

1 MR. PHANCO: Officer Mark Zapata.

2 THE BAILIFF: This witness has not been  
3 sworn.

4 THE COURT: All right. Come forward, sir.  
5 (Whereupon the witness is sworn in by  
6 the Court.)

7 THE COURT: You may take the stand. Your  
8 witness, sir.

9 **OFFICER MARK ZAPATA,**

10 having been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION BY THE STATE**

12 BY MR. PHANCO:

13 Q. Go ahead and introduce yourself to the jury  
14 with your first and last name, spelling both so the court  
15 reporter can get them down.

16 A. Officer Mark Zapata. M-a-r-k, Z-a-p-a-t-a.

17 Q. How are you employed, sir?

18 A. Houston Police Department.

19 Q. How long have you been with the Houston Police  
20 Department?

21 A. Thirteen years.

22 Q. And what division are you currently assigned  
23 to?

24 A. Narcotics.

25 Q. How long have you been in narcotics?

1 A. Eight years.

2 Q. Talk to the jury a little bit about what you do  
3 in narcotics, who's your partner, what you guys do on a  
4 daily basis.

5 A. My partner is Officer Jessie Aguirre, and on a  
6 daily basis we pretty much -- if we have any tips come in,  
7 or confidential informants, we go out there. I look at  
8 the locations, the houses, get plates, vehicles, follow  
9 people. If we have no leads, we go out there and buy  
10 dope. We just go out to a targeted area, they're high  
11 narcotics areas and get on the ground and hit people up  
12 and try and score dope, contraband, narcotics, marijuana.

13 Q. Real quick. For the record purposes so we are  
14 clear, dope is --

15 A. Cocaine, marijuana, ice.

16 Q. Hold on.

17 A. Ice is meth.

18 Q. All right. Good. So you guys are out there  
19 doing that kind of thing. Do you have -- do you both work  
20 undercover or just Aguirre? How does that work?

21 A. We both work undercover and our squad. So we  
22 pretty much -- if I have somebody that I'm talking to --

23 MR. DUNN: Objection, Your Honor.

24 Nonresponsive after "we both work undercover.

25 THE COURT: Sustained.

1 Q. (By Mr. Phanco) Talk about you both working  
2 uncover.

3 A. We both buy dope, we both work informants, we  
4 both do the same job. Our target is to identify new  
5 houses in the area that are selling narcotics.

6 Q. All right. I'm going to draw your attention to  
7 October 15, 2014. Do you recall that date?

8 A. Yes, sir.

9 Q. And did you come into contact with someone you  
10 knew to be Rigoberto Monrroy?

11 A. Yes, sir.

12 Q. And do you see him in the courtroom here today?

13 A. Yes, sir.

14 Q. If you could identify him by actually pointing  
15 at him and describing him using an article of clothing  
16 that he's wearing.

17 A. The gentleman right there in the gray shirt,  
18 looks like black pants.

19 THE COURT: He's identified the defendant.

20 MR. PHANCO: Thank you, Your Honor.

21 Q. (By Mr. Phanco) All right. So tell me how you  
22 came into contact with the defendant on October 15, 2014.

23 A. Well, my partner advised us that he had an  
24 individual that he was going to buy some cocaine from. He  
25 briefed us. We went to that location where this deal took

1 place.

2 Q. I'm going to show you what's been marked  
3 State's Exhibit 2, which is there on the screen. Is that  
4 familiar to you?

5 A. Yes.

6 Q. What is that?

7 A. That is the residence of the location where the  
8 buy-bust occurred and is the residence of the suspect.

9 Q. All right. So your partner is doing the  
10 undercover. What are you doing?

11 A. He was doing the undercover work, I was the  
12 surveillance guy. I was pretty much -- I had an eye. The  
13 eye means you're the main guy on surveillance which  
14 informs over the radio to all the units in the area a  
15 play-by-play of what's going on.

16 Q. Okay. And so where are you kind of set up?

17 A. I'm about a hundred yards from the house on the  
18 street.

19 Q. Okay.

20 A. On Iola.

21 Q. Now, you're watching it. Do you visually  
22 record it with a camera or anything like that?

23 A. No. I was periodically just taking a glance in  
24 my long eyes, which are binoculars, periodically just  
25 every once in awhile. But I pretty much had a good view

1 on the location.

2 Q. Why don't you record from your vantage point?

3 A. The reason we don't record, due to the fact  
4 that it can compromise and jeopardize the investigation.  
5 Many of these neighborhoods, there are people, family  
6 members, that look out for vehicles that don't belong; or  
7 they do countermeasures by countersurveillance, other  
8 crooks in the area driving around trying to identify us as  
9 cops. So, therefore, we don't have any recording systems  
10 out so we don't get identified or get burned and  
11 jeopardize the undercover officer of his safety.

12 Q. So kind of tell us what -- oh, real quick. Do  
13 you know the address of the house in which you were  
14 surveilling that day?

15 A. It's on Iola Street, and it was -- excuse me.  
16 I have to look at the report real quick. 2820 Iola.

17 Q. Okay. And what county is that address in?

18 A. Harris County.

19 Q. So you -- tell us how you came into contact  
20 with the defendant that day.

21 A. Again, my partner Jessie advised that he had  
22 this buy-bust. We set up in the area. On this day, I set  
23 up surveillance. Jessie rolled into the location, pulled  
24 into the driveway. He was parked there for several  
25 minutes before the defendant suspect arrived at the

1 location.

