Volume 2 of 4

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

CERTIORARI TO EDGEFIELDCOUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2014-000591

Fredy Deleon,.....Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

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MR. MIZZELL: IF IT PLEASE, YOUR HONOR? I NEXT BRING THE INTERPRETER AROUND FOR THE COURT TO QUALIFY HER. PLEASE STATE YOUR NAME FOR THE RECORD.

THE INTERPRETER: MY NAME IS AVA KRAEMER.

THE COURT: LAST NAME IS SPELLED WITH A C OR A K?

THE INTERPRETER: K. K-R-A-E-M-E-R.

THE COURT: ALRIGHT. RAISE YOUR RIGHT HAND, PLEASE. (THE INTERPRETER WAS SWORN TO TELL THE TRUTH.) THANK YOU. MS. KRAEMER, DO YOU WORK WITH COMMUNICAR?

THE INTERPRETER: YES, SIR.

THE COURT: AND HOW LONG HAVE YOU BEEN WITH THEM?

THE INTERPRETER: ABOUT -- WELL, THIS IS MY FIRST TIME TO BE IN COURT, SO TODAY.

THE COURT: OKAY. WHAT BACKGROUND DO YOU HAVE IN SPANISH?

THE INTERPRETER: I WAS -- MY UNDERGRADUATE DEGREE WAS IN SPANISH AT THE UNIVERSITY OF WISCONSIN. I STUDIED IN MEXICO FOR 6 WEEKS, I STUDIED -- I HAD A MINOR IN SPANISH, AND I WAS IN THE PEACE CORPS FOR 2 AND A HALF YEARS. I RECEIVED IN MAY OF 2004 MY MASTER'S DEGREE IN SOCIAL WORK IN WHICH TIME I'VE BEEN WORKING WITH THE LATINO POPULATION--

THE COURT: I'M SORRY. WE'RE JUST WHAT? YOUR MASTER'S DEGREE IN WHAT?

THE INTERPRETER: MASTER'S DEGREE IN SOCIAL WORK AND I'VE BEEN EMPLOYED WITH DIABLO PROJECTS WHICH PROVIDES INTERPRETATION AND TRANSLATION BY PHONE TO DEHEC AND DSS AND THEN I ALSO WORKED WITH THE UNIVERSITY HIGH SCHOOL EQUIVALENCY PROGRAM WHICH OFFERS THE

G.E.D. IN SPANISH.

THE COURT: I GATHER FROM WHAT YOU INDICATED THAT YOU HAVE NOT BEEN QUALIFIED BEFORE AS AN INTERPRETER IN COURTS IN SOUTH CAROLINA.

THE INTERPRETER: NO, SIR.

THE COURT: AND HAVE YOU HAD AN OPPORTUNITY BRIEFLY TO TALK TO THE DEFENDANTS IN THE NEXT CASE?

THE INTERPRETER: YES, SIR.

THE COURT: DID YOU HAVE ANY DIFFICULTY IN COMMUNICATING WITH THEM?

THE INTERPRETER: NO, SIR.

THE COURT: DID THEY HAVE ANY APPARENT DIFFICULTY IN COMMUNICATING WITH YOU?

THE INTERPRETER: NOT THAT I'M AWARE OF, NO.

THE COURT: OKAY. THEY DON'T SEEM TO SPEAK ANY ODD DIALECTS OR ANYTHING THAT AFFECT YOUR ABILITY TO COMMUNICATE WITH THEM?

THE INTERPRETER: NO.

THE COURT: STATE HAVE ANY QUESTIONS OF THE INTERPRETER?

MR. MIZZELL: NO, SIR.

THE COURT: ANY OF THE DEFENDANTS HAVE ANY QUESTIONS OF THE INTERPRETER?

MR. HAWK: NONE ON BEHALF OF THE DEFENDANT DELEON, YOUR HONOR.

THE COURT: ALRIGHT.

MR. MILLER: NONE ON BEHALF OF DEFENDANT GUERRERO, YOUR HONOR.

MR. SUSSMAN: NONE ON BEHALF OF MY CLIENTS, JUDGE.

THE COURT: ALRIGHT. THE COURT FINDS THAT MS. KRAEMER IS A

QUALIFIED EXPERT TO INTERPRET SPANISH TO ENGLISH AND ENGLISH TO SPANISH IN THIS PROCEEDING. I NEED YOU TO RAISE YOUR RIGHT HAND AGAIN. (THE INTERPRETER WAS SWORN TO TELL THE TRUTH.) WELL, I SHOULDA DONE THIS DIFFERENTLY. RAISE YOUR RIGHT HAND AGAIN. I'M SORRY. (THE INTERPRETER WAS SWORN TO TRANSLATE VERBATIM.) THANK YOU. I NEED YOU TO FIND A SEAT PROBABLY OVER THERE BY MR. PUETZ SOMEWHERE.

MR. SUSSMAN: WE'RE GOING TO TRY TO SITUATE HERE IN THE MIDDLE AMONGST THEM.

THE COURT: MS. KRAEMER, IF YOU NEED PEOPLE TO SLOW DOWN, IF YOU NEED US TO STOP, YOU GIVE US A SIGNAL. OKAY?

THE INTERPRETER: OKAY.

THE COURT: THANK YOU. START NOW. SOLICITOR, CALL YOUR CASE.

MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? THE STATE NOW CALLS FOR TRIAL 2004-GS-19-140 THE STATE –VS- FREDY DELEON ALSO KNOWN AS FREDY DELEON TAMAYO AN INDICTMENT FOR TRAFFICKING IN MARIJUANA. IT'S BEEN TRUE-BILLED BY THE GRAND JURY OF EDGEFIELD COUNTY. THE STATE NOW CALLS THIS CASE FOR TRIAL.

ALSO INDICTMENT 2004-GS-19-137 THE STATE – VS- ALFREDO AVILA-AROJONA. AN INDICTMENT FOR TRAFFICKING IN MARIJUANA. IT'S BEEN TRUE-BILLED BY THE GRAND JURY.

MR. HAWK: YOUR HONOR, CAN WE HOLD ONE SECOND AND LET ME HAVE A CONVERSATION WITH THE INTERPRETER?

MR. MAYE: THE STATE ADDITIONALLY CALLS FOR TRIAL 2004-GS-19-138 THE STATE – VS- RAPHEL PEREZ HERNANDEZ, AN INDICTMENT FOR TRAFFICKIN' IN MARIJUANA. IT'S BEEN TRUE-BILLED BY THE GRAND JURY OF EDGEFIELD COUNTY.

THE STATE CALLS INDICTMENT 2004-GS-19-139 THE STATE –VS- HONORIO HERNANDEZ GUERRERO, AN INDICTMENT FOR TRAFFICKING IN MARIJUANA.

ALL THESE CASES HAVE BEEN TRUE-BILLED BY THE GRAND JURY OF EDGEFIELD COUNTY. THE STATE NOW CALLS THEM FOR TRIAL.

THE COURT: YOU OKAY?

THE INTERPRETER: YEP.

THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL, PLEASE, GIVE ME YOUR ATTENTION. WE ARE ABOUT TO QUALIFY A JURY THAT WILL HEAR 4 SEPARATE AND DISTINCT CHARGES INVOLVING 4 INDIVIDUALS. THESE CASES ARE BEING TRIED TOGETHER MERELY FOR THE PURPOSE OF CONVENIENCE AND EACH OF THESE CASES HAS TO BE EVALUATED SEPARATELY.

NOW ONE INDICTMENT IS CAPTIONED THE STATE OF SOUTH CAROLINA – VS- ALFREDO AVILA-AROJONA.

THE NEXT INDICTMENT IS CAPTIONED THE STATE OF SOUTH CAROLINA – VS- RAPHEL PEREZ HERNANDEZ.

THE NEXT INDICTMENT IS CAPTIONED THE STATE OF SOUTH CAROLINA – VS- HONORIO HERNANDEZ GUERRERO.

AND THE NEXT IS CAPTIONED THE STATE OF SOUTH CAROLINA –VS FREDY DELEON ALSO KNOWN AS FREDY DELEON-TAMAYO.

EACH OF THESE MEN IS CHARGED WITH THE OFFENSE OF TRAFFICKING IN MARIJUANA. AND I'M GOING TO READ THE LANGUAGE FROM ONE INDICTMENT, BUT THE LANGUAGE IN EACH INDICTMENT IS IDENTICAL EXCEPT IT CHANGES THE NAMES OF THE INDIVIDUAL DEFENDANTS. WHAT THESE MEN ARE CHARGED WITH IS IT IS ALLEGED THAT THEY DID IN EDGEFIELD COUNTY ON OR BETWEEN APRIL 5, 2002, AND MAY 18, 2002, KNOWINGLY, INTENTIONALLY, WILFULLY AND

UNLAWFULLY SELL, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO THIS STATE OR THAT THEY PROVIDED FINANCIAL ASSISTANCE OR THAT THEY OTHERWISE AIDED, ABETTED, ATTEMPTED OR ASSISTED OR CONSPIRE OR PARTICIPATED WITH OTHERS TO SELL, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO THIS STATE OR THAT THEY WERE KNOWINGLY IN ACTUAL OR CONSTRUCTIVE POSSESSION OR KNOWINGLY ATTEMPTED TO BECOME IN ACTUAL OR CONSTRUCTIVE POSSESSION OF MORE THAN 100 POUNDS BUT LESS THAN 200 POUNDS -- I'M SORRY. LESS THAN 2000 POUNDS OF MARIJUANA. THAT IS ALLEGED TO BE IN VIOLATION OF A CODE SECTION CITED IN THE INDICTMENT FOR TRAFFICKING IN MARIJUANA.

SO EACH OF THESE MEN IS CHARGED WITH TRAFFICKING IN MARIJUANA GREATER THAN 100 POUNDS BUT LESS THAN 2000 POUNDS.

EACH OF THESE MEN HAS ENTERED A PLEA OF NOT GUILTY.

EACH IS PRESUMED TO BE INNOCENT.

THE STATE OF SOUTH CAROLINA BROUGHT THESE CHARGES, AND THE STATE HAS THE ENTIRE BURDEN OF PROOF. THE STATE MUST PROVE EACH DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THESE INDICTMENTS ARE NOT EVIDENCE. THEY ARE CHARGING PAPERS. THEY'RE MERELY THE FORMAL MEANS BY WHICH SOMEONE IS CHARGED AND BROUGHT TO TRIAL. I'M GOING TO BE ASKING YOU A SERIES OF QUESTIONS. IF ANY OF THESE QUESTIONS APPLY TO YOU OR IF YOU HAVE ANY DOUBT ABOUT WHETHER THEY APPLY TO YOU, PLEASE, STAND. WHEN I CALL ON YOU, THE FIRST THING WE WILL DO IS TO IDENTIFY YOURSELF, AND THEN I WANT YOU TO LISTEN CAREFULLY TO THE QUESTION I ASK YOU AND RESPOND TO THAT QUESTION. REMEMBER THAT IF YOU NEED TO DISCUSS ANYTHING MORE PRIVATELY, FEEL FREE TO COME DOWN FRONT AND

REMEMBER THAT YOU'RE UNDER OATH. IS ALFREDO AVILA-AROJONA IN THE COURTROOM?

MR. SUSSMAN: YES, SIR.

THE COURT: HAVE HIM STAND, PLEASE. FACE THAT DIRECTION, PLEASE, SIR. THANK YOU, SIR. YOU MAY BE SEATED. MR. AROJONA IS REPRESNTED BY MR. WILLIAM SUSSMAN. THANK YOU, MR. SUSSMAN. YOU MAY BE SEATED.

IS RAPHEL PEREZ HERNANDEZ IN THE COURTROOM? WILL YOU FACE THAT DIRECTION. THANK YOU. YOU MAY BE SEATED. HE CAN BE SEATED. AND MR. SUSSMAN REPRESENTS MR. HERNANDEZ AS WELL. THANK YOU.

IS HONORIO HERNANDEZ GUERRERO IN THE COURTROOM? FACE THAT WAY, PLEASE. THANK YOU. YOU MAY BE SEATED. MR. GUERRERO IS REPRESENTED BY MR. DAVID MILLER. THANK YOU.

MR. HAWK, DOES YOUR CLIENT PREFER DELEON OR DELEON-TAMAYO?

MR. HAWK: DELEON, YOUR HONOR.

THE COURT: ALRIGHT.

MR. HAWK: THANK YOU.

THE COURT: IS FREDY DELEON IN THE COURTROOM? FACE THAT WAY, PLEASE. THANK YOU VERY MUCH, SIR. MR. DELEON WILL BE REPRESENTED BY MR. MARTIN PUETZ AND BY MR. JAQUE HAWK. THANK YOU. ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY EMPLOYMENT WITH ANY OF THESE DEFENDANTS? IF SO, PLEASE, STAND. NO ONE STOOD. THE FOLLOWING PERSONS HAVE BEEN IDENTIFIED AS POTENTIAL WITNESSES IN THE STATE'S CASE. IF ANY OF THEM ARE PRESENT AT THIS TIME, THEN THAT PERSON WOULD NEED TO STAND AND FACE THE JURY. COBY PERRY WITH SLED. THANK YOU. ROGER LOWE. WALLACE OWENS OF THE AIKEN COUNTY SHERIFF'S OFFICE. CAROL C-A-

R-O-L GILLILAND. ERIC OWENSBY OF THE AIKEN COUNTY SHERIFF'S OFFICE. MIKE JONES OF THE AIKEN COUNTY SHERIFF'S OFFICE. JOSEPH LEATHERMAN WITH SLED. ROOSEVELT YOUNG OF THE EDGEFIELD COUNTY SHERIFF'S OFFICE. THANK YOU. CHRIS WASH OF THE EDGEFIELD COUNTY SHERIFF'S OFFICE. THANK YOU. PATRICK MIZE M-I-Z-E WHO IS WITH THE UNITED STATES CUSTOM SERVICE. DON BULLOCK. RAQUEL JIMENEZ OF THE -- IS THAT SALUDA COUNTY?

MR. MAYE: YES, SIR, YOUR HONOR.

THE COURT: SALUDA COUNTY SHERIFF'S OFFICE. SHERIFF ADELL DOBEY OF THE EDGEFIELD COUNTY SHERIFF'S OFFICE. ROBERTA DIAZ. RICK GAONA? HELP ME OUT. G-O--

MR. MAYE: GAONA.

THE COURT: GAONA. RICK GAONA. WHAT--

MR. MAYE: UNITED STATES -- FORMERLY UNITED STATES CUSTOM SERVICE. IT IS NOW SOME FORM OF IMMIGRATION AND CUSTOMS KNOWN AS ICE (PHONETIC).

THE COURT: HE'S WITH THE FEDERAL GOVERNMENT.

MR. MAYE: YES, SIR.

THE COURT: AND MICHELLE WILLIAMS DOWLING. IS SHE WITH THE SAME FEDERAL AGENT?

MR. MAYE: FEDERAL GOVERNMENT.

THE COURT: ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY EMPLOYMENT WITH ANY OF THE POTENTIAL WITNESSES FOR THE STATE? IF SO, PLEASE, STAND. NO ONE STOOD. THE STATE OF SOUTH CAROLINA WILL BE REPRESENTED BY MR. ERVIN MAYE AND MR. JOE MIZZELL. THEY ARE WITH THE SOLICITOR'S OFFICE OF THE 11TH JUDICIAL CIRCUIT.

NOW, LADIES AND GENTLEMEN, TO THE BEST OF YOUR KNOWLEDGE DO ANY OF YOU KNOW ANYTHING AT ALL ABOUT THESE CASES? AND WHEN I SAY THESE CASES, I DON'T MEAN IN A LEGAL SENSE NECESSARILY. I MEAN DO YOU KNOW ANYTHING ABOUT THE UNDERLYING FACTUAL ALLEGATIONS, ANYTHING ABOUT THE MATTER. DO YOU RECALL SEEING, HEARING, READING ANYTHING IN THE MEDIA ABOUT THE CASE? IF YOU KNOW ANYTHING ABOUT THE CASES AT ALL THAT YOU CAN RECALL, PLEASE, STAND. YES, MA'AM?

THE JUROR: JULIE RODGERS. I THINK I DO.

THE COURT: ALRIGHT.

THE JUROR: THERE WAS TALK ABOUT IT A LOT. MY HUSBAND AND ME.

THE COURT: OKAY. HOLD ON JUST A MINUTE. LET ME FIND YOU ON MY PAGE, MS. RODGERS. MS. RODGERS IS JUROR #96. YOU AND YOUR HUSBAND HAD CONVERSATIONS ABOUT THE MATTER?

THE JUROR: YES. IF IT'S THE MATTER I'M THINKING ABOUT. HE WAS VERY CLOSE TO IT WHEN IT HAPPENED IN THE AREA.

THE COURT: OKAY. ALRIGHT. I THINK THE ALLEGATIONS IN THE CASE ARE THAT THERE WAS A TRUCK THAT CONTAINED SOME ITEMS OF FURNITURE AND SHAPED LIKE FIREPLACES.

THE JUROR: YES, SIR.

THE COURT: AND THAT THE ALLEGATIONS ARE THAT MARIJUANA WAS CONCEALED IN THOSE -- COME DOWN HERE AND LET ME TALK TO YOU. OKAY? (THE FOLLOWING OCCURRED ON THE RECORD BUT OUTSIDE THE HEARING OF THE COURTROOM AUDIENCE.) OKAY. MS. RODGERS, LET'S GO TO THE LAST QUESTION FIRST AND THEN I'LL COME BACK AND WORK MY WAY THROUGH IT. YOU UNDERSTAND IF YOU'RE ON THE JURY YOU HAVE TO DECIDE THE CASE BASED ON

THE EVIDENCE PRESENTED IN THE COURTROOM.

THE JUROR: UH-HUH.

THE COURT: AND THE LAW THAT I TELL YOU.

THE JUROR: YES, SIR.

THE COURT: THE CONVERSATIONS THAT YOU'VE HAD WITH YOUR HUSBAND AND HIS KNOWLEDGE ABOUT ANYTHING, DO YOU FEEL THAT THAT IN ANY WAY COULD AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

THE JUROR: NO, SIR. I'M VERY HONEST. I JUST KNEW THAT HE CALLED THE DAY THAT THIS HAPPENED AND SAID THAT SOMETHIN' WAS GOIN' ON BECAUSE HE WORKS IN THAT AREA.

THE COURT: CAN YOU RECALL WHAT YOU ALL TALKED ABOUT?

THE JUROR: THAT THE GENTLEMAN HAD OWNED A STORE CLOSE TO WHERE HE USED TO WORK BEFORE HE MOVED INTO THE LARGE BUILDING. HE KNEW THE GENTLEMAN. DIDN'T MENTION ANY NAMES. THE FELLOW LIVED IN A TRAILER PARK NEXT TO THE STORE. AND WE HAD JUST DISCUSSED IT. AND HE CALLED ME THAT EVENING AND TOLD ME THAT SOMETHING WAS GOING ON AND THERE WAS THIS BIG RAID OUT THERE. LIKE I SAY, I'M HONEST AND I THOUGHT THAT'S WHAT Y'ALL WANTED TO KNOW.

THE COURT: THAT'S EXACTLY -- YOU'RE DOING EXACTLY THE RIGHT THING. OKAY. NOW HAVE YOU FORMED ANY KIND OF OPINION ABOUT THE CASE?

THE JUROR: OH, NO, SIR.

THE COURT: HAVE YOU FORMED AN OPINION AS TO WHETHER ANYONE IS GUILTY OR NOT GUILTY?

THE JUROR: NO, SIR. I DON'T KNOW THESE GENTLEMEN.

THE COURT: OKAY. IF YOU'RE ON THIS JURY WILL YOU BE ABLE TO COMPLETELY SET ASIDE ANYTHING YOUR HUSBAND MAY HAVE SAID OR ANY KNOWLEDGE OF THE CASE OUTSIDE THE COURTROOM AND DECIDE THE CASE BASED ONLY ON WHAT'S PRESENTED IN THE COURTROOM?

THE JUROR: YES, SIR.

THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND ABOUT THAT?

THE JUROR: NO, SIR. I MEAN I COULD IF I KNEW INDIVIDUALS, BUT I DON'T.

THE COURT: YES, MA'AM. OKAY. SO YOU'RE CONFIDENT YOU CAN BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: YES, SIR.

THE COURT: DON'T DISCUSS THAT WITH ANY OF THE OTHER JURORS. (THE FOLLOWING OCCURRED WITHIN THE HEARING OF THE COURTROOM.) ALRIGHT. MS. RODGERS IS 96. SHE'S ELIGIBLE TO SERVE. ANYBODY ELSE ON THAT SUBJECT?

THE JUROR: YOUR HONOR? (THE FOLLOWING OCCURRED OUTSIDE THE HEARING OF THE COURTROOM, BUT ON THE RECORD.)

THE COURT: YOU NEED TO STATE YOUR NAME.

THE JUROR: GLENN HERLONG. BASED ON A CONVERSATION I REMEMBER READING IN THE PAPER WHEN IT OCCURRED. NOTHING MORE.

THE COURT: DO YOU REMEMBER WHAT YOU MAY HAVE READ?

THE JUROR: I THINK THEY FOUND A TRUCK AND THEY FOUND AN 18-WHEELER IN TRENTON OR SOMETHIN' OR OTHER.

THE COURT: OKAY. MR. HERLONG, YOU UNDERSTAND IF YOU'RE ON THIS JURY YOU WILL BE UNDER OATH TO DECIDE THE CASE BASED ON THE EVIDENCE PRESENTED IN THE COURTROOM AND THE LAW I TELL YOU.

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL ABOUT WHAT YOU MAY HAVE READ OR SEEN OR HEARD THAT MAY AFFECT YOUR ABILITY TO DO THAT?

THE JUROR: NO, SIR.

THE COURT: SO YOU CAN JUST COMPLETELY PUT ASIDE WHATEVER YOU MAY HAVE READ IN THE NEWSPAPER AND DECIDE THE CASE BASED ON THE EVIDENCE?

THE JUROR: YES, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, SIR.

(THE FOLLOWING OCCURRED WITHIN THE HEARING OF THE COURTROOM.)

MR. HERLONG IS JUROR #46. HE'S ELIGIBLE TO SERVE.

LADIES AND GENTLEMEN, DO ANY OF YOU HAVE ANY CONNECTION OF ANY KIND WITH ANY OF THE ENTITIES INVOLVED IN THESE -- THIS CASE OR THESE CASES? ARE YOU SUPPLIER, A VOLUNTEER; DO YOU DO ANY BUSINESS WITH ANY OF THESE ENTITIES? AND THOSE WOULD INCLUDE SLED, THE AIKEN COUNTY SHERIFF'S OFFICE, THE EDGEFIELD COUNTY SHERIFF'S DEPARTMENT, THE U.S. CUSTOMS SERVICE, HOMELAND SECURITY, IMMIGRATION AND NATURALIZATION, WHATEVER IT'S KNOWN AS NOW OR THE SALUDA COUNTY SHERIFF'S OFFICE? DO YOU HAVE ANY CONNECTION WITH ANY OF THOSE ENTITIES, PLEASE, DISCLOSE THEM TO US. NO ONE STOOD.

DO YOU HAVE ANY CONNECTION WITH ANY OF THE ATTORNEYS INVOLVED IN THE CASE ON EITHER SIDE? IF YOU'VE EVER BEEN REPRESENTED BY ONE OF THESE ATTORNEYS; IF YOU EVER BEEN ON THE OPPOSITE OF THE CASE INVOLVING ONE OF THESE ATTORNEYS; IF YOU REGULARLY DO BUSINESS WITH THE LAW

FIRMS OR HAVE DONE BUSINESS WITH ANY OF THE FIRMS WITH WHICH THEY'RE AFFILIATED OR THE SOLICITOR'S OFFICE, PLEASE, DISCLOSE THAT TO US. NO ONE STOOD.

NOW IF YOU ARE NEIGHBORS, FRIENDS; IF YOU ATTEND THE SAME CIVIC CLUBS; IF YOU GO TO THE SAME CHURCHES; IF YOU'VE GOT ANY CONNECTION WITH ANY OF THESE PEOPLE THAT ARE INVOLVED IN THIS CASE, YOU NEED TO LET US KNOW ABOUT IT. SO IF ANY OF YOU ARE FRIENDS, NEIGHBORS, ATTEND THE SAME CHURCH OR CIVIC CLUBS, HAVE ANY CONNECTION WITH ANY OF THESE FOLKS IN THIS CASE, THESE CASES, PLEASE, STAND AND LET US KNOW ABOUT IT.

THE JUROR: ELAINE PARKER #84.

THE COURT: OKAY, MS. PARKER, GO AHEAD, PLEASE.

THE JUROR: I'M A FRIEND OF COBY PERRY.

THE COURT: YOU UNDERSTAND, MS. PARKER, THAT MR. PERRY MAY BE A WITNESS IN THE CASE?

THE JUROR: YES, SIR.

THE COURT: JUST ANSWER THIS YES OR NO. IF YOU NEED -- WELL, BEFORE I GET TO THAT. DO YOU UNDERSTAND THAT IF YOU'RE A JUROR YOU HAVE TO EVALUATE THE BELIEVABILITY OF EVERYBODY WHO TAKES THE WITNESS STAND.

THE JUROR: YES, SIR.

THE COURT: SO ANSWER THESE QUESTIONS YES OR NO. IF YOU NEED TO GO BEYOND THAT, COME DOWN FRONT, PLEASE. HAVE YOU EVER FORMED IN YOUR OWN MIND OR EXPRESSED TO ANYONE ELSE AN OPINION AS TO WHETHER COBY PERRY IS A BELIEVABLE PERSON OR NOT? JUST YES OR NO. IF YOU NEED TO GO BEYOND THAT, COME DOWN FRONT.

THE JUROR: BELIEVABLE. YES, SIR.

THE COURT: ALRIGHT. I HAVE TO SET YOU ASIDE, MS. PARKER. YOU STAY WITH US FOR FURTHER INSTRUCTIONS. OKAY? ALRIGHT. MR. HERLONG?

THE JUROR: I KNOW COBY PERRY AND FAMILY FROM CHURCH.

THE COURT: JUROR #46 MR. HERLONG. ALRIGHT. MR. HERLONG, YOU UNDERSTAND IF YOU'RE A JUROR YOU HAVE TO EVALUATE THE BELIEVABILITY, THE CREDIBILITY OF EVERY WITNESS WHO TAKES THE STAND?

THE JUROR: YES, SIR.

THE COURT: JUST ANSWER THIS YES OR NO. IF YOU NEED TO GO BEYOND IT, TELL ME DOWN HERE. HAVE YOU EVER FORMED IN YOUR OWN MIND OR EXPRESSED ANY OPINION AS TO WHETHER HE IS A BELIEVABLE PERSON OR NOT?

THE JUROR: NO, SIR.

THE COURT: OKAY. CAN YOU DECIDE THIS CASE WITHOUT REGARD TO YOUR PRIOR RELATIONSHIP OR EXISTING RELATIONSHIP WITH MR. PERRY OR HIS FAMILY?

THE JUROR: YES, SIR.

THE COURT: CAN YOU DECIDE THIS CASE WITHOUT REGARD TO WHAT HE MAY THINK ABOUT YOUR DECISION?

THE JUROR: YES, SIR.

THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND ABOUT ANY OF THAT?

THE JUROR: NO, SIR.

THE COURT: MR. HERLONG IS 46. HE'S ELIGIBLE TO SERVE. YES, MA'AM? YOUR NAME, PLEASE?

THE JUROR: LUCILLE BURTON.

THE COURT: OKAY. MS. BURTON, HOLD ON JUST A MOMENT. 15. ALRIGHT. MS. BURTON, WHAT'S YOUR SITUATION?

THE JUROR: I'M FAMILIAR WITH MR. YOUNG. WE GREW UP IN THE SAME CHURCH TOGETHER.

THE COURT: OKAY. DO YOU UNDERSTAND, MS. BURTON, THAT MR. YOUNG IS A POTENTIAL WITNESS IN THE CASE?

THE JUROR: YES, SIR.

THE COURT: YOU UNDERSTAND IF YOU'RE A JUROR YOU HAVE TO EVALUATE WHETHER EACH WITNESS IS BELIEVABLE?

THE JUROR: YES, SIR.

THE COURT: ANSWER THESE QUESTIONS YES OR NO. IF YOU NEED TO GO BEYOND THAT, COME DOWN FRONT, PLEASE. HAVE YOU EVER FORMED IN YOUR OWN MIND OR EXPRESSED TO ANYONE ELSE AN OPINION AS TO WHETHER ROOSEVELT YOUNG IS A BELIEVABLE PERSON OR NOT?

THE JUROR: NO, SIR.

THE COURT: CAN YOU DECIDE THIS CASE WITHOUT REGARD TO YOUR PRIOR RELATIONSHIP OR YOUR EXISTING RELATIONSHIP TO MR. YOUNG?

THE JUROR: YES, SIR.

THE COURT: DO YOU HAVE ANY -- CAN YOU DECIDE THIS CASE WITHOUT REGARD TO WHAT HE MAY THINK ABOUT YOUR DECISION?

THE JUROR: YES, SIR.

THE COURT: DO YOU HAVE ANY DOUBT AT ALL IN YOUR MIND ABOUT ANY OF THAT?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MS. BURTON IS JUROR #15. SHE'S ELIGIBLE. YES, MA'AM?

THE JUROR: JULIE RODGERS #96. CHRIS WASH IS A FRIEND OF THE FAMILY.

WE SPEND TIME TOGETHER ON THE HOLIDAYS.

THE COURT: ALRIGHT. MS RODGERS, YOU UNDERSTAND IF YOU'RE A JUROR YOU HAVE TO EVALUATE THE BELIEVABILITY OF EVERY WITNESS WHO TESTIFIES?

THE JUROR: YES, SIR.

THE COURT: YOU UNDERSTAND THAT MR. WASH IS A POTENTIAL WITNESS IN THE CASE?

THE JUROR: YES, SIR.

THE COURT: ANSWER THESE YES OR NO. IF YOU NEED TO GO BEYOND THAT, COME DOWN FRONT. HAVE YOU EVER FORMED IN YOUR OWN MIND OR EXPRESSED TO ANYONE ELSE AN OPINION AS TO WHETHER HE IS A BELIEVABLE PERSON OR NOT?

THE JUROR: NO, SIR.

THE COURT: CAN YOU DECIDE THESE CASES WITHOUT REGARD TO YOUR PRIOR OR EXISTING RELATIONSHIP WITH MR. WASH?

THE JUROR: YES, SIR.

THE COURT: YOU CAN DECIDE THIS CASE WITHOUT REGARD TO WHAT HE MAY THINK OF YOUR DECISION?

THE JUROR: YES, SIR.

THE COURT: SO IF YOU'RE ON THAT JURY IT'S NOT GONNA CROSS YOUR MIND ABOUT THE NEXT TIME Y'ALL ALL HOLIDAY TOGETHER DISCUSSING THIS MATTER?

THE JUROR: NO, SIR, IT MIGHT.

THE COURT: ALRIGHT. I'LL SET YOU ASIDE ON THIS. 96 MS. RODGERS IS SET ASIDE. YOUR NAME, PLEASE?

THE JUROR: KIM LORIMER.

THE COURT: OKAY, MS. LORIMER, WAIT JUST A MINUTE, PLEASE. 62. WHAT'S YOUR SITUATION, MA'AM?

THE JUROR: I TAUGHT ROOSEVELT YOUNG'S CHILD IN MY CLASS AND MIGHT HAVE HIS OTHER CHILD IN MY CLASS THIS YEAR COMING UP.

THE COURT: TAUGHT WHICH ONE? I'M SORRY.

THE JUROR: (INAUDIBLE)

THE COURT: IS THERE ANYTHING AT ALL ABOUT THAT RELATIONSHIP THAT WOULD IN ANY WAY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THE CASE?

THE JUROR: NO, SIR.

THE COURT: HAVE YOU EVER FORMED IN YOUR OWN MIND OR EXPRESSED TO ANYONE ELSE ANY OPINIONS ABOUT MR. YOUNG'S BELIEVABILITY?

THE JUROR: NO, SIR.

THE COURT: CAN YOU DECIDE THE CASE WITHOUT REGARD TO YOUR RELATIONSHIP TO MR. YOUNG AND HIS FAMILY?

THE JUROR: YES, SIR.

THE COURT: WILL YOU BE IN ANY WAY CONCERNED ABOUT WHAT MR. YOUNG MAY THINK ABOUT YOUR DECISION?

THE JUROR: NO, SIR.

THE COURT: YOU HAVE ANY DOUBT ABOUT ANY OF THAT?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MS. LORIMER IS 62. SHE'S ELIGIBLE TO SERVE. ANYBODY ELSE? OKAY. LADIES AND GENTLEMEN, I'M GOING TO POSE THIS QUESTION AND IF IT APPLIES TO YOU OR IF YOU HAVE ANY DOUBT ABOUT

WHETHER IT APPLIES TO YOU, WE'RE GONNA TALK ABOUT IT DOWN FRONT.

I NEED YOU TO STAND, BUT WE'RE GONNA TALK ABOUT ALL THESE THINGS DOWN FRONT. NOW IF I'VE SET YOU ASIDE ON THE CASE, YOU DON'T HAVE TO ANSWER ANYMORE OF THESE QUESTIONS. ALRIGHT? THESE CASES ALLEGE TRAFFICKING IN MARIJUANA. HAVE ANY OF YOU OR ANY OF YOUR IMMEDIATE FAMILY MEMBERS OR ANY OF YOUR CLOSE PERSONAL FRIENDS EVER BEEN CHARGED WITH ANY TYPE OF DRUG OFFENSE? OR HAVE ANY OF YOU OR ANY OF YOUR IMMEDIATE FAMILY MEMBERS OR CLOSE PERSONAL FRIENDS IN ANY WAY EVER BEEN THE VICTIM OF ANY DRUG RELATED CRIME? IF YOU'VE EVER BEEN ON EITHER SIDE OR ANY IMMEDIATE FAMILY MEMBERS OR CLOSE PERSONAL FRIENDS HAVE EVER BEEN ACCUSED OF THIS OR IN SOME WAY YOU FEEL BEEN VICTIMIZED BY SOMETHING THAT WAS IN ANY WAY DRUG RELATED, PLEASE, STAND. ALRIGHT. FOLKS, THERE'S A RAIL OVER HERE WITH AN OPENING. IF YOU'D FORM A LINE RIGHT THERE, THE CLERK OR THE BAILIFF WILL SEND YOU UP ONE AT A TIME.

(THE FOLLOWING OCCURRED ON THE RECORD BUT OUTSIDE THE HEARING OF THE COURTROOM.) YES, MA'AM? WHAT'S YOUR NAME?

THE JUROR: LISA MARTIN. (130)

THE COURT: OKAY, MS. MARTIN, WHAT'S YOUR SITUATION?

THE JUROR: MY SON TERRENCE I WANNA THINK AIKEN COUNTY -- I THINK IT'S BEEN LESS THAN 8 MONTHS BUT I'M NOT SURE. IT MIGHT'VE BEEN EDGEFIELD COUNTY. HE WAS CHARGED FOR MARIJUANA.

THE COURT: IS THAT CASE STILL PENDING?

THE JUROR: I THINK SO.

THE COURT: DO YOU KNOW WHAT SPECIFICALLY HE WAS CHARGED WITH?

WAS IT SIMPLE POSSESSION OR POSSESSION WITH INTENT OR DISTRIBUTION?

THE JUROR: I'M NOT SURE.

THE COURT: HOW OLD IS YOUR SON?

THE JUROR: HE'S 24.

THE COURT: IS THERE ANYTHING AT ALL ABOUT THAT EXPERIENCE OR YOUR RELATIONSHIP WITH HIM THAT WOULD IN ANY WAY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: I DON'T APPROVE OF IT.

THE COURT: DO YOU FEEL THAT YOUR LACK OF APPROVAL WOULD AFFECT YOUR ABILITY TO FAIRLY AND IMPARTIALLY EVALUATE A CASE WHERE SOMEBODY WAS BRINGING IN OVER 100 POUNDS?

THE JUROR: I WOULD ASSUME THEY'RE GUILTY.

THE COURT: I WOULD HAVE TO SET YOU ASIDE. DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. WAIT FOR FURTHER INSTRUCTIONS. MS. MARTIN IS 130. SHE'S SET ASIDE. YES, MA'AM?

THE JUROR: STACY BIGGERSTAFF. #9.

THE COURT: WHAT'S YOUR SITUATION?

THE JUROR: MY BROTHER HAS BEEN IN ILLEGAL DRUGS AND HE'S CURRENTLY IN RICHMOND COUNTY DETENTION CENTER.

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH HIM OR EXPERIENCE WITH HIM THAT WOULD AFFECT YOUR ABILITY TO SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO.

THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND?

THE JUROR: NO.

THE COURT: THANK YOU. MA'AM. MS. BIGGERSTAFF IS JUROR #9. SHE'S ELIGIBLE TO SERVE. YES, MA'AM? MS. CULLUM?

THE JUROR: YES, SIR.

THE COURT: #23. WHAT'S YOUR SITUATION?

THE JUROR: MY COUSIN WAS CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE.

THE COURT: YOU KNOW WHAT DRUG?

THE JUROR: MARIJUANA I THINK.

THE COURT: YOU KNOW WHAT AGENCY CHARGED HER? LIKE THE SHERIFF'S OFFICE IN EDGEFIELD OR---

THE JUROR: I THINK IT WAS NORTH AUGUSTA SHERIFF'S OFFICE.

THE COURT: NORTH AUGUSTA P.D.?

THE JUROR: UH-HUH.

THE COURT: ANYTHING AT ALL ABOUT THAT EXPERIENCE OR YOUR RELATIONSHIP WITH YOUR COUSIN THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO.

THE COURT: ANY DOUBT IN YOUR MIND ABOUT THAT?

THE JUROR: NO.

THE COURT: MS. CULLUM IS JUROR #23. SHE'S ELIGIBLE TO SERVE. YES, SIR?

THE JUROR: CHARLES NICHOLSON. #80.

THE COURT: WHAT'S YOUR SITUATION?

THE JUROR: I'M NEARLY LIFELONG FRIEND OF A PERSON THAT'S BEEN CONVICTED THAT'S BEEN IN THIS SITUATION.

THE COURT: WAS IT IN EDGEFIELD COUNTY?

THE JUROR: EDGEFIELD COUNTY.

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH THAT PERSON AND YOUR EXPERIENCES WITH HIM OR HER THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: POSSIBLY.

THE COURT: I'LL SET YOU ASIDE. I NEED YOU TO STAY TO GET FURTHER INSTRUCTION. DON'T DISCUSS ANY OF THAT WITH YOUR FELLOW JURORS. OKAY?

THE JUROR: OKAY.

THE COURT: MR. NICHOLSON IS JUROR #80. HE'S EXCUSED FROM THE FIRST TRIAL. YES, MA'AM? YOUR NAME, PLEASE.

THE JUROR: MONTINE SIMPKINS. (103)

THE COURT: WHAT'S YOUR SITUATION?

THE JUROR: MY EX-HUSBAND HE DO DRUGS. THAT'S WHY I GOT A DIVORCE.

THE COURT: WHAT KIND OF DRUGS DID HE USE?

THE JUROR: THE PIPE KIND. HE GOT CAUGHT WITH THAT.

THE COURT: CRACK COCAINE?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR EXPERIENCES WITH HIM, YOUR RELATIONSHIP WITH HIM AND THE DRUGS THAT WOULD IN ANY WAY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: NO, SIR.

THE COURT: YOU HAVE ANY DOUBT AT ALL ABOUT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN A CASE IN WHICH IT'S ALLEGED THAT SOMEONE

TRAFFICKED IN DRUGS?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MS. SIMPKINS IS 103. SHE'S ELIGIBLE. YES, SIR?

THE JUROR: WALLACE HOLLOWAY. #51.

THE COURT: OKAY, MR. HOLLOWAY, WHAT'S YOUR SITUATION?

THE JUROR: I HAVE A FIRST COUSIN WHO WAS CHARGED OF POSSESSION OF TRAFFICKING.

THE COURT: YOU HAVE A FIRST COUSIN WHO IS PRESENTLY DETAINED FOR TRAFFICKING?

THE JUROR: CRACK COCAINE. HE HASN'T BEEN TO TRIAL.

THE COURT: IS HE IN EDGEFIELD COUNTY?

THE JUROR: HE LIVES IN EDGEFIELD.

THE COURT: IS HE IN JAIL IN EDGEFIELD?

THE JUROR: I THINK HE'S OUT ON BAIL.

THE COURT: OUT ON BAIL?

THE JUROR: (NODDED YES.)

THE COURT: IS THERE ANYTHING AT ALL ABOUT YOUR RELATIONSHIP WITH HIM OR EXPERIENCE WITH THE FAMILY THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: NO. I DON'T HARDLY DEAL WITH HIM AT ALL. I BARELY KNOW HIM.

THE COURT: YOU HAVE ANY DOUBT IN YOUR MIND ABOUT THAT, THAT YOU CAN BE FAIR AND IMPARTIAL?

THE JUROR: NO, SIR.

THE COURT: MR. HOLLOWAY IS JUROR #51. HE'S ELIGIBLE TO SERVE.

THE JUROR: LUCILLE BURTON. #15.

THE COURT: YES, MA'AM?

THE JUROR: I WAS CHARGED WITH SIMPLE POSSESSION OF MARIJUANA BUT NOT CONVICTED OF IT. IT WAS MY CAR SO I GOT FINED.

THE COURT: WAS THAT IN EDGEFIELD?

THE JUROR: AIKEN COUNTY.

THE COURT: IS THERE ANYTHING ABOUT THAT EXPERIENCE OR YOUR RELATIONSHIP WITH ANYONE IN THAT CASE THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: NO, SIR.

THE COURT: YOU HAVE ANY DOUBT AT ALL ABOUT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MS. BURTON IS JUROR #15. SHE'S ELIGIBLE TO SERVE. YES, MA'AM? WHAT'S YOUR NAME?

THE JUROR: ROSA MAY BLACKS.

THE COURT: YOU WERE TRANSFERRED FROM LAST WEEK. 134. WHAT'S YOUR SITUATION?

THE JUROR: I KNOW VIRGIL CULBREATH. HE WAS RAISED UP AROUND ME.

THE COURT: WHO IS THAT? WHO IS VIRGIL CULBREATH?

MR. MIZZELL: HE'S CHARGED WITH TRAFFICKING.

THE COURT: IS THERE ANYTHING ABOUT YOUR EXPERIENCE WITH MR. CULBREATH THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL

JUROR IN THIS CASE?

THE JUROR: NO, HE WAS JUST RAISED UP AROUND ME. THAT'S ALL.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL IN THIS CASE?

THE JUROR: YES, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU, MA'AM. MS. BLACKS IS 134. SHE'S ELIGIBLE TO SERVE. YES, MA'AM? YOUR NAME, PLEASE?

THE JUROR: ROBIN PIERRE.

THE COURT: MS. PIERRE IS JUROR #89. WHAT'S YOUR SITUATION?

THE JUROR: MY HUSBAND DID 23 MONTHS FOR ARMED ROBBERY FOR CRACK COCAINE. TO GET CRACK COCAINE. HE'S STILL HAVING DRUG PROBLEMS. HE'S IN -- WE'RE IN THE MIDDLE OF A DIVORCE. HE WAS PAROLED TO THIS STATE IN 2002.

THE COURT: YOU'RE GOING THROUGH A DIVORCE BECAUSE OF HIS ADDICTION?

THE JUROR: RIGHT.

THE COURT: IS THERE ANYTHING ABOUT ALL OF THAT THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: DRUGS HAVE RUINED MY LIFE.

THE COURT: IT WOULD AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

THE JUROR: I COULD NOT BE FAIR AND IMPARTIAL. DRUGS HAVE RUINED MY LIFE.

THE COURT: I APPRECIATE IT AND I CAN UNDERSTAND. I HAVE SOME OF THAT AS WELL TO DEAL WITH. THANK YOU, MA'AM. YOU STAY WITH US FOR

FURTHER INSTRUCTIONS: MS. PIERRE IS JUROR #89. SHE'S SET ASIDE ON THE FIRST CASE. YES, SIR? YOUR NAME, PLEASE, SIR?

THE JUROR: SAMUEL STEVENS. (110.)

THE COURT: OKAY, MR. STEVENS, WHAT'S YOUR SITUATION?

THE JUROR: I HAVE HAD SOME COUSINS THAT WERE CONVICTED OF DRUG TRAFFICKING.

THE COURT: WAS THAT IN EDGEFIELD COUNTY?

THE JUROR: YES, SIR, IT WAS.

THE COURT: DO YOU KNOW WHAT AGENCY MADE THE CHARGE AGAINST THEM? SHERIFF'S OFFICE OR---

THE JUROR: SHERIFF'S OFFICE.

THE COURT: ALL THOSE CASES HAVE ENDED?

THE JUROR: YES, SIR.

THE COURT: DID ANY OF THEM GO TO PRISON?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL ABOUT ANY OF THAT EXPERIENCE OR RELATIONSHIP WITH ANY OF THEM THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR; NO, SIR.

THE COURT: ANY DOUBT ABOUT THAT?

THE JUROR: NO, SIR.

THE COURT: THANK YOU VERY MUCH. MR. STEVENS IS 110. HE'S ELIGIBLE TO SERVE. YES, SIR?

THE JUROR: JEMOND SMITH. (106)

THE COURT: WHAT'S YOUR SITUATION?

THE JUROR: I HAVE A COUSIN PREVIOUSLY DOING TIME ON A CONVICTION.

THE COURT: FOR A DRUG CHARGE?

THE JUROR: YES, SIR. HE WILL BE RELEASED THURSDAY.

THE COURT: DID THAT COME OUT OF EDGEFIELD COUNTY?

THE JUROR: YES, SIR.

THE COURT: DO YOU KNOW WHAT AGENCY MADE THE CHARGE? SHERIFF'S OFFICE OR POLICE DEPARTMENT OR---

THE JUROR: CITY POLICE.

THE COURT: WHICH ONE?

THE JUROR: EDGEFIELD.

THE COURT: IS THERE ANYTHING ABOUT YOUR RELATIONSHIP WITH YOUR COUSIN OR THAT EXPERIENCE THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MR. SMITH IS 106. HE'S ELIGIBLE TO SERVE. YES, SIR? YOUR NAME?

THE JUROR: TROY CUMBEE #24.

THE COURT: OKAY, MR. CUMBEE, WHAT'S YOUR SITUATION?

THE JUROR: MY BEST FRIEND WAS EXPELLED FROM HIGH SCHOOL OUR SENIOR YEAR BECAUSE OF MARIJUANA.

THE COURT: IS THREE ANYTHING AT ALL ABOUT THAT EXPERIENCE THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: HAVE ANY DOUBT AT ALL ABOUT THAT?

THE JUROR: YES, SIR.

THE COURT: YOU HAVE SOME DOUBT?

THE JUROR: OH, NO, SIR.

THE COURT: WELL, LET ME ASK YOU AGAIN. IF YOU'RE ON THE JURY CAN YOU PUT ALL THAT ASIDE AND BE FAIR AND IMPARTIAL AND DECIDE THIS CASE BASED ONLY ON THE EVIDENCE IN THIS CASE AND THE LAW THAT APPLIES TO THIS CASE?

THE JUROR: YES, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MR. CUMBEE IS 24. HE'S ELIGIBLE TO SERVE. YES, MA'AM? YOUR NAME?

THE JUROR: EVELYN ELAM BRAXTON. 31.

THE COURT: 31. WHAT'S YOUR SITUATION?

THE JUROR: MY HUSBAND GOT ARRESTED TWICE BEFORE WE GOT MARRIED.

THE COURT: YOU KNOW WHO ARRESTED HIM, WHAT OFFICE, LIKE THE SHERIFF'S DEPARTMENT OR—

THE JUROR: ALL I KNOW IT WAS EDGEFIELD COUNTY.

THE COURT: DID HE GET CONVICTED OF EITHER ONE OF THOSE?

THE JUROR: YES, SIR.

THE COURT: DID HE HAVE TO DO TIME IN PRISON?

THE JUROR: YES, SIR.

THE COURT: HE'S OUT NOW THOUGH?

THE JUROR: YES, SIR.

THE COURT: IS THERE ANYTHING AT ALL THAT EXPERIENCE THAT WOULD IN ANY WAY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

THE JUROR: NO, SIR.

THE COURT: ANYTHING ABOUT YOUR RELATIONSHIP WITH YOUR HUSBAND THAT WOULD AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

THE JUROR: NO, SIR.

THE COURT: ANY DOUBT IN YOUR MIND?

THE JUROR: NO, SIR.

THE COURT: THANK YOU. MS. ELAM BRAXTON IS JUROR #31. SHE'S ELIGIBLE TO SERVE. (THE FOLLOWING OCCURRED WITHIN THE HEARING OF THE COURTROOM.) IF I SET YOU ASIDE ON THIS CASE, WOULD YOU MOVE OVER AND BACK TWO ROWS, PLEASE. IF I SET YOU ASIDE ON THIS CASE. CAN Y'ALL THINK OF ANYTHING ELSE? CAN YOU THINK OF ANY OTHER QUESTIONS?

MR. MAYE: NOTHIN' FROM THE STATE, YOUR HONOR.

THE COURT: WELL, I HADN'T FINISHED YET. THEY ASKED ME IF I HAD THE VOIR DIRE, AND I DON'T HAVE A COPY OF IT. MS. BLACK, I DIDN'T SET YOU ASIDE.

THE JUROR: OH, YOU DIDN'T?

THE COURT: NO, MA'AM. YOU NEED TO TALK TO ME SOME MORE? WELL, LET ME MAKE SURE I UNDERSTOOD WHAT YOU TOLD ME. YOU FEEL LIKE YOU -- ARE YOU SURE YOU CAN BE FAIR AND IMPARTIAL ON THE CASE?

THE JUROR: SIR?

THE COURT: YOU SURE YOU CAN BE FAIR AND IMPARTIAL ON THIS CASE?

THE JUROR: OH, YEAH.

THE COURT: OKAY. ALRIGHT. YOU ALL CAN -- LET ME GO AHEAD AND FINISH AND THEN YOU ALL CAN TELL ME ANY ADDITIONAL QUESTIONS YOU WANT ME TO ASK. HAVE ANY OF YOU FORMED OR EXPRESSED ANY OPINIONS ABOUT THESE CASES? IF SO, PLEASE, STAND. ARE EACH OF YOU ABLE TO GIVE BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANTS A FAIR AND IMPARTIAL TRIAL? IF YOU KNOW OF ANY REASON WHY YOU CANNOT, PLEASE, STAND. ARE ANY OF YOU AWARE OF ANY INTEREST, BIAS OR PREJUDICE THAT YOU MIGHT HAVE FOR OR AGAINST THE STATE, FOR OR AGAINST ANY DEFENDANT, FOR OR AGAINST ANY ENTITY INVOLVED OR ANYONE INVOLVED IN THESE CASES? IF SO, PLEASE, STAND. CAN EACH OF YOU GIVE BOTH SIDES A FAIR AND IMPARTIAL TRIAL? IF NOT, PLEASE, STAND. OR ALL SIDES I SHOULD SAY. ALRIGHT. FURTHER QUESTIONS FROM THE STATE?

MR. MAYE: NOTHIN' FROM THE STATE, YOUR HONOR.

THE COURT: ALRIGHT. FROM MR. DELEON?

MR. HAWK: NO, YOUR HONOR. WE'RE FINE.

THE COURT: ALRIGHT. FROM MR. GUERRERRO?

MR. MILLER: NO, YOUR HONOR.

THE COURT: AND FROM YOUR TWO CLIENTS, MR. SUSSMAN?

MR. SUSSMAN: NO, YOUR HONOR.

THE COURT: THANK YOU. THE JURY PANEL IS QUALIFIED. I'VE GOT 37? THE STRIKES ARE 20 AND 10? 10 AND 20?

MR. MIZZELL: YES, SIR, YOUR HONOR. I BELIEVE THAT'S CORRECT.

THE COURT: ALRIGHT. YES, SIR. LADIES AND GENTLEMEN, BEFORE I GO ANY FURTHER WITH THIS, I'VE HAD EXTENSIVE DISCUSSIONS WITH THE ATTORNEYS ABOUT HOW LONG THIS CASE IS EXPECTED TO LAST. NOW THE TRUTH

IS THAT NOBODY CAN TELL EXACTLY HOW LONG A CASE IS GOING TO LAST. JUST LIKE I CAN'T TELL HOW LONG IT WOULD TAKE TO GO THROUGH THIS PROCESS BECAUSE I NEVER KNOW HOW MANY PEOPLE ARE GOING TO RESPOND. THINGS HAPPEN DURING A TRIAL THAT CREATE PROBLEMS. I KNOW THAT WE'LL HAVE SOME LEGAL ISSUES TO DEAL WITH THIS AFTERNOON. SO THE JURY THAT'S PICKED ON THIS CASE WILL START IN THE MORNING. THE INFORMATION I HAVE IS THAT THEY EXPECT THE CASE TO GO TO THE JURY ON FRIDAY. I REALIZE IT'S THE 4TH OF JULY WEEKEND COMING UP. IF ANY OF YOU ALL HAVE PLANS TO GO OUT OF TOWN OR ANYTHING LIKE THAT ON FRIDAY, YOU NEED TO LET ME KNOW ABOUT THAT. DO IT NOW.

THE JUROR: CHRIS CLANCY. JUROR 19.

THE COURT: YES, SIR.

THE JUROR: I'VE GOT ACCOMMODATIONS AT THE BEACH. A DEPOSIT WAS MADE, AND I'M LEAVING LATE THURSDAY.

THE COURT: OKAY. MR. CLANCY IS JUROR #19. YOU'RE LEAVIN' THURSDAY?

THE JUROR: YES, SIR. THURSDAY ABOUT 1 O'CLOCK.

THE COURT: HAVE A SEAT OVER HERE. I'LL SET YOU ASIDE ON THE FIRST CASE. I DON'T -- I DON'T THINK WE'LL BE THROUGH THURSDAY. I THINK WE'LL BE THROUGH FRIDAY, BUT I DON'T THINK WE'LL BE THROUGH THURSDAY. YES, MA'AM, YOUR NAME, PLEASE?

THE JUROR: TARA JOHNSON, JUROR #58.

THE COURT: AND WHAT'S YOUR SITUATION, MS. JOHNSON?

THE JUROR: I HAVE RESERVATIONS ALREADY FROM WEDNESDAY THROUGH SATURDAY IN LOUISIANA AND THEY ARE RESERVED AND CONFIRMED.

THE COURT: HAVE A SEAT OVER HERE. I'LL SET YOU ASIDE ON THE FIRST TRIAL. NOW LET ME ASSURE YOU FOLKS THAT WE WILL NOT BE WORKIN' ON THE WEEKEND. I MEAN NO MATTER WHAT HAPPENS, IF EVERYTHING WENT COMPLETELY HAYWIRE WITH US, WE WOULDN'T WORK ON THE WEEKEND. WE'RE NOT GONNA WORK ON MONDAY. WHAT WE WOULD HAVE TO DO IS PICK UP ON TUESDAY IF EVERYTHING WENT HAYWIRE. I'VE BEEN A JUDGE NEARLY 14 YEARS. I'VE NEVER HAD THAT SITUATION OCCUR. I'VE HAD TO GO INTO THE SECOND WEEK BEFORE, BUT I KNEW IT WAS GONNA HAPPEN BEFORE WE STARTED THE TRIAL. I CAN'T PROMISE YOU IT WON'T HAPPEN THIS TIME, BUT IT HADN'T NEVER HAPPENED TO ME BEFORE. ALRIGHT. THE JURY PANEL IS QUALIFIED. YOU TAKE THOSE 2 OUT?

THE CLERK: YES, SIR.

THE COURT: ALRIGHT. AS I UNDERSTAND IT, WE DON'T HAVE ANY DIFFICULTY WORKING OUT THE STRIKES FOR THE DEFENSE ALLOCATING THOSE. THE STRIKES ARE 10 FOR THE STATE; 20 FOR ALL DEFENDANTS COMBINED. WE READY? YOU NEED TO REARRANGE. WHILE THEY'RE DOING THAT, LET ME TELL YOU HOW THIS WORKS. THE CLERK IS GONNA DRAW NAMES OUTTA THAT HOPPER. SHE WILL READ THE NAMES ONE AT A TIME. WHEN SHE READS YOUR NAME -- 30 SOME PEOPLE, THERE'S A PRETTY GOOD CHANCE SHE MAY READ YOUR NAME. WHEN YOU HEAR YOUR NAME CALLED, YOU NEED TO GO TO THE CLOSEST AISLE. FOR SOME REASON JURORS THINK THEY HAVE TO COME DOWN THE CENTER AISLE. YOU DON'T HAVE TO COME DOWN THE CENTER AISLE. GO TO THE NEAREST AISLE. Y'ALL CAN'T BLOCK THAT GATE. Y'ALL CAN'T BLOCK THE GATE. GO TO THE NEAREST AISLE. COME ALL THE WAY DOWN FRONT, AND COME HERE TO THIS RAIL WHERE MR. DUNN AND MS. NOACK ARE. THAT DESK DOWN THERE.

SO YOU'LL BASICALLY BE IN THAT AREA WHERE THAT MICROPHONE STAND IS IF YOU CAN SEE THAT. TURN AROUND AND FACE BACK TOWARD THE BACK OF THE COURTROOM. OR THE FRONT OF THE COURTROOM. WHATEVER YOU WANT TO CALL IT. BACK THAT WAY. ALRIGHT?

WHEN YOU GET DOWN HERE THE CLERK IS GONNA ASK QUESTIONS OF THE STATE'S ATTORNEY AND THE DEFENSE ATTORNEY. A LOTTA JURORS GET CONFUSED AND THINK THAT THE CLERK'S TALKIN' TO THEM. THE CLERK'S NOT TALKIN' TO YOU. IF WE NEED TO TALK TO YOU WE'LL CALL YOU BY NAME. BASED ON THE RESPONSES THAT SHE – MR. DUNN OR MS. NOACK GET, YOU WILL BE TOLD EITHER TO RETURN TO YOUR SEAT IN THE COURTROOM OR HAVE A SEAT OVER HERE IN THE JURY BOX. SO YOU NEED TO BRING YOUR PERSONAL BELONGINGS, BECAUSE YOUR NEXT STOP MAY BE OVER HERE.

ALSO, WHAT I'M GOING TO ASK YOU TO DO IF YOU'RE NOT PICKED FOR THIS JURY IF YOU'RE SET ASIDE AFTER YOU COME UP HERE, GO OVER AND HAVE A SEAT ON ONE OF THOSE EMPTY ROWS ON THE BACK AND FILE ALL THE WAY OVER TO THE WALL. IT'LL GO QUICKER; IT'LL BE QUIETER IN HERE THAN IF YOU'RE TRYIN' TO WALK ACROSS ONE ANOTHER. OKAY? JUST EXPERIENCE FROM BEIN' IN THIS COURTROOM. SO YOU'LL GET OUTTA HERE MAYBE AT 1 O'CLOCK IF WE DO THIS. ALRIGHT? MR. CLERK, MADAM CLERK, GIVE US A JURY.

#111 MARY J. THOMAS – WHITE FEMALE – ACCEPTED

#23 TRACY M. CULLUM – WHITE FEMALE – EXCUSED BY DEFENSE

#62 KIMBERLY C. LORIMER – WHITE FEMALE – EXCUSED BY DEFENSE

#124 KATHLEEN M. YONCE – WHITE FEMALE – EXCUSED BY DEFENSE

#25 CHRISTINE B. CURRY – BLACK FEMALE – ACCEPTED

#100 RENEE A. SHARROCK. - WHITE FEMALE – ACCEPTED

#128 GARY B. RUSHTON – WHITE MALE – EXCUSED BY DEFENSE

#106 JEMOND H. SMITH – BLACK MALE – EXCUSED BY STATE

#9 STACY P. BIGGERSTAFF – WHITE FEMALE – EXCUSED BY DEFENSE

#94 SUSAN E. RILEY – WHITE FEMALE – EXCUSED BY DEFENSE

#60 MARY P. KEMP – BLACK FEMALE – ACCEPTED

#129 THOMAS MR. SANTOMAURO – WHITE MALE – EXCUSED BY DEFENSE

#93 JODY A. REESE – WHITE MALE – EXCUSED BY DEFENSE

#112 HENRY TILLMON – BLACK MALE – ACCEPTED

#51 WALLACE HOLLOWAY – BLACK MALE – ACCEPTED

#5 CHERYL H. BOND – BLACK FEMALE – EXCUSED BY DEFENSE

#76 JOHN W. MOODY, JR. – WHITE MALE – ACCEPTED

#85 RAYMOND A PARKMAN, SR. – WHITE MALE – EXCUSED BY DEFENSE

#75 THEODORE W. MITCHUM – WHITE MALE – EXCUSED BY DEFENSE

#65 CHARTISE MCKIE - BLACK FEMALE – ACCEPTED

#31 EVELYN B. ELAM – BLACK FEMALE – ACCEPTED

#70 GLORIA MILLER – BLACK FEMALE – ACCEPTED

#83 CANDY B. PADGETT – WHITE FEMALE – EXCUSED BY DEFENSE

#110 SAMUEL A. STEVENS – BLACK MALE – ACCEPTED

#108 TIMOTHY L. STANCEL – WHITE MALE – EXCUSED BY DEFENSE

#103 MONTINE B. SIMPKINS – BLACK FEMALE – EXCUSED BY DEFENSE

#46 GLENN B. HERLONG – WHITE MALE – EXCUSED BY DEFENSE

#15 LUCILLE BURTON – BLACK FEMALE – EXCUSED BY STATE

#24 TROY E. CUMBEE – WHITE MALE – EXCUSED BY DEFENSE

#36 DEMOND R. GLOVER – BLACK MALE – ACCEPTED

ALTERNATE

#134 ROSA M. BLACKS – BLACK FEMALE – EXCUSED BY STATE

#47 ESTHER W. HICKS – WHITE FEMALE – EXCUSED BY DEFENSE

#56 BEATRICE O. JOHNSON – BLACK FEMALE – ACCEPTED

THE COURT: ARE THERE ANY MATTERS TO TAKE UP INCLUDING COMPOSITION OF THE PANEL PRIOR TO THE JURY BEING SWORN? FROM THE STATE?

MR. MAYE: NOT FROM THE STATE, YOUR HONOR.

THE COURT: DEFENSE? ANY DEFENDANTS?

MR. HAWK: NO, YOUR HONOR.

THE COURT: MR. MOODY, YOU'RE GOING TO BE THE FOREMAN OF THE JURY. WHEN YOU COME BACK IN, TAKE THE SEAT RIGHT IN FRONT OF YOU. KEEP THAT SEAT THROUGHOUT THE TRIAL, PLEASE.

MS. JOHNSON, YOU'RE THE ALTERNATE. YOU NEED TO STAY IN THAT SEAT THROUGHOUT THE TRIAL, PLEASE. THE REST OF YOU MAY SIT ANYWHERE IN THE JURY BOX YOU LIKE. IF YOU'RE LIKE EVERY OTHER JURY I HAVE, YOU WILL DEVELOP A FAVORITE CHAIR. SOME OF YOU WILL ANYWAY. JUST LIKE GOIN' TO CHURCH AND SEEIN' THE SAME FOLKS IN THE SAME PEWS EVERY WEEK. IF YOU HAVE A FAVORITE CHAIR, THAT'S FINE WITH ME. BUT JURY BOXES ARE TIGHT AND I DON'T WANT YOU FALLIN'. WE DID HAVE ONE INCIDENT IN LEXINGTON WHERE A LADY BROKE HER ANKLE. I DON'T WANT THAT TO HAPPEN TO ANY OF YOU. SO, PLEASE, FOLKS, WHEN YOU COME IN I WANT YOU TO FILE ALL THE WAY TO THE END. LEAVE THAT SEAT VACANT. MR. MOODY, IF YOU'RE ALWAYS THE LAST ONE IN IT WORKS BEST. MS. JOHNSON, IF YOU'RE RIGHT IN FRONT OF HIM, THE NEXT TO THE LAST ONE IN, THAT WORKS BEST. THE REST OF YOU JUST FILE IN AND GO TO THE END. PLEASE, DON'T MAKE PEOPLE STEP ACROSS YOU, AND,

PLEASE, DON'T STEP ACROSS PEOPLE. IF YOU HAVE A FAVORITE CHAIR AND YOU SEE YOU'RE NOT GONNA GET IT BY THE ORDER IN WHICH YOU COME IN, JUST KINDA STEP TO THE SIDE BEFORE YOU GET IN THE JURY BOX AND ASK YOUR FELLOW JUROR IF YOU CAN GO IN AND GET YOUR CHAIR. NEVER HAD ANYBODY FIGHT OVER A CHAIR BEFORE, SO I DON'T EXPECT IT NOW.

A COUPLE OF OTHER THINGS AND THEN I'M GONNA SEND YOU BACK IN THE JURY ROOM FOR JUST A FEW MINUTES AND THEN I'LL BRING YOU BACK OUT HERE AND GIVE YOU SOME INSTRUCTIONS.

THE CARPET, WHEN THE CARPET WAS CHANGED IN HERE, FOR SOME REASON I THINK FOLKS QUIT NOTICING THOSE STEPS AS MUCH. THERE ARE 2 STEPS UP AND 2 STEPS DOWN. WHEN YOU GO BACK TO THE JURY ROOM YOU'RE GONNA GO BACK THROUGH THIS DOOR AND GO ALL THE WAY BACK TO THE END OF THIS FLOOR BASICALLY. SO WHEN YOU ARE COMING IN AND GOING OUT, PLEASE, BE CAREFUL AND WATCH THAT. EVERY TERM OF COURT I SAY THAT AND EVERY TERM OF COURT AT SOME POINT SOMEBODY STUMBLES BECAUSE THEY JUST DON'T SEE THE STEPS. SO PAY ATTENTION. AND EVEN THE LAWYERS WHO WORK IN HERE EVERY DAY THEY STUMBLE OVER 'EM SOMETIMES. SO BE CAREFUL.

WHEN YOU GO BACK TO THE JURY ROOM DO NOT DISCUSS THIS CASE IN ANY WAY. DON'T TALK ABOUT THE TYPE OF CASE IT'S ALLEGED TO BE. DON'T TALK ABOUT THE PEOPLE THAT ARE INVOLVED IN IT. DON'T TALK ABOUT THE CASE AT ALL. YOU MAY TALK ABOUT THE WEATHER; YOU MAY TALK ABOUT OTHER SUBJECTS, BUT DON'T TALK ABOUT THE CASE. WHAT I'M GONNA DO AFTER YOU GET ACCLIMATED BACK THERE AND AFTER I GIVE INSTRUCTIONS TO THE REST OF THE JURY PANEL IS I'LL BRING YOU OUT. I'M GONNA LET YOU GO FOR

THE DAY. I'LL TELL YOU WHAT TIME TO BE HERE TOMORROW AND WE'LL START THE TRIAL TOMORROW. THE LAWYERS AND I WILL STAY HERE TODAY AND WORK ON LEGAL MATTERS THIS AFTERNOON. OKAY? ANY QUESTIONS BEFORE I LET YOU GO? MADAM BAILIFF, IF YOU'LL TAKE CHARGE OF THE JURY, PLEASE. TAKE THEM BACK TO THE JURY ROOM FOR ME, PLEASE. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) Y'ALL WANT TO START AT 9:30 IN THE MORNING?

MR. MAYE: YES, SIR. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)

THE COURT: ALRIGHT. LADIES AND GENTLEMEN, WE'RE GONNA TRY TO START THIS CASE IN THE MORNING AT 9:30. I NEED YOU IN THAT JURY ROOM AT 9:30 TOMORROW MORNING.

PLEASE, DON'T COME THROUGH THE COURTROOM. THEY'LL SHOW YOU. THERE ARE PLENTY OF ENTRANCES AND EXITS BACK THERE. THERE'S AN ELEVATOR BACK THERE. JUST COME UP; GO STRAIGHT TO THE JURY ROOM.

DO NOT DISCUSS THIS CASE AMONG YOURSELVES. DON'T LET ANYBODY DISCUSS IT WITH YOU. AND WHEN YOU GO OUT OF THIS COURTHOUSE TODAY YOU MAY RUN INTO FAMILY MEMBERS, FRIENDS, ANYONE AND YOU NEED TO UNDERSTAND THAT YOU CANNOT DISCUSS THE CASE WITH ANYBODY AT ALL UNTIL THIS WEEK IS COMPLETELY OVER WITH AND YOU'VE FINISHED THIS CASE AND YOU'VE FINISHED YOUR JURY DUTY. SO FOR EXAMPLE, YOU CAN TELL YOUR SPOUSE AT HOME THAT YOU'RE ON A JURY, BUT YOU CAN'T TELL THEM ANYTHING ABOUT THE CASE. YOU CAN'T TELL THEM IT'S A CASE RELATED TO ALLEGATIONS CONCERNING DRUGS. YOU CAN'T TELL 'EM WHO'S INVOLVED IN IT. YOU CAN'T TALK ABOUT THE CASE. I NEVER KNOW IF THERE'S GONNA BE MEDIA COVERAGE OF THE TRIAL. I DON'T THINK THERE'S GONNA BE ANY MEDIA COVERAGE OF THIS

TRIAL DURING THE WEEK, BUT IF THERE SHOULD BE ANY, GET AWAY FROM IT, AND THEN REPORT TO ME WHAT YOU SAW, HEARD OR READ THROUGH THE MEDIA. IF ANYBODY SHOULD ATTEMPT TO CONTACT YOU AND DISCUSS THE CASE WITH YOU, REPORT THAT TO ME SO THAT I CAN DEAL WITH IT.

NOW A COUPLE OF LITTLE HOUSEKEEPING THINGS, AND THIS IS FOR YOUR BENEFIT, LADIES AND GENTLEMEN, AND THEN I'LL LET YOU GO. LARGE ROOMS LIKE THIS ARE DIFFICULT TO MAINTAIN HEATING AND COOLING, AND SOME OF YOU ARE GOING TO BE HOT NATURED AND SOME OF YOU ARE GONNA BE COLD NATURED. IF YOU'LL NOTICE YOU'RE SITTING RIGHT UNDER A VENT. SO I TELL THIS TO EVERYBODY IN EVERY COURTHOUSE, TRY TO REMEMBER TO TELL THEM. IT'S ALWAYS BEST IF YOU BRING YOURSELF A SWEATER OR SOMETHING SO IF YOU'RE COOL YOU CAN PUT THAT ON, AND IF YOU GET WARM YOU CAN TAKE THAT OFF. WE TRY TO KEEP IT SOMEWHAT COOL IN COURTROOMS 'CAUSE SOMETIMES WE HAVE A LITTLE PROBLEM, PEOPLE DOZE A LITTLE BIT. SO WE TRY TO KEEP IT A LITTLE COOL. I'LL TRY TO MAKE SURE YOU'RE COMFORTABLE BUT I CAN'T PROMISE YOU THAT. AS YOU KNOW, THE AFTERNOON SUN'S GONNA START COMIN' THROUGH THOSE WINDOWS WE'RE GONNA HAVE SOME OTHER ISSUES.

NOW WE USUALLY BREAK FOR LUNCH ABOUT 1 O'CLOCK. WE USUALLY GIVE YOU AN HOUR TO AN HOUR AND A HALF FOR LUNCH. WE USUALLY WILL GO TILL ABOUT 5:30 IN THE AFTERNOON. IF I SEE THAT WE'RE GOING TO VARY THAT SCHEDULE, I'LL TRY TO TELL YOU. WE DO HAVE TO MAKE ADJUSTMENTS FOR WITNESSES AND THINGS LIKE THAT, AND SOME OF THE WITNESSES IN THESE CASES ARE FROM OUT OF STATE, AND WE HAD SOME PROBLEMS LAST NIGHT APPARENTLY BECAUSE OF ALL THE BAD WEATHER WITH FLIGHTS. SO SOME OF 'EM, I THINK, HAVE NOT HAD ANY SLEEP. SO WE'LL TRY TO ACCOMMODATE

EVERYBODY INCLUDING YOU, BUT YOU'RE GONNA BE MY FIRST PRIORITY. ANY QUESTIONS BEFORE I LET YOU GO? OKAY. MADAM BAILIFF, IF YOU'LL TAKE CHARGE OF THE JURY AND TAKE THEM BACK THROUGH THAT WAY. AND I NEED YOU HERE AT 9:30. PLEASE, BE HERE ON TIME. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) ALRIGHT. IT'S 20 AFTER ONE. Y'ALL SAID 3 BEFORE AND WE SAID 2:30. YOU WANT TO SAY LIKE 2:45?

MR. HAWK: THAT'S FINE.

MR. MAYE: YES, SIR.

THE COURT: COURT'S IN RECESS ON THIS CASE TILL 2:45. MAKE SURE YOUR CLIENTS KNOW TO BE BACK HERE AT 2:45. (THERE WAS A LUNCH RECESS.)

MR. SUSSMAN: FOR PURPOSES OF TODAY WE CREATED OUR CORNER FOR OUR FELLOWS, BUT TOMORROW WE NEED TO HAVE THEM DOWN ON THE FLOOR.

THE COURT: WE SWITCHED INTERPRETERS?

MR. SUSSMAN: THAT'S RIGHT. SO I GUESS WE NEED TO REQUALIFY.

THE COURT: MR. HUNT, WILL YOU COME OVER HERE FOR ME, PLEASE.

MR. MIZZELL: YOUR HONOR, WE ARE ONE DEFENDANT SHORT, BUT HE'S BEING BROUGHT.

THE COURT: RAISE YOUR RIGHT HAND, PLEASE. (THE INTERPRETER WAS SWORN TO TELL THE TRUTH BY THE COURT.) MR. HUNT, YOU'VE TRANSLATED FOR THE COURT NUMEROUS TIMES. IS THAT CORRECT?

MR. HUNT: YES, YOUR HONOR.

THE COURT: AND YOU, I BELIEVE, HAVE A DEGREE FROM CLEMSON AND A MASTER'S DEGREE AND YOU RUN A COMPANY CALLED COMMUNICAR THAT PROVIDES TRANSLATION SERVICES. IS THAT RIGHT?

MR. HUNT: THAT'S CORRECT.

THE COURT: YOU'RE NOT RELATED TO ANYONE IN THIS CASE?

MR. HUNT: NO, YOUR HONOR.

THE COURT: AND YOU HAVE NO INTEREST IN THE CASE, ANY PERSONAL STAKE IN THE CASE.

MR. HUNT: NO.

THE COURT: ALRIGHT. YOU'VE BEEN QUALIFIED AT LEAST A DOZEN TIMES I WOULD EXPECT IN COURTS IN THIS STATE.

MR. HUNT: YES, YOUR HONOR.

THE COURT: ANYTHING FURTHER FROM THE STATE ON HIS QUALIFICATIONS?

MR. MAYE: NO, SIR.

THE COURT: DEFENSE?

MR. SUSSMAN: JUST TO POINT OUT THAT HE WAS, IN FACT, THE QUALIFIED INTERPRETER AT THE LAST TRIAL IN THIS CASE. NO OBJECTION.

MR. HAWK: NO OBJECTION ON BEHALF OF DEFENDANT DELEON, YOUR HONOR.

MR. MILLER: NONE ON BEHALF OF DEFENDANT GUERRERO, YOUR HONOR.

THE COURT: THANK YOU. MR. HUNT, YOU'RE QUALIFIED AS AN EXPERT IN THE FIELD OF TRANSLATING ENGLISH TO SPANISH AND SPANISH TO ENGLISH. (MR. HUNT WAS SWORN TO TELL THE TRUTH BY THE COURT.) DO YOU SWEAR THAT YOU WILL TRANSLATE VERBATIM ENGLISH TO SPANISH AND SPANISH TO ENGLISH THROUGHOUT THESE PROCEEDINGS?

MR. HUNT: I DO.

THE COURT: THANK YOU. ALRIGHT. I APPRECIATE YOUR SERVICE TO THE COURT. WE'RE WAITING ON WHO?

MR. SUSSMAN: MR. AVILA.

THE COURT: ALL DEFENDANTS ARE PRESENT. WHAT PRETRIAL MOTIONS DO WE HAVE?

MR. PUETZ: JUDGE, WE HAVE NOT FILED A MOTION TO SUPPRESS. IT WAS MY BELIEF HAVING DONE THAT IN THE FIRST CASE, BUT WE ARE CERTAINLY NOT WAIVING OR REURGING CONSIDERATION OF THE COURT OR ASKING THE COURT TO RULE AGAIN AS IT RELATES TO THE SEIZURE AT DELEON TIENDA -- OR TIENDA DELEON BACK ON MAY 18TH OF 2002, AND IT WAS MY UNDERSTANDING THE GOVERNMENT OR THE STATE'S GOING TO GO AHEAD AND ESTABLISH THROUGH THEIR WITNESSES THAT THE EXCEPTION OF THE BORDER.

MR. HAWK: AND THE ONLY OTHER THING I CAN THINK OF, JUDGE, IS THAT LEDGER THAT WAS FOUND IN THE CAR THAT THE COURT RULED THAT UNLESS MORE FOUNDATION BE LAID IN REGARDS TO THE AUTHOR AND UNDER WHAT CIRCUMSTANCES IT WAS PUT TOGETHER AND WHAT ITS MEANING WAS THAT THAT WOULD NOT BE REFERRED TO. WE WOULD ASK THE COURT TO REISSUE THAT SAME RULING. AND THAT'S IN REFERENCE TO THE HANDWRITTEN LEDGER THAT WAS FOUND IN THE GREEN FORD THUNDERBIRD.

MR. MAYE: I DON'T INTEND TO DO THAT. I'LL CAUTION ALL MY WITNESSES TO MAKE NO MENTION OF IT. ON THE OTHER -- I GUESS THE FACT THAT WE HAD AGREED THAT THAT IS OFF LIMITS IN THIS CASE, YOUR HONOR, I HAVE INSTRUCTED MY OFFICERS NOT TO GO INTO THE LEDGER. BUT IT'S GONNA BE DIFFICULT. I THINK LAST TIME WE WERE IN SOME DIFFICULTY WHEN THEY WERE DIRECTLY ASKED IF THEY HAVE ANYTHING LINKING, WAS THERE ANYTHING ELSE AT ALL, OFFICERS -- I DON'T THINK THEY COULD GO INTO THAT. AND I GUESS JUST SOME CAVEAT -- I DON'T -- WE DON'T INTEND TO GO INTO THAT IN OUR DIRECT

EVIDENCE BUT IF THEY CONTINUALLY ASK THAT QUESTION, I WOULD TAKE THE POSITION THAT THEY COULD RESPOND IN THE AFFIRMATIVE.

MR. HAWK: I THINK I'LL BE MUCH MORE CAUTIOUS IN MY QUESTIONS NOT TO OPEN THAT DOOR.

THE COURT: INSTRUCT EVERY WITNESS -- INSTRUCT EVERY WITNESS THAT THEY ARE NOT TO DISCUSS THE LEDGER. IT IS NOT TO BE MENTIONED. PERIOD.

MR. MAYE: YES, SIR.

THE COURT: UNLESS THEY HAVE A RULING BY THE COURT THAT ALLOWS IT IN. SO IF YOU ALL THINK THEY'VE OPENED THE DOOR IN SOME WAY TO IT, YOU CAN STAND UP AND TELL ME THAT YOU HAVE A MATTER OF LAW.

MR. MAYE: YES, SIR.

THE COURT: BUT INSTRUCT THE WITNESSES THAT IF THEY ARE ASKED QUESTIONS THAT THEY FEEL REQUIRES THEM TO USE THAT TERM LEDGER OR ANYTHING LIKE THAT, THAT THEY ARE TO TURN TO ME AND WE'LL SEND THE JURY OUT AND WE'LL HANDLE IT THAT WAY.

MR. MAYE: YOUR HONOR, WE'RE PREPARED TO GO THROUGH AND ESTABLISH THE BORDER SEARCH AND EXCEPTION EXTENDED BORDER EXCEPTION, YOUR HONOR. WE'LL GO INTO THIS AS MUCH -- I'M GONNA TELL YOUR HONOR WE'RE GONNA CALL AGENT RICK GAONA., AND LIKE I SAID, WE'VE HEARD A LOT OF THIS TESTIMONY BEFORE. I KNOW IT'S GOT TO GO INTO THE RECORD IN THIS CASE. AGENT RICK GAONA WAS THE AGENT AT THE BORDER THAT ACTUALLY VIEWED THE INITIAL X-RAY, SET THE TRUCK ASIDE AND APPARENTLY HAD ALREADY BEEN SET ASIDE TO BE SEARCHED BECAUSE IT WAS A FIRST-TIME CARRIER AND IT HAD SUSPECT GOODS, EITHER POTTERY OR FURNITURE AND IT'S A FIRST TIME FOR THIS CARRIER COMIN' THROUGH OR FOR

THIS PARTICULAR CONSIGNEE. AGENT RICK GAONA IS GONNA TESTIFY THAT BASICALLY HE VIEWED THE X-RAY, THAT HE DID A TEST, DID A PROBE TEST, PULLED OUT A SMALL QUANTITY, GOT A POSITIVE FIELD TEST FOR MARIJUANA. AGENT DOWLING IS GOING TO TESTIFY IN THIS CASE ABOUT THE DRUGS REMAINING IN THE SAME CONDITION, YOUR HONOR. AGENT MIZE IS GONNA CONTINUE FORWARD. 'WAS COMIN' UP WITH THE DRUGS AND THEY WERE IN THE SAME CONDITION AS WHEN THEY WERE SEALED DOWN AT THE BORDER, YOUR HONOR. AND THEN WE GO TO OFFICER LOWE AND THEN THE INTERNAL CHAIN WITH THE SHERIFF'S DEPARTMENT, YOUR HONOR, WITH DOBEY AND WASH AND I'LL CALL WITNESSES. WE'LL LAY THE FOUNDATION FOR THAT IF THIS IS THE APPROPRIATE TIME FOR ME TO DO SO, YOUR HONOR.

THE COURT: ALRIGHT. YOU ALL ARE STILL MOVING TO SUPPRESS THAT EVIDENCE. IS THAT CORRECT?

MR. PUETZ: YES, SIR.

THE COURT: JOINED IN BY EVERYBODY?

MS. SUSSMAN: THAT'S CORRECT, YOUR HONOR.

MR. MILLER: YES, YOUR HONOR.

MR. SUSSMAN: ON BEHALF OF MY CLIENTS.

THE COURT: ALRIGHT. ALL DEFENDANTS ARE MOVING TO SUPPRESS THE DRUGS, AND SO LET'S HAVE A SUPPRESSION HEARING.

MR. MAYE: STATE CALLS RICK GAONA FROM THE FORMER UNITED STATES CUSTOMS SERVICE, IMMIGRATION AND CUSTOMS, AND I THINK IT'S THE DEPARTMENT OF BORDER PROTECTION.

RICK GAONA, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q AGENT GAONA, WOULD YOU INTRODUCE YOURSELF FOR THE RECORD.

A YES. MY FULL NAME IS RICARDO GAONA. WHEN I'M AT THE PORT IN LAREDO EVERYBODY CALLS ME RICK BUT MY FULL NAME IS RICARDO GAONA.

THE COURT: SPELL THAT, PLEASE, SIR.

A SPELLED R-I-C-A-R-D-O. LAST NAME IS SPELLED G-A-O-N-A.

Q AGENT GAONA, WHERE ARE YOU EMPLOYED?

A PRESENTLY I'M EMPLOYED WITH CUSTOMS AND BORDER PROTECTION. THAT'S WHAT IT'S CALLED NOW. FORMERLY CALLED U.S. CUSTOMS SERVICE.

Q WERE YOU WORKING THERE MAY 14TH OF 2002?

A THAT IS CORRECT, SIR.

Q IN WHAT CAPACITY WERE YOU WORKING ON BEHALF OF CUSTOMS ON THAT DAY?

A CUSTOMS INSPECTOR AND I WAS ASSIGNED -- MAY 14TH I WAS ASSIGNED TO THE -- I WAS ONE OF THE OPERATORS FOR THE N.I.I. EQUIPMENT. N.I.I. STANDS FOR NON INTRUSIVE INSPECTION WHICH IS A BACUS (PHONETIC) 2 X-RAY.

Q OKAY. THAT'S AN X-RAY MACHINE?

A THAT IS CORRECT, SIR.

Q WHAT KIND OF SCALE OF X-RAY MACHINE ARE WE TALKIN' ABOUT; HOW BIG IS IT?

A WHEN YOU SAY BIG, WHAT DO YOU MEAN HOW BIG?

Q HOW LARGE -- WHAT WILL GO INSIDE THAT X-RAY MACHINE?

A THE X-RAY SYSTEM THE BACUS 2 IS FIXED AS A STATIONARY X-RAY. OKAY? WE LOOKIN' AT PROBABLY AS BIG AS WHERE A TRAILER COULD FIT

THROUGH THERE WITH THE---

Q WHAT KIND OF TRAILER WOULD FIT IN IT?

A DO YOU NEED A -- A TRACTOR-TRAILER WOULD DEFINITELY FIT THROUGH THERE, YES. THAT'S WHAT WE – WHERE I WAS WORKING, IT WAS AN IMPORT LOT, AND THAT'S ALL WE DEAL WITH IS TRACTOR-TRAILERS.

Q OKAY. WHAT DOES -- DID ANYTHING UNUSUAL COME TO YOUR ATTENTION THAT DAY? ON THE 14TH. DID ANYTHING ATTRACT YOUR ATTENTION THAT YOU WERE LOOKIN' AT ON THAT DAY?

A WELL, ON THAT PARTICULAR DAY WE HAD A -- WE HAD A SEIZURE ON THAT PARTICULAR DAY OF NARCOTICS.

Q OKAY. DESCRIBE FOR THE COURT AND RELATE THE DETAILS OF YOUR INVOLVEMENT IN THAT SEIZURE. WHAT DID YOU DO?

A OKAY. MY -- I WAS ASSIGNED -- I'M ONE OF THE OPERATORS ASSIGNED TO THE BACUS 2 SYSTEM WHICH IS THE N.I.I. EQUIPMENT, AND I WAS ASSIGNED WITH JOSEPHINA GUERA (PHONETIC) AT THE TIME. SHE WAS A GROUND PERSON; I WAS THE OPERATOR AT THE TIME. OKAY, WHAT WE DID WE -- WE WOULD ROTATE -- WE ROTATE EVERY 30 MINUTES BECAUSE OF THE HEAT IN LAREDO. WE TEND TO ROTATE EVERY 30 MINUTES OUTSIDE THE GROUND PERSON AND THEN THE OTHER PERSON WOULD BE INSIDE VIEWING THE IMAGES, AND ON THIS PARTICULAR -- ON THAT DATE WE HAD A TRAILER THAT CAME IN AND WE -- I FOUND AN ANOMALY IN ONE OF THE TRAILERS.

Q WHAT ARE YOU TALKIN' ABOUT AN ANOMALY? WHAT ARE YOU TALKIN' ABOUT?

A AN ANOMALY IS A DISCREPANCY, WHAT WE CALL IT DISCREPANCY WITHIN THE TRAILER ITSELF. IF IT'S A TRAILER IT'S COMIN' IN EMPTY 'CAUSE WE

DO GET A LOT OF EMPTY TRAILERS. AND WE DO GET A WHOLE BUNCH OF TRAILERS THAT COME IN WITH -- WITH MERCHANDISE. AND AN ANOMALY IS A DISCREPANCY FOUND WITHIN THE TRAILER OR THE COMMODITY WITHIN THE TRAILER.

Q OKAY. DID THAT GENERATE AN IMAGE, DID YOU PRINT OUT AN IMAGE OF THAT VIEW THAT YOU SAW THERE?

A YES, WE DO. YES, I DID. ANY PARTICULAR -- ANY ANOMALY THAT WE FIND, WE PRINT IT OUT. WE HAVE TO PRINT IT OUT.

Q DID YOU BRING A PRINTOUT OF THAT WITH YOU HERE TODAY?

A YES, I DID, SIR.

Q DO YOU HAVE IT HERE WITH YOU?

A YES, I DO.

Q I'M GOING TO HAND YOU THIS AND ASK IF YOU CAN IDENTIFY THIS. CAN YOU TELL US WHAT THAT IS?

A YES, I CAN.

Q WHAT IS IT?

A ON THIS PARTICULAR TRAILER KEEP IN MIND THAT THE DRIVER WHEN HE ARRIVES HE HAS TO PRESENT A MANIFEST. HE HAS TO. HE HAS TO PRESENT A MANIFEST. OKAY. SO WHEN I'M SCANNING THIS TRAILER I KNOW WHAT'S BEFORE ME. I KNOW WHAT'S INSIDE THE TRAILER.

Q FROM THE MANIFEST?

A YES. FROM THE MANIFEST.

Q DID YOU HAVE A COPY OF THE MANIFEST AT THAT TIME?

A YES, WE DID.

Q OKAY. LET ME ASK YOU THIS: DOES THAT PHOTOGRAPH THAT YOU

BROUGHT WITH YOU THERE, DOES IT FAIRLY AND ACCURATELY REFLECT THE VIEW FROM YOUR X-RAY MACHINE OR THE N.I.I. MACHINE OF THAT TRAILER WHERE YOU FOUND THE ANOMALIES?

A THAT IS CORRECT.

Q OKAY.

MR. MAYE: YOUR HONOR, AT THIS TIME I GUESS I'LL MARK THIS FOR IDENTIFICATION. I'M GONNA MOVE IT INTO EVIDENCE. IF THEY'VE GOT OBJECTION TO IT COMIN' IN AT SOME POINT IN TIME I'LL JUST MARK IT FOR I.D. IT DOES NOT MAKE ANY DIFFERENCE.

MR. SUSSMAN: UNLESS IT WAS ALREADY COVERED, I DON'T GET THE FOUNDATION---

MR. MAYE: THAT'S FINE.

MR. SUSSMAN: ---AS FAR AS HIS EXPERTISE---

MR. MAYE: THAT'S FINE.

MR. SUSSMAN: ---THE MACHINE.

MR. MAYE: THAT'S FINE.

MR. SUSSMAN: WHICH I CAN VOIR DIRE ON.

THE COURT: MARK IT FOR I.D.. (STATE'S EXHIBIT #1 MARKED FOR IDENTIFICATION.)

MR. SUSSMAN: SO WHAT'S IT MARKED?

MR. MAYE: I.D. 1.

MR. SUSSMAN: THANK YOU.

MR. MAYE: STATE'S ONE. I.D.

Q AND YOU SAID YOU HAD A SHIPPING MANIFEST AS WELL?

A YES, SIR.

Q DID YOU BRING THAT WITH YOU HERE TODAY?

A THAT IS CORRECT, SIR.

Q LET ME HAND YOU THIS AND ASK IF YOU CAN IDENTIFY IT. WHAT IS THAT PAPER YOU BROUGHT?

A THIS PAPER I HAVE BEFORE ME RIGHT NOW IS THIS IS THE ACTUAL MANIFEST THAT'S PRESENTED TO ONE OF THE CUSTOMS INSPECTORS AT PRIMARY WHEN THE DRIVER MAKES HIS ARRIVAL THERE AT THE IMPORT LOT. HE HAS TO PRESENT ONE OF THESE PAPERS TO US.

Q IS THAT A FAIR AND ACCURATE COPY OF THE SHIPPING MANIFEST OF THE TRAILER IN QUESTION.

A THAT IS CORRECT.

THE COURT: HOLD ON.

MR. SUSSMAN: IF I'M NOT MISTAKEN, HE SAID IT WAS PRESENTED TO SOMEONE ELSE. HE WOULD BE TESTIFYING TO HEARSAY. THE WAY I UNDERSTAND HIS LAST RESPONSE.

THE COURT: SOLICITOR?

Q DID YOU HAVE THAT MANIFEST THERE IN FRONT OF YOU AT THE TIME YOU VIEWED THE TRAILER?

A THAT IS CORRECT, SIR.

Q SO YOU SAW THAT AT THE SAME TIME.

A YES. WE HAVE TO -- WE HAVE TO SEE THIS. SO I HAVE TO LOOK AT THE MANIFEST. I HAVE TO KNOW WHAT'S INSIDE THE TRAILER.

Q ALRIGHT.

MR. MAYE: I'M GONNA MOVE TO ADMIT THIS FOR I.D. PURPOSES AS WELL, YOUR HONOR.

MR. SUSSMAN: HAVING IT MARKED FOR I.D. IS FINE, BUT IF HE'S MOVIN' IT INTO EVIDENCE I WOULD OBJECT.

MR. MAYE: WE'LL DO THAT IN FRONT OF THE JURY I GUESS. WE'LL TAKE THAT UP AT A LATER TIME. I'M NOT TRYIN' TO -- WE'LL MARK IT FOR I.D. FOR PURPOSES OF THE SUPPRESSION MOTION.

THE COURT: GIVE IT TO THE COURT REPORTER. (STATE'S EXHIBIT #2 MARKED FOR IDENTIFICATION.)

Q AS TO THAT SHIPPING MANIFEST HAS IT ALREADY BEEN PREMARKED THAT THAT PARTICULAR TRAILER IS GOING TO RECEIVE TIGHT SCRUTINY?

A CAN YOU, PLEASE, REPEAT YOUR QUESTION.

Q WAS THAT TRAILER ALREADY EARMARKED FOR HEIGHTENED SCRUTINY PRIOR TO YOU LOOKIN' AT IT IN THE X-RAY MACHINE?

A YES. YES, IT WAS. THIS PARTICULAR SHIPMENT WAS.

Q WHY IS THAT? WHAT IS THAT CALLED?

A THIS PARTICULAR SHIPMENT WAS ALREADY BEFORE IT EVEN ARRIVED TO THE INSPECTOR PRIMARY, THIS SHIPMENT WAS ALREADY GONNA BE SUBJECTED TO INTENSIVE BEFORE IT EVEN GOT TO US.

Q WHY?

A BECAUSE WE HAVE A DEPARTMENT CALLED THE D.A.U. WHICH IS A DATA ANALYTICAL UNIT. WHAT THEY DO IS THEY REVIEW PAPERWORK, THE CONSIGNEE, SHIPPERS, INFORMATION AND THEY -- THEY – WHAT IS IT CALLED? WHAT THEY DO IS THAT THEY -- THEY REVIEW IT. THEY REVIEW ALL THIS AND THEY DETERMINE -- THEY DETERMINE IF IT'S GONNA BE AN INTENSIVE BEFORE IT GETS TO US.

Q WHEN YOU GOT THE MANIFEST WAS IT ALREADY INDICATED THAT THAT

WAS GONNA BE AN INTENSIVE SEARCH ITEM?

A THIS PARTICULAR SHIPMENT, YES.

Q OKAY. WHAT ABOUT THAT SHIPMENT MAKES IT SUSPECT BASED ON YOUR EXPERIENCE AND TRAINING?

A THIS PARTICULAR SHIPMENT BASED ON MY EXPERIENCE AND I'VE BEEN WORKING THE IMPORT LOTS -- I'VE WORKED THE IMPORT LOTS FOR 6 YEARS. SO I'VE DEALT WITH THIS TYPE OF, YOU KNOW, COMMODITIES FOR THE LAST 6 YEARS.

Q LET ME ASK YOU THIS: ABOUT HOW MANY TRAILERS A DAY COME THROUGH THERE?

A THROUGH THE WORLD TRADE BRIDGE YOU'RE LOOKIN' AT ROUGHLY 35 TO 45 HUNDRED TRAILERS DAILY.

Q AND YOU'VE BEEN WORKIN' IN THAT FOR 6 YEARS?

A I DID THAT FOR 6 YEARS. I DON'T DO IT RIGHT NOW. I'M ASSIGNED TO THE PASSENGER TO WHERE THE BRIDGES ARE IN LAREDO, BUT PRIOR TO THIS, YES, I WAS THERE FOR 5 AND A HALF YEARS.

Q DID YOU HAVE SPECIALIZED TRAINING FOR YOUR DUTIES AT THAT POINT IN TIME?

A YES. YOU HAVE TO BECOME CERTIFIED, YES, IN ORDER TO BE ONE OF THE OPERATORS.

Q WERE YOU CERTIFIED TO RUN THE N.I.I. MACHINE?

A YES.

Q WHAT KIND OF SPECIALIZED TRAINING DID YOU RECEIVE?

A WELL, YOU HAVE TO GO THROUGH THE -- FIRST OF ALL, IT'S A -- I WAS TRAINED WITH S.A.I.C. WHICH I DON'T KNOW IT'S OUT OF CALIFORNIA, THE PEOPLE THAT MAKE THE -- THE MAKERS OF THE BACUS -- OF THE BACUS 2

SYSTEM.

Q YOU WENT TO A SPECIALIZED SCHOOL FOR THAT?

A YES.

Q WHERE WAS THAT?

A IT WAS HELD IN -- THEY CAME DOWN, THEY GAVE IT TO US THERE IN LAREDO.

Q HOW LONG DID THAT LAST?

A IT WAS I WANNA SAY 2 WEEKS.

Q ABOUT 2 WEEKS?

A I'M NOT -- I'M NOT SURE THE EXACT TIME BUT IT WAS—

Q APPROXIMATELY 2 WEEKS?

A YES.

Q SPECIALIZED TRAINING TO RUN THAT MACHINE?

A THAT IS CORRECT.

Q WERE YOU AT THAT TIME RUNNING THE MACHINE ON A DAILY BASIS?

A AFTER THE TRAINING, YES. I DID THAT FOR THE NEXT -- I DID THAT FOR THE NEXT 2 OR 3 YEARS.

Q ABOUT HOW MANY TRAILERS A DAY WERE YOU LOOKIN' AT DOIN' THAT?

A THROUGH THE -- WE HAVE DIFFERENT X-RAYS. MY PARTICULAR ONE WE WOULD DO ON A DAILY -- ON A SHIFT BY SHIFT ABOUT 130, 140 PER SHIFT.

Q 130, 140—

A PER SHIFT.

Q OKAY. LET ME ASK YOU THIS: WHAT ABOUT THE MANIFEST, IF ANYTHING, DREW YOUR ATTENTION TO IT OR MADE IT SUSPECT?

A THIS ALSO BASED ON MY EXPERIENCE AND SEIZURES THAT HAVE COME

THROUGH THAT PORT, WE WOULD TARGET -- WE DO TARGET MEXICAN HANDICRAFTS OR WOODEN FURNITURE, THOSE TYPE OF COMMODITIES WERE -- WERE SUSPECT COMMODITIES, WHAT WE WOULD CALL SUSPECT COMMODITIES EVEN THOUGH IN THIS PARTICULAR CASE THIS ONE WAS ALREADY IN INTENSIVE TO BEGIN WITH, BUT EVEN IF IT WASN'T INTENSIVE, THIS SHIPMENT WAS PROBABLY GONNA GET REFERRED TO THE N.I.I. EQUIPMENT TO BEGIN -- YOU KNOW, IF IT WOULDN'T A BEEN AN OVERRIDE. IT WAS PROBABLY GONNA GET SENT OVER THERE ANYWAY BECAUSE THIS PARTICULAR COMMODITY WE FOUND SEIZURES IN THIS PARTICULAR COMMODITY BEFORE. MANY TIMES. NOT JUST ONE TIME. MANY TIMES.

Q WHAT MAKES THOSE ITEMS PARTICULARLY -- GIVES YOU PARTICULAR EMPHASIS ON THOSE? WHY DO THOSE ITEMS RECEIVE INTENSE SCRUTINY?

A WELL, FOR ONE -- FOR ONE IS WE'VE GOTTEN A LOTTA SEIZURES IN THIS PARTICULAR COMMODITY.

Q WHAT KIND OF COMMODITY IS THAT?

A WOODEN FURNITURE.

Q OKAY. SO YOU HAVE PREVIOUSLY TESTIFIED THAT YOU OBSERVED THE ANOMALIES IN THE TRAILER AND THAT THE -- YOU HAD THAT MANIFEST THERE IN FRONT OF YOU AT THAT TIME. IS THAT CORRECT?

A THAT IS CORRECT.

Q ON THAT MANIFEST WHO IS THAT SHIPMENT GOING TO? WHO DOES IT INDICATE THAT IT'S GOING TO ON THAT MANIFEST?

A ACCORDING TO THIS MANIFEST--

MR. SUSSMAN: I HAVE TO -- I HAVE TO OBJECT, JUDGE. I HATE TO BE A PEST BUT IF HE'S GONNA READ FROM A DOCUMENT I THINK IT WOULD HAVE TO BE

MOVED INTO EVIDENCE. IF HE'S MOVING IT INTO EVIDENCE WE'D LIKE TO BE HEARD.

THE COURT: I'LL LET YOU BE HEARD, BUT IT'S NOT GOING INTO EVIDENCE TILL THE JURY COMES.

MR. SUSSMAN: WELL, FOR PURPOSES OF THE HEARING IF HE'S GONNA READ FROM A DOCUMENT, IT WOULD HAVE TO BE MOVED INTO EVIDENCE FOR PURPOSES OF THE HEARING.

THE COURT: I'LL HEAR YOU. GO AHEAD.

MR. SUSSMAN: I DIDN'T HEAR YOU.

THE COURT: I WILL HEAR YOU. GO AHEAD.

MR. SUSSMAN: OKAY. WELL, I STILL HAVEN'T HEARD EVIDENCE THAT HE ACTUALLY MADE THE DOCUMENT, THAT HE HAD ANYTHING TO DO WITH THE CREATION OF THE DOCUMENT, THAT HE WASN'T EVEN THERE INITIALLY WHEN THE DOCUMENT WAS TAKEN BY SOME OTHER PEOPLE AT THE INITIAL CHECK. SO I'M NOT SURE EXACTLY HOW IT CAME INTO HIS HANDS OR WHY HE WOULD BE QUALIFIED TO AUTHENTICATE THE DOCUMENT.

THE COURT: ALRIGHT.

Q LET ME ASK YOU THIS, AGENT GAONA: IN ORDER FOR A TRAILER LOAD OF ANY KIND OF GOODS TO MOVE THROUGH THERE, IS IT NECESSARY FOR THEM TO HAVE A MANIFEST? IS IT POSSIBLE FOR ONE TO GO THROUGH WITHOUT A MANIFEST?

A EVERY – EVERY SHIPMENT THAT ARRIVES AT THAT PORT MUST HAVE A MANIFEST.

Q WAS THAT THE MANIFEST FOR THAT PARTICULAR TRAILER?

A IT WAS THE MANIFEST FOR THIS PARTICULAR TRAILER, YES.

Q HOW DO YOU KNOW THAT?

A BECAUSE EVERY MANIFEST MUST HAVE THE TRAILER NUMBER IDENTIFYING THAT PARTICULAR TRAILER.

Q DID THE MANIFEST THAT YOU HAD THERE MATCH THAT PARTICULAR TRAILER NUMBER AT THAT TIME?

A YES, IT DID.

Q IS THAT THE CORRECT MANIFEST FOR THE TRAILER FOR WHICH YOU GENERATED THE X-RAY IMAGES?

A YES, IT IS, SIR. AND IF YOU LOOK AT THE VACUS 2 OF THIS COPY RIGHT HERE---

Q STATE'S 1.

A YOU LOOK AT WINDOW C, THAT PARTICULAR TRAILER, NUMBER OF THE TRAILER, THAT'S WHAT WE PUT -- WE TRY TO FOCUS ON THE TRAILER NUMBER ITSELF AND GET AN IMAGE OF IT, AND AS YOU CAN SEE, IT MATCHES UP TO THE MANIFEST THAT THEY PRESENTED ENTRY FOR.

Q WHAT IS THAT NUMBER?

A THAT NUMBER IS 638A S IN SIERRA LIMA 097.

Q SO THIS MANIFEST MATCHES THE TRAILER THERE?

A THAT IS CORRECT.

Q ARE THOSE NECESSARY AND REGULARLY PASSED THROUGH TO YOU IN THE COURSE OF YOUR BUSINESS THERE?

A WHAT RECORDS, SIR?

Q THE MANI---

A THE MANIFEST.

Q THEY PASS IT OVER TO---

A YES.

MR. MAYE: YOUR HONOR, AT THIS TIME WE'RE GONNA MOVE TO ADMIT THESE INTO EVIDENCE. THE AGENT HAS AUTHENTICATED THESE AS BEING THE ACTUAL COPY OF THE MANIFEST. HE INDICATES THAT A NUMBER MATCHES THE TRAILER. HE INDICATES THAT NO TRAILER CAN COME THROUGH WITHOUT A MANIFEST. IT'S NOT NECESSARY THAT HE BE THE ORIGINATOR OR THAT HE GENERATED THESE DOCUMENTS AND ALL, YOUR HONOR. HE HAS STATED THAT THE IMAGE FROM THE VACUS (PHONETIC) SYSTEM OR THE X-RAY SYSTEM FAIRLY AND ACCURATELY REFLECTS THE VIEW THAT HE ACTUALLY SAW THERE, YOUR HONOR. AND IT'S OUR POSITION THAT THEY'RE VALID AND CAN BE MOVED INTO EVIDENCE. WE DON'T HAVE THE OTHER AUTHOR OF THESE TO ADMIT THESE INTO EVIDENCE. IT'S NOT NECESSARY.

THE COURT: ALRIGHT.

MR. SUSSMAN: ALL THEY HAVE, BASICALLY, IS THE AGENT WHO SAID THAT THE X-RAY OF THIS -- THIS TRAILER AND THAT THIS -- THIS DOCUMENT THAT HE HAD WITH HIM OR HAS BEEN IDENTIFIED TODAY IS A DOCUMENT THAT HAS THE SAME NUMBER ON IT THAT IS ON THIS TRAILER. HE HASN'T TESTIFIED HOW HE GOT IT, WHERE IT CAME FROM, WHO GAVE IT TO HIM, IF IT WAS GIVEN TO HIM BY THE PERSON THAT DROVE THE TRUCK. THERE'S STILL BEEN NO EXPLANATION AS TO HOW HE CAME INTO POSSESSION OF THIS DOCUMENT IN ORDER TO AUTHENTICATE IT. HE HASN'T EVEN TESTIFIED THAT HE KEEPS IT AS A RECORD IN THE COURSE OF HIS BUSINESS AS A RECORD-KEEPING EXCEPTION TO THE HEARSAY RULE. I WOULD STILL OBJECT. WE DON'T KNOW WHERE IT CAME FROM.

MR. PUETZ: AND ALSO, TOO, JUDGE, THERE'S A GREAT DEAL OF WRITINGS THAT ARE ON HERE IN ADDITION TO THE ACTUAL PRINTED DOCUMENT. AND I

THINK THAT IT WOULD BE INCUMBENT FOR ALL OF THESE WRITINGS TO BE EXPLAINED TO SEE IF THEY ARE EVEN PART OF THE -- OR THAT IT'S SOMETHING THAT CUSTOMS SERVICE ROUTINELY WRITE. AND I'M NOT SURE BUT THAT WE SHOULD NOT HAVE THE PERSON WHO DID ALL THESE HANDWRITINGS ON HERE.

THE COURT: PUT BEFORE ME WHATEVER IT IS YOU WANT.

Q WHERE DID YOU -- WHERE DID THAT DOCUMENT COME FROM OR WHERE DID YOU RECEIVE IT FROM?

A WHEN THIS TRAILER MAKES ENTRY, WHEN THE DRIVER PRESENTS A MANIFEST.

Q WHO WAS IT PRESENTED TO?

A IT IS PRESENTED TO AN INSPECTOR THAT'S WORKING PRIMARY, WHAT WE CALL PRIMARY. WE HAVE PRIMARY BOOTHS. WHEN THE TRAILERS COME IN, THEY PRESENT THIS DOCUMENT TO THE INSPECTOR. THE INSPECTOR WORKS IN THE PRE-FILE NUMBER WHICH IS A PRE-FILE NUMBER THAT IS GIVEN A PARTICULAR BROKER THAT PREPARED THIS MANIFEST FOR HIM. IT'S GIVEN TO US. WHAT WE DO IS WE RUN IT THROUGH OUR SYSTEM. WE RUN THE PRE-FILE THROUGH OUT SYSTEM AND THEN IF IT'S AN INTENSIVE, THIS PARTICULAR PAPER IS NOT GIVEN TO THE DRIVER. IF IT'S AN INTENSIVE WE'RE NOT GONNA GIVE THE PAPER TO THE DRIVER BECAUSE HE CAN LEAVE---

Q OKAY.

A HE CAN LEAVE THE COMPOUND WITHOUT HIM EVER GETTING INSPECTED. SO THEREFORE WE KEEP THE PAPERWORK. HE KEEPS THE PAPERWORK. IT'S THEN TURNED, PICKED UP BY ANOTHER -- LIKE SOME MORE INSPECTORS INSIDE. AND THEN IT'S BROUGHT TO ME TO THE---

Q WHERE DID YOU RECEIVE THAT? WHERE DID YOU RECEIVE THAT THAT

DAY?

A I HAVE TO GO INSIDE AND PICK UP THE PAPERWORK. ALL THE INTENSIVES I PICK UP INSIDE.

Q WHERE DID YOU PICK THAT PAPER UP AT?

A INSIDE OF THE A.C. -- IT'S CALLED A.C.S.

Q YOU PICKED IT UP YOURSELF INSIDE A.C.S.?

A YES.

Q OKAY.

A ALL THE INTENSIVES, ANY INTENSIVES THAT ARE HELD THERE, THEY'RE NEVER GIVEN TO THE DRIVER. NEVER AT THAT TIME BECAUSE, LIKE I SAID, HE CAN -- THEY CAN TRY TO LEAVE THE COMPOUND WITHOUT EVER GETTING INSPECTED WHICH HAS HAPPENED BEFORE.

Q OKAY. ALL THOSE PAPERS DO THEY FLOW THROUGH CUSTOMS' HANDS THERE AS A PART OF THE REGULAR COURSE OF BUSINESS THERE IN THE TRAILERS COMING THROUGH?

A OH, YES.

Q OKAY. DO Y'ALL MAKE RECORDS OF THOSE AT THAT TIME? AS THEY COME THROUGH, DO Y'ALL KEEP AND MAINTAIN THOSE INTERNALLY WHILE DURING THE TIME THAT THE TRAILER IS THERE ON THE GROUNDS?

A THAT IS CORRECT.

Q OKAY. IF NOTHING IS WRONG, WHERE DOES THAT MANIFEST THEN GO? WHAT DO YOU THEN DO WITH IT IF NOTHIN'S WRONG WITH IT OR IT DOESN'T GET THE INITIAL SCRUTINY?

A IF NOTHING -- IF I WOULDN'T HAVE NOTICED THE ANOMALY ON THIS PARTICULAR TRAILER?

Q YES.

A I HAVE A STAMP THERE AT THE VACUS. I WOULDA STAMPED IT OUT AND THIS GUY WOULD'VE BEEN GOOD TO GO.

Q WHERE WOULD THE MANIFEST HAVE THEN GONE?

A I WOULD'VE GIVEN A COPY, A COPY OF THIS MANIFEST TO THE DRIVER HIMSELF WHO IN THIS CASE WAS JOSE ORWIN (PHONETIC) CONTRARIUS (PHONETIC). I WOULD'VE GIVEN HIM A COPY OF THIS WITH MY STAMP -- NOT MY STAMP BUT WITH THE STAMP OF THE VACUS CLEARING IT THAT'S ALREADY BEEN INSPECTED THROUGH THE N.I.I. AND THEN HE WOULD'VE BEEN GOOD TO GO. HE WOULD'VE PRESENTED THAT, THE COPY I WOULD'VE GIVEN TO HIM HE WOULD'VE PRESENTED IT TO THE INSPECTOR AT THE GATE AS HIS RELEASE.

Q THAT WOULD'VE LET HIM OUT?

A YES. THAT WOULD'VE LET HIM OUT.

Q SO YOU WOULD HAVE MADE HIM A COPY AT THAT POINT IN TIME?

A THERE'S NO COPY. THERE'S ONLY 2 COPIES THEY PRESENT TO US. THERE'S NEVER A COPY -- I MEAN WHEN HE COMES IN THERE'S 2 COPIES OF THE MANIFEST. ONE IS HIS RELEASE AND ONE IS KEPT FOR OUR RECORDS. BUT SINCE THIS WAS AN INTENSIVE, WE KEPT BOTH COPIES OF THE MANIFEST. WE DON'T GIVE HIM A COPY AT THE POINT OF WHERE HE GAVE US THE -- WHEN HE MADE ENTRY WITH HIS -- WITH HIS TRAILER OR COMMODITY.

Q ARE THOSE REGULARLY REPORTED RECORDS DEALING WITH THE CUSTOMS SERVICE? ARE THEY MAINTAINED?

A YES, SIR.

Q ARE YOU A CUSTOMS AGENT?

A I'M A CUSTOMS INSPECTOR.

Q YOU'RE A CUSTOMS INSPECTOR. AS SUCH, DO YOU HAVE ACCESS TO THOSE RECORDS AND INFORMATION?

A YES.

Q OKAY. IS THAT, IN FACT, THE RECORD THAT YOU HAVE IN THIS CASE A REGULARLY GENERATED IN THE COURSE OF THOSE TRAILERS PULLIN' THROUGH THAT DAY? IS THAT THE DOCUMENT ACTUALLY THAT PAPERWORK?

A YES, SIR, IT IS.

MR. MAYE: YOUR HONOR, THAT'S ALL WE HAVE AT THIS TIME. WE WOULD STATE IN THIS CASE THAT IT'S A REGULARLY RECORDED BUSINESS RECORD. IT'S NOT NECESSARY THAT WE HAVE THE AUTHOR OF THAT, YOUR HONOR. THE AGENT TESTIFIED THAT THE REGULAR COURSE OR FLOW OF PAPERWORK IS THAT THE MANIFESTS ARE PRESENTED THERE. THEY COME THROUGH FOR THE REGULAR COURSE OF BUSINESS, YOUR HONOR. THAT THERE ARE 2 COPIES. AND THAT IF THERE'S NOTHING WRONG, THE COPY IS RETURNED AND THE TRUCK PASSES ON THROUGH, YOUR HONOR. THE AGENT HAS TESTIFIED THAT THIS IS THE ONE THAT MATCHES THE TRAILER, YOUR HONOR.

MR. HAWK: YOUR HONOR, MAY I VOIR DIRE HIM ON THIS POINT?

THE COURT: SURE.

CROSS-EXAMINATION

BY MR. HAWK

Q THIS DOCUMENT THAT YOU REFERRED TO, DID YOU PREPARE IT?

A I'M SORRY, SIR. WHAT WAS YOUR QUESTION?

Q DID YOU PREPARE THIS DOCUMENT?

A THE MANIFEST YOU MEAN?

Q THE MANIFEST.

A THE MANIFESTS ARE NOT PREPARED BY US.

Q OKAY. AND DO YOU KNOW WHO PREPARED IT?

A ACCORDING TO THE -- ACCORDING TO THIS MANIFEST IT WAS PREPARED BY A BROKER -- YOU LOOK TOWARD THE BOTTOM.

Q CAN I SEE THE DOCUMENT. YOU'RE REFERRING TO THIS AS A MANIFEST. IS THIS WHAT YOU CALL A MANIFEST?

A THAT IS A MANIFEST.

Q IS IT ALSO CALLED A BILL OF LADING?

A NO. THAT'S A MANIFEST.

Q ALRIGHT. AND DO YOU KNOW WHEN THIS WAS PREPARED?

A NO, I DO NOT.

Q DO YOU KNOW -- AND YOU REALLY CAN'T SAY WHO PREPARED IT.

A I CAN TELL YOU ACCORDING TO THAT I CAN TELL YOU THAT BROKER JAMCO (PHONETIC) INTERNATIONAL PREPARED IT.

Q OKAY. BUT IF I WAS PREPARING IT -- IF I HAD A BLANK DOCUMENT LIKE THIS AND I WANTED TO WRITE JAMCO INTERNATIONAL ON IT, I'D WRITE JAMCO INTERNATIONAL ON IT. RIGHT?

A I GUESS YOU COULD WRITE WHATEVER YOU WANTED TO ON IT.

Q AND MAYBE IF I WAS A DRUG TRAFFICKER AND I WAS TRYIN' TO FOOL SOMEBODY I COULD WRITE ANYTHING I WANTED TO ON HERE. COULDN'T I?

A I'M ASSUMING SO.

Q THIS PARTICULAR NAME OR THIS PARTICULAR COMPANY THAT CAME ACROSS WAS ONE THAT Y'ALL HAD NEVER EVEN SEEN BEFORE.

A WHAT WAS YOUR QUESTION AGAIN? WHAT WAS YOUR STATEMENT AGAIN?

Q YOU SAID THIS WAS NOT A SHIPPER THAT YOU HAD EVER SEEN BEFORE AND THAT WAS WHY THE SHIPMENT WAS FLAGGED. IS THAT RIGHT?

A THE COMMODITY WAS FLAGGED, NOT THE -- THIS PARTICULAR COMMODITY WAS FLAGGED.

Q OKAY. SO YOU HAD HAD PRIOR DEALINGS WITH JAMCO INTERNATIONAL.

A YES, I'VE DEALT WITH JAMCO BEFORE, YES.

Q AND SEBASTIAN EXPORTACIONES?

A I HAVEN'T THE SLIGHTEST IDEA WHO SEBASTIAN EXPORTACIONES IS. I DON'T KNOW WHO THEY ARE.

Q YOU DON'T KNOW WHO THEY ARE.

A NO.

Q IS THIS THE FIRST TIME YOU'VE EVER RECEIVED ANYTHING TO YOUR KNOWLEDGE COMING ACROSS THE BORDER FROM SEBASTIAN EXPORTACIONES?

A I DO NOT KNOW THAT.

Q OKAY. DO YOU KNOW ONE WAY OR THE OTHER? DO YOU KNOW ONE WAY OR THE OTHER?

A I DON'T KNOW. I CAN'T ANSWER THAT. I CAN LOOK IT UP.

Q ALRIGHT.

A BUT--

Q DO YOU HAVE ANY IDEA AS TO WHETHER OR NOT WHOEVER PREPARED THIS DOCUMENT KEPT IT IN THE REGULAR COURSE OF BUSINESS?

A SIR, AS I ANSWERED YOU WHILE AGO, I DON'T KNOW WHO PREPARED THAT PAPERWORK. I CAN PROBABLY VOUCH IT WAS PROBABLY JAMCO INTERNATIONAL WHICH IS A BROKER WHICH IS W.C.I. OR W.C.I THE PREFILE NUMBER.

Q ALRIGHT. DO YOU KNOW IF THE ENTRIES THAT ARE MADE ON THIS DOCUMENT WERE MADE AT OR NEAR THE TIME OF THE ACTUAL EVENT THAT'S RECORDED THEREIN?

A I DON'T KNOW. ALL I DO KNOW IS THEY HAVE TO FILE AN ENTRY WITH OUR ENTRY TEAM, WITH CUSTOMS ENTRY TEAM 24 HOURS IN ADVANCE SO THAT WE CAN REVIEW THE MANIFEST REVIEW, THE BROKER REVIEW, THE CONSIGNEE REVIEW, THE SHIPPER. ALL THAT COMES INTO CONSIDERATION IF THIS PARTICULAR SHIPMENT IS GONNA GET INTENSIFIED OR NOT WHICH IN THIS PARTICULAR CASE THIS WAS AN INTENSIVE SHIPMENT BEFORE IT ARRIVED AT OUR PORT BECAUSE WE LOOK AT ALL THAT. WE HAVE A TEAM. AND I CANNOT SAY I BECAUSE I'VE NEVER WORKED FOR THAT TEAM BUT I DO KNOW WHAT THEY DO THERE. THAT THEY REVIEW THE SHIPPER; THEY REVIEW THE CONSIGNEE; THEY REVIEW -- YOU KNOW, THERE ARE CERTAIN THINGS THAT COME INTO PLAY IN THIS IF IT'S GONNA BE INTENSIFIED BEFORE IT ARRIVES AT OUR PORT.

Q OKAY. WOULD IT BE FAIR TO SAY THAT THIS IS A FORM THAT SOMEBODY JUST TYPES IN INFORMATION?

A WELL, IT'S JUST A PIECE OF PAPER.

Q ALRIGHT. AND IT'S A FORM THAT'S FILLED OUT. IN OTHER WORDS, YOU PUT IN, YOU KNOW, YOUR NAME, UP HERE IS WHOEVER IS THE ADDRESS OF THE SHIPPER, POINT OF ARRIVAL. THINGS LIKE THAT. JUST FILL IT IN.

A BASICALLY, YES, BECAUSE IT ASKS FOR THE DRIVER, THE TRAILER NUMBER, THE PRE-FILE NUMBER.

Q OKAY. AND ANYBODY CAN TYPE IT IN OR FILL IT IN IF THEY WANTED TO. RIGHT? PUT IN ANY INFORMATION THEY WANTED TO.

A I GUESS, YEAH.

Q AND DO YOU HAVE ANY PROOF OR ANY KNOWLEDGE THAT THIS PARTICULAR DOCUMENT IS A REGULAR BUSINESS RECORD KEPT IN THE COURSE OF BUSINESS OF ANY COMPANY INVOLVED IN THIS SHIPMENT?

A IT'S SOMETHING THAT WE WOULD DEAL WITH ON A DAILY BASIS. CUSTOMS WOULD---

Q I UNDERSTAND. I UNDERSTAND YOU DEAL WITH. YOU COLLECT THEM AS THEY COME THROUGH.

A RIGHT.

Q BUT AS FAR AS THE RECORD ITSELF, THE ORIGINAL OF THIS, DO YOU HAVE IT?

A THE ORIGINAL WHAT?

Q THE ORIGINAL MANIFEST.

A WELL, WE KEEP THE---

Q INSTEAD OF A COPY.

A WE KEEP THE ORIGINAL.

Q OKAY. WHERE IS THAT?

A A COPY OF THE ORIGINAL I WOULD HAVE TO GO BACK TO LAREDO, TEXAS TO---

Q ALRIGHT.

A ---GET THAT 'CAUSE WE FILE THEM. WE DON'T THROW THEM AWAY. WE FILE THEM AND I DON'T KNOW HOW LONG WE KEEP THEM AFTER THAT.

Q I UNDERSTAND. BUT AS FAR AS THIS COMPANY OR ANY OF THESE SHIPPERS, YOU DON'T KNOW WHETHER THAT WAS ACTUALLY KEPT AS A PART OF THEIR NORMAL BUSINESS RECORDS, DO YOU?

A NO.

MR. SUSSMAN: JUDGE, MAY I FOLLOW UP ON THAT?

CROSS-EXAMINATION

BY MR. SUSSMAN

Q SO THE ORIGINAL MANIFEST IS BROUGHT IN – BROUGHT IN BY THE TRUCK DRIVER WHEN HE STOPS AT THE BORDER?

A THE 2 ORIGINAL MANIFESTS ARE BROUGHT IN BY THE ORIGINAL DRIVER WHICH WAS THE ONE ON THE TOP RIGHT HAND CORNER.

Q SO THE ANSWER TO THAT IS YES? THE DRIVER BRINGS IN THE ORIGINAL.

A THE 2 ORIGINALS, YES.

Q AND THE ORIGINALS WERE TAKEN BY SOMEONE OTHER THAN YOURSELF.

A THE ORIGINALS WERE TAKEN BY THE PRIMARY OFFICER WHO WORKED THAT ENTRY.

Q THE ORIGINALS WERE TAKEN BY SOMEONE OTHER THAN YOURSELF.

A THAT IS CORRECT, SIR.

Q THANK YOU. THAT'S ALL I HAVE.

THE COURT: ANYTHING ELSE FROM THE DEFENSE?

MR. HAWKE: NO, SIR, YOUR HONOR, NOT IN REFERENCE TO THE ADMISSION OF THIS DOCUMENT.

THE COURT: ANY QUESTIONS IN RESPONSE TO THOSE?

MR. MAYE: NO, SIR, YOUR HONOR.

THE COURT: AND WHAT'S YOUR MOTION?

MR. SUSSMAN: WELL, YOUR HONOR, WE WOULD OBJECT TO THE ADMISSION OF THIS DOCUMENT BECAUSE IT IS A DOCUMENT THAT IS NOT GENERATED BY CUSTOMS. IT IS APPARENTLY BROUGHT IN BY THE DRIVER, AND THIS GENTLEMAN NEVER TOOK THE DOCUMENT INTO HIS CUSTODY. HE

APPARENTLY WASN'T PRESENT WHEN IT WAS TAKEN. ALL HE DOES IS GO IN THE OFFICE AND PICKS A PIECE OF PAPER UP AND SEES THE NUMBER MATCHIN' ON THE TRAILER. WE WOULD SUBMIT THAT THAT IS NOT A SUFFICIENT FOUNDATION TO AUTHENTICATE THE DOCUMENT THAT'S COME IN FROM THIS PARTICULAR TRAILER. IF HE'S REFERRING TO SOMEONE ELSE THAT TOOK THE DOCUMENT, THAT WOULD BE HEARSAY. AND THEREFORE I DON'T THINK THEY'VE ESTABLISHED THAT THIS IS CUSTODIAN RECORDS EXCEPTION TO THE HEARSAY RULE, THAT THEY WOULD MORE OR LESS HAVE TO HAVE THE PERSON WHO TOOK THE DOCUMENT IN TO AUTHENTICATE IT AS THE ONE COMING FROM THIS PARTICULAR TRAILER THAT THEY X-RAYED.

THE COURT: ALRIGHT.

MR. SUSSMAN: THANK YOU.

THE COURT: YOU ALL JOIN HIS MOTION?

MR. MILLER: YES, SIR.

MR. HAWKE: YES, YOUR HONOR.

THE COURT: PRELIMINARY QUESTIONS ARE GOVERNED UNDER RULE 104. THIS IS A PRELIMINARY QUESTION AT THIS STAGE BECAUSE IT'S A PRETRIAL HEARING. ONE OBJECTION HAS BEEN RAISED AS TO THE AUTHENTICATION OF THE DOCUMENT. AUTHENTICATION IS GENERALLY GOVERNED UNDER RULE 901 OF THE SOUTH CAROLINA RULES OF EVIDENCE. THE COURT FINDS UNDER RULE 901 THAT THERE IS SUFFICIENT AUTHENTICATION OF THIS DOCUMENT. THE RULE SUBSECTION A PROVIDES THAT AUTHENTICATION IS SATISFIED BY EVIDENCE SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER IN QUESTION IS WHAT ITS PROPONENT CLAIMS. IT GOES ON AND GIVES EXAMPLES IN SUBSECTION B WHICH UNDER SUBSECTION 7 OF B DEALS WITH PUBLIC RECORDS OR REPORTS. IT IS

AUTHENTICATED.

WITH REGARD TO THE HEARSAY EXCEPTION, THE COURT FINDS AS A PRELIMINARY RULING UNDER RULE 104 THAT RULE 803 SUBSECTION 6 AND SUBSECTION 8 WOULD COVER THE HEARSAY ISSUE.

SUBSECTION 6 DEALS WITH RECORDS OF REGULARLY CONDUCTED ACTIVITY AND IT STATES IN THERE IT DOESN'T HAVE TO BE THE CUSTODIAN OF RECORD.

IT COULD BE A QUALIFIED WITNESS.

THIS WITNESS HAS TESTIFIED THAT WHEN SOMEONE APPEARS AT THE MEXICAN BORDER OF THE UNITED STATES AND INTENDS TO BRING SOMETHING ACROSS THE BORDER, THAT PERSON HAS TO HAVE A MANIFEST AND THAT THAT IS PRESENTED, AND THEN IT GOES THROUGH VARIOUS HANDS.

I CONCEDE THAT NOT ALL THE PEOPLE WHOSE HANDS IT WENT THROUGH ARE HERE, BUT THAT THIS IS A REGULAR PRACTICE OF THE BUSINESS ACTIVITY OF THE BORDER GUARDS. IT'S A REPORT THAT'S REQUIRED. AND THAT GETS US INTO SUBSECTION A, AND IT PROVIDES THAT RECORDS AND REPORTS AND STATEMENTS IN ANY FORM OF PUBLIC AGENCIES OR OFFICES SETTING FORTH MATTERS OBSERVED PURSUANT TO A DUTY IMPOSED BY LAW. THOSE THINGS ARE EXCEPTIONS TO THE HEARSAY RULE. ALSO ACTIVITIES OF THE OFFICE OR THE AGENCY ARE EXCEPTIONS TO THE HEARSAY RULE. IT IS NOT INADMISSIBLE UNDER HEARSAY EXCEPTIONS. IT IS NOT INADMISSIBLE UNDER AUTHENTICATION EXCEPTIONS. THIS IS A PRELIMINARY RULING HOWEVER UNDER RULE 104. MARK IT FOR IDENTIFICATION PURPOSES. IN ORDER FOR IT TO GO BEFORE THE JURY, IT IS GOING TO HAVE TO BE A SITUATION WHERE ALL THESE THINGS ARE PRESENTED IN FRONT OF THE JURY. (STATE'S EXHIBIT #2 MARKED FOR IDENTIFICATION.)

DIRECT EXAMINATION BY MR. MAY RESUMES

Q ONCE YOU SAW THE ANOMALIES; ONCE YOU VIEWED THE MANIFEST AND SAW THE ANOMALIES INSIDE, WHAT DID YOU THEN DO? WHAT ACTION DID YOU TAKE?

A WHEN I SEE THIS ANOMALY WHAT I DO IS I IMMEDIATELY CALL OUR SUPERVISOR AND TELL 'EM WHAT WE HAVE. IN THIS PARTICULAR CASE IT WAS SUPERVISOR MARTIN WHICH SHE'S RETIRED NOW. ADOMONDINA (PHONETIC) MARTIN. WE CALL HER AND THEN WHAT WE DO IS WE ESCORT, WE HAVE TO ESCORT THIS PARTICULAR TRAILER, WE CANNOT LOSE SIGHT OF IT. WE HAVE TO ESCORT THIS PARTICULAR TRUCK, TRAILER FROM THE VACUS TO OUR INTENSIVE DOCK.

Q *DID YOU, IN FACT, DO THAT ON THAT DAY?*

A OH, YES. YES. YES, I DID.

Q SO YOU STAYED WITH THAT TRAILER FROM THE TIME YOU SAW THE ANOMALY UNTIL IT WENT TO THE INTENSIVE DOCK?

A THAT IS CORRECT, SIR.

Q WHAT ACTION DID YOU THEN TAKE?

A THE TRAILER IS TAKEN TO THE INTENSIVE DOCK. IT'S BACKED UP. BOTH DOORS HAVE TO GET WHERE THEY GET OPENED. AND THE TRAILER IS BACKED UP AGAINST OUR DOCK. AT THAT TIME EVERY PARTICULAR BROKER IN THIS CASE IT'S JAMCO, HAS WHAT THEIR -- WHAT WE CALL STEVEDORES. STEVEDORES THEY OFF THE LOAD. THEY OFF THE LOAD BUT WE'RE WITNESSING. WE'RE RIGHT THERE WITH THEM WHILE THEY'RE OFFLOADING. IN THIS PARTICULAR CASE THE TRAILER WAS 100 PERCENT OFFLOADED. IT' OFFLOADED ONTO OUR DOCK. ONCE IT WAS 100 PERCENT OFFLOADED WE CONTACTED THE C.E.O. WHICH IS CANINE AL

MCCAULEY AND HAD HIM -- HAD HIM GO AROUND THE MERCHANDISE WITH HIS CANINE. AND THE DOG DID GIVE A POSITIVE ALERT TO NARCOTICS INSIDE THE TRAILER WITHIN THE COMMODITY -- NOT INSIDE THE TRAILER. THE COMMODITY ITSELF.

Q OKAY. ONCE THE TRAILER WAS OPENED AND THE INTENSIVE WAS THERE ANY OPPORTUNITY FOR ANYBODY OTHER THAN CUSTOMS -- WAS THERE ANY OPPORTUNITY FOR ANYBODY TO TAMPER OR ALTER OR ADD ANYTHING OR TAKE ANYTHING AWAY FROM THE ITEMS?

A NO. NOBODY IS ALLOWED ON OUR DOCK. THE STEVEDORES ARE ON OUR DOCK AND IT'S US. NOBODY ELSE IS ALLOWED TO GO ON OUR DOCK. IF THEY DO, THEY HAVE TO ASK PERMISSION FROM US, YOU KNOW, WHATEVER THEY WANNA DO ON THE DOCK. BUT NORMALLY BUSINESS, NOBODY IS ALLOWED ON THE DOCK.

Q LET ME ASK YOU THIS: DID THIS TRAILER AND THE ITEMS IN THIS TRAILER, DID THEY CROSS OVER FROM MEXICO INTO THE UNITED STATES? OR WERE THEY IN THE PROCESS OF CROSSING OVER FROM MEXICO TO THE UNITED STATES?

A CAN YOU REPEAT YOUR QUESTION?

Q THE ITEMS THAT WERE COMING ACROSS WAS THERE A BORDER CROSSING WERE THEY ATTEMPTING TO MAKE A BORDER CROSSING WITH THOSE ITEMS WHEN YOU INTERCEPTED THAT?

A YES, SIR, THERE WAS.

Q OKAY. SO THEY ORIGINATED IN WHAT COUNTRY, THE ITEMS IN THE TRAILER?

A THE ITEMS IN THE TRAILER ORIGINATED IN MEXICO.

Q AND ARE GOING INTO WHAT COUNTRY?

A INTO THE U.S.

Q UNITED STATES. OKAY. WHAT DID YOU THEN DO AFTER THE DOG ALERTED ON THE MERCHANDISE? WHAT WAS THE NEXT THING THAT YOU DID?

A. WHEN THE DOG ALERTED WE HAVE THE DRIVER AND WE HAVE INSPECTORS WATCHING THE DRIVER WHILE WE'RE CHECKING THIS MERCHANDISE. OKAY. WE CAN NEVER LOSE SIGHT OF THE DRIVER.

Q OKAY. DID YOU CONTACT AT THAT TIME, DID YOU CONTACT ANYONE?

A. AT THAT PARTICULAR -- WHEN I WAS ON THE DOCK, NO. WE ALREADY HAD INSPECTORS ALREADY SET UP THERE.

Q WHO CALLED FOR INSPECTORS

A NO, THERE'S INSPECTORS ALREADY WORKING AT THE BORDER. I'M AT THE VACUS. I'M AT THE X-RAY. I'M AT A REMOTE -- NOT A REMOTE, BUT I'M AWAY FROM THE DOCK. BUT WE HAVE OUR INTENSIVES, INSPECTORS THAT WORK THE INTENSIVES. THEY'RE ALWAYS THERE.

Q WHICH INSPECTOR DID YOU SEE THERE AT THAT DOCK ON THIS PARTICULAR SHIFT THIS DAY? OR WHICH INVESTIGATOR WAS PRESENT THERE? DO YOU REMEMBER? WAS AGENT DOWLING THERE---

THE COURT: HOLD ON JUST A MINUTE.

MR. PUETZ: I MEAN I GOT THE IMPRESSION BASED ON HIS TESTIMONY THAT HE WASN'T AT THE DOCK WITH THIS THING, THAT HE WAS AT -- WITH THE X-RAY MACHINE. NOW MAYBE I'M MISUNDERSTANDING.

A I WAS WORKING AT THE X-RAY SYSTEM AT THE TIME, YES. I'M THE ONE THAT NOTICED THE ANOMALY. OKAY? I MYSELF I ESCORTED THE TRAILER. I STAY WITH THE TRAILER TILL IT GETS TO THE DOCK. WE CAN NEVER LOSE SIGHT OF THIS TRAILER OR THE DRIVER BECAUSE HE CAN LEAVE THE COMPOUND. SO

THEREFORE WE HAVE TO ESCORT IT TO THE DOCK WHICH I PARTICULARLY ESCORTED TO THE DOCK MYSELF. I OFFLOADED THE MERCHANDISE -- WE OFFLOADED THE MERCHANDISE. WE CHECKED IT TO CONFIRM THE ANOMALY.

Q AND THAT WAS ALL DONE IN YOUR PRESENCE.

A THAT'S ALL DONE IN MY PRESENCE, YES, SIR.

Q WHAT DID YOU DO TO FURTHER INSPECT – WHAT FURTHER INSPECTIONS DID YOU PERFORM OF THE ITEMS IN THE TRAILER? WHAT TESTS OR ANYTHING ELSE DID YOU DO AT THAT TIME?

A ONCE THE MERCHANDISE WAS OFFLOADED, I MORE OR LESS KNEW WHERE THE ANOMALIES WERE IN THE TRAILER.

Q HOW DID YOU KNOW THAT?

A ACCORDING TO THE COPY OF THE X-RAY.

Q OKAY. SO WHAT DID YOU DO BASED ON THAT?

A WHAT I DID, ONCE I HAD THE CANINE GIVE THE POSITIVE ALERT THE DRIVER WAS, OF COURSE, ESCORTED INSIDE. BUT I CHECKED THE ANOMALY MYSELF. ME AND ALONG WITH CANINE AL MCCAULEY WHO WAS PRESENT WITH ME. WE PRIED OPEN ONE OF THESE PIECES OF FURNITURE. WE PRIED IT OPEN WITH A CROWBAR AND THEN WE GOT ENOUGH ACCESS TO THE -- WE WANTED TO CONFIRM THE ANOMALY WHICH WE DID. WE DID CONFIRM THE ANOMALY. ONCE WE CONFIRMED THE ANOMALY WITH THE CROWBAR, I TESTED IT WITH MY KNIFE, AND IT REVEALED A GREEN, LEAFY SUBSTANCE.

Q DID YOU TEST THAT OR FIELD TEST THAT?

A WE HAVE TO TEST ALL NARCOTICS THAT ARE FOUND, WE HAVE TO. SO, YES. YOUR ANSWER IS YES.

Q WHAT DID IT FIELD TEST FOR?

A THIS PARTICULAR SHIPMENT, THIS PARTICULAR GREEN, LEAFY SUBSTANCE TESTED POSITIVE FOR MARIJUANA.

Q OKAY. HAVE YOU SEEN MARIJUANA BEFORE BASED ON YOUR WORK WITH THE CUSTOMS SERVICE, ARE YOU FAMILIAR WITH IT?

A YES, SIR.

Q A FEW TIMES OR MANY TIMES?

A MANY TIMES.

Q DID THE GREEN LEAFY SUBSTANCE THAT YOU SAW, DID IT APPEAR TO BE MARIJUANA BASED ON YOUR TRAINING AND EXPERIENCE AND SEEING AND HANDLING MARIJUANA AT THAT TIME? JUST FROM EYEBALLING IT AND LOOKING AT IT FROM WHAT YOU HAD.

A YES. AT THAT TIME I DON'T OPEN IT ALL THE WAY UP. I JUST CRACKED IT A LITTLE OPEN SO I COULD GO IN THERE AND TEST -- I MEAN GET MY KNIFE IN THERE AT LEAST AND GET A PIECE OF THE GREEN LEAFY SUBSTANCE.

Q BASED ON THE SMALL AMOUNT THAT YOU SAW THERE, DID IT APPEAR TO BE MARIJUANA TO YOU?

A. YES. YES.

Q DID YOU THEN FIELD TEST IT?

A IT WAS FIELD TESTED, YES.

Q OKAY. WAS IT FIELD TESTED BY YOU?

A IT WAS FIELD TESTED BY ME, YES.

Q WHAT WAS THE RESULT?

A IT WAS POSITIVE FOR MARIJUANA.

Q DO YOU HAVE EXPERIENCE IN PERFORMING OR TRAINING IN PERFORMING THIS FIELD TEST OF MARIJUANA?

A YES.

Q WHERE DID YOU RECEIVE THAT?

A I RECEIVED THE TRAINING AT GLENKIKO (PHONETIC) AT THE ACADEMY AT FLEXI, IT'S CALLED FLEXI.

Q AT FLEXI. HOW LONG WAS YOUR TRAINING IN IDENTIFYING MARIJUANA?

A WELL, WE WERE THERE FOR 3 MONTHS.

Q YOU WERE THERE FOR 3 MONTHS. OKAY. HOW MANY TIMES WOULD YOU ESTIMATE THAT YOU'VE CONDUCTED A FIELD TEST OR VISUAL INSPECTION OF MARIJUANA?

A IN THE TIME THAT I'VE BEEN THERE AT LAREDO, AT LEAST 40 TIMES. 50 TIMES MYSELF.

Q OKAY. AT LEAST 40 OR 50 TIMES.

A AND KEEP IN MIND TOO I – SINCE I'M A SENIOR INSPECTOR I HELP ALL THESE OTHER INCOMING INSPECTORS. BUT AT LEAST 40 TIMES MYSELF.

Q OKAY. AFTER YOU GOT THE POSITIVE FIELD TEST, WHAT HAPPENED NEXT?

A PROCEDURE, ONCE I FIND A SEIZURE AND IT'S CONFIRMED THAT IT IS NARCOTICS, WHAT WE DO – AND THESE ARE PROCEDURES – WE HAVE TO CONTACT THE DUTY AGENTS. WHAT WE DO IS WE CONTACT SECTOR, OUR SECTOR, WHICH IS BASED OUT OF SOMEWHERES IN –. I THINK THEY ARE BASED OUT OF ORLANDO, FLORIDA IF I'M NOT MISTAKEN. WE CONTACT THEM AND WE ASK TO SPEAK TO THE DUTY AGENT THAT'S IN CHARGE FOR LAREDO AT THAT TIME.

Q DUTY AGENT? WHO, IN FACT, DID YOU SPEAK TO?

A I DON'T KNOW WHO I SPOKE TO IN SECTOR, BUT DUTY AGENT MICHELLE WILLIAMS RESPONDED. SHE' NOW MARRIED. I DON'T KNOW WHAT HER LAST NAME. I BELIEVE IT'S DOWLING. MICHELLE WILLIAMS DOWLING RESPONDED.

Q WHO DID YOU TURN OVER THE PAPERWORK AND THE MANIFEST TO AT THAT TIME?

A WE TURN IT OVER TO THE AGENT.

Q TURNED IT OVER TO DOWLING?

A YES. THE AGENTS ARE IN CHARGE OF IT NOW.

Q YOU MEAN MICHELLE.

A MICHELLE.

Q OKAY. TURNED IT OVER TO HER. DID YOU CONTINUE TO STAY WITH THE TRAILER THROUGHOUT THE REST OF YOUR SHIFT OR DID YOU LEAVE AT THAT POINT IN TIME?

A SOMEBODY WAS WATCHIN' THE TRAILER. I HAVE TO START THE PAPERWORK OF THE SEIZURE AND ALL THAT.

Q OKAY.

A BUT SOMEBODY AN INSPECTOR ALWAYS HAS TO BE WITH THE SHIPMENT. WE CANNOT LEAVE A SHIPMENT LIKE THAT ON THE DOCK WITHOUT BEING GUARDED. SOMEBODY ALWAYS HAS TO BE WITH IT.

MR. MAYE: YOUR HONOR, THAT'S ALL THE QUESTIONS. I'M GONNA RESERVE THE RIGHT TO RECALL HIM FOR A BRIEF MATTER. BUT THAT'S ALL I HAVE FOR HIM AT THIS TIME. I WOULD LIKE TO TAKE A VERY, VERY SHORT RECESS IF THAT'S ALRIGHT. MAYBE FOR ABOUT 30 SECONDS.

THE COURT: ALRIGHT. AGENT GAONA, YOU CAN STEP DOWN BUT YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYBODY. WE'RE AT EASE FOR A COUPLE OF MINUTES. (THERE WAS A BRIEF RECESS.) CROSS?

CROSS-EXAMINATION

BY MR. HAWKE:

Q WHEN YOU CAME ACROSS AND YOU EXAMINED THE ITEMS THAT CAME WITH THE SHIPMENT, YOU FOUND, I THINK, 23 CHIMNEYS THAT HAD DRUGS IN THEM. IS THAT RIGHT?

A AT THAT TIME I'M LOOKIN' AT THE MANIFEST SINCE I DON'T BREAK OPEN EVERY PIECE OF FURNITURE THAT'S THERE. I DON'T KNOW HOW MANY HAD ANOMALIES. I DON'T KNOW HOW MANY HAD DRUGS. AT THAT TIME I DON'T KNOW.

Q OKAY. DID Y'ALL HAVE 23 CHIMNEYS ON THERE? DID Y'ALL AT LEAST COUNT THE CHIMNEYS?

A NO. ALL I KNOW IS I'M LOOKIN' AT A MANIFEST WITH 133 BUNDLES OR PIECES OF FURNITURE.

Q OKAY. YOU WEREN'T INVOLVED IN COUNTING IT OR ANYTHING?

A NO, SIR. ALL I DO IS I COME FROM THE ANOMALY.

Q ALRIGHT.

A I OFFLOAD. OFFLOAD THE TRAILER. I DON'T COUNT THE PIECES OF FURNITURE OR WOODEN OR WHATEVER YOU SAY, CHIMNEYS. WHAT I DO IS I CONFIRM THE ANOMALY. ONCE I CONFIRM, IT'S TURNED OVER TO THE AGENTS IN CHARGE.

Q OKAY. BUT YOU POPPED OPEN THIS ONE AND FOUND THE DRUGS AND DID SOME TESTING. DID YOU TEST OR CHECK ANY OTHERS?

A I HAVE TO CHECK, I HAVE TO CONFIRM THE PRESENCE OF NARCOTICS BEFORE WE CONTACT THE AGENT, YES. YES, I DID.

Q ALRIGHT. I UNDERSTAND. DID YOU DO THAT TO ANY OF THE OTHERS?

A NO, I DID NOT.

Q OKAY. SO YOU DID IT TO THE ONE.

A I DID IT ONLY TO ONE. THAT IS CORRECT.

Q DO YOU REMEMBER HOW MANY -- WHEN YOU WERE OUT THERE, YOU SAID THE WHOLE SHIPMENT HAD BEEN UNLOADED?

A THE WHOLE SHIPMENT WAS OFFLOADED.

Q AND YOU WERE OUT THERE WORKIN' ON ONE OF 'EM WITH A CROWBAR?

A THAT IS CORRECT.

Q ALRIGHT. AND DID YOU NOTICE HOW MANY OTHERS WERE OUT THERE?

A HOW MANY OTHER PIECES OF FURNITURE?

Q CHIMNEYS.

A OKAY. WHAT WE DID IS WE SEPARATED THE ONE THAT I THOUGHT WERE SUSPECT, WE SEPARATE 'EM, BUT I DON'T -- I DIDN'T GET A COUNT, NO.

Q OKAY.

A ALL I KNOW IS I CHECK THAT ONE, ONE PARTICULAR ONE AND WE CHECKED IT, OPENED IT, PRIED IT OPEN AND WE GOT A TEST OF THE BUNDLE, ONE OF THE BUNDLES THAT WAS IN THERE.

Q LET ME ASK YOU, ONCE YOU UNLOADED EVERYTHING AND YOU CHECKED IT, DID Y'ALL LOAD EVERY SINGLE PIECE BACK ON THERE?

A WHAT WE TRY TO DO, SIR IS WE TRY TO LOAD IT BACK ON THE TRAILER THE WAY IT WAS. OKAY, WE DON'T TRY TO MIX IT. WE TRY TO LOAD IT BACK THE WAY IT WAS.

Q YOU TRY TO MAKE SURE IT'S LOADED BACK ON THERE EXACTLY AS IT WAS WHEN YOU TOOK IT OFF.

A WE TRY TO.

Q OKAY. I UNDERSTAND THAT. AND THEN YOU -- WHY DO YOU DO THAT?

A BECAUSE IN CASES LIKE THIS ONE WHERE THERE'S NARCOTICS INVOLVED, WHAT WE TRY TO DO IS WE TRY TO PUT IT BACK AS WE TRIED AS IT WAS BECAUSE IT'S NARCOTICS WE HAVE TO CONTACT THE AGENTS. THE AGENTS THEN IN TURN THEY DO THEIR THING. YOU KNOW, THAT WHICH IS SEPARATE FROM US. MY JOB'S TO FIND IT.

Q RIGHT.

A OKAY. FIND NARCOTICS. THEIR JOB IS TOTALLY DIFFERENT FROM WHAT I DO.

Q I GOTCHA. AND SO WHEN YOU INITIALLY OPENED IT, WAS IT SEALED? DID IT HAVE SEALS ON IT ALL AROUND?

A THE TRAILER DID COME WITH SEALS, YES.

Q DO YOU REMEMBER HOW MANY?

A I DON'T REMEMBER. I THINK THERE WAS 3 SEALS.

Q OKAY. AND THEN Y'ALL BASICALLY HAD TO BREAK THOSE SEALS TO GO IN AND CHECK THIS STUFF AND UNLOAD.

A YOU HAVE TO BREAK THE SEAL IN ORDER TO OPEN THE DOOR, YES.

Q ALRIGHT. AND THEN ONCE YOU GET EVERYTHING OFF, YOU MAKE YOUR TEST OR WHATEVER, AND THEN YOU LOAD IT BACK ON EXACTLY AS IT WAS OR AS CLOSE AS YOU CAN MAKE IT TO HOW IT WAS WHEN YOU UNLOADED IT.

A THAT IS CORRECT. TRY TO.

Q YOU DON'T LEAVE OFF ANY PIECES OR ANYTHING, DO YOU?

A NO, SIR. I'D LOSE MY JOB.

Q ALRIGHT. AND THEN YOU RESEAL IT.

A AND THEN -- WHAT WAS YOUR QUESTION? I'M SORRY.

Q YOU PUT ANOTHER SEAL ON IT?

A IN THIS PARTICULAR CASE I MYSELF DID NOT PUT A SEAL ON IT, NO.

Q YOU KNOW WHO DOES?

A THE AGENTS.

Q THE AGENTS WHEN THEY TAKE CONTROL OF IT.

A THAT IS CORRECT.

Q ALRIGHT. AND WAS THAT SHIPMENT TOUCHED OR WAS IT HANDLED IN ANY FURTHER WAY BEFORE IT LEFT YOUR CUSTODY AND CONTROL OUT THERE AT THE BORDER?

A THAT PARTICULAR TRAILER WAS BACKED UP AGAINST THE DOCK. OKAY? AND GUARDED. IT WAS ALWAYS IN GUARDED CONDITION.

Q OKAY. WOULD IT BE FAIR TO SAY THEN ONCE Y'ALL UNLOADED IT AND YOU DID YOUR TESTING, Y'ALL LOADED IT BACK AS NEARLY AS YOU COULD TO HOW IT WAS WHEN YOU FIRST UNLOADED IT? AND THEN ONCE THAT WAS DONE AND THE DOORS WERE SHUT, IT SHOULD NOT HAVE BEEN TAMPERED WITH ANYMORE?

A YES, THAT IS CORRECT.

Q OKAY. WHATEVER IT CAME ACROSS THAT BORDER WITH WAS PUT ALL BACK ON THERE AND ALL THAT MAINTAINED ON THE TRAILER ITSELF.

A THAT IS CORRECT. AND GUARDED.

Q ALRIGHT. NOW THE -- THIS PARTICULAR SHIPMENT CAME FROM, I THINK -- I THINK YOU SAID IT WAS BROUGHT OVER BY JAMCO AS A BROKER. IS THAT RIGHT?

A JAMCO IS THE BROKER, IS THE U.S. CUSTOMS BROKER.

Q WERE YOU FAMILIAR WITH JAMCO?

A AM I FAMILIAR WITH THEM?

Q YES.

A IN WHAT SENSE?

Q IN OTHER WORDS, IS THAT A BROKER THAT YOU WERE FAMILIAR WITH AS BEING INVOLVED WITH A SHIPMENT OF GOODS ACROSS THE BORDER?

A THE ONLY THING I CAN SAY IS THEY WERE THE ONES THAT THE U.S. CUSTOMS BROKER THAT PREPARED THE MANIFEST TO THIS PARTICULAR SHIPMENT.

Q OKAY. ALRIGHT. HAD YOU HAD ANY EXPERIENCE WITH THEM BEFORE?

A WHEN YOU SAY EXPERIENCE, SIR, I DON'T KNOW WHAT—

Q HAVE YOU BEEN IN OTHER CASES WHERE JAMCO INTERNATIONAL WAS INVOLVED AND YOU WERE CHECKING THE SHIPMENT, THINGS LIKE THAT?

A WELL, WE CHECK SHIPMENTS FOR — I MEAN, I KNOW I'VE HEARD OF JAMCO AND I'VE SEEN MANIFESTS WITH THEIR NAMES ON 'EM IF THAT'S WHAT YOU'RE AKSIN'.

Q THAT'S WHAT I'M ASKIN'.

A JUST LIKE I DO OTHER BROKERS. THERE'S A WHOLE BUNCHA BROKERS IN LAREDO. BUT, YES, I HAVE SEEN OTHER MANIFESTS WITH JAMCO BEIN' THE BROKER, YES.

Q OKAY. SINCE YOU HAVE ALL OF THESE DRUGS THAT YOU DISCOVERED ON THIS PARTICULAR TRAILER, DID YOU CONTACT ANYBODY FROM JAMCO?

A THAT'S NOT MY JOB.

Q OKAY. DID YOU DIRECT THAT ANYBODY CONTACT JAMCO TO SEE IF THEY HAD ANY KNOWLEDGE OF WHAT WAS ON THEIR SHIPMENT?

A DID I DIRECT?

Q YES.

A THAT'S NOT MY JOB.

Q OKAY. WHOSE JOB IS IT?

A ONCE I FIND THE NARCOTICS, AS I SAID WHILE AGO, ONCE I FIND THE NARCOTICS, IT'S TURNED OVER TO THE U.S. -- TO THE U.S. CUSTOMS AGENT.

Q ARE THEY THE ONES THAT DO THE FOLLOW UP INVESTIGATION ONCE YOU TURN OVER THE DRUGS THEN?

A I WOULD SAY YES.

Q ALRIGHT. WHAT ABOUT DID YOU CONTACT ANYBODY FROM SEBASTIAN EXPORTACIONES?

A NO.

Q WOULD THAT HAVE ALSO BEEN THE AGENT'S JOB TO FOLLOW THAT UP?

A I CANNOT SPEAK FOR THE AGENTS. YOU'RE ASKING ME. I DON'T KNOW WHO SEBASTIAN -- THE ONLY THING ACCORDING TO THIS, SEBASTIAN WOULD BE THE -- THE ONE THAT ARE IMPORTING – EXPORTED THE MERCHANDISE.

Q OKAY. AND DO YOU KNOW IF ANYBODY HAS EVER CONTACTED THEM OR TRIED TO ARREST ANYBODY FROM THAT PARTICULAR GROUP?

A NO.

Q OKAY. AND THEN YOU HAD A DRIVER THAT CAME OVER JOSE ROBART (PHONETIC) CONTRARES (PHONETIC). IS THAT RIGHT?

A JOSE RUEN (PHONETIC) CONTRARES (PHONETIC).

Q RIGHT. DID ANYBODY MAKE ANY INQUIRIES AS TO HIS KNOWLEDGE OF THE SHIPMENT?

A THE DRIVER WAS DETAINED BY ME, BY US, CUSTOMS. OKAY? ONCE I FOUND THE ANOMALY, HE WAS DETAINED AND HE WAS -- I'M SURE HE WAS -- I'M

SURE HE WAS QUESTIONED BY THE AGENTS. NOT US. NOT ME. THAT'S NOT MY JOB.

Q BUT YOU DIDN'T QUESTION HIM?

A THAT'S NOT MY JOB.

Q OKAY. AND WERE YOU THERE PRESENT FOR ANY OF HIS QUESTIONING?

A NO, SIR.

Q DO YOU KNOW WHY HE WAS RELEASED?

A NO, SIR.

Q OKAY. AND YOU WEREN'T INVOLVED IN THAT PART AT ALL.

A THAT IS CORRECT, SIR.

Q I NOTICE ON HERE IT LOOKS LIKE SOMETHING BLED THROUGH THE SHEET ON MY COPY. IF I CAN APPROACH. AND YOU CAN SORTA SEE IT THROUGH THIS. IT LOOKS LIKE NADOO (PHONETIC) 102. RIGHT UP HERE. SEE THAT?

A THIS RIGHT HERE? NAME?

Q IS THAT WHAT IT SAYS?

A IT LOOKS LIKE IT SAYS NAME N-A-M-E.

Q SEE HOW IT LOOKS LIKE IT'S BLED THROUGH TO THE OTHER SIDE? FROM THE OTHER SIDE. DO YOU KNOW WHAT THAT STANDS FOR?

A IT SAYS NAME CONTOO (PHONETIC) LOOKS LIKE. IT LOOKS SOMETHIN' LIKE THAT. I DON'T KNOW. IT'S HARD--

Q YOU DON'T KNOW WHAT THAT IS.

A NO.

Q OKAY.

THE COURT: CROSS.

MR. SUSSMAN: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MR. SUSSMAN

Q AGENT GAONA, MY NAME IS WILLIAM SUSSMAN. I REPRESENT MR. AROJONA AND MR. HERNANDEZ. I WAS JUST GONNA ASK YOU ONE OR TWO QUESTIONS. HAVE YOU EVER TESTIFIED BEFORE?

A NO, SIR.

Q SO WE'RE GONNA, YOU KNOW, JUST TAKE A FEW MINUTES TO DO THIS AND IF THERE'S SOMETHING YOU DON'T UNDERSTAND, JUST LET ME KNOW. IS THAT AGREEABLE?

A THAT'S FINE, SIR.

Q NOW AS I UNDERSTAND IT THE WORLD TRADE BRIDGE CARRIES -- WILL HAVE AS MANY AS 3500 OR 4500 TRUCKS TO GO THROUGH A DAY ROUGHLY?

A THAT IS CORRECT.

Q OKAY. AND IN A SHIFT YOU MIGHT SEE ANYWHERE BETWEEN 130 AND 140 TRUCKS.

A THAT'S AT THE VACIS 2.

Q OKAY. THAT'S WHERE YOU WORK.

A WHERE I WAS STATIONED.

Q THE VAC -- IS IT VACIS OR BACKUS?

A V. V AS IN VICTOR. A-C-I-S. VACIS 2.

Q OKAY. AND YOU'RE TRAINED TO OPERATE THE VACIS 2.

A THAT IS CORRECT.

Q TRAINING THAT TOOK APPROXIMATELY 2 WEEKS.

A THAT IS CORRECT.

Q AND THEN YOU GET SOME SORT OF STATE OR FEDERAL CERTIFICATION TO

OPERATE THE MACHINE?

A WE GET A CERTIFICATION THAT MUST BE KEPT AT THAT PARTICULAR SITE. AT THE VACIS WE HAVE A FILE THAT'S KEPT THERE. IT'S A CERTIFICATION THAT I'VE BEEN CERTIFIED TO OPERATE THAT PARTICULAR SYSTEM.

Q IS IT LIKE -- COULD IT ALSO BE CALLED AN OPERATOR'S PERMIT?

A THAT IS CORRECT.

Q DO YOU HAVE A COPY WITH YOU?

A NO, SIR, I DON'T.

Q YOU KNOW THIS MACHINE WAS TESTED -- I MEAN X-RAYED WHEN? WHAT IS THE DATE--

A WHAT MACHINE? YOU SAID THIS MACHINE?

Q I MEAN THE TRACTOR-TRAILER WAS X-RAYED WHEN?

A ACCORDING TO THIS MANIFEST THE DATE OF ARRIVAL STATES 5-14-02. 2002.

Q AND WHAT WAS THE DATE OF YOUR CERTIFICATION TO OPERATE THE MACHINE?

A I DON'T KNOW, SIR. I'D HAVE TO LOOK THAT UP. PROBABLY 3, 4 YEARS PRIOR TO THIS.

Q DO YOU HAVE TO HAVE YOUR CERTIFICATION RENEWED?

A I JUST GOT BACK FROM FLEXI (PHONETIC) FROM THE FEDERAL LAW ENFORCEMENT TRAINING CENTER AND WE WENT TO A -- THROUGH A RE-CERTIFICATION ORDER, YES.

Q HOW GOOD -- HOW LONG ARE THE PERMITS GOOD FOR?

A I DO NOT KNOW.

Q AND YOU SAID THAT ONCE THE -- ONCE THE TRAILER IS MARKED FOR

INTENSIVE, IT'S SENT TO YOUR SECTION FOR X-RAY?

A NOT NECESSARILY DOES IT HAVE TO BE SENT TO OUR X-RAY. ONCE WE DECIDE TO CHECK THE TRAILER -- OKAY, ONCE WE DECIDE -- WHENEVER THE INSPECTOR DECIDES TO CHECK A TRAILER, IT COULD EITHER BE -- HE HAS OPTIONS. HE HAS DIFFERENT OPTIONS. WE HAVE THE X-RAYS. OR WE CAN SEND IT UP TO THE DOCK AND WE CAN JUST OUT LOAD IT AND CHECK IT RIGHT THERE AND THEN. NOT NECESSARILY DOES IT HAVE TO BE SENT TO THE X-RAYS.

Q WHO DETERMINES OR WHO MAKES THE DECISION TO SEND IT TO X-RAY?

A IT'S ALL UP TO THE INSPECTOR, WHOMEVER THE INSPECTOR THAT GOT THE MANIFEST BECAUSE WE HAVE OPERATIONS AT THE -- WHAT WE CALL THE BAT CAVE WHEN TRAILERS ARE RELEASED. WE HAVE A SECOND OPPORTUNITY TO CHECK THESE COMMODITIES.

Q BUT YOU DON'T MAKE THE DECISION TO X-RAY IT, DO YOU?

A I CAN MAKE THAT DECISION, YES.

Q DID YOU MAKE THE DECISION TO X-RAY IT IN THIS CASE?

A I WAS ALREADY AT THE X-RAY. I WORK THE X-RAY.

Q DID YOU MAKE THE DECISION THOUGH TO X-RAY THIS PARTICULAR TRAILER OR WAS IT EARMARKED FOR YOU TO GO AHEAD AND X-RAY IT?

A I DO NOT MAKE THE DECISION TO X-RAY. ALL I KNOW IS IT CAME UP TO OUR X-RAY. IT WAS WAITING IN LINE THERE, AND WE SCANNED IT. I SCANNED IT.

Q NOW AS I UNDERSTAND IT, THE CANINES -- YOU SAW THE ANOMALIES IN THE X-RAY. RIGHT?

A YES, SIR.

Q THEN YOU CALLED THE CANINE TO COME AND CHECK THE TRAILER.

A NO. NO.

Q SOME OTHER---

A IT WAS TAKEN TO THE INTENSIVE DOCK, OFFLOADED AND THEN I CALLED THE CANINE.

Q THEN THE CANINE CAME AND ALERTED ON THE ANOMALIES.

A IT ALERTED TO THE FURNITURE.

Q ALRIGHT. THE FURNITURE IN WHICH YOU SUSPECTED THERE WERE ANOMALIES.

A WHICH I SUSPECTED BEIN' ANOMALIES, YES.

Q WELL---

A I DIDN'T SUSPECT, YOU KNOW. I ALREADY KNEW THERE WAS AN ANOMALY THERE. I SUSPECTED THERE BEING NARCOTICS IN IT.

Q OKAY. SO NOT ALL ANOMALIES THAT YOU SEE ARE NARCOTICS?

A THAT IS CORRECT.

Q WHICH IS THE REASON YOU BROUGHT THE DOG IN.

A THAT IS CORRECT.

Q OKAY. SO THEN ONCE THE DOG'S ALERTED, IS IT MY UNDERSTANDING YOU PRIED OPEN ONE OF THE WOODEN FURNITURES TO STICK YOUR KNIFE IN TO CHECK IT?

A ONCE THE DOG ALERTED, WE THEN GO AFTER THE DRIVER WHICH IT WAS BEIN' GUARDED AS I SAID EARLIER, WE GO TO THE DRIVER AND WE SECURE HIM.

Q AND DID YOU SAY THE FURNITURE WAS OFFLOADED FROM THE TRAILER BY STEVEDORES?

A THE TRAILER WAS OFFLOADED BY WHAT WE CALL STEVEDORES.

Q AND THE STEVEDORES WORK FOR WHOM?

A THEY WORK FOR THE BROKERS.

Q THE BROKER IN THIS CASE—

A IN THIS CASE BEING JAMCO.

Q SO THE STEVEDORES ACTUALLY ARE PRIVATELY EMPLOYED BY THE IMPORT BROKER.

A I DON'T KNOW WHO THEY'RE EMPLOYED BY.

Q SO BUT THEY'RE WORKING IN THIS SECURITY AREA.

A THAT IS CORRECT.

Q YOU DON'T KNOW WHO THEY WORK FOR.

A THIS PARTICULAR ONE IT WAS CALLED BOXER. THE NAME OF THE STEVEDORE COMPANY IS CALLED BOXER WHICH I BELIEVE THEY GET PAID FOR IT BY JAMCO TO OFFLOAD.

Q BUT THEY'RE NOT CUSTOMS AGENTS.

A THEY ARE NOT CUSTOMS AGENTS.

Q THEY'RE NOT LAW ENFORCEMENT AGENTS.

A THEY ARE NOT. NO.

Q THEY'RE JUST SOME HIRED GUYS LIKE LABORERS.

A THAT IS CORRECT.

Q AND SO THEY UNLOAD THE CHIMNEYS ONTO THE DOCK.

A THEY OFFLOADED THE CHIMNEYS ON THE DOCK.

Q YEAH. OKAY. AND IT'S MY UNDERSTANDING THAT AFTER YOU'RE DONE CHECKING, YOU CHECKED ONE CHIMNEY AND FOUND THE MARIJUANA IN ONE OF THE CHIMNEYS. IS THAT CORRECT?

A I FOUND THE GREEN LEAFY SUBSTANCE, YES, WHICH LATER TESTED POSITIVE.

Q AND THEN YOU -- BUT YOU SAY YOU DID NOT COUNT THE CHIMNEYS.

A THAT IS CORRECT.

Q BUT YET YOU SAID YOU TRIED TO LOAD THE CHIMNEYS BACK ON THE TRAILER THE WAY THEY CAME OFF.

A YES, THAT'S CORRECT.

Q YOU TRIED TO PUT THE TRAILER BACK IN THE SAME CONDITION IT WAS BEFORE IT CAME THERE.

A BEFORE IT GOT OFFLOADED, WE TRIED TO ACCOMMODATE IT BACK IN THE TRAILER THE WAY IT WAS.

Q WELL, IF YOU DON'T COUNT THE CHIMNEYS WHEN YOU OFFLOAD THEM, THEN HOW DO YOU -- HOW CAN YOU BE SURE THAT YOU'VE GOT THE SAME NUMBER WHEN YOU PUT THEM BACK ON?

A SIR, I'M ON THE DOCK. I'M ON THE DOCK AND I NEVER LOSE SIGHT OF THE MERCHANDISE. SO ONCE A MERCHANDISE IS OFFLOADED, I HAVE TO MAKE SURE THAT MERCHANDISE GETS BACK ON THE TRAILER.

Q SO WHAT YOU'RE TELLING---

A EVEN IF IT HAS THE NARCOTICS OR NOT. YOU KNOW, WE HAVE TO MAKE SURE THE COMMODITY IS BACK ON THE TRAILER.

Q SO IT'S YOUR TESTIMONY UNDER OATH HERE TODAY THAT YOU WERE PRESENT THE ENTIRE TIME; YOU NEVER LEFT THE SITE; YOU NEVER LEFT THE AREA WHERE THESE CHIMNEYS WERE WHERE YOU COULD PERSONALLY SEE ALL OF THEM FROM THE TIME THEY WERE OFF -- LOADED OFF THE TRAILER TO THE TIME THEY WERE PUT BACK ON THE TRAILER.

A THAT IS CORRECT.

Q WHAT PERIOD OF TIME ARE WE TALKIN' ABOUT? HOW LONG DID IT TAKE TO OFFLOAD 'EM, CANINE, CHECK AND PUT 'EM BACK ON?

A APPROXIMATION -- BECAUSE THIS SHIPMENT WAS OFFLOADED 100 PERCENT. YOU'RE PROBABLY LOOKIN' AT ABOUT -- PROBABLY AN HOUR, HOUR AND A HALF. BY THE TIME THEY GET THE STUFF OFFLOADED. BECAUSE THAT'S WHAT TAKES THE LONGEST TO OFFLOAD THIS BECAUSE THIS HAS TO GET OFFLOADED PIECE BY PIECE BY HAND. THEY DON'T HAVE A MACHINE IN THERE, A FORKLIFT. YOU CANNOT USE A FORKLIFT FOR THIS PARTICULAR TYPE OF MERCHANDISE. IT HAS TO BE OFFLOADED MANUALLY WITH A DOLLY PIECE BY PIECE.

Q AND HOW MANY PIECES WERE THERE THAT WERE OFFLOADED?

A 133 PIECES. IT WAS 100 PERCENT OFFLOADED. 133 PIECES ACCORDING TO THE MANIFEST.

Q SO 133 PIECES WERE OFFLOADED. THEN YOU CALLED THE DOGS TO COME IN.

A THAT IS CORRECT.

Q AND WHERE ARE THE DOGS LOCATED?

A THE DOGS ARE -- WE HAVE CANINES THAT WORK THERE AT THE INTENSIVE DOCK. THEY'RE ASSIGNED TO INTENSIVE, TO WORLD TRADE BRIDGE INTENSIVE DOCK.

Q AND IN YOUR -- WHEN YOU SPOT THE ANOMALIES, ARE YOU TESTIFYING HERE TODAY THAT EVERY CHIMNEY SHOWED AN ANOMALY?

A ON THIS TRAILER OR?

Q ON THIS TRAILER.

A I CANNOT SAY IF THEY WERE CHIMNEYS. ALL I KNOW IS THAT THEY ARE WOOD FURNITURE ACCORDING TO THIS MANI -- YOU KNOW, I DON'T KNOW. IT WAS WOOD FURNITURE.

Q THERE ARE 133 PIECES OF WOOD FURNITURE.

A THAT IS CORRECT.

Q AND DID EVERY PIECE OF FURNITURE SHOW AN ANOMALY?

A THAT IS -- THAT IS INCORRECT.

Q OKAY.

A EVERY PIECE OF FURNITURE DID NOT SHOW AN ANOMALY. IF YOU LOOK AT THE IMAGES, IT DID NOT SHOW AN ANOMALY.

Q HOW MANY PIECES OF FURNITURE SHOWED AN ANOMALY?

A I DO NOT KNOW.

Q YOU DON'T KNOW?

A I DON'T KNOW HOW MANY PIECES SHOWED AN ANOMALY.

Q BUT IF 133 PIECES CAME OFF, THEN 133 PIECES WENT ON.

A THAT IS TRUE.

Q NOW YOU SAID THAT THE -- ONCE YOU FOUND THE ANOMALY YOU CALLED MICHELLE OR SOMEONE CALLED -- THE DUTY OFFICER CALLED MICHELLE?

A THAT IS INCORRECT, SIR. ONCE I FIND THE ANOMALY I CALL MY SUPERVISOR. WHEN I SAW THE ANOMALY AT THE X-RAY, I CALLED THE SUPERVISOR AND I TOLD HIM WE HAVE A POSSIBLE. SO WE THEN ESCORTED THAT TRAILER TO THE DOCK.

Q WHO DID YOU CALL?

A AT THAT TIME THERE WAS SUPERVISOR ALAMANDINA MARTIN. SHE WAS A SUPERVISOR AT THE TIME. SHE'S NO LONGER WITH CUSTOMS ANYMORE. SHE RETIRED.

Q AND YOU SAID THAT THE TRAILER WAS CONTINUALLY WATCHED BY

INSPECTORS UNTIL IT LEFT?

A THAT IS CORRECT.

Q WHO WERE THE INSPECTORS THAT WATCHED IT?

A I DO NOT KNOW.

Q DID YOU GENERATE A REPORT?

A THAT IS CORRECT.

Q WHERE IS THAT REPORT?

A I DO NOT HAVE IT.

Q WHAT DID YOU DO WITH IT?

A THE REPORT IS IN THE SYSTEM. I CAN PULL IT UP IN OUR C-CAT.

Q WELL, WERE YOU AWARE AT THE TIME THAT YOU INSPECTED THIS AND FOUND -- INSPECTED THIS TRAILER AND FOUND THESE ANOMALIES THAT THE CASE WAS GOING TO BE PROSECUTED?

A CAN YOU REPEAT YOUR QUESTION?

Q THAT SOMEONE WAS GOING TO BE PROSECUTED FOR POSSESSION OF THIS DOPE?

A DID I KNOW THIS?

Q YEAH.

A NO.

Q DID YOU THINK IT WAS JUST GONNA BE LET GO AND NOTHING WOULD BE DONE ABOUT IT?

A I DON'T KNOW.

Q WELL, WHEN YOU FILE YOUR REPORT, DO YOU SIGN IT WITH YOUR NAME?

A IT'S GENERATED THROUGH MY SOCIAL SECURITY NUMBER. WE DON'T SIGN ANYTHING, BUT IT'S GENERATED THROUGH MY SOCIAL.

Q WHERE DO YOU FILE THIS REPORT?

A THERE AT THE SITE AT WHATEVER SITE I'M--

Q WHO DO YOU FILE IT WITH?

A IT'S THERE -- IT'S IN THE COMPUTER.

Q WELL, IS IT SOMETHING THAT THEN IS GIVEN OVER TO THE CUSTOMS AGENTS?

A THAT IS CORRECT. THEY HAVE ACCESS TO IT, YES.

Q AND AS FAR AS YOU KNOW, THEY UTILIZE THAT REPORT IN THEIR INVESTIGATION?

A I'M ASSUMING THEY DO.

Q BECAUSE AFTER YOU FIND THE ANOMALIES YOU TURN IT OVER TO -- YOU REPORT IT TO YOUR SUPERVISOR AND THEN YOU SAID SOMEONE CALLED THE DUTY OFFICER WHO CALLED MICHELLE.

A WE HAVE TO CONTACT THE SECTOR AND THEY IN TURN CONTACT WHOEVER IS IN CHARGE OR THE DUTY AGENT AT THAT -- FOR THAT TIME. WHICH WAS MICHELLE WILLIAMS.

Q HOW DO YOU KNOW IT WAS MICHELLE WILLIAMS?

A I DO NOT KNOW IT WAS HER UNTIL I CONTACT SECTOR. SECTOR KNOWS. THEY'LL TELL ME THEY KNOW WHO'S ON CHARGE FOR THAT PARTICULAR SHIFT OR TIME OR DAY.

Q WELL, DID MICHELLE WILLIAMS ARRIVE WHILE YOU WERE STILL THERE?

A MICHELLE WILLIAMS DID ARRIVE AT THE SCENE.

Q AND DID YOU REPORT TO HER AS TO WHAT YOU FOUND?

A I HAVE TO REPORT TO HER I THINK EVERY SPECIFICS ON WHAT HAPPENED.

Q OKAY. AND SHE HAS ACCESS TO YOUR WRITTEN REPORT?

A I'M SURE SHE DOES.

Q AND DO YOU KNOW WHAT HAPPENED TO THE TRAILER IN THIS CASE PERSONALLY? DO YOU KNOW WHAT HAPPENED TO IT?

A ALL I KNOW IS THAT TRAILER WAS IN GUARDED CONDITION. IT WAS BACKED UP AGAINST THE DOCK.

Q HOW LONG ARE YOUR SHIFTS?

A OUR NORMAL ARE 8 HOURS, BUT SOMETIMES THEY'RE 16 HOURS WORK. A LOTTA OVERTIME.

Q ABOUT HOW LONG HAD YOU WORKED THIS PARTICULAR SHIFT?

A I WENT IN AT 1600 HOURS ON THAT DAY.

Q WHEN DID YOU LEAVE?

A ON THIS PARTICULAR SHIPMENT I CAN'T RECALL BUT I DO KNOW I STAYED AFTER 2400 HOURS WHICH IS 12 O'CLOCK AT NIGHT.

Q IN YOUR DUTIES IN -- AND THIS PARTICULAR CASE YOU WERE, BASICALLY, THE X-RAY TECHNICIAN?

A I WAS THE X-RAY TECHNICIAN AT THE TIME, YES.

Q DO YOU KEEP A LOG OF THE X-RAY PICTURES YOU TAKE?

A WE KEEP A LOG OF THE TRAILER, THE ENTRY NUMBER, THE TRAILER NUMBERS THAT WE X-RAYED FOR THAT DAY.

Q AND WHERE IS THAT LOG?

A IT WOULD BE BACK AT THE WORLD TRADE BRIDGE.

Q IS THAT PART OF THE REPORT YOU NORMALLY GENERATE?

A WHAT WE DO WE ANNOTATE EVERY TRAILER THAT'S SCANNED.

Q DO YOU TAKE ANY OTHER NOTES AS FAR AS YOUR PART OF THIS INVESTIGATION?

A OTHER NOTES, NO, BUT I DO HAVE TO GENERATE WHAT WE CALL A SEIZURE. WE GENERATE -- WE HAVE TO GENERATE THAT WITH ALL THE SPECIFICS, THE NAME OF THE DRIVER, THE TRAILER, ENTRY NUMBER, COMMODITY, ALL THAT STUFF. IT'S A PRETTY LENGTHY REPORT, BUT--

Q SEIZURE REPORT?

A IT'S CALLED A SEIZURE REPORT.

Q THAT YOU GENERATE.

A THAT I MUST GENERATE, YES.

Q AND OF COURSE THERE YOU PUT THE RESULTS OF YOUR INVESTIGATION.

A YES. WE PUT THE FINDINGS AND ALL THAT IN THE NARRATIVE. THE LAST PAGE IS A NARRATIVE.

Q WHEN YOU SAID WE, I'M ASKIN' ABOUT WHAT YOU DO.

A WHAT I DO IS -- I'M SORRY -- WHEN I SAY WE, CUSTOMS INSPECTORS THT GET SEIZURES. BUT IN THIS PARTICULAR CASE, I GENERATED THE--

Q ARE YOU THE ONE THAT DIRECTED THE FURNITURE BE OFFLOADED 100 PERCENT FROM THE TRAILER?

A THAT IS CORRECT.

Q AND YOU'RE THE ONE WHO DIRECTED THAT ONE OF THE WOOD FURNITURES BE PRIED OPEN.

A I PROBED THAT MYSELF. I OPENED IT MYSELF.

Q AND IT WAS YOUR KNIFE THAT WENT IN AND PULLED OUT THE GREEN, LEAFY SUBSTANCE.

A THAT IS CORRECT.

Q AND YOU WERE THE ONE WHO TESTED THE GREEN, LEAFY SUBSTANCE.

A THAT IS CORRECT.

Q AND YOU USED WHAT KIND OF KIT?

A IT'S CALLED A DUCANOID – DUCANOY -- IF I PRONOUNCE IT RIGHT. DUCANOY LEVINE.

Q THAT YOU'VE BEEN TRAINED TO USE.

A THAT IS CORRECT.

Q AND IT TESTED POSITIVE FOR MARIJUANA.

A THAT IS CORRECT.

Q AND YOU ONLY TESTED ONE PIECE OF WOOD FURNITURE.

A THAT WOOD FURNITURE OF THE GREEN, LEAFY SUBSTANCE.

Q RIGHT. WHEN YOU TESTED THAT, WHAT FORM WAS THE GREEN, LEAFY SUBSTANCE IN? WAS IT IN A BAG; WAS IT IN A CONTAINER?

A IT WAS CONCEALED IN A PLASTIC -- PLASTIC WRAPPING.

Q OKAY. AND DID YOU -- WHAT SIZE OPENING DID YOU MAKE IN THE PLASTIC WRAPPING?

A I MAKE A VERY SMALL INSERT, YOU KNOW, AN INCISION WITH A KNIFE. WHAT I DO IS I PROBE IT AND TRY TO GET A LITTLE BIT OUT TO PUT IT INSIDE THE TEST KIT.

Q AND DID YOU MARK THIS BAG?

A NO, I DID NOT. WHAT WE DO IS ONCE I CONFIRM IT, WHAT WE DO IS WE TRY TO TAPE IT UP AND WE TRY TO LEAVE THE PACKAGE, LEAVE THE PIECE OF FURNITURE SOMEWHAT INTACT BECAUSE WE DON'T WANNA, YOU KNOW, IN CASE OF IT BEIN' A CONTROLLED DELIVERY, ONCE IT GETS TURNED OVER TO THE AGENTS.

Q HAVE YOU GONE BACK AND BEEN ABLE TO IDENTIFY THAT BAG YOU TESTED?

A NO.

Q HOW ABOUT THE PIECE OF FURNITURE IT WAS IN? DID YOU IDENTIFY WHICH PIECE OF FURNITURE IT WAS IN?

A NO.

Q YOU DIDN'T MARK IT?

A NO.

MR. SUSSMAN: IF I COULD HAVE JUST ONE SECOND.

THE COURT: YES.

MR. SUSSMAN: YOUR HONOR, MAY I APPROACH THE WITNESS?

THE COURT: YES, SIR.

Q NOW WHEN YOU TAKE THESE X-RAY PICTURES, DO YOU MARK WHAT SECTION THE ANOMALIES WERE FOUND ON?

A WHAT I TRY TO DO IS---

Q DO YOU MARK THE X-RAYS AS TO WHERE THE ANOMALIES ARE INDICATED?

A YES. I TRY TO WRITE IN THE -- DO A LITTLE ARROW, POINT A LITTLE ARROW TO WHERE I FEEL IS THE ANOMALY AND WHERE THE INSPECTORS AS IT GETS OFFLOADED WHERE THEY MORE OR LESS NEED TO CHECK.

Q WHAT IS YOUR RECOLLECTION AS TO WHERE THE ANOMALIES WERE LOCATED IN THIS PARTICULAR TRAILER?

A IN THIS PARTICULAR TRAILER, IT WAS TOWARD THE BACK. THE BACK OF THE TRAILER – AS YOU ENTER THE BACK OF THE TRAILER, PROBABLY FOR THE NEXT – IT WAS PROBABLY 8, 10 FEET IN, 12 FEET IN. IS WHERE I COUNTED THEM.

Q LET ME ASK YOU THIS: COULD YOU ACCESS THE REPORT RIGHT NOW FOR ME?

A IF YOU GIVE ME A COMPUTER WITH C-CATS, I CAN GET MY C-CATS, YES.

Q GIVE YOU A COMPUTER WITH WHAT?

A I NEED A COMPUTER. I NEED A COMPUTER AT MY STATION THAT HAS C-CATS AND IF YOU GOT DYNACOM ACCESS, I CAN GET INTO IT. BUT ANY NORMAL COMPUTER, NO.

Q OKAY. AND YOU DID NOT BRING THAT REPORT WITH YOU.

A NO, SIR.

Q IS THERE SOMEONE IN LAREDO WHO COULD ACCESS THAT REPORT AND SEND IT UP HERE?

A I'M SURE I CAN CONTACT A SUPERVISOR OR THROUGH MICHELLE OR SOMEBODY. THE DUTY AGENTS CAN CONTACT AND GET AHOLD OF IT.

Q IS MICHELLE HERE? IS MICHELLE HERE TODAY?

A I DON'T KNOW. SHE SHOULD BE -- YES, SHE'S HERE. YOU'RE ASKIN' ME IF SHE'S HERE?

Q YEAH.

A YEAH, SHE'S HERE.

Q YOU'VE SEEN HER?

A THAT IS CORRECT, SIR.

Q AND BUT IS SHE STILL -- WHAT EXACTLY WAS YOUR POSITION THEN? WERE YOU A CUSTOMS AGENT BACK THEN?

A I'M A CUSTOMS INSPECTOR.

Q AND IS THAT---

A NEVER A CUSTOMS AGENT. I'M CUSTOMS INSPECTOR. SOME PEOPLE REFER TO 'EM AS AGENTS. BUT CUSTOMS INSPECTOR.

Q SO YOU'RE A CUSTOMS INSPECTOR THAT WORKS AT THE BORDER.

A. THAT IS CORRECT.

Q. AND THEN WHEN YOU FIND AN ANOMALY OR NARCOTIC, THEN YOU CALL CUSTOMS AGENT.

A. THAT IS CORRECT.

Q. ALRIGHT. AND THAT'S WHAT MICHELLE IS. SHE'S A CUSTOMS AGENT.

A. THAT IS CORRECT.

Q. LARRY MIZE IS A CUSTOMS AGENT.

A. THAT IS CORRECT.

Q. SO ONCE YOU INSPECT AND FIND THE NARCOTIC OR WHATEVER IT IS, THEN IT'S UP TO THE AGENT TO ACTUALLY DO WHATEVER INVESTIGATION THEY CHOOSE TO DO.

A. THAT IS CORRECT.

Q. THAT'S ALL I HAVE, JUDGE.

THE COURT: ALRIGHT. MR. MILLER, YOU HAVE ANY QUESTIONS?

MR. MILLER: NO, YOUR HONOR.

THE COURT: BACK OVER TO YOU. ANYTHING ELSE FROM THE STATE?

MR. MAYE: NOTHIN' ELSE, YOUR HONOR.

THE COURT: ANYTHING ELSE FOR MR. DELEON?

MR. HAWKE: NO, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.

MR. MAYE: STATE CALLS MICHELLE DOWLING TO THE STAND.

MICHELLE WILLIAMS DOWLING, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q AGENT DOWLING, WOULD YOU, PLEASE, INTRODUCE YOURSELF FOR THE RECORD.

A MY NAME IS MICHELLE DOWLING.

Q WHERE ARE YOU EMPLOYED, MS. DOWLING?

A THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT IN FAIRFAX, VIRGINIA.

Q OKAY. WHERE WERE YOU FORMERLY EMPLOYED?

A U.S. CUSTOMS.

Q U.S. CUSTOMS. WERE YOU WITH THE INVESTIGATIVE DEPARTMENT OF CUSTOMS AT THAT TIME?

A YES, I WAS.

Q LET ME DIRECT YOUR ATTENTION TO MAY 14TH 2002. WERE YOU CALLED OUT BECAUSE OF A NARCOTICS SEIZURE ON THAT DAY?

A YES.

Q WOULD YOU DESCRIBE FOR THE COURT THE SITUATION ABOUT YOUR GOING OUT AND WHAT YOU FOUND WHEN YOU ARRIVED.

A ON MAY 14TH 2002 I WAS NOTIFIED BY THE U.S. CUSTOMS INSPECTOR THAT THERE WAS A NARCOTICS SEIZURE AT THE WORLD TRADE BRIDGE IN LAREDO, TEXAS. I RESPONDED TO INTERVIEW THE PRIMARY INSPECTOR, THE SECONDARY INSPECTOR, CANINE OFFICER AND I ALSO INTERVIEWED THE DRIVER OF THAT PARTICULAR TRACTOR TRAILER.

Q WHAT DID YOU SEE WHEN YOU ARRIVED? WHERE WERE YOU STATIONED AT THAT TIME? LET ME BACK UP.

A I WAS STATIONED IN LAREDO, TEXAS.

Q AT THAT TIME. OKAY. WHAT DID YOU SEE WHEN YOU ARRIVED? WHAT DID YOU DO?

A I LOOKED AT SOME MERCHANDISE THAT WAS LOCATED IN THE TRACTOR TRAILER. I WAS ALSO GIVEN A SAMPLE OF THE NARCOTICS THAT WAS CONTAINED IN ONE OF THE WOODEN FIREPLACES THAT WAS LOCATED IN THE TRACTOR TRAILER.

Q OKAY. WHAT DID YOU THEN DO?

A INTERVIEWED THE DRIVER.

Q OKAY. BASED ON YOUR INTERVIEW OF THE DRIVER, DID Y'ALL BRING ANY CHARGES OR ARREST THE DRIVER AT THAT TIME?

A NO, WE DID NOT.

Q WHY NOT?

A WE FELT LIKE THE DRIVER WASN'T AWARE OF WHAT WAS GOING ON BECAUSE OF HIS DEMEANOR. HE WASN'T NERVOUS BY ANY MEANS. HE STATED TO US THAT HE PICKED UP THE TRACTOR TRAILER LOAD IN NUEVO LAREDO, MEXICO AND HE WAS INSTRUCTED TO DROP IT OFF IN LAREDO, TEXAS, AND RETURN AND DO THE SAME THING. HE WAS DOING THIS THROUGHOUT THE DAY AND EVERYTHING -- HIS PAPERWORK CORRESPONDED TO HIS STORY. WE FELT LIKE HE HAD NO KNOWLEDGE OF THE NARCOTICS IN THE TRACTOR TRAILER.

Q WHAT TYPE OF DRIVER WAS HE?

A A DREDGE DRIVER.

Q WHAT IS THAT? WHAT'S A DREDGE DRIVER?

A A DREDGE DRIVER IS A MEXICAN CITIZEN THAT NORMALLY PICKS UP A MEXICAN TRAILER ON THE MEXICAN SIDE AND WILL DROP IT OFF ACROSS THE BORDER WHICH WOULD BE IN LAREDO, TEXAS, AND HE USUALLY DOES THAT

SEVERAL TIMES A DAY. HE GOES BACK AND FORTH.

Q DOES A DREDGE DRIVER LIKE THAT DOES HE USUALLY GO DEEP INTO THE INTERIOR OF EITHER COUNTRY?

A NO, HE DOES NOT.

Q OKAY. DO Y'ALL TYPICALLY SEE THE SAME DRIVER OVER AND OVER AGAIN?

A YES, WE DO.

Q IN ANY EVENT YOU DID NOT INSTITUTE ANY CHARGES OR CASE AGAINST HIM AT THAT TIME.

A NO, WE DID NOT.

Q OKAY. WHAT ELSE DID YOU DO ONCE YOU GOT THERE AND YOU TESTIFIED THAT YOU TALKED WITH EVERYONE AND YOU DIDN'T CHARGE THE DRIVER; WHAT ELSE DID YOU DO THAT DAY?

A WE TOOK PHOTOGRAPHS OF THE TRACTOR TRAILER; LOADED THE MERCHANDISE BACK INTO THE TRAILER; RESEALED IT; AND WE SECURED IT UNTIL WE DECIDED TO LEAVE LAREDO, TEXAS FOR A CONTROLLED DELIVERY.

Q DID YOU CHANGE OR ALTER ANYTHING IN THE TRAILER FROM THE TIME YOU INITIALLY SAW IT UNTIL THE TIME IT WAS PLACED BACK IN AND SEALED BACK UP?

A NO, I DID NOT.

Q WERE THE ITEMS OF FURNITURE THAT THEY HAD TESTED, WERE THOSE DESTROYED IN ANY WAY?

A CAN YOU REPEAT THE QUESTION, PLEASE.

Q WERE ANY OF THE ITEMS OF FURNITURE, DID THEY DESTROY OR BREAK THEM OPEN TO GET THE DRUGS OUT OR WERE THEY IN SUBSTANTIALLY THE SAME

CONDITION AS WHEN YOU SAW 'EM?

A SAME CONDITION.

Q WERE THE ITEMS -- WAS SURVEILLANCE MAINTAINED ON 'EM OR WERE THEY KEPT IN THE CUSTODY AND CONTROL FROM THE TIME YOU GOT THERE ON THE SCENE UNTIL THE DAY THAT Y'ALL LEFT TO COME TO SOUTH CAROLINA?

A YES.

Q OKAY. LET ME ASK YOU THIS: WAS THE TRAILER SUBSEQUENTLY SEALED THERE AT THE BORDER?

A YES.

Q WAS THAT DONE IN YOUR PRESENCE?

A YES, IT WAS.

Q WHO ELSE WAS PRESENT AT THE TIME THAT IT WAS SEALED?

A SPECIAL AGENT BRYAN MIZE.

Q DID Y'ALL HAVE AN OCCASION THEN TO -- DID YOU CONTACT THE CARRIER OR ANYTHING -- WHAT ARRANGEMENTS DID YOU MAKE FOR A CONTROLLED DELIVERY?

A I CONTACTED THE MANAGER AT BORDER CARRIERS.

Q WHEN DID YOU DO THAT?

A THE FOLLOWING MORNING.

Q WHAT DID YOU DO AS CONTACTING HIM? WHAT ARRANGEMENTS DID YOU MAKE?

A WE -- WE CONTACTED THE MANAGER AND INFORMED HIM OF WHAT WE HAD FOUND, THE NARCOTICS AND MERCHANDISE LOCATED IN THEIR TRAILER. THEY WERE WILLING TO COOPERATE 100 PERCENT AND THEY PROVIDED A DRIVER THAT WAS GOING TO DELIVER THE MERCHANDISE FROM LAREDO, TEXAS TO

TRENTON, SOUTH CAROLINA.

Q OKAY. WHEN DID Y'ALL, IN FACT, LEAVE LAREDO, TEXAS?

A MAY 16TH AT AROUND 11 A.M.

Q WHERE DID Y'ALL THEN TRAVEL TO?

A SLYDELL, LOUISIANA.

Q OKAY. DID Y'ALL STOP IN SLYDELL OVERNIGHT?

A YES, WE DID.

Q OKAY. THEN WHERE DID YOU TRAVEL TO?

A TRENTON, SOUTH CAROLINA.

Q OKAY. WHAT DID YOU DO WHEN YOU GOT TO TRENTON?

A WE TURNED OVER THE MERCHANDISE TO U.S. CUSTOMS AGENTS.

Q LET ME ASK YOU THIS: WAS THE TRAILER WAS IT EVER OPENED OR ALTERED OR CHANGED AT ANY TIME FROM THE TIME THAT Y'ALL LEFT TILL THE TIME THAT Y'ALL ARRIVED IN SOUTH CAROLINA?

A NO, IT WAS NOT.

Q OKAY. DID THE TRAILER REMAIN SEALED THROUGHOUT THAT TIME PERIOD?

A YES, IT WAS.

Q OKAY. WHEN DID Y'ALL ATTEMPT TO MAKE A CONTROLLED DELIVERY? ON WHAT DAYS WAS THAT ATTEMPT MADE?

A ON MAY 18TH ABOUT 8:30 IN THE MORNING.

Q ABOUT 8:30 IN THE MORNING. WHAT WAS YOUR INVOLVEMENT IN THAT?

A SURVEILLANCE.

Q SURVEILLANCE? OKAY. WHO ACTUALLY WENT WITH THE DRIVER TO MAKE THE CONTROLLED DELIVER? WHO FROM CUSTOMS WENT?

A SPEICAL AGENT BRYAN MIZE.

Q WHY? WHY DID MIZE GO AND NOT SOMEONE ELSE?

A MAINLY FOR SAFETY PRECAUTIONS FOR THE DRIVER BECAUSE HE WAS AN INNOCENT THIRD PARTY AND THAT WE FELT FOR SAFETY REASONS THAT IT WOULD BE IN THE BEST INTEREST FOR SPECIAL AGENT BRYAN MIZE TO GO WITH HIM BECAUSE HE DID HAVE A FIREARM. HE HAS LAW ENFORCEMENT EXPERIENCE PRIOR TO U.S. CUSTOMS. HE WORKED FOR 6 YEARS WITH A STATE DEPARTMENT, STATE LAW ENFORCEMENT. AND HE ALSO HAD ABOUT 3 YEARS OF FEDERAL LAW ENFORCEMENT. AND THE DRIVER OF THAT PARTICULAR COMPANY FELT VERY COMFORTABLE WITH SPECIAL AGENT MIZE.

Q HAD THEY SPENT TIME TOGETHER ON THE TRIP UP?

A YES, THEY HAD. THEY DROVE TOGETHER STARTING IN SLYDELL. SO THEY DEVELOPED THAT BOND FROM SLYDELL TO TRENTON, SOUTH CAROLINA.

Q OKAY. SO YOU WORKED SURVEILLANCE. DID YOU HAVE OCCASION THEN TO GO OUT TO A GROCERY STORE LATIENDA DELEON HERE IN EDGEFIELD COUNTY?

A YES.

Q WHAT WERE THE CIRCUMSTANCES OF YOU GOIN' AND ENTERIN' THE LATIENDA DELEON?

A WHEN I ENTERED THAT PARTICULAR STORE, THE MERCHANDISE WAS ALREADY THERE, AND WE WERE ENTERING THE STORE JUST GIVEN THE DIRECT ORDER FROM THE, YOU KNOW, LOCAL LAW ENFORCEMENT, FEDERAL LAW ENFORCEMENT IN THE AREA AND THAT'S WHY I WENT INTO THAT PARTICULAR STORE.

Q OKAY. WHEN YOU GOT THERE, WHAT ITEMS DID YOU SEE OR WHAT ITEMS

DID YOU SEE -- WHAT WAS THE FOCUS OF ATTENTION AT THE STORE WHEN YOU GOT THERE?

A WOODEN FURNITURE AND THERE WAS ONE CHIMNEY.

Q OKAY. DID YOU DIRECT LOCAL LAW ENFORCEMENT TO OPEN UP THOSE ITEMS AT THAT TIME?

A YES.

Q OKAY. WERE THEY, IN FACT, OPENED UP OR WAS A CHIMNEY OPENED UP THERE AT LA TIENDA DELEON?

A YES, IT WAS OPENED.

Q WHAT DID THEY FIND INSIDE THE CHIMNEY?

A 20 BUNDLES OF A GREEN, LEAFY SUBSTANCE WHICH WAS MARIJUANA.

Q OKAY. BELIEVED TO BE MARIJUANA. DID YOU LOOK AT IT?

A YES.

Q OKAY. HAVE YOU SEEN OR HAD THE OCCASION TO SEE MARIJUANA BASED ON YOUR EXPERIENCE AND TRAINING AS A CUSTOMS AGENT?

A YES.

Q *ABOUT HOW MANY TIMES? COULD YOU COUNT THEM?*

A IT'S BEEN NUMEROUS TIMES. PROBABLY OVER 200 TIMES AT LEAST.

Q OVER 200 TIMES. BASED ON YOUR EXPERIENCE AND TRAINING, DID THE BUNDLES YOU SAW APPEAR TO BE MARIJUANA?

A YES.

Q AND YOU TURNED THOSE OVER TO LOCAL LAW ENFORCEMENT AT THAT TIME?

A YES.

Q DO YOU REMEMBER WHO TOOK CUSTODY OF IT AT THAT TIME? WHO WAS

THE LOCAL LAW ENFORCEMENT?

A SLED. IS THAT RIGHT?

Q I DON'T KNOW.

A OKAY.

Q ANSWER ANY QUESTIONS THAT---

MR. MAYE: WE RESERVE THE RIGHT TO RECALL HER BACK. ANSWER ANY QUESTIONS DEFENSE HAS.

THE COURT: ALRIGHT. CROSS.

CROSS-EXAMINATION

BY MR. HAWKE

Q AGENT, DID YOU GENERATE A REPORT OF YOUR ACTIVITIES REGARDING THIS PARTICULAR CASE?

A YES, I DID.

Q DID YOU GEN -- WHEN DID YOU GENERATE IT FIRST OF ALL?

A A REPORT INVESTIGATION?

Q YES. DID YOU DO IT RIGHT THEN OR DID YOU DO IT LATER; WHEN DID YOU PREPARE IT?

A I DID IT WHEN I WENT BACK TO THE OFFICE IN LAREDO, TEXAS.

Q OKAY. ABOUT HOW MANY DAYS LATER WAS THAT?

A IT'S NORMALLY DONE THE DAY YOU GET BACK FROM YOUR CONTROLLED DELIVERY.

Q OKAY. DID YOU KEEP FIELD NOTES AS WELL?

A AT THAT TIME WHEN WE GOT TO TRENTON, SOUTH CAROLINA, IT WAS TURNED OVER TO THE DIFFERENT LAW ENFORCEMENT IN THAT AREA. SO THEY WOULD'VE TAKEN NOTES.

Q OKAY.

A THAT WASN'T MY RESPONSIBILITY AT THAT TIME.

Q OKAY. ALRIGHT. BUT AS FAR AS WHAT YOU USED TO PREPARE YOUR REPORT, HAVE YOU KEPT FIELD NOTES OR AUDIO RECORDINGS OR ANYTHING USED TO PREPARE YOUR FINAL REPORT WITH AND PUT IT TOGETHER?

A NO. MY FINAL REPORT PERTAINS TO WHEN I RECEIVED THE PHONE CALL ALL THE WAY TO THE ACTUAL POINT OF DELIVERY WHEN WE TURNED IT OVER, AND THAT'S WHERE MY REPORT STOPS.

MR. HAWKE: YOUR HONOR, MAY I APPROACH THE WITNESS?

THE COURT: YES, SIR.

Q THIS IS SOME OF THE DOCUMENTS THAT WERE TURNED OVER TO US AS PART OF DISCOVERY. IS THAT YOUR SIGNATURE THERE ON THE FIRST PAGE?

A YES.

Q OKAY. AND THIS -- WHAT I'M REFERRING TO IS THE REPORT OF INVESTIGATION, AND IT'S A 3-PAGE REPORT. THERE AND THERE AND THEN THERE. IS THAT YOUR REPORT?

A THAT'S IT.

Q ALRIGHT. HAVE YOU PREPARED ANY OTHER REPORTS OTHER THAN THESE THREE PAGES THAT I JUST SHOWED YOU?

A PERTAINING TO THIS CASE THIS SHOULD BE THE ONLY REPORT.

Q OKAY. SO THAT IS YOUR REPORT.

A YES.

Q ALRIGHT. WHEN THIS -- AND I NOTICE THESE ITEMS THAT WERE UNLOADED, YOU SAID EVERYTHING WAS LOADED BACK UP. IS THAT CORRECT?

A. YES.

Q AND I THINK THERE WAS AN INDICATION THAT THERE WERE 23 -- I THINK YOU INDICATED IN YOUR REPORT THAT THERE WERE 23 DECORATIVE CHIMNEYS. IS THAT RIGHT?

A YES.

Q AND THOSE WERE THE CHIMNEYS THAT THE DRUGS WERE ACTUALLY CONCEALED IN. AM I CORRECT?

A CORRECT.

Q OKAY. AND DO YOU KNOW HOW MANY OF THOSE HAD DRUGS IN THEM? OR DO YOU KNOW?

A I WANT TO SAY THE 23 CHIMNEYS WERE THE ONES THAT HAD THE ACTUAL MARIJUANA IN 'EM.

Q ANYWAY, OUT OF THE COMPLETE FURNITURE AND EVERYTHING WAS LEFT AS IT IS OTHER THAN THE SAMPLE THAT YOU TOOK AND THEN PLACED BACK ONTO THE TRAILER?

A YES, SIR.

Q AND THEN IT WAS RESEALED.

A YES.

Q AND IT REMAINED THAT WAY, DID IT NOT, TILL IT CAME TO TRENTON, SOUTH CAROLINA?

A YES.

Q AND DID IT REMAIN SEALED UP UNTIL IT WAS UNSEALED FREDY DELEON'S?

A YES.

Q OKAY. AND NOBODY WENT INTO IT AT ANY TIME BETWEEN THE TIME IT WAS SEALED UNTIL THE TIME IT GOT TO MR. DELEON'S. IS THAT RIGHT?

A RIGHT.

Q AND YOU WERE INVOLVED IN THE ACTUAL UNLOADING OF THE TRACTOR TRAILER. IS THAT RIGHT?

A WAS I INVOLVED IN UNLOADING?

Q YES.

A NO, SIR.

Q WHERE WERE YOU AT WHEN THAT OCCURRED?

A I WAS DOING SURVEILLANCE.

Q OKAY. AND WHAT WERE YOU SURVEILLING FROM?

A I WAS AT WISE STREET. WE WEREN'T STATIONED AT ONE PLACE. WE WERE KIND OF MOVIN' AROUND DIFFERENT PLACES, BUT FOR THE MAJORITY OF THE TIME I WAS AT THAT LOCATION.

Q AND FROM WISE STREET YOU COULD NOT VISUALLY SEE THE STORE. COULD YOU?

A NO.

Q OKAY. THE ONLY TIME YOU COULD SEE IT IS IF YOU MOVED AROUND AND WENT BY THE STORE TO SEE IT. AM I CORRECT?

A CORRECT.

Q DO YOU REMEMBER HOW MANY TIMES YOU DID THAT?

A NO.

Q OKAY. YOU REMEMBER DOING IT AT ANY TIME?

A YES.

Q OKAY. ALRIGHT. WHEN WAS THE FIRST TIME YOU CAME EITHER TO THE STORE OR TO WHERE THE TRACTOR TRAILER EVENTUALLY WAS TAKEN DOWN?

A WHAT TIME DID I GET TO THE STORE?

Q YEAH. DID YOU GO TO THE STORE? LET ME CLARIFY MY QUESTION. DID YOU GO TO THE STORE FIRST OR DID YOU GO TO WHERE THE TRACTOR TRAILER WAS?

A ARE YOU TALKIN' -- CAN YOU, PLEASE, REPHRASE YOUR QUESTION OR REPEAT IT.

Q ALRIGHT. WHEN PEOPLE STARTED GETTING ARRESTED---

A RIGHT.

Q ---WERE YOU FOLLOWING THE TRACTOR TRAILER OR DID YOU GO TO THE STORE?

A I WAS AT THE STORE.

Q OKAY. ALRIGHT. SO YOU WENT TO THE STORE AND THAT'S WHEN YOU GAVE DIRECTIONS FOR THEM TO GO AHEAD AND OPEN UP THE CHIMNEY THAT WAS THERE. IS THAT RIGHT?

A YES.

Q OKAY. YOU DID NOT ATTEMPT IN ANY WAY TO GET A SEARCH WARRANT OR ANYTHING.

A NO, I DID NOT. WE DIDN'T NEED IT.

Q OKAY. NOW THERE WAS ONE CHIMNEY THAT WAS OFFLOADED AT FREDY DELEON'S. AM I CORRECT?

A YES.

Q ALRIGHT. DID YOU EVENTUALLY GO TO WHERE THE TRAILER WAS AS WELL?

A NO.

Q YOU DIDN'T? DO YOU KNOW HOW MANY CHIMNEYS THEY FOUND ON THE TRAILER THERE?

A IF THEY OFFLOADED ONE AT THE STORE, THEN, OBVIOUSLY, THERE'S 22 IN THE TRAILER.

Q OKAY. THERE SHOULD'VE BEEN 22 AND NOT 12?

A I DON'T -- I WASN'T THERE TO OFFLOAD THAT TRAILER AT THAT LOCATION. SO I CAN'T ANSWER THAT QUESTION. I CAN TELL YOU WHAT I SAW AT THE STORE WHERE I WAS AT.

Q OKAY. WERE YOU EVER THERE TO SEE HOW MANY CHIMNEYS THEY TOOK OFF THE TRAILER WHEN THEY UNLOADED IT?

A AT THE STORE?

Q NO, NOT AT THE STORE, WHERE IT EVENTUALLY GOT STUCK IN THE MUD.

A NO. I WAS AT THE STORE THE WHOLE TIME.

Q OKAY. WELL, WHEN Y'ALL TOWED THE TRAILER BACK TO UNLOAD IT AND FIND OUT EXACTLY HOW MUCH DRUGS WERE IN THERE, DO YOU REMEMBER HOW MANY CHIMNEYS THEY UNLOADED?

A NO.

Q OKAY. DID Y'ALL MAKE ANY OTHER DELIVERIES TO ANYWHERE ELSE? DID YOU MAKE ANY OTHER CONTROLLED DELIVERIES?

A NO.

Q OTHER THAN TO MR. DELEON'S STORE.

A. THAT TRAILER DID GO SOMEWHERE ELSE BUT I DIDN'T HAVE VISUAL OF IT. I WAS AT THE STORE, SO I CAN'T ANSWER WHAT THAT PARTICULAR -- I MEAN, WHERE THAT TRAILER WENT. I MEAN I KNOW THEY WERE DIRECTED TO GO SOMEWHERE ELSE, BUT I WASN'T WITH THAT TEAM. I WAS WITH A DIFFERENT TEAM.

Q DO YOU KNOW WHERE THE TRAILER WENT?

A NO.

Q DO YOU KNOW IF THEY MADE ANY DELIVERIES?

A THEY DIDN'T MAKE ANY DELIVERIES; THEY GOT STUCK IN THE MUD.

Q OKAY. ALRIGHT. DO YOU KNOW IF -- IN OTHER WORDS, WAS THIS TRAILER, TO YOUR KNOWLEDGE, EVER TAKEN SOMEWHERE ELSE AND OTHER DELIVERIES MADE?

A NO.

Q AND YOU DON'T KNOW HOW MANY CHIMNEYS WERE ON THE TRAILER WHEN IT CAME HERE.

A THERE WAS 23 CHIMNEYS TOTAL.

Q RIGHT.

A MIXED IN WITH OTHER WOOD FURNITURE.

Q RIGHT.

A AND IT WAS DELIVERED TO SOUTH CAROLINA.

Q ALRIGHT. SO YOU STILL THINK THERE WAS 23. HERE.

A YEAH, 23 HERE IN SOUTH CAROLINA.

Q BUT YOU WEREN'T THERE TO COUNT THE NUMBER OF CHIMNEYS THAT WERE TAKEN OFF THE TRAILER, WERE YOU?

A NO, I WAS NOT.

Q OKAY. I THINK YOU SAID AT THE BORDER YOU INTERVIEWED THE DRIVER?

A YES, I DID.

Q AND WERE YOU ONE OF THE PEOPLE THAT WAS ACTUALLY INVOLVED IN THE INTERVIEW OF THE DRIVER?

A YES.

Q OKAY. AND AFTER TALKING TO HIM, APPARENTLY HE TOLD YOU THAT HE

DIDN'T KNOW WHAT WAS IN THE TRAILER. IS THAT RIGHT?

A THAT'S RIGHT.

Q OKAY. AND YOU BELIEVED HIM. RIGHT?

A YES.

Q AND BECAUSE YOU BELIEVED HIM BECAUSE HE -- HE SAID HE DIDN'T HAVE ANY KNOWLEDGE, YOU DID NOT ARREST. AM I CORRECT?

A WE DID NOT ARREST HIM.

Q ALRIGHT. AND IT'S NOT UNUSUAL FOR PEOPLE WHO GET -- IT'S NOT UNUSUAL FOR PEOPLE TO GET DECEIVED BY DRUG DEALERS AND DRUG TRAFFICKERS FROM TIME TO TIME AND TOLD THEY'RE SHIPPING ONE THING WHEN, IN FACT, THERE'S SOME DRUGS HIDDEN IN THE ITEMS. AM I CORRECT?

A IT JUST DEPENDS ON THE SITUATION.

Q OKAY. BUT I MEAN PEOPLE -- I BET THAT DURING THE COURSE OF YOUR INVESTIGATION YOU'VE RELEASED NUMEROUS DRIVERS, HAVEN'T YOU?

A YES.

Q AND YOU'VE ALSO RELEASED NUMEROUS PEOPLE THAT WERE INVOLVED IN THE SHIPMENT OF THE DRUGS. AM I CORRECT?

A NORMALLY THAT'S NOT THE CASE.

Q OKAY. SO NORMALLY YOU WOULD TAKE DOWN SOMEBODY LIKE BORDER CARRIERS.

A NO. BORDER CARRIERS IS THE OWNER OF THE TRACTOR TRAILER. THEY'RE THE CARRIER, SO – WE – YOU KNOW, WE HAVE TO DO OUR INVESTIGATION. IT DEPENDS ON WHERE IT LEADS US AND THAT'S WHEN WE MAKE OUR DECISION.

Q OKAY. DID -- DID ANYONE INVESTIGATE JAMCO INTERNATIONAL?

A NO.

Q TO FIND OUT WHO THAT WAS OR WHO MIGHT'VE CALLED JAMCO INTERNATIONAL AND ORDERED THIS?

A NO. WE DIDN'T DO THAT BECAUSE AT THAT POINT YOU DON'T KNOW WHO'S INVOLVED AND WHO'S NOT INVOLVED. SO WE DIDN'T WANT TO RISK IT. SO WE INTERVIEWED THE DRIVER AND WE TOOK THE APPROPRIATE COURSE OF ACTION FROM THAT POINT.

Q OKAY. BUT ONCE EVERYTHING WAS TAKEN DOWN, DID YOU GO BACK AND SEE WELL WHO CALLED JAMCO INTERNATIONAL OR SEBASTIAN EXPORTACIANES – I CAN'T -- I'M NOT GOOD WITH SPANISH. BUT YOU KNOW WHAT I'M TALKIN' ABOUT?

A NO, AT THAT POINT AFTER I DELIVERED IT TO SOUTH CAROLINA IT WAS NO LONGER MY CASE.

Q OKAY.

A I TURNED IT OVER TO LAW ENFORCEMENT IN SOUTH CAROLINA. AT THAT POINT THEY WOULD PICK IT UP OR IF THEY WOULD CALL ME AND ASK FOR ASSISTANCE, I'D BE MORE THAN HAPPY TO DO SO, BUT MY JOB WITH THE CASE IS TO DELIVER THE MARIJUANA TO SOUTH CAROLINA AND THAT WAS IT.

Q OKAY. DO YOU REMEMBER THE REPORT INDICATED THAT THE CASE AGENT WOULD FOLLOW UP ALL POSSIBLE LEADS?

A YES.

Q WOULD THAT BE YOU?

A NO, I SENT HIM THE REPORT, A COLLATERAL REPORT SAYING TO FOLLOW UP ALL LEADS.

Q ALRIGHT. YOU SENT THAT -- ARE THOSE THE NOTES THAT YOU'RE TALKIN'

ABOUT? RIGHT THERE AT THE BOTTOM.

A THIS IS AN ACTING GROUP SUPERVISOR---

Q RIGHT.

A ---THAT WROTE THIS AND---

Q ALRIGHT. NOW FIRST OF ALL THIS -- AN ACTING GROUP SUPERVISOR OF WHO?

A OF MY GROUP.

Q OKAY. SO THIS IS THE SUPERVISOR OF YOUR GROUP.

A ACTING GROUP SUPERVISOR OF MY GROUP.

Q ALRIGHT. AND ON JANUARY 9TH HE SAID THAT Y'ALL WILL -- THE CASE AGENT WILL EXHAUST ALL POSSIBLE LEADS. WHO IS -- WHO IS THE CASE AGENT?

A I'M THE CASE AGENT FROM LAREDO TO SOUTH CAROLINA. THE CASE AGENT IN SOUTH CAROLINA WOULD BE THE INDIVIDUALS THAT WE TURNED IT OVER TO.

Q OKAY.

A SO THAT'S NOT INSINUATING ME.

Q OKAY. WHO IS IT INSINUATING?

A THE CASE AGENTS ON THE OTHER END.

Q OKAY. ALRIGHT. WHO IS THAT PERSON? WHO IS THE CASE AGENT THAT YOU TURNED OVER YOUR WHOLE CASE TO?

A THE STATE AND LOCALS.

Q YOU DIDN'T TURN IT OVER TO ANY U.S. CUSTOMS AGENTS HERE?

A U.S. CUSTOMS AND STATE AND LOCAL, BY THE END OF THE DAY WE DECIDED IT WAS GONNA GO TO STATE AND LOCAL. SO AT THAT TIME THEY WOULD HAVE THE CASE.

Q SO NOBODY KNOWS WHO THIS CASE AGENT IS WHO IS GONNA EXHAUST ALL POSSIBLE LEADS. YOU CAN'T GIVE ME ONE NAME.

A COBY.

Q TOBY?

A COBY.

Q COBY. ALRIGHT. SO EVERYTHING – HE WAS THE ONE WHO WAS INSTRUCTED TO FOLLOW UP ALL POSSIBLE LEADS.

A HE WASN'T INSTRUCTED. HE WAS JUST -- THAT'S WHAT WE NORMALLY DO.

Q OKAY.

A IT'S ON A CASE-BY-CASE BASIS.

Q DID – I THINK YOU SAID YOU SPOKE TO THE MANAGER AT BORDER CARRIERS?

A YES.

Q AND I THINK THEY EXECUTED SOME DOCUMENTS AND YOU ARE SAYING THAT THEY DIDN'T HAVE ANY KNOWLEDGE OF WHAT THEY WERE SHIPPING?

A THEY STATED THAT THEY DIDN'T HAVE KNOWLEDGE AND THAT THEY WERE GOING TO COOPERATE AND ASSIST US IN WHATEVER THAT WE NEEDED.

Q OKAY. AND BECAUSE THEY EXECUTED THIS DOCUMENT AND TOLD YOU THAT THEY DIDN'T HAVE ANY KNOWLEDGE, YOU RELEASED 'EM. EXCUSE ME. NOT RELEASED 'EM. YOU DID NOT ARREST THEM OR PROSECUTE THEM.

A THE DRIVER?

Q ANYBODY FROM BORDER CARRIERS.

A NO, WE DID NOT.

Q OKAY. AND DID YOU HAVE -- DID YOU DO ANY FURTHER INVESTIGATION

INTO BORDER CARRIERS' ROLE IN THIS OTHER THAN GET THEM TO EXECUTE THIS PIECE OF PAPER AND RELEASE THEM AND THEN GET THEM TO PROVIDE YOU WITH A DRIVER?

A NO, WE DID NOT.

Q OKAY. DID THEY CHARGE YOU FOR THE DRIVER?

A EXCUSE ME?

Q DID THEY CHARGE YOU FOR THE DRIVER?

A NO. THE DRIVER WAS GOING TO MAKE THAT DELIVERY.

Q OKAY.

A HE WAS SCHEDULED TO PICK IT UP IN LAREDO, TEXAS AND DELIVER IT TO TRENTON, SOUTH CAROLINA.

Q OKAY. WHERE WAS -- I NOTICE THAT THE TRUCK INITIALLY CROSSED THE BORDER ON MAY 14TH, AND THEN ON MAY 16TH I THINK IS WHEN Y'ALL LEFT TO COME HERE. IS THAT RIGHT?

A YES.

Q WHERE WAS IT AT FROM MAY 14TH TO MAY 16TH?

A AT BRIDGEPORT (PHONETIC) AT THE LOADING DOCK. IT WAS BACKED UP TO THE LOADING DOCK WITH THE DOOR SHUT AND SEALED.

Q OKAY.

A WITH 24-HOUR SECURITY.

Q WAS THE TRACTOR THERE AS WELL? DID THE TRACTOR REMAIN THERE AS WELL OR JUST THE TRAILER?

A I DON'T RECALL.

Q WHEN -- WHEN YOU GOT HERE, YOU SAID IT WAS TURNED OVER TO LOCAL U.S. CUSTOMS. IS THAT RIGHT?

A U.S. CUSTOMS.

Q WHO WOULD THAT BE? WHO IS THE PERSON?

A WHO'S THE PERSON THAT WORKS IN SOUTH CAROLINA?

Q RIGHT. THAT YOU TURNED OVER THE CASE TO.

A AT THAT TIME WHEN WE FIRST GOT TO SOUTH CAROLINA, WE TURNED IT OVER TO DEAN TUCKER.

Q DEAN TUCKER.

MR. HAWKE: I NEED THIS MARKED FOR IDENTIFICATION. YOU CAN PUT THEM AS ONE OR 3. EITHER WAY. THAT'S FINE. (DEFENDANT'S EXHIBITS 1 THROUGH 3 MARKED FOR IDENTIFICATION.)

Q LET ME SHOW YOU WHAT WE'VE MARKED AS FOR IDENTIFICATION PURPOSES DEFENDANT'S EXHIBIT 1. CAN YOU TELL ME WHAT THAT IS.

A THE MARIJUANA.

Q OKAY. AND WHAT MARIJUANA?

A THAT WAS LOCATED IN MERCHANDISE IN THE TRACTOR TRAILER.

Q OKAY. AND WHAT'S THE QUANTITY OF THE MARIJUANA?

A UNKNOWN AMOUNT.

Q HOW DO YOU -- WHERE DO YOU GET UNKNOWN AMOUNT? I THOUGHT THAT WAS A KILOGRAM.

A WELL, YEAH, IT SAYS KILOGRAM, BUT IT'S AN UNKNOWN AMOUNT. AND ANY TIME -- IF WE'RE NOT SURE WHAT THE EXACT WEIGHT WAS BECAUSE WE DIDN'T PULL OFF THE MERCHANDISE FROM THE TRACTOR TRAILER, SO YOU JUST PUT THIS TO INDICATE, YOU KNOW, WE GET A FINAL WEIGHT AT A LATER TIME ONCE EVERYTHING IS OFFLOADED.

Q OKAY. BUT YOUR REPORT SAYS MARIJUANA KILOGRAM QUANTITY ONE. IS

THAT RIGHT?

A ACTUALLY THIS ISN'T -- I DIDN'T PRODUCE THIS. I DIDN'T DO THIS REPORT.

Q AND IS THIS—

A THIS WAS DONE BY THE -- JUST BECAUSE MY SIGNATURE IS HERE DOESN'T MEAN THAT I DID THIS REPORT. OFFICE OF FIELD OPERATIONS OF U.S. CUSTOMS—

Q UH-HUH.

A —THEY SEIZE THE MERCHANDISE, THEY WOULD TYPE UP THIS REPORT.

Q SO THAT WOULD'VE BEEN MR. GAONA THAT JUST LEFT?

A IT COULD'VE BEEN HIM OR IT COULD'VE BEEN THE SUPERVISOR.

Q OKAY. BUT IT SAYS THAT—

A IT DOESN'T SAY THAT I PRODUCED THE REPORT.

Q OKAY. WHAT IS THIS ALL DOWN HERE AT THE BOTTOM OF IT? WHAT DOES THIS MEAN?

A IT'S JUST SAYING THAT THE INSPECTORS WITH U.S. CUSTOMS AT ONE POINT HAD THE MARIJUANA.

Q OKAY.

A AND NOW THEY ARE -- IT'S IN MY CUSTODY AND CONTROL.

Q OKAY. THIS IS BASICALLY A CHAIN OF CUSTODY SHEET. ISN'T IT? SAYING THAT YOU HAD IT FIRST AND THEN CREIGHTON MAGATE (PHONETIC) HE HAD IT AND THEN M. WILLIAMS HAD IT AND THEN J. TURKIF (PHONETIC) HAD IT AND THEN R. YOUNG HAD IT FROM EDGEFIELD. AM I CORRECT?

A WELL, IT'S -- I HAD CUSTODY FROM DAY ONE ALL THE WAY TILL WE GOT HERE.

Q OKAY.

A ON THE 18TH.

Q ALL RIGHT. AND SO NOBODY PULLED OFF A KILOGRAM OF COCAINE -- OF MARIJUANA?

A NO.

Q OKAY. Y'ALL WOULD JUST -- YOU KNOW WHY THAT ARBITRARY FIGURE WAS USED—

A NO, I DON'T. I DIDN'T GENERATE THIS REPORT. SO I DON'T KNOW. THEY JUST PUT -- ACTUALLY I THINK – I DON'T KNOW IF THIS IS LIKE A GENERIC RANDOM – 'CAUSE WE MEASURE EVERYTHING IN KILOS, THEY JUST PUT KILO THERE.

Q ALL RIGHT.

A AND YOU HAVE TO PUT SOME KIND OF QUANTITY IN ORDER FOR, YOU KNOW, TO REPORT OR TO GENERATE THE REPORT.

Q I GUESS I DON'T UNDERSTAND WHY SOMEBODY WOULD ACCEPT SOMETHING OF THE CHAIN OF CUSTODY DOCUMENT THAT SAYS A CUSTODY RECEIPT FOR RETAINED OR SEIZED PROPERTY—

A UH-HUH.

Q ---AND SIGN IT WHEN IT'S INACCURATE.

A THE ONLY – IT'S NOT INACCURATE. WE CAN'T PULL OFF A HUN -- WE CAN'T DO A HUNDRED PERCENT OFFLOAD OF A TRACTOR TRAILER AND BREAK INTO IT WHEN WE WANNA DO A CONTROLLED DELIVERY AND BE SUCCESSFUL AT THAT. WE HAVE TO LEAVE EVERYTHING INTACT AND THEN ONCE YOU EXECUTE CONTROLLED DELIVERY AND EVERYTHING IS SAID AND DONE, THAT'S WHEN YOU ACTUALLY DO THE WEIGHT AND THAT'S WHEN YOU GO BACK IN AND YOU PUT IN THE WEIGHT OF THE ACTUAL MARIJUANA BECAUSE AT THIS TIME, WE DON'T

KNOW. IT'S A GUESSTIMATE.

Q OKAY.

A IT COULD BE ONE KILOGRAM. YOU HAVE NO IDEA WHAT THE WEIGHT IS.

Q OKAY. WOULDN'T IT BE MORE ACCURATE IF YOU PUT UNKNOWN?

A YES.

Q OKAY. DO YOU KNOW WHY THAT FIGURE ONE WAS PICKED?

A I CAN'T ANSWER THAT BECAUSE I DIDN'T GENERATE THIS REPORT.

Q OKAY. THEN I SEE THAT THERE IS A – I SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S EXHIBIT 2. AND ONE OF 'EM IS PAGE – LET'S SEE—

A I DO KNOW THE INSPECTORS JUST TO BE SAFE, WE KNOW MARIJUANA'S THERE SO WE'LL PUT ONE KILO 'CAUSE YOU KNOW YOU AT LEAST HAVE ONE KILO.

Q OKAY.

A AND THEN WE'LL GO BACK AND CHANGE IT ONCE WE GET A FINAL WEIGHT.

Q I SEE THAT DEFENDANT'S EXHIBIT #1 INDICATES THAT THIS IS ITEM #1 ON DEFENDANT'S EXHIBIT 2. THIS INDICATES THIS IS ITEM #3. AND ON DEFENDANT'S EXHIBIT #3, IT INDICATES THAT THAT IS ITEM #4. DO YOU KNOW WHAT ITEM #2 WAS? OR WHERE THAT DOCUMENT MIGHT BE?

A I DIDN'T GENERATE THE REPORTS. I DON'T KNOW WHAT ITEM #2 IS, BUT FOR THE MOST PART – I CAN'T ANSWER YOUR QUESTION BECAUSE I DIDN'T GENERATE – I DIDN'T DO THE NUMBERING SYSTEM OF 1, 2, 3 OR 4. THAT WASN'T ME. SO—

Q OKAY.

A —YOU'RE GONNA HAVE TO ASK THAT PERSON.

Q DO YOU KNOW WHAT 2304 ON THE REPORT MEANS?

A LAREDO, TEXAS. IT'S A PORT CODE.

Q NOW EACH ONE OF THESE INDICATES -- AND I'M REFERRING TO DEFENDANT'S EXHIBITS NUMBERS 1, 2 AND 3 -- THAT AT SOME POINT IN TIME CRAIG MAGAHEE (PHONETIC) HAD CONTROL OF THE ITEMS OF 1, 2 AND 3. IS THAT RIGHT?

A HE WAS THE AGENT IN SLIGHDEL (PHONETIC).

Q OKAY. AND THEN ON MAY 17TH IT INDICATES THAT YOU THEN RETAINED CUSTODY AGAIN?

A YES.

Q OKAY. AND THEN ON MAY 18TH JOHN TUCKER RETAINED CUSTODY OF THESE 3 ITEMS?

A YES. THAT'S WHEN WE DELIVERED IT TO TRENTON, SOUTH CAROLINA, AND I TURNED OVER--

Q AND THEN LATER ON MAY 18TH ROOSEVELT YOUNG RETAINED CUSTODY OF THESE 3 ITEMS. IS THAT RIGHT?

A YES.

Q OKAY. ALL RIGHT. EXCEPT FOR RIGHT HERE ON DEFENDANT'S EXHIBIT #2 IT WAS TURNED OVER FROM JOHN TUCKER TO PAUL GARTIN?

A IT WAS TURNED OVER FROM JAMES TUCKER TO PAUL GARTIN BECAUSE THE TRAILER BELONGED TO BORDER CARRIERS.

Q I GOTCHU.

A AND HE WAS THE DRIVER OF THAT TRAILER.

Q SO EVERYTHING WAS TURNED OVER EXCEPT FOR THAT TRAILER. IS THAT RIGHT?

A RIGHT.

Q OKAY. I'M THROUGH.

THE COURT: CROSS.

MR. SUSSMAN: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MR. SUSSMAN

Q AGENT DOWLING?

A YES, SIR.

Q MY NAME IS WILLIAM SUSSMAN. I REPRESENT MR. ARJONA AND MR. HERNANDEZ. DO YOU KNOW WHICH ONE IS WHICH?

A NO.

Q NOW YOUR JOB DESCRIPTION AT THE TIME THIS DELIVERY TOOK PLACE IN SOUTH CAROLINA WAS AS A FEDERAL CUSTOMS AGENT?

A YES.

Q DO YOU HAVE ARREST POWERS?

A YES.

Q AND HOW MANY TYPES OF INVESTIGATIONS LIKE THIS HAVE YOU DONE IN THE PAST BEFORE THIS ONE?

A NUMEROUS.

Q DID PREVIOUS INVESTIGATIONS THAT YOU WERE INVOLVED IN RESULT IN ARRESTS?

A YES.

Q PROSECUTIONS?

A YES.

Q IN COURT?

A. YES.

Q. WHAT COURTS?

A FEDERAL COURT.

Q ALL FEDERAL COURTS?

A THE ONES THAT I'VE HAD TO GO TO TRIAL UP TO THIS POINT?

Q YES.

A FEDERAL.

Q OKAY. NOW HOW MANY FEDERAL PROSECUTIONS WERE YOU INVOLVED WITH BEFORE THIS CASE?

A THAT WENT TO COURT?

Q YES.

A ONE.

Q AND HOW MANY INVESTIGATIONS WERE YOU INVOLVED WITH WERE HANDLED AS A FEDERAL INVESTIGATION?

A NUMEROUS.

Q OKAY. NOW WHEN YOU TOOK CUSTODY AND CONTROL OF THIS CASE IN LAREDO, TEXAS, WAS IT A FEDERAL INVESTIGATION?

A IT WAS – WHEN I RESPOND TO THE BRIDGE, IT IS A FEDERAL INVESTIGATION.

Q WHEN YOU DEPARTED FOR LOUISIANA, WAS IT A FEDERAL INVESTIGATION?

A YES. I MEAN IT'S AN INVESTIGATION FROM START TO FINISH AND ONCE WE GET TO THE END, WE DECIDE IF IT'S GONNA GO WITH FEDERAL OR STATE. IT JUST DEPENDS ON THE CIRCUMSTANCES.

Q SO AT THE TIME THAT YOU WERE INVOLVED IN THE CASE BETWEEN

LAREDO, TEXAS, AND SLIGHDEL, LOUISANA, YOU WEREN'T SURE WHETHER IT WAS A FEDERAL OR STATE INVESTIGATION AT THAT POINT?

A IT JUST DEPENDS ON THE THRESHOLD AND WHAT THAT ENTAILS IN SOUTH CAROLINA BECAUSE EACH STATE IS DIFFERENT.

Q WELL, YOU WEREN'T IN SOUTH CAROLINA AT THAT POINT, WERE YOU?

A NO.

Q SO BETWEEN LAREDO, TEXAS AND SLIGHDEL, LOUISANA, YOU WEREN'T CERTAIN WHETHER IT WAS A FEDERAL OR STATE INVESTIGATION?

A WELL, SINCE IT'S IN MY CUSTODY IT'S GONNA BE FEDERAL.

Q THAT'S WHAT I'M ASKIN' YOU.

A YES.

Q YOU SURE ABOUT THAT?

A YES, I'M SURE. I'M A FEDERAL AGENT.

Q OKAY. NOW BETWEEN SLIGHDEL, WHAT WAS THE NEXT STOP YOU CAME TO?

A TRENTON, SOUTH CAROLINA.

Q AT THE TIME YOU ARRIVED IN TRENTON, SOUTH CAROLINA, WAS IT A FEDERAL OR STATE INVESTIGATION?

A IT WAS STILL FEDERAL.

Q YOU WERE THE AGENT IN CHARGE.

A YES.

Q YOU WERE A FEDERAL AGENT.

A YES.

Q YOU HAD ANOTHER FEDERAL AGENT IN THE TRUCK THAT WAS HAULING THE MARIJUANA.

A A FEDERAL AGENT ACCOMPANYING THE TRACTOR-TRAILER DRIVER.

Q RIGHT. YOU HAD A FEDERAL AGENT IN THE TRUCK THAT WAS HAULING THE MARIJUANA.

A YES.

Q THAT WAS AGENT MIZE.

A YES, SIR.

Q AND THEN WHO DID YOU MEET UP WITH IN TRENTON?

A WE MET UP WITH U.S. CUSTOMS AGENTS, DEA AGENTS, FBI, STATE AND LOCAL. WE HAD A VARIETY OF DIFFERENT LAW ENFORCEMENT THERE. AND WE HAD A BRIEFING.

Q AND THAT BRIEFING WAS HANDLED BY WHOM? THERE WAS AN AGENT IN CHARGE?

A U.S. CUSTOMS.

Q SO IT WAS STILL A FEDERAL INVESTIGATION AT THAT POINT.

A AT THIS POINT.

Q AND THE DEA INVOLVED, THAT'S THE DRUG ENFORCEMENT AGENCY WHICH IS A FEDERAL AGENCY.

A YES.

Q SO THE AGENT THAT YOU DEALT WITH IN TRENTON WAS THAT DEAN TUCKER?

A YES.

Q WITH THE DEA?

A HE'S WITH U.S. CUSTOMS.

Q WHO WAS THE DEA AGENT YOU MET WITH?

A I'M NOT SURE.

Q WAS IT SOMEONE OUT OF FLORENCE, SOUTH CAROLINA OR GREENVILLE OR DO YOU KNOW?

A I CAN'T TELL YOU.

Q OKAY. DID YOU GENERATE A REPORT AS A RESULT OF YOUR INVESTIGATION?

A FROM THAT POINT?

Q IN THIS CASE IN ITS ENTIRETY DID YOU GENERATE A REPORT?

A REPORT #1 WHICH THE FIRST ATTORNEY BROUGHT UP HERE.

Q OKAY. AND DID YOU GENERATE ANY OTHER TYPES OF REPORTS, ANY INVESTIGATIVE SUMMARIES?

A NO, 'CAUSE I TURNED OVER THE CASE IN TRENTON, SOUTH CAROLINA.

Q WELL, WHEN YOU TURN OVER A CASE TO A STATE AGENCY, DO YOU NOT STILL GENERATE A REPORT OF YOUR ACTIONS IN THE CASE?

A I DID MY REPORT #1 WHICH IS THAT REPORT INVESTIGATION THAT YOU HAVE THERE.

Q SO WHEN YOU CAME THROUGH TRENTON TO -- WELL, FIRST OF ALL, YOU WERE ACTUALLY IN SALUDA, WEREN'T YOU? DIDN'T YOU HAVE SOME MEETING POINT IN SALUDA?

A IS THAT THE AIRPORT?

Q YEAH.

A YES.

Q AND THAT WAS THE NIGHT BEFORE THE TRENTON DELIVERY.

A RIGHT.

Q AND WHO WAS AT THE SALUDA MEETING AT THE AIRPORT?

A THERE WASN'T A MEETING THERE. WE JUST -- WE -- THE CUSTOMS

AGENTS FROM LAREDO WERE ESCORTED OUT THERE BY CUSTOMS AGENTS IN THE GREENVILLE OFFICE.

Q DID YOU MEET WITH ANY STATE PROSECUTORS?

A NOT THAT I'M AWARE OF.

Q AND THEN YOU MADE YOUR DELIVERY THE NEXT DAY INTO TRENTON.

A YES.

Q AND AT THAT POINT IT WAS STILL A FEDERAL INVESTIGATION

A YES.

Q NOW THERE WERE OTHER VEHICLES INVOLVED IN THIS CASE? THERE WAS ANOTHER VEHICLE INVOLVED IN THIS CASE?

A YES.

Q AND THAT VEHICLE GOT AWAY?

A YES.

Q AND AFTER THAT VEHICLE GOT AWAY, IS THAT WHEN IT BECAME A STATE INVESTIGATION?

A NO.

Q WHO MADE THE DECISION FOR IT TO GO FROM A FEDERAL INVESTIGATION TO A STATE INVESTIGATION?

A AT THAT POINT WE PRESENT THE FACTS TO THE U.S. ATTORNEY'S OFFICE. THEY'RE THE ONES THAT MAKES THE DECISION TO ACCEPT IT OR DECLINE THE CASE.

Q AND THE POINT THAT YOU JUST REFERRED TO, AT THAT POINT YOU REFERRED IT TO THE U.S. ATTORNEY, WAS THAT AFTER DELIVERY WAS MADE TO TRENTON?

A YES.

Q WAS THAT AFTER THE TRACTOR-TRAILER GOT STUCK IN THE MUD?

A I'M NOT SURE.

Q WAS THAT AFTER THE VEHICLE WITH THE 2 MALES GOT AWAY?

A I'M NOT SURE. I DIDN'T PLACE THE PHONE CALL.

Q WELL, WEREN'T YOU THE AGENT IN CHARGE?

A UNTIL WE DROPPED OFF THE MERCHANDISE AND AT THAT TIME THE RECEIVING OFFICE TAKES CONTROL..

Q WHO IS THE RECEIVING OFFICE?

A THE U.S. CUSTOMS OFFICE.

Q WHO WAS THAT?

A DEAN TUCKER.

Q SO THE RECEIVING OFFICE WAS A FEDERAL CUSTOMS AGENT.

A YES.

Q SO IT WAS STILL A FEDERAL INVESTIGATION.

A UP UNTIL THAT POINT UNTIL THE U.S. ATTORNEY'S OFFICE DECLINED IT, AND IT JUST DEPENDS ON – SOMETIMES IT GOES FEDERAL; SOMETIMES IT GOES STATE. IT JUST DEPENDS.

Q WELL, AGAIN, YOU SAID AT THAT POINT THE U.S. ATTORNEY DECLINED IT, BUT YOU DON'T KNOW AT WHAT POINT THAT OCCURRED—

A NO, I DO NOT. I DID NOT MAKE THE PHONE CALL.

Q —IN REGARDS TO THE INVESTIGATION? OKAY. DEAN TUCKER DID.

A I'M NOT SURE.

MR. MAYE: MAY IT PLEASE, YOUR HONOR.

THE COURT: HOLD ON A SECOND.

MR. MAYE: I WANT TO PUT ONE THING ON THE RECORD. I KNOW WE'RE IN

CAMERA HERE, BUT I DON'T WANT TO WAIVE MY RIGHT TO OBJECT. PRIOR TO BEGINNING THE LAST TRIAL, I MOVED IN LIMINE THAT THERE BE NO MENTION OF THE FACT OF WHETHER OR NOT THE U.S. ATTORNEY'S OFFICE PICKED UP THIS CASE FOR PROSECUTION, THE STATE PROSECUTED IT, AS TO WHETHER OR NOT THAT WAS CONTINGENT WHETHER OR NOT THIS WAS A BAD CASE. I WOULD OBJECT TO THAT AGAIN. I DON'T WANT TO JUST SIT HERE AND WAIVE THAT AGAIN. SO I WANT TO BE SURE AND PUT THAT ON THE RECORD IN CASE ANY QUESTIONING BEFORE THE JURY REGARDING ANY ARGUMENT ABOUT WHETHER OR NOT THE U.S. ATTORNEY'S OFFICE ACCEPTED IT OR NOT WHETHER IT WAS A GOOD CASE OR A BAD CASE. I JUST WANTED TO PUT THAT ON THE RECORD. WE CAN TAKE THAT UP LATER, BUT I JUST DIDN'T WANT TO WAIVE IT BY SITTIN' HERE THROUGH THIS LINE OF QUESTIONIN'.

THE COURT: SIR?

MR. SUSSMAN: THANK YOU, JUDGE

Q NOW WHO WAS AT THE STORE WHEN THE -- WHEN THAT OFFLOAD TOOK PLACE? YOU WERE NOT AT THE STORE.

A NO, I WAS NOT.

Q YOU WERE ON SURVEILLANCE.

A YES.

Q OUTSIDE OF THE STORE.

A RIGHT.

Q WAS DEAN TUCKER AT THE STORE?

A HE WAS ONE OF THE INDIVIDUALS AT THE STORE.

Q YOU WERE IN RADIO CONTACT.

A RIGHT.

Q SO TUCKER WAS THERE. RIGHT?

A YES.

Q WHEN THE CHIMNEY WAS OFFLOADED AT THE STORE.

A WHEN THE CHIMNEY WAS OFFLOADED AT THE STORE, DEAN TUCKER WAS NOT THERE.

Q WELL, MIZE WAS THERE.

A YES.

Q AND TUCKER CAME IN RIGHT AFTER THAT?

A NOT RIGHT AFTER, BUT—

Q RIGHT AFTER IT WAS OFFLOADED AT THE STORE?

A THERE WAS SOME TIME THAT PASSED.

Q OKAY. WHERE ARE THE PHOTOS THAT YOU TOOK OF THE TRAILER AT THE BORDER?

A IN MY CASE FILE.

Q WHERE IS THAT?

A I HAVE – THERE -- I'M TRYIN' TO THINK.

Q WELL, LET ME ASK YOU THIS– THAT'S OKAY – YOU RECALL WHAT PHOTOS YOU TOOK, CAN YOU DESCRIBE THEM FOR US?

A JUST OF THE TRACTOR AND THE TRAILER.

Q ABOUT HOW MANY WOULD YOU HAVE TAKEN?

A ONE OR TWO.

Q WOULD THAT HAVE BEEN ATTACHED TO THAT REPORT THE OTHER ATTORNEY SHOWED YOU?

A WOULD THE PHOTOS BE ATTACHED?

Q YES.

A I DON'T KNOW WHAT HE HAS.

Q WELL, I MEAN I'M ASKIN' WHAT WAS YOUR NORMAL PRACTICE WHEN YOU DID YOUR REPORT. DID YOU ATTACH THE PHOTOS TO YOUR REPORT?

A NO, I DON'T. NOT UNLESS THEY'RE -- IT DEPENDS ON THE SITUATION. IF THEY'RE ASKED FOR, OF COURSE I WILL.

Q I THINK YOU TESTIFIED THAT SOMEONE ASKED YOU IF YOU WENT AND GOT A SEARCH WARRANT FOR THE STORE, AND YOU REPLIED YOU DIDN'T NEED ONE.

A RIGHT.

Q WHY WAS THAT?

A BECAUSE WE HAVE NEXUS TO THE BORDER. WE HAVE BORDER SEARCH AUTHORITY, AND WE FOLLOWED THAT TRACTOR-TRAILER WITH THAT MARIJUANA AND THE WOODEN FURNITURE FROM LAREDO, TEXAS TO SOUTH -- I'M SORRY -- TO TRENTON, SOUTH CAROLINA, AND THEREFORE AS U.S. CUSTOMS AGENTS, YOU DO NOT NEED A SEARCH WARRANT.

Q SO LONG AS IT'S A FEDERAL INVESTIGATION.

A YES.

Q SO AT THE TIME THAT THE MERCHANDISE WAS OFFLOADED AND THE STORE WAS SEARCHED IT WAS STILL AN ACTIVE FEDERAL INVESTIGATION.

A AT THAT POINT, YES.

Q IS THAT A YES?

A YES.

Q NOW FROM 5-14 TO 5-16 I THINK YOU WERE ASKED WHERE THE TRAILER WAS AND YOU SAID IT WAS BACKED UP AGAINST THE LOADING DOCK IN LAREDO?

A YES.

Q AND IT WAS UNDER GUARD.

A RIGHT.

Q SO THERE WAS NO WAY THAT ANYONE COULD'VE GOTTEN IN OR GOTTEN OUT.

A RIGHT.

Q IS THERE A LAW AS TO WHO THE INDIVIDUALS WERE THAT WOULD'VE BEEN GUARDING IT?

A NO.

Q YOU KNOW WHAT STEVEDORES ARE?

A YES.

Q WELL, WHO ARE STEVEDORES?

A THEY'RE HIRED BY THE DIFFERENT COMPANIES TO OFFLOAD MERCHANDISE.

Q DO THEY HAVE ACCESS TO THESE SECURED AREAS WHERE THE ANOMALIES ARE LOCATED? ARE FOUND.

A THEY HAVE ACCESS TO THE LOADING DOCK BUT WHEN THE TRAILER IS UP AGAINST THE DOCK WITH THE DOOR CLOSED AND SEALED, THEY DON'T HAVE ACCESS TO THAT.

Q BUT THEY ACTUALLY, ARE THEY UTILIZED TO UNLOAD MERCHANDISE THAT CARRIES ANOMALIES?

A WHEN INSTRUCTED TO DO SO.

Q OKAY. BUT THEY DON'T WORK FOR THE FEDERAL GOVERNMENT.

A NO.

Q DO THEY HAVE SOME SORT OF CLEARANCE TO COME IN AND OUT OF THE SECURED AREA?

A THEY HAVE BADGES. THEY HAVE SOME KIND OF CLEARANCE. I'M NOT SURE TO WHAT DEGREE.

Q THAT'S NOT REALLY YOUR RESPONSIBILITY.

A NO.

Q AND SO IS IT YOUR TESTIMONY THAT -- WELL, LET ME ASK YOU THIS. I'M NOT SURE IT'S CLEAR. AT WHAT POINT DID DEAN TUCKER TAKE OVER THIS CASE?

A WHEN WE ARRIVED IN TRENTON, SOUTH CAROLINA. THAT'S WHEN THE CASE AGENT IN LAREDO WHICH IS MYSELF WILL TURN OVER THE CASE TO U.S. CUSTOMS AGENTS IN THAT AREA.

Q SO BUT DID TUCKER HAVE CONTROL OF THE CASE BEFORE THE DELIVERY WAS MADE TO TRENTON?

A I WOULD HAVE CONTROL OF THE CASE BECAUSE I'M THE ONE THAT IS FOLLOWING THE TRACTOR-TRAILER ALL THE WAY TO TRENTON, SOUTH CAROLINA UNTIL IT REACHES THE FINAL DESTINATION.

Q I KNOW THAT, BUT WHAT I'M ASKING YOU AS THE CASE AGENT IN CHARGE, AT WHAT POINT DID YOU PASS THE INVESTIGATION OVER TO AGENT TUCKER?

A WHEN WE PHYSICALLY MET THE NIGHT OF THE 17TH AND WE TRANSFERRED EVERYTHING OVER.

Q AT THE AIRPORT IN SALUDA.

A YES.

Q OKAY. SO HE HAD CONTROL OF IT THE NEXT MORNING, HE HAD CONTROL OF THE CASE WHEN THE DELIVERY WAS MADE TO TRENTON.

A YES.

Q OKAY. AND YOU SAID YOU'RE IN -- WHERE ARE YOU NOW?

A FAIRFAX, VIRGINIA.

Q WHEN DID YOU GET TRANSFERRED UP THERE?

A A MONTH AND A HALF AGO.

Q AND WHAT IS YOUR JOB POSITION NOW?

A I'M A SPECIAL AGENT WITH IMMIGRATION AND CUSTOMS ENFORCEMENT. I INVESTIGATE INTERNET CRIMES SUCH AS CHILD PORNOGRAPHY.

Q SO YOU STILL WORK WITH THE FEDERAL CUSTOMS AGENCY?

A YES, I'M STILL A SPECIAL AGENT WITH THE SAME AGENCY.

Q JUST A DIFFERENT KIND OF---

A DIFFERENT OFFICE.

Q ALL RIGHT. HAVE YOU SEEN AGENT TUCKER SINCE YOU'VE UP HERE TO EDGEFIELD?

A NO.

Q HAVE YOU SEEN HIS REPORT, HAVE YOU REVIEWED HIS REPORT?

A YES.

Q IS THAT THE FIRST TIME YOU'VE SEEN THAT REPORT?

A NO.

Q WHEN IS THE FIRST TIME YOU SAW AGENT TUCKER'S REPORT?

A I DON'T RECALL. THIS CASE WAS 2 YEARS AGO.

Q BUT YOU'VE SEEN IT RECENTLY.

A YES.

Q HOW MANY PAGES IS IT? MORE THAN ONE?

A IT MIGHT BE RIGHT AT ONE. I'M NOT SURE.

Q WHAT ABOUT THE F.B.I. AGENTS INVOLVED? HAVE YOU SEEN THEM SINCE YOU'VE BEEN UP HERE?

A NO.

Q DID THEY REALLY HAVE MUCH TO DO WITH THE DELIVERY AND THE ARRESTS THAT WERE MADE?

A NO.

Q DO YOU RECALL WHO THE F.B.I. AGENTS WERE?

A NO.

Q I DON'T THINK THEY'RE REFERENCED IN YOUR REPORT AT ALL EITHER, ARE THEY?

A I DON'T THINK SO.

Q AND AGENT TUCKER'S STATIONED IN GREENVILLE?

A GREENVILLE? YES.

Q THANK YOU, AGENT. I DON'T HAVE ANY FURTHER QUESTIONS. MR. MILLER MIGHT.

CROSS-EXAMINATION

BY MR. MILLER

Q AGENT DOWLING, GOOD AFTERNOON. MY NAME IS DAVID MILLER. I REPRESENT HONORIO GUERRERO. WE'VE BEEN TALKING ABOUT THIS REPORT. IT'S GOT YOUR SIGNATURE ON THE FIRST PAGE. WELL, IT SAYS MICHELLE WILLIAMS. OBVIOUSLY, THAT WAS BEFORE YOU WERE MARRIED. CORRECT?

A YES.

Q AND THIS IS YOUR REPORT OR IS THIS SOMEBODY ELSE'S REPORT THAT YOU SIGNED?

A IT'S MY REPORT.

Q OKAY. IT'S YOUR REPORT. AND UP HERE IN THE TOP RIGHT-HAND CORNER IT SAYS PAGE ONE. CORRECT?

A CORRECT.

Q AND ON THE NEXT PAGE IT SAYS PAGE 2 BUT THERE'S NOT A WHOLE LOT OF INFORMATION ON IT. CORRECT?

A CORRECT.

Q AND HERE IT SAYS PAGE 3. CORRECT?

A CORRECT.

Q AND THERE IS NO PAGE 4. THERE IS A SUBSEQUENT PAGE, BUT IT'S NOT NUMBERED AS PAGE 4. CORRECT?

A THERE IS A PAGE 4 BUT YOU DON'T HAVE IT.

Q OKAY. THE PAGE 4 IS MISSING. DO YOU HAVE THE COPY OF PAGE 4?

A I'M SURE THE PROSECUTOR DOES. I MEAN IT WASN'T LEFT OUT INTENTIONALLY.

Q RIGHT. WELL, I'M JUST -- THAT'S EXACTLY WHAT I WAS GETTING AT WAS NOT THAT IT WAS LEFT OUT INTENTIONALLY BUT THERE IS SOMETHING BECAUSE THIS SENTENCE ENDS ABRUPTLY.

A RIGHT.

Q AUSA CASTILLO DECLINES AND THEN THERE'S NOTHING ELSE. SO THERE IS A SUBSEQUENT PAGE TO YOUR REPORT.

A YES, THERE IS, UH-HUH.

Q AND THE PROSECUTION SHOULD HAVE THAT PAGE?

A YES.

Q IF THEY DON'T HAVE THAT PAGE COULD YOU GET THAT FOR US?

A I SURE CAN.

Q WOULD YOU UTILIZE THE -- I'M SORRY. I'M NOT FAMILIAR WITH YOUR TERMINOLOGY. THE COMPUTER SYSTEM THAT THE OTHER AGENT WAS TALKING

ABOUT TO GET THAT REPORT?

A YES.

Q OKAY. SO HE COULD GET THE REPORT, HIS REPORT FROM THE SAME TYPE SYSTEM?

A RIGHT.

Q THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

A THANKS.

THE COURT: ANYTHING FURTHER OF THIS WITNESS?

MR. MAYE: YES, SIR.

REDIRECT EXAMINATION

BY MR. MAYE

Q YOU PREVIOUSLY TESTIFIED THAT YOU DIRECTED THE AGENTS AT THE STORE TO GO AHEAD AND OPEN UP THE FURNITURE, THE FURNITURE AT THE STORE. YOU'VE ALSO DIRECTED THE AGENTS TO OPEN UP THE FURNITURE AT THE SHERIFF'S DEPARTMENT, THE OTHER ITEMS THAT WERE BROKEN OPEN, DIDN'T YOU?

A YES.

Q OKAY. WERE THOSE ITEMS WHEN THEY WERE BROKEN OPEN BOTH AT THE STORE AND AT THE SHERIFF'S DEPARTMENT LATER, WERE THEY ALL SEALED UP JUST AS THEY WERE BACK AT LAREDO, TEXAS?

A YES.

Q SO THE FIRST TIME THAT THEY WERE CRACKED OPEN OR BROKEN OPEN WAS HERE IN SOUTH CAROLINA AT YOUR DIRECTION. IS THAT CORRECT?

A THAT'S CORRECT.

MR. MAYE: I'VE GOT A COPY OF THE REPORT RIGHT HERE. WE MADE

COPIES LAST TIME. I MADE THE COPIES MYSELF AND I COULD'VE MISSED ONE. SO-

–

MR. HAWKE: I'VE NEVER MISSED ONE.

THE COURT: ANYTHING ELSE OF THIS WITNESS?

MR. PUETZ: JUDGE--

RECROSS EXAMINATION

BY MR. PUETZ

Q AGENT DOWLING, CORRECT ME IF I'M WRONG. AT THAT AIRPORT IN TRENT – IN SALUDA ON THE NIGHT OF MAY 17TH, YOU TURNED THIS CASE OVER TO SPECIAL AGENT DEAN TUCKER WITH CUSTOMS. IS THAT CORRECT?

A THAT'S CORRECT.

Q AND IT WAS HE THAT WAS MAKING THE DECISION AS TO GO AHEAD AND SEIZE THAT PARTICULAR CHIMNEY IN THE STORE 'CAUSE HE WAS THERE FIRST. WASN'T HE? THE NEXT DAY.

A YOU'RE ASKING ME IF HE MADE THE DECISION TO SEIZE THE CHIMNEY?

Q YES.

A YES.

Q AND HE MADE THE DECISION TO OPEN UP THE REST OF THE ITEMS THAT WERE IN THE TRAILER OF THE TRACTOR ON MAY 18TH HERE AT THE EDGEFIELD COUNTY SHERIFF'S DEPARTMENT. IS THAT NOT CORRECT?

A NO. IT WAS CUSTOMS AGENTS IN GENERAL. IT WASN'T DEAN TUCKER PER SE. WE HAVE THE EXTENDED BORDER SEARCH AUTHORITY AND THAT'S WHAT WE DID. WE GAVE HIM THE OKAY.

Q IT WAS HIS CASE AND HE WAS THE PERSON WHO WAS MAKING THE DECISIONS ON MAY 18TH. IS THAT NOT CORRECT?

A HE WAS ONE OF THE ONES MAKING THE DECISIONS.

Q YOU HAD -- IT WAS NOT YOUR CASE AT THAT POINT IN TIME ON MAY 18TH. WAS IT?

A TECHNICALLY, WE TRANSFERRED OVER TO THOSE AGENTS, BUT WE'RE THERE TO ASSIST AND WE'RE THERE TO HELP AND WE CAN INSTRUCT JUST AS WELL AS DEAN CAN TO OPEN UP THE CHIMNEYS.

Q BUT IT WAS TUCKER THAT MADE THE DECISION AND GAVE THE ORDER TO OPEN THE CHIMNEY THAT WAS AT THE TIENDA DELEON. IS THAT NOT CORRECT?

A NO, IT'S NOT CORRECT.

Q HE TOOK POSSESSION OF IT AND ASKED YOU TO SIGN THE PROPERTY RECEIPT, DIDN'T HE?

A YES.

Q THANK YOU.

THE COURT: ANYTHING FURTHER OF THE WITNESS?

MR. MAYE: I'VE JUST GOT ONE.

REDIRECT EXAMINATION

BY MR. MAYE

Q ARE YOU A FEDERAL CUSTOMS AGENT?

A YES, I AM.

Q OKAY. CAN ANY LOCAL LAW ENFORCEMENT AGENCY ACT OR OPEN OR CARRY OUT CUSTOMS AUTHORITY BASED ON YOUR ORDERS?

A YES.

Q OKAY. AND YOU PREVIOUSLY TESTIFIED THAT YOU GAVE THE ORDER BOTH AT THE STORE AND FOR THE ITEMS AT THE SHERIFF'S DEPARTMENT THAT THOSE BE OPENED.

A YES.

MR. SUSSMAN: OBJECTION, YOUR HONOR. LEADING.

THE COURT: SUSTAINED. ANYTHING ELSE?

MR. HAWKE: NO, YOUR HONOR.

THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.

A THANK YOU.

MR. HAWKE: YOUR HONOR, MAY I MAKE A QUICK PHONE CALL TO MAKE ARRANGEMENTS TO HAVE MY SON TRANSPORTED TO HIS -- REAL QUICK? MARTY'S HERE. I DON'T THINK WE NEED TO STOP. IT'LL TAKE ME ONE MINUTE.

THE COURT: SURE. I JUST -- HOW MANY MORE WITNESSES DO WE HAVE?

MR. MAYE: YOUR HONOR, FOR THE PURPOSES OF SUPPRESSION, IT WAS MY INTENT TO TAKE IT ON FORWARD, ALL THE WAY FORWARD TO THE DRUGS AND THROUGH THE AGENT TESTING. I'VE GOT AGENT MIZE; I'VE GOT ROGER LOWE, SHERIFF DOBEY, ROOSEVELT YOUNG. I'VE GOT JUST A FEW MORE WITNESSES AND CHRIS WASH TESTED THE DRUGS. SO I HAVE A FEW MORE WITNESSES TO GO THROUGH ACTUALLY TOWARD PUTTIN' THE EVIDENCE IN.

THE COURT: SO HOW MANY?

MR. MAYE: 4 BASICALLY.

THE COURT: IT SEEMS TO ME THAT YOU ALL ARE TRYING TO TRY THIS CASE. NOW MAYBE WE'RE GETTING INTO WITNESSES THAT Y'ALL HAVE HEARD BEFORE INSTEAD OF WITNESSES YOU HAVEN'T HEARD, SO MAYBE THIS NEXT PART'LL GO QUICKER. BUT THE PURPOSE OF THIS SUPPRESSION HEARING IS NOT A FISHING EXPEDITION. IT'S NOT AN OPPORTUNITY TO TRY THE CASE. IT'S AN OPPORTUNITY TO FIND OUT IF THE EVIDENCE IS TO BE SUPPRESSED. AND WE'RE GONNA HAVE TO STAY HERE TONIGHT UNTIL WE FINISH THIS.

MR. MAYE: SURE, YOUR HONOR.

THE COURT: I GOT DRUG COURT AT 6:30 WHICH WON'T TAKE LONG, BUT I HAVE TO DO IT. AND THIS IS GETTING KINDA RIDICULOUS TO BE HONEST WITH YOU TO BE HONEST WITH YOU. THIS IS JUST GOIN' WAY BEYOND THE SCOPE OF WHAT I THINK A SUPPRESSION MOTION OUGHTA BE INVOLVED WITH.

MR. MAYE: I AGREE, YOUR HONOR. WE JUST DON'T WANT -- FROM MY PERSPECTIVE---

THE COURT: YOU CAN'T -- YOU GOTTA CALL ALL YOUR WITNESSES. I JUST WANT TO KNOW HOW THERE ARE. AND I TOLD THE JURY TO BE HERE AT 9:30, AND I'M NOT GONNA START IN THE MORNIN' AT 8 O'CLOCK. SO WE GONNA FINISH THIS PART TONIGHT. I'M JUST SAYIN' LET'S STICK TO THE FOCUS THAT WE'RE ON---

MR. MAYE: YES, YOUR HONOR.

THE COURT: OR SHOULD BE ON. I'M NOT SAYIN' THE STATE OR – IF I WAS IN THE DEFENSE'S SHOES, I'D BE DOIN' THE SAME THING, BUT THESE WITNESSES, I GUESS, THAT'S BEEN HERE BEFORE, I'M HOPIN' IT'LL SHORTEN IT A LITTLE BIT.

MR. MAYE: I HOPE SO, YOUR HONOR.

THE COURT: ALL RIGHT. WE'RE AT EASE FOR A COUPLE OF MINUTES. (THERE WAS A BRIEF RECESS.) YOU READY, MR. MAYE?

MR. MAYE: YES, SIR.

THE COURT: ALL RIGHT.

BRIAN PATRICK MIZE, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q AGENT MIZE, STATE YOUR NAME FOR THE RECORD.

A BRIAN PATRICK MIZE.

Q AGENT MIZE, AS TO THIS CASE, WHEN WAS YOUR FIRST INVOLVEMENT WITH IT?

A I WAS CONTACTED THE DAY OF THE SEIZURE JUST TO BE TOLD TO BE PREPARED FOR A CONTROLLED DELIVERY. MY ACTUAL PHYSICAL INVOLVEMENT WAS ABOUT 2 DAYS LATER.

Q OKAY. WHEN DID YOU ACTUALLY GO OUT THERE AND START PARTICIPATING IN THE ATTEMPTED CONTROLLED DELIVERY?

A ON MAY 16TH.

Q OKAY. LET ME ASK YOU THIS: WHEN YOU ARRIVED AT THE SCENE, WHAT DID YOU SEE THERE?

A TRACTOR-TRAILER LADEN WITH FURNITURE.

Q WAS THE FURNITURE INTACT WHEN YOU SAW IT?

A IT WAS INTACT IN THE TRAILER.

Q OKAY. DID YOU GET A GOOD LOOK AT THE FURNITURE INSIDE THE TRAILER?

A I DID.

Q OKAY. WAS THE TRAILER SUBSEQUENTLY SEALED UP?

A YES, IT WAS.

Q WAS THAT DONE SO IN YOUR PRESENCE?

A YES, SIR, IT WAS.

Q OKAY. LET ME ASK YOU THIS? DID YOU SUBSEQUENTLY EXECUTE A CONTROLLED DELIVERY INVOLVING CERTAIN ITEMS OUT OF THIS TRACTOR-TRAILER TRUCK?

A YES, WE DID.

Q WHERE DID THAT ULTIMATELY TAKE PLACE AT?

A THE TIENDA DELEON HERE IN EDGEFIELD COUNTY, SOUTH CAROLINA.

Q SOUTH CAROLINA. WAS THE TRAILER STILL SEALED UP AS IT HAD BEEN IN YOUR PRESENCE IN LAREDO, TEXAS?

A YES, SIR, IT WAS.

Q OKAY. HOW COULD YOU TELL IT WAS STILL SEALED UP AND HADN'T BEEN TAMPERED WITH?

A I BROKE THE SEAL, SIR.

Q YOU BROKE THE SEAL AT THAT TIME.

A I DID.

Q AND WAS SEALED IN YOUR PRESENCE IN TEXAS—

MR. PUETZ: LEADING.

THE COURT: SUSTAINED.

Q WHAT WAS THE CONDITION OF THE SEAL WHEN YOU WERE IN TEXAS?

A IT WAS PLACED ON INTACT.

Q WHERE DID Y'ALL GO WHEN YOU LEFT LAREDO, TEXAS?

A TO SOUTH CAROLINA.

Q WHERE'S THE FIRST PLACE YOU STOPPED?

A SLIGHDEL, LOUISANA.

Q THEN WHERE DID YOU GO?

A ON TO SALUDA COUNTY AIRPORT.

Q TO THE SALUDA COUNTY AIRPORT?

A IN SOUTH CAROLINA.

Q WHERE WAS THE NEXT STOP YOU WENT?

A TO TIENDA DELEON.

Q TIENDA DELEON?

A YES, SIR.

Q WHAT WERE THE CIRCUMSTANCES OF YOU EXECUTIN' A DELIVERY THERE?

A I WAS IN AN UNDERCOVER CAPACITY. I ASSISTED WITH THE DELIVERY OF SOME OF THE ITEMS TO THAT STORE.

Q OKAY. WERE CERTAIN ITEMS OFFLOADED THERE AT TIENDA DELEON HERE IN SOUTH CAROLINA?

A 13 PIECES OF FURNITURE INCLUDING ONE OF THE WOOD FIREPLACES.

Q INCLUDING ONE OF THE WOOD FIREPLACES. OKAY. WAS -- WHAT WAS THE CONDITION OF THE FURNITURE AND THE ITEMS AT TIENDA DELEON VERSUS BACK AT THE BORDER WHEN YOU SAW THE TRAILER SEALED?

A THERE WAS NO DIFFERENCE.

Q NO DIFFERENCE. DID THEY APPEAR TO BE TAMPