leonard.

18 **REDIRECT EXAMINATION**

19 Q. (BY MR. LEONARD) And Officer Zamora, just so the  
20 record is clear, you did -- you did, in fact, take pictures  
21 of the green paperwork with the defendant's name on it?

22 A. Yes.

23 Q. Okay. You took pictures of it while it was there  
24 at the apartment?

25 A. That's correct.

1 Q. Okay. Did you take a picture of the lease  
2 agreement as well?

3 A. I believe so, yes, at least a top portion of it.

4 Q. Okay. And did you take pictures of the cell phone  
5 as well?

6 A. Yes.

7 Q. Okay.

8 MR. LEONARD: Judge, may I approach?

9 THE COURT: Sure.

10 Q. (BY MR. LEONARD) Officer, I'm going to show you  
11 what's been marked as State's Exhibit 21 and 22. I'm going  
12 to show you what's been marked as State's Exhibit 21 and 22.  
13 Would you take a look at those photographs and tell me if  
14 you recognize it.

15 A. I do.

16 Q. And in general what do you recognize them as?

17 A. One picture to be a couple of cell phones, looks  
18 like the top part of a lease agreement, and some of that  
19 green paperwork and on the second one, just to zoom in, of  
20 the green paperwork with the name of Mr. Smalley on it.

21 Q. Are these fair and accurate representations of the  
22 items you observed in the apartment on October 21st, 2011?

23 A. Yes, sir, they are.

24 MR. LEONARD: Judge, I'm now tendering to  
25 defense counsel 21 and 22 and offering them into evidence.

1 MR. MARTIN: We have no objection.

2 THE COURT: 21 and 22 are admitted.

3 MR. LEONARD: Briefly. May I publish?

4 Q. (BY MR. LEONARD) What are we looking at in 21?

5 A. Picture of a couple cell phones, cell phone here  
6 and here, some of that green paperwork and this is the lease  
7 agreement, if I'm not mistaken.

8 Q. And is 22 a close-up of the green paperwork?

9 A. Yes, it's blurry but you can see the name here,  
10 last name's Smalley, first name Marcus.

11 Q. Okay.

12 MR. LEONARD: Pass this witness.

13 THE COURT: Mr. Martin?

14 MR. MARTIN: Very briefly, Your Honor.

15 **RECROSS-EXAMINATION**

16 Q. (BY MR. MARTIN) Officer, where did you recover the  
17 phones?

18 A. One of the -- there were three cell phones. One of  
19 the phones was on Mr. Smalley's person. The others were  
20 found inside. I don't think I made a note where and I can't  
21 tell you that I remember exactly.

22 Q. All right, sir. Thank you, sir.

23 MR. MARTIN: I pass the witness, Your Honor.

24 THE COURT: Mr. Leonard?

25 MR. LEONARD: Nothing further, Judge.

1                   *THE COURT:* May this witness be excused?

2                   *MR. LEONARD:* He may from the State.

3                   *MR. MARTIN:* Okay.

4                   *THE COURT:* On call?

5                   *MR. MARTIN:* On call will be perfect. Thank  
6 you, Judge.

7                   *THE COURT:* Absolutely. Thank you, Officer.  
8 You're free to go. Please make sure you don't discuss your  
9 testimony with any of the other witnesses and we have a way  
10 to get you back if we need you.

11                   Don't take any evidence.

12                   *THE WITNESS:* That stuff, you want me to put  
13 it up there? These are just empty envelopes but I'm going  
14 to drop it off.

15                   *THE COURT:* Make sure the court reporter --

16                   *THE WITNESS:* Thank you.

17                   A *JUROR:* Get your hat.

18                   *THE WITNESS:* Thank you. That's very  
19 important.

20                   *THE COURT:* Did you leave your gun?

21                   *THE WITNESS:* The gun never gets left behind.

22                   *THE COURT:* Oh, the hat.

23                   *THE WITNESS:* Don't let everybody know.

24                   *THE COURT:* Call your next witness, please,  
25 Mr. Leonard.