2 Q. Okay. Now, I assume that you don't come on the  
3 location until the deal goes down and Jessie gives you a  
4 signal?

5 A. Correct.

6 MR. DUNN: Objection, Your Honor. Leading.

7 THE COURT: It's overruled.

8 Q. (By Mr. Phanco) So tell me what happens when  
9 you come on the scene. What do you see?

10 A. Once the deal is done and Jessie is driving  
11 off, I advised units to come on in, it's been a good deal.  
12 Jessie breaks the air and advises the description, the  
13 clothing articles of what the guy was wearing at the time  
14 so that -- he was the only guy in the driveway. Units  
15 come in and detain the defendant in the driveway.

16 Q. What do you do?

17 A. As I roll up, there are a bunch of uniformed  
18 officers and other narcotics officers. We pretty much go  
19 on scene, make sure that everything is under control.  
20 Officer Jessie, he drove off. Everything was under  
21 control. He's detained. We walk up to the front door.  
22 At that time there's some -- I guess a family member had  
23 come out, and everybody is on the front porch. So we  
24 identified ourselves as narcotics officers investigating  
25 the scene.

1 Q. So you actually go make contact with the family  
2 at the house?

3 A. I was -- I wasn't the first one. The family  
4 came out already. I met everybody on that front porch.

5 Q. What did you say to them?

6 A. I didn't say much. I just said, "Everything  
7 will be all right. Houston police narcotics." We're in  
8 regular clothes. I showed them my badge and identified  
9 ourselves.

10 Q. All right. And what do you do with the family;  
11 do you tell them to go back inside; or where do you tell  
12 them to go?

13 A. Once Jessie comes back to the scene and he's  
14 talking to the suspect, he walks him back in the house.  
15 The family comes in a little front area, and they are  
16 watching cartoons. There are three kids that are watching  
17 cartoons in the living area.

18 Q. All right. What are you doing with the family  
19 when Jessie is talking with the defendant?

20 A. I'm in and out of the house going back because  
21 I parked my vehicle -- that street is pretty narrow.  
22 There are a lot of vehicles, and there are cars trying to  
23 pass by. I was making sure my car was parked correctly,  
24 that traffic could flow. As I go back in and out of the  
25 house, they're just there. We are monitoring. We had

1 some uniformed officers making sure that they're not  
2 moving around for officer safety reasons.

3 Q. I want to be real clear because sometimes, the  
4 way you say, it's important. When you say you're going in  
5 and out of the house, into the physical house or on and  
6 off the property?

7 A. In and off the property -- well, in the house.  
8 Once everybody went back in the house, into the house.

9 Q. Okay.

10 A. Once Jessie walked the suspect into the  
11 residence, then we went into the residence.

12 Q. I got you. So before Jessie goes in the  
13 residence when he's just talking to the defendant, do you  
14 go inside?

15 A. No, sir.

16 Q. What are you doing?

17 A. We are pretty much outside.

18 Q. And you're coming on and off the property?

19 A. Yes, from the driveway to the street.

20 Q. Okay. Where is the family when Jessie and the  
21 defendant are talking?

22 A. They come out to the front porch.

23 Q. Are officers over there standing near?

24 A. Yes, everybody is just standing around just  
25 holding the scene until the case agent, Officer Aguirre,



1 gives us next -- what he wants to do next at the scene.

2 Q. Did you talk to the family, other than  
3 identifying yourself, about you calling CPS or you  
4 arresting any of the family members?

5 A. Never, no.

6 Q. Did you ever walk up to the defendant and tell  
7 him that you were going to arrest some family members or  
8 call CPS?

9 A. No.

10 Q. Did you ever see or hear any of the other  
11 officers do that?

12 A. No.

13 Q. Now, you're a scary guy, a big guy.

14 MR. DUNN: Objection, Your Honor.

15 Side-bar.

16 THE COURT: It's overruled.

17 Q. (By Mr. Phanco) Did you ever threaten any -- I  
18 see you've got a smile now, but --

19 A. No.

20 Q. When you're in a serious mode, did you threaten  
21 anything to the family or to the defendant?

22 A. No.

23 Q. Never said anything about, you know, if he  
24 doesn't give consent, or he doesn't allow you in the  
25 house, you're going to do something bad to him or his

1 family?

2 A. No.

3 Q. Did you hear anybody else do that?

4 A. No.

5 Q. So Jessie walks the defendant inside of the  
6 house. Do you go with him?

7 A. No.

8 Q. What did you do?

9 A. Again, I'm on the front porch. He walks in.  
10 There are several officers. He walks the defendant to the  
11 kitchen table. We pretty much make sure that the family  
12 is okay and the kids are okay.

13 MR. DUNN: Objection, Your Honor. It calls  
14 for speculation. He said he didn't walk in with  
15 Mr. Aguirre. How could he know?

16 THE COURT: So your objection is as to  
17 speculation?

18 MR. DUNN: Right.

19 THE COURT: All right. It's sustained  
20 unless he's speaking of what he observed.

21 Q. (By Mr. Phanco) So you're sticking with the  
22 kids. What do you do with the kids?

23 A. The front room and the dining room are  
24 attached, so you can see it. I'm just standing there  
25 making sure that everything is under control and safe,

1 because due to the fact that the kids sat on the sofa and  
2 the wife --

3 MR. DUNN: Objection, Your Honor.  
4 Nonresponsive at this point.

5 THE COURT: Sustained.

6 Q. (By Mr. Phanco) What's going on?

7 A. There are no weapons. They are just watching  
8 TV.

9 Q. And the wife, where was she?

10 A. She sat down on the couch.

11 Q. All right. So tell me what happens next once  
12 you're there watching everything. Are you speaking, or  
13 who is speaking to the defendant?

14 A. Jessie.

15 Q. And what happens next?

16 A. Once he finished the conversation with the  
17 defendant, he advised that he obtained a written consent  
18 to search the residence.

19 Q. What did you do next?

20 A. Once he got a written consent, we started  
21 searching the residence. And we searched one of the front  
22 rooms in the corner. As a group, there are six or seven  
23 of us in a squad. We kind of take certain rooms and  
24 search it.

25 Q. Why do you take -- why does each person go to a

1 different room?

2 A. So that none of us are all in one room on top  
3 of each other and we can do a good search.

4 Q. What room did you go to?

5 A. The front bedroom to the left.

6 Q. What did you find while you were in the front  
7 bedroom?

8 A. In the front bedroom in the dresser drawer we  
9 found a pistol and a box that had currency in it.

10 Q. What kind of -- so you found a pistol in the  
11 dresser drawer. What else did you find?

12 A. And it was next to a box, which in the box was  
13 currency.

14 MR. PHANCO: May I approach, Your Honor,  
15 for the exhibit?

16 THE COURT: Yes, sir.

17 Q. (By Mr. Phanco) So if you click the left corner  
18 of the screen, it should go out. Bottom left. Sorry.

19 A. (Witness complies.)

20 Q. So in that drawer?

21 A. Yes.

22 Q. Now, we only get a picture of the money. Did  
23 you take the gun into custody?

24 A. I didn't touch anything. We pretty much  
25 pointed it out. Officer Aguirre came and recovered all

1 the articles.

2 Q. So you got a gun from there. What else did you  
3 find in the room?

4 A. In the closet there was another gun in the same  
5 room. In the closet there was a pistol up on the -- in  
6 the upper closet.

7 Q. Okay. That's State's Exhibit No. 12. Is that  
8 what you're referring to?

9 A. Yes, sir.

10 Q. So you have two pistols. You said Aguirre  
11 collected both of them?

12 A. Correct.

13 Q. Did you find anymore guns?

14 A. Not in that room.

15 Q. What did you find next?

16 A. Another officer found another gun in the house.

17 Q. Okay. And did Aguirre take custody of that  
18 gun?

19 A. Yes.

20 Q. Now, when you guys collect all the evidence,  
21 did you find some -- or did officers find cocaine in the  
22 house, as well?

23 A. Yes.

24 Q. You get back to the station to check all this  
25 stuff into evidence. Do you check anything into evidence?

1 A. I took the guns.

2 Q. And who did you take custody of the guns from?

3 A. I took custody from Officer Aguirre, Jessie,  
4 and took them down to the HPD property room and tagged  
5 them.

6 Q. And who has the guns now?

7 A. They're right --

8 MR. PHANCO: May I approach, Your Honor?

9 THE COURT: Yes, sir. Jackson, clear the  
10 weapon, please.

11 THE BAILIFF: Yes, sir.

12 THE COURT: Have they already been cleared  
13 by Jackson?

14 MR. PHANCO: They have not, Your Honor.

15 THE COURT: All right. Let the record show  
16 that I'm instructing Officer Jackson to open the bags  
17 so he can clear the weapons.

18 THE BAILIFF: All three weapons have been  
19 cleared.

20 THE COURT: All right. Let's proceed.

21 MR. PHANCO: Thank you, Your Honor.

22 Q. (By Mr. Phanco) All right. So tell me what  
23 kind of gun was found in the drawer of the master bedroom.

24 MR. DUNN: Judge, I'm going to object to  
25 this line of testimony concerning the guns. Officer

1       Aguirre already testified that these guns were not  
2       used in the commission of any felony for which  
3       Mr. Monrroy has been charged. He also said  
4       Mr. Monrroy was in lawful possession of those guns.  
5       They hold no relevance in this case at this point.

6                THE COURT: It's a question of fact for the  
7       jury to determine. You may proceed.

8       Q.       (By Mr. Phanco) So which -- if you need to  
9       refer to your report, which gun was the one found in the  
10      dresser drawer, or do you know already?

11      A.       The Glock.

12      Q.       Okay. I'm going to show you -- I'm going to  
13      mark State's Exhibit 28, which is an evidence bag and its  
14      contents. If you could take a look at it, tell me what it  
15      is, describe it, and let me know how you know that you  
16      checked it into evidence.

17      A.       It is a Glock. Let's see here.

18      Q.       You can take it out of the bag. If you need to  
19      cut it open, you can do so.

20      A.       It's a Glock 9, a baby Glock, which we call it  
21      a baby Glock because it's a small pistol. The reason why  
22      I know I tagged it, because my initials are on the bag  
23      where it was taken into custody by -- in the property  
24      room.

25      Q.       Okay. And when you found that gun, do you

1 recall whether it was loaded or clear, as it is now?

2 A. It was loaded.

3 THE COURT: Hang on one second. Jackson,  
4 you mind opening up one of the blinds so the lawyers  
5 can see we're in trial and don't come in and out?

6 THE BAILIFF: Yes.

7 Q. (By Mr. Phanco) I show you what's been marked  
8 as State's Exhibits 29 and 30, which is a bag and its  
9 contents. If you can describe State's Exhibits 29 and 30.

10 A. 30 is the magazine for the 9, which belongs to  
11 this gun. It's one magazine. And 29 are the bullets,  
12 live rounds. They haven't been fired.

13 Q. Okay. I'm going to show you what's been marked  
14 as State's Exhibit 31. It's a bag and its contents. If  
15 you can describe State's Exhibit 31 to me.

16 A. 31 is a .40 caliber Beretta.

17 Q. And I show you State's Exhibits 32 and 33,  
18 which are two bags and their contents. Describe those two  
19 things.

20 A. 32 is the magazine that goes to the Beretta and  
21 33 are the live rounds.

22 Q. And where did you find that gun?

23 A. This gun was found in the room in the closet  
24 that's located on the picture here.

25 Q. And the defendant [sic] is referring to State's



1 Exhibit 12. I show you what's marked as State's  
2 Exhibit 35, which is a bag and its contents. Go ahead and  
3 describe what State's Exhibit 35 is.

4 A. It's a black and silver Taurus 9-millimeter.

5 THE COURT: What's that number?

6 MR. PHANCO: 35, Your Honor.

7 THE COURT: You said that's a 9-millimeter?

8 THE WITNESS: Yes, sir.

9 Q. (By Mr. Phanco) And, lastly, I show you State's  
10 Exhibits 36 and 37, which are two bags and its contents.  
11 If you could explain what the contents of the State's  
12 exhibits are.

13 A. 36 are the 9-millimeter live rounds, unfired,  
14 and the article in Exhibit 37 is the -- is another  
15 magazine.

16 Q. Okay. And what does that magazine and rounds  
17 go to?

18 A. The magazine goes to the Glock.

19 MR. PHANCO: At this time, Your Honor, I'm  
20 going to ask that State's Exhibits 28, 29, 30, 31,  
21 32, 33, 35, 36, and 37 be admitted into evidence.  
22 Tendering to opposing counsel for inspection.

23 MR. DUNN: Judge, again, we would object on  
24 the grounds that there's already been previous  
25 testimony by Officer Zapata's partner that these guns

1           were not used in the commission of any felony with  
2           which Mr. Monrroy has been charged. They were in his  
3           lawful possession at the time. And we would also ask  
4           that any testimony up until this point be -- the jury  
5           be instructed to disregard.

6                        THE COURT: I'll respond again, it's a  
7           question of fact for the jury to decide. Overruled.  
8           They are admitted.

9                        MR. DUNN: Just for the record, is it  
10          overruled as to both requests?

11                       THE COURT: I said it's overruled and they  
12          are admitted.

13                               (Whereupon State's Exhibit Nos. 28-33  
14                               and 35-37 are admitted into evidence.)

15                       MR. PHANCO: I ask to publish to the jury  
16          by walking them by, Your Honor?

17                       THE COURT: I'm sorry?

18                       MR. PHANCO: May I publish to the jury by  
19          walking by?

20                       THE COURT: All right. Quickly.

21                       MR. PHANCO: Yes, Your Honor.

22          Q.        (By Mr. Dunn) All right. So these are the  
23          three guns found inside of the home.

24                       MR. DUNN: I object to that side-bar  
25          statement.

1 THE COURT: Sustained. Do not testify,  
2 sir.

3 Q. (By Mr. Dunn) Are these the guns that were  
4 found inside of the home?

5 A. Yes.

6 Q. And in what condition, that is, as far as the  
7 bullets and magazines, were they when you found them?

8 A. They were loaded.

9 Q. All three?

10 A. Yes.

11 Q. At any point in time while you were in the  
12 house, outside of the house, at any point when you were on  
13 the property, did you threaten, coerce, either the  
14 defendant or his family into doing what you asked?

15 A. Negative, no.

16 Q. Did you hear anybody else threatening or  
17 coercing the defendant and his family to do what you guys  
18 were asking?

19 A. No.

20 MR. PHANCO: I pass the witness, Your  
21 Honor.

22 THE COURT: Cross?

23 MR. DUNN: Yes, Judge.

24 **CROSS-EXAMINATION BY THE DEFENSE**

25 BY MR. DUNN:

1 Q. Good morning, Officer Zapata.

2 A. Good morning.

3 Q. I've got a few quick questions for you. Maybe  
4 not so quick, but a few questions. You've been with HPD  
5 for 13 years, correct?

6 A. Yes, sir.

7 Q. And you've been with narcotics for eight years,  
8 right?

9 A. Yes, sir.

10 Q. I'm assuming you received ample amount of  
11 training as an HPD officer and, moreover, as a narcotics  
12 officer, correct?

13 A. Yes, sir.

14 Q. And on October 15, 2014, you were working  
15 undercover, along with Officer Aguirre, correct?

16 A. Yes, sir.

17 Q. And you stated on direct that you were  
18 located -- at the time that Officer Aguirre conducted his  
19 buy with Mr. Monrroy, that you were about a hundred yards  
20 away?

21 A. Yes, sir.

22 Q. At a hundred yards away, you could see the  
23 transaction as it occurred?

24 A. Not the transaction. I can see him at the  
25 location because he went into the fenced area. I couldn't

1 see him or the hand-to-hand. I just saw when he left, and  
2 he gave me the visual that it was a good deal.

3 Q. Fair enough. When you were looking, you also  
4 stated that from time to time you would look at the -- at  
5 the area with a pair of binoculars, correct?

6 A. Correct.

7 Q. On prior testimony you said that -- were you  
8 stationary the whole time in your vehicle?

9 A. Yes.

10 Q. And you didn't drive around, right?

11 A. No.

12 Q. Were your windows tinted?

13 A. Lightly.

14 Q. Lightly tinted. Could somebody look inside?

15 A. Yes.

16 Q. Were there people around?

17 A. Yes.

18 Q. So there were people around while you had your  
19 binoculars around, correct?

20 A. Not at that time, but people are up and down  
21 the street on bicycles, or whatever. And sometimes when  
22 you are watching a residence, you can't tell what's behind  
23 you. They can come up on you real easy.

24 Q. Fair enough. You would agree with me that  
25 binoculars are part of surveillance equipment, correct?

1 A. Correct.

2 Q. You just told the State that you don't use  
3 recording devices and visual or audio devices because you  
4 don't want to trigger any kind countersurveillance or  
5 alarm anybody, correct?

6 A. Correct.

7 Q. However, it's okay to use binoculars, but not  
8 other surveillance equipment; is that your testimony  
9 today?

10 A. No. It's okay to take a quick glance with  
11 binoculars just to get a visual and put them down really  
12 quickly. It takes less than a second or two.

13 Q. All right. And when you're doing the  
14 surveillance, and certainly this isn't a car that you --  
15 let me back up a second. What kind of vehicle were you  
16 in?

17 A. I drive a Lexus 430.

18 Q. And is this a low income or high income  
19 neighborhood?

20 A. Low income.

21 Q. You said that countersurveillance checks to see  
22 if anything is out of the ordinary from the neighborhood,  
23 correct?

24 A. Correct.

25 Q. You would agree with me -- what kind of Lexus

1 was it?

2 A. A 430.

3 Q. That a 430 Lexus in a low income neighborhood  
4 would summarily be out of the norm for that area, correct?

5 A. Yes.

6 Q. So you're outside with binoculars in a Lexus,  
7 but you find it suspicious to have any other equipment,  
8 correct?

9 A. Correct.

10 Q. Okay. You're a hundred yards away and Officer  
11 Aguirre signals for the takedown to occur, right?

12 A. Correct.

13 Q. Do you get out of your car and go to the  
14 residence or do you drive up to the residence and then get  
15 out of your car?

16 A. Once he drives off, I drive up. I don't get  
17 out of my vehicle. I drive up.

18 Q. And you would agree with me that a hundred  
19 yards is fairly close, correct?

20 A. Correct. Yes and no.

21 Q. And there a number of other officers within the  
22 area, correct?

23 A. Correct.

24 Q. How far away are they?

25 A. A block -- maybe a block or two.

1 Q. So safe to say that you are the closest person  
2 to the area, correct?

3 A. Yes.

4 Q. How long does it take you to get to the  
5 residence once the signal has been made?

6 A. Once it was given, I mean, I'm on the street,  
7 but I waited for my partner to drive off.

8 Q. How long did it take you for the signal --  
9 after the signal was made to get there, sir?

10 A. Thirty seconds, a minute, 45 seconds.

11 Q. Thirty seconds to 45 seconds. So you should be  
12 first on the scene, correct?

13 A. Yes, I should, but I didn't because I don't  
14 have safety equipment, I don't have a gun, I don't have a  
15 vest or anything.

16 Q. So you said it took you 30 to 45 seconds to get  
17 there after the signal was made, correct?

18 A. Correct.

19 Q. So 30, 45 seconds, you're telling me that  
20 you're not able to get there first on the scene?

21 A. That's not my job. My job was surveillance.

22 Q. How many seconds after the first person got on  
23 the scene did you arrive?

24 A. I pulled up with him.

25 Q. And they were a block away and you were a



1 hundred yards away, but it took you more time to get  
2 there, right? Yes or no, sir?

3 A. I waited for them to pull up for me to pull in.

4 Q. So you saw Officer Harris there?

5 A. No, I didn't.

6 Q. You didn't see Officer Harris?

7 A. I seen when --

8 Q. You already said, no, you didn't, sir. Thank  
9 you.

10 A. Okay.

11 Q. Who was the first person to come into contact  
12 with Mr. Monrroy?

13 A. I don't recall.

14 Q. It's your testimony that when you get there,  
15 the family is on the porch, correct?

16 A. Correct.

17 Q. And you arrive at the same time as every other  
18 officer, correct?

19 A. Correct.

20 Q. So if another officer said that the only person  
21 that was outside was Mr. Monrroy, that person wouldn't be  
22 telling the truth, correct?

23 A. Negative.

24 Q. Okay. Were you there when Mr. Monrroy  
25 allegedly gave consent to have his truck searched?

1 A. No.

2 Q. All the -- and you don't know who gave the  
3 consent -- or who Mr. Monrroy allegedly gave the consent  
4 to, right?

5 A. For the verbal of the vehicle?

6 Q. Correct.

7 A. No.

8 Q. And all the officers are there simultaneously.  
9 Do you know who's the first person to come into contact  
10 with Mr. Monrroy?

11 A. I think it was Officer Larson.

12 Q. Officer Larson. How do you spell Officer  
13 Larson's name?

14 A. I think it's Harris. What's his first name,  
15 Harris?

16 Q. I don't know, sir.

17 A. His last name is Harris.

18 Q. Well, who is Officer Larson?

19 A. Officer Harris. I think Larson is his first  
20 name.

21 Q. Just now you said you didn't know who Officer  
22 Harris was; isn't that correct?

23 A. I said I know who Officer Harris was. You  
24 asked me who was the one who took him in custody. I  
25 didn't know who that was or who got the verbal consent.

1 Q. I asked you also if Officer Harris was the  
2 first person to come into contact with him and you said  
3 no, correct?

4 A. I said I wasn't sure.

5 Q. All right. Could you show me -- you have a  
6 copy of your offense report, correct?

7 A. Yes, sir.

8 MR. DUNN: May I approach, Judge?

9 THE COURT: Yes, sir.

10 Q. (By Mr. Dunn) Just to help me out, can you show  
11 me in here where Officer Harris' name is in here and  
12 whether it shows a first or last name?

13 A. (Witness complies.)

14 Q. Okay. Officer Harris. Thank you. Now, when  
15 this -- when you arrived and now Officer Harris conducts  
16 the arrest, what are you doing at that point?

17 A. Just making sure the scene is safe just with  
18 the other officers approaching him. They are on the front  
19 porch, and hold the scene until Officer Aguirre does his  
20 investigation.

21 Q. How many officers are there with you?

22 A. Seven or eight.

23 Q. Seven or eight. Do you recall who those  
24 officers are?

25 A. Well, officers from my squad, Azraft, Martinez,

1 Medina, Sergeant Bounds, Officer Kelly, Perez, Pardo, and  
2 the report shows all the officers that were here.

3 Q. So it wasn't 10 to 12 officers. It was only 7  
4 or 8 officers there?

5 A. It could be 10 to 12. Whatever is in the  
6 report.

7 Q. Now, did you speak to Mr. Monrroy at the onset  
8 of your arrival?

9 A. No.

10 Q. Did you know if Mr. Monrroy could speak  
11 English?

12 A. No.

13 Q. Were you notified that Mr. -- if Mr. Monrroy  
14 gave consent to search his truck?

15 A. No.

16 Q. So what other officers do you come in contact  
17 with during the investigation? I mean, how did that work?

18 A. Basically, once the scene is under control --  
19 all the officers on the scene -- you have narcotics  
20 officers, which are undercover, and you have uniformed  
21 officers who are pretty much on the scene just waiting for  
22 the case agent, Officer Aguirre, to run his scene. We're  
23 just assisting on the job that we're doing until he gives  
24 us the next instructions of what to do.

25 Q. Fair enough. Now, what family members are

1 outside watching all of this happen?

2 A. The family members in response to the people at  
3 the house?

4 Q. Well, you said there were family members on the  
5 porch watching, correct?

6 A. Once the ruckus and the commotion got loud  
7 outside, I believe the lady and some of her kids came to  
8 the front porch.

9 Q. Did you see Mr. Monrroy actually being  
10 arrested?

11 A. No, I didn't.

12 Q. If you were outside with the rest of the  
13 officers, how could you not see Mr. Monrroy's arrest?

14 A. He was already in custody. So I saw him in  
15 custody. I didn't see when he got taken down.

16 Q. So when you arrived, he was already in custody?

17 A. The officer already had him in custody.

18 Q. Didn't you just say that you arrived  
19 simultaneously with everybody else?

20 A. I side we arrived at the same time, but I  
21 didn't get out of my vehicle; therefore, they went into  
22 the yard, and there was a long fence that I couldn't see  
23 who came into contact with him first.

24 Q. You just sat outside and waited a little bit?

25 A. Pretty much.

1 Q. Now, when you walk inside, who all is in the  
2 house?

3 A. Same officers. When they walked in the house,  
4 some of the uniformed officers and the narcotics officers.

5 Q. What do you do once you walk in the house?  
6 Everybody starts walking around the house, correct?

7 A. Negative. Once Officer Aguirre walked the  
8 defendant in, the family sat down in the front living  
9 room. We stayed there just standing there until the next  
10 instructions were given on what to do.

11 Q. You stand at attention while that's happening,  
12 right?

13 A. Not attention, but just standing there.

14 Q. So Officer Aguirre is the only person talking  
15 to the family members at the dining room table?

16 A. Yes, sir.

17 Q. He's the only one at the dining room table?

18 A. Yes, sir.

19 Q. Can you hear what's being said by Officer  
20 Aguirre?

21 A. You can hear him. They are speaking Spanish  
22 and you can hear him talking to him, but I don't exactly  
23 know the words they were saying. I wasn't paying  
24 attention to the whole conversation.

25 Q. Fair enough. At any point did Mr. Monrroy

1 speak English, to your knowledge?

2 A. To my knowledge, no.

3 Q. So you're not there when -- or you're not in  
4 front of Mr. Monrroy when he signs this Consent --

5 A. No.

6 Q. -- to Search?

7 A. No.

8 Q. And you're familiar with the Consent to Search  
9 paperwork, correct?

10 A. Yes.

11 Q. Showing you what has been previously marked and  
12 admitted as State's Exhibit No. 22. Are you familiar with  
13 this document?

14 A. Yes.

15 Q. What is this document?

16 A. The Consent to Search.

17 Q. And can you translate in English for me --  
18 well, this document is in Spanish, correct?

19 A. Correct.

20 Q. Can you translate in English for me what that  
21 first line at the top says?

22 A. I don't understand. I don't really understand  
23 all of that.

24 Q. I made an assumption. Do you speak Spanish?

25 A. I speak it. I don't -- I know, basically, it's

1 a Consent to Search. It's saying that it's a Consent to  
2 Search his residence.

3 Q. Not basically. You said you speak Spanish,  
4 correct?

5 A. I speak Spanish, yes.

6 Q. You read Spanish?

7 A. Somewhat.

8 Q. So it's safe to say that it's possible to be  
9 able to speak Spanish, but not be able to read it very  
10 well, correct?

11 A. Yes.

12 Q. And is Spanish your first or second language?

13 A. Second.

14 Q. Second language. How long have you spoken  
15 Spanish?

16 A. I don't know. Fifteen years, maybe.

17 Q. Fifteen years. Did you grow up speaking  
18 Spanish?

19 A. No, English.

20 Q. Would you call yourself fluent in Spanish?

21 A. The department says yes. I get paid for it.

22 Q. Very good. So -- and that's a good point that  
23 you raise. The department, do you have to be -- do they  
24 have to qualify you to speak Spanish?

25 A. Correct.



1 Q. Do they also qualify you to read Spanish?

2 A. Not necessarily; hold a conversation and  
3 understand the conversation with somebody that you would  
4 be encountering.

5 Q. And have you ever had to give someone -- give  
6 someone a Consent to Search document before?

7 A. Yes.

8 Q. Have you ever had to give someone a Consent to  
9 Search document that was in Spanish?

10 A. Yes.

11 Q. Isn't it police procedure to go over that  
12 document with them?

13 A. Yes, but therefore we have Spanish speakers,  
14 like my partner.

15 Q. It's a "yes" or "no" at that point.

16 A. Yes.

17 Q. Have you been the one to ever go over the  
18 document with someone that was a Spanish speaker?

19 A. No.

20 Q. No. And to be fair, this Consent to Search  
21 specifically gives Officer Aguirre and Officer Zapata the  
22 right to search Mr. Monrroy's home, correct?

23 A. Correct.

24 Q. Now, there was a number of things found in  
25 Mr. Monrroy's home. You said just now on your direct

1 testimony that the things that you found were currency in  
2 the bedroom, along with a couple of guns, correct?

3 A. Correct.

4 Q. Those are the only things that you found,  
5 correct?

6 A. Correct.

7 Q. When you first walked into the home, you didn't  
8 see any drugs on the mantel, did you?

9 A. In plain view.

10 Q. In plain view. You didn't testify to that  
11 earlier, did you?

12 A. You didn't ask me.

13 Q. Fair enough. All the other things that were  
14 found in the home, neither you nor Officer Aguirre found.  
15 They were other officers that found those items, correct?

16 A. Are you talking about the narcotics?

17 Q. Narcotics and the other currency, because you  
18 just testified the only things you found were the currency  
19 and the guns, correct?

20 A. The only currency in that particular room,  
21 because there was other currency found in the house.

22 Q. You testified that you found -- the only things  
23 that you found specifically was the currency in that  
24 drawer and a couple of guns, correct?

25 A. Yes, the only currency in that drawer and those

1 two guns.

2 Q. Okay. How much currency was in that drawer  
3 specifically?

4 A. I don't know. I can't -- I can't estimate.

5 Q. You have no knowledge as to that amount. The  
6 other currency and the other drugs, alleged drugs, that  
7 were found in the home were not found by either you nor  
8 Officer Aguirre, correct?

9 A. No.

10 Q. They were found by other officers, correct?

11 A. Other team members, yes.

12 Q. Other officers that were not listed as a part  
13 of the Consent to Search, correct?

14 A. The other --

15 Q. Yes or no, sir. Other officers named in the  
16 consent?

17 A. No.

18 Q. And the other officers are the ones who found  
19 other drugs and currency, correct?

20 A. Correct.

21 Q. As far as the truck goes, obviously, there was  
22 enough time to secure in some shape, form, or fashion,  
23 whether coerced or not, a written consent form for the  
24 house, correct?

25 A. Say it again.

1 Q. Sure, I'll say it again. There was enough time  
2 to secure a consent form, whether lawfully or unlawfully  
3 obtained, for the search of the house, correct?

4 A. Correct.

5 Q. There would have been enough time to also  
6 obtain a Consent to Search Mr. Monrroy's truck, as well,  
7 correct?

8 A. Correct.

9 Q. But that wasn't done here, was it?

10 A. A verbal was given.

11 Q. There was no signed Consent to Search  
12 Mr. Monrroy's truck, was there?

13 A. No, not signed consent.

14 Q. It's your testimony that you and the other  
15 officers didn't move outside of that living room area  
16 until that Consent to Search was signed?

17 A. Yes.

18 Q. Okay. Now, I have three or four guns at home  
19 that are loaded, a shotgun and some rifles all loaded.

20 MR. PHANCO: I object to relevance, Judge.

21 THE COURT: That's sustained.

22 Q. (By Mr. Dunn) Does the fact that Mr. Monrroy  
23 had guns in his home -- well, let me back up. For the  
24 charge with which Mr. Monrroy is charged with, a felony,  
25 intent to deliver, were there guns used in the commission

1 of that crime?

2 A. No.

3 Q. Was there anything illegal about Mr. Monrroy  
4 having guns in his home under the laws of the state of  
5 Texas?

6 A. No, unless you are --

7 MR. DUNN: Objection after no, Judge.

8 THE COURT: You asked if there was  
9 anything. You may explain your answer, sir.

10 A. No, as long as you're not a felon in  
11 possession, you are able to attain a weapon in your home.

12 Q. At that time was Mr. Monrroy a felon?

13 A. To my knowledge, no.

14 MR. DUNN: Pass the witness, Judge.

15 THE COURT: Any redirect?

16 MR. PHANCO: Briefly, Judge.

17 **REDIRECT EXAMINATION BY THE STATE**

18 BY MR. PHANCO:

19 Q. You said that there were no guns used in the  
20 commission of a possession of a controlled substance. Do  
21 you believe the guns you found specifically -- I'll refer  
22 to State's Exhibit 16. Do you believe the guns in his  
23 house were going to be used to protect his drug  
24 trafficking organization?

25 MR. DUNN: I'm going to object. It calls

1 for speculation.

2 THE COURT: It's overruled.

3 Q. (By Mr. Phanco) In your experience as a police  
4 officer, a narcotics officer.

5 A. Correct.

6 Q. And you stated that you speak Spanish, but you  
7 don't read it very well?

8 A. Correct.

9 Q. So if I said to you, I'm going to give you a  
10 Consent to Search form for your house, would you request  
11 that in Spanish or English?

12 MR. DUNN: Objection, Your Honor.  
13 Relevance as to what he would do.

14 THE COURT: It's sustained.

15 Q. (By Mr. Phanco) Do you give people whose houses  
16 you want to search, do you give them the opportunity to  
17 either get the form in Spanish or English?

18 A. Correct. We have both English or Spanish, so  
19 we ask them.

20 MR. PHANCO: I'll pass.

21 THE COURT: Any recross?

22 **RECROSS-EXAMINATION BY THE DEFENSE**

23 BY MR. DUNN:

24 Q. You said that the guns are used in the  
25 protection of drugs and narcotics, right?

1 A. Yes.

2 Q. When Mr. Monrroy allegedly delivered any  
3 cocaine to Officer Aguirre, did he have any gun on him?

4 A. No.

5 Q. So he wasn't using the gun in protection of his  
6 delivery at that point, was he?

7 A. No.

8 MR. DUNN: Pass the witness.

9 THE COURT: Rebuttal?

10 MR. PHANCO: Just one, Your Honor.

11 **FURTHER REDIRECT EXAMINATION BY THE STATE**

12 BY MR. PHANCO:

13 Q. Do you remember a shrine in the room?

14 A. Yes.

15 MR. DUNN: Objection, Your Honor. That's  
16 outside the scope of --

17 THE COURT: I'm going to sustain that.  
18 Anything that's -- I don't want to start direct  
19 examination over.

20 MR. PHANCO: Sure. I'll end on that,  
21 Judge.

22 THE COURT: Then you may step down. It's  
23 10:30. Let's take our morning break.

24 (Whereupon the Court stood in a brief  
25 recess.)

1 THE COURT: Check on the jury, please.

2 (The defendant and jury are present.)

3 THE COURT: State, call your next witness.

4 MR. PHANCO: I'll rest, Judge.

5 THE COURT: All right. The State rests.

6 What say the defense?

7 MR. DUNN: Wow. The defense at this point  
8 has a motion outside the presence of the jury.

9 THE COURT: Come forward.

10 (Whereupon counsel approached the  
11 bench out of the hearing of the jury.)

12 THE COURT: Make your motion on the record,  
13 sir.

14 MR. DUNN: As of right now, the State has  
15 not shown anything to warrant the special issue of a  
16 firearm. They've had two officers testify that it  
17 was not used in the commission of the offense  
18 alleged. And we're going to ask that the special  
19 issue that was brought by the State be removed.

20 THE COURT: Okay. That's going to be a  
21 punishment issue anyway; that's when the jury would  
22 hear it. So that's denied. Okay.

23 MR. DUNN: We'll probably come back again  
24 after our case in chief for another directed.

25 (Whereupon the following proceeding is



1 held in the hearing of the jury.)

2 MR. DUNN: Judge, at this time the defense  
3 would like to call Ana Talavera to the stand.

4 THE COURT: All right.

5 THE BAILIFF: This witness has not been  
6 sworn.

7 THE COURT: All right. Come forward,  
8 ma'am.

9 MR. DUNN: Ms. Talavera is going to be  
10 using a translator, Judge.

11 (Whereupon the witness is sworn in by  
12 the Court.)

13 THE COURT: All right. You may have a  
14 seat. You may proceed when you are ready.

15 Let me instruct the jury real quick. You  
16 may or may not understand Spanish; if you do, the  
17 translation that we will use is from the official  
18 translator; that's what will be in the record and  
19 that's what we will use to determine any questions of  
20 fact that you may have to resolve today.

21 You may proceed, sir.

22 MR. DUNN: Thank you, Judge.

23 **ANA MARIA TALAVERA,**

24 having been first duly sworn, testified as follows:

25