

1 going into any statements my guy -- Mr. Smalley gave Officer
2 Zamora in this matter after he had been arrested and -- on
3 the basis it would violate Article 38.22 and .23 of our Code
4 of Criminal Procedure in that if it's a oral statement, it
5 wasn't properly recorded. That would be --

6 *THE COURT:* Mr. Leonard, my understanding from
7 our conversations off the record was that these were
8 statements made by the defendant and you're offering them in
9 rebuttal to the testimony he gave in direct and cross
10 yesterday.

11 *MR. LEONARD:* That is correct, Judge.

12 *THE COURT:* Your objection's overruled.

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

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

15 *THE COURT:* Come on back up, please, Officer.
16 Have your seat.

17 You may proceed.

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

19 **MOISES ZAMORA,**

20 having been first duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 Q. *(BY MR. LEONARD)* Good morning, Officer Zamora.

23 A. Good morning.

24 Q. Couple of things I want to go over with you today.
25 Yesterday on cross-examination there was some discussion

1 about what happened to the money that was found there at the
2 apartment on October 27th of 2011.

3 A. Yes, sir.

4 Q. Okay. Did you do any research to find out what
5 happened to that money?

6 A. Yes. Since it wasn't in the offense report, I'm
7 glad you asked because it kind of bothered me a little bit
8 and I went back into the case file and I found that -- we
9 do -- every time we do a narcotics search warrant, we have
10 to leave a copy of the warrant at the location and we also
11 have to leave an inventory of anything we take out as
12 evidence. And we have an inventory in the case file that
13 was prepared by my sergeant that says what -- how much --
14 what the count of the money was and what the disposition of
15 the money was and also all the evidence that we took for
16 trial.

17 Q. Okay. And did I ask you to go and research that
18 yesterday?

19 A. Yes, you did.

20 Q. Okay. And what did you document? What did you
21 find in your records?

22 A. It was \$210 and it was returned to Mr. Smalley at
23 the scene.

24 Q. Okay. And how would it have been returned to
25 Mr. Smalley?

1 A. As is, just the cash, back to him -- to go with him
2 to go to -- when he got transported to the jail.

3 Q. Okay. After Mr. Smalley was taken into custody,
4 did you have an opportunity -- well, let me ask you this.
5 You put him in handcuffs, right?

6 A. Yes, sir.

7 Q. Did you read him his rights?

8 A. Yes, I did.

9 Q. Okay. And what were the rights that you read him?

10 A. I don't have it out here. At the scene we have
11 a -- it's a statement from person in custody form and the
12 rights are on there and I just read them out verbatim. It's
13 what you guys heard on TV: You have the right to remain
14 silent, not make any statement at all, so forth and so
15 forth.

16 Q. Okay. Did he agree to waive those rights and speak
17 to you?

18 A. Yes, he did.

19 Q. Okay. And what was the conversation that you had
20 with the defendant?

21 A. Well, he wanted to give me his side of the story
22 and what was going on, I guess, with him at that apartment.
23 So, at that time I gave him the opportunity to go ahead and
24 give himself -- or go ahead and give me an explanation of
25 him being -- why he was there.

1 Q. Okay. Did he say why he was at the apartment? And
2 this information you're talking about, it's documented in
3 your offense report?

4 A. Yes, it is.

5 Q. Okay. Why did Mr. Smalley say he was at the
6 apartment?

7 A. Okay. My offense report, I annotated that -- I
8 asked him about the apartment and Suspect Smalley told me
9 that he went to the apartment to buy some marijuana.

10 Q. Okay. Did he say who he went to the apartment
11 with?

12 A. Yes. He gave me an explanation that -- he said
13 that the female that was also there, she was also inside and
14 he was figuring that she was going to buy some marijuana as
15 well and he stated that there were two dope dealers inside
16 the apartment.

17 Q. Did he tell you those dope dealers' names?

18 A. Yes, he referred to me out there that the name --
19 and I can't make this up -- it was Stupid and Butter.
20 Stupid and Butter had supposedly received a phone call from
21 a convenience store across the street and they asked him to
22 watch the place and we'll be right back, okay, and they went
23 across the street and that's when we came crashing through
24 the door.

25 Q. Okay. Did he tell you any more information about

1 Stupid or Butter?

2 A. No, he gave me just real brief descriptions, they
3 were black male, younger and he just knows them from staying
4 at that apartment.

5 Q. Okay.

6 A. But he didn't know -- wouldn't give me a first
7 name, last name or any way for me to identify Mr. Stupid or
8 Mr. Butter.

9 Q. Okay. Did anyone come to the scene while you were
10 there conducting your investigation looking for the
11 defendant?

12 A. Yes. While we were there at the scene, it's not
13 uncommon for family members, friends, they want to know
14 what's going on so they can take care of, I guess, their
15 loved ones or significant others. His wife and his
16 girlfriend -- or two females, one identified herself as his
17 wife and one identified herself as his girlfriend, arrived
18 at the scene wanting to know what was going to happen with
19 the defendant.

20 Q. Okay. And did you talk to them? Did you
21 communicate with them?

22 A. Yes. I remember speaking to the defendant's wife,
23 that's who I spoke to. Officer Gonzales actually spoke to
24 the female who identified herself as the girlfriend.

25 Q. Okay. Did you release any property to them or did

1 you have any discussions about -- with the defendant about
2 what was to happen with any of his property?

3 A. Yes. We found out that the dog that was inside,
4 the big pit bull --

5 MR. MARTIN: Objection to "we found out."
6 That would be hearsay, I believe.

7 THE COURT: Sustained.

8 MR. LEONARD: Okay.

9 THE COURT: Maybe you need to rephrase your
10 question.

11 MR. LEONARD: Sure.

12 THE WITNESS: Yes, ma'am.

13 Q. (BY MR. LEONARD) Did you ask the defendant what he
14 wanted to do with the dog?

15 A. While at the scene I found that the pit bull had
16 little puppies. It was a female. And the puppies were
17 there on the balcony. Before we left, we need to have
18 disposition for the animals. We can't just leave them up
19 there. So, we either call animal control to come pick them
20 up and being pit bulls, everybody knows the first thing
21 they're going to do is put them down. So I asked the
22 defendant what did he want me to do with his dogs.

23 Q. And what did he say?

24 A. And he wanted me to release the dogs to his
25 girlfriend, last name of Fobbs, said, Take the dog and the

1 pups.

2 Q. So, he indicated that the dogs were his and he
3 wanted his girlfriend to take them?

4 A. Yes, sir.

5 MR. LEONARD: I pass this witness.

6 THE COURT: Mr. Martin?

7 MR. MARTIN: May I have just one moment, Your
8 Honor?

9 THE COURT: Uh-huh.

10 MR. MARTIN: I have no questions, Your Honor.

11 THE COURT: May this witness be excused?

12 MR. LEONARD: He may, Judge.

13 MR. MARTIN: Yes, Judge.

14 THE COURT: Thank you, Officer. You're free
15 to go.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Call your next witness, please.

18 MR. LEONARD: The State of Texas rests.

19 THE COURT: State rests. What says the
20 defense?

21 MR. MARTIN: We'll rest too, Your Honor.

22 THE COURT: Close?

23 MR. LEONARD: State rest and close.

24 MR. MARTIN: Yes, Your Honor.

25 THE COURT: Can I see the lawyers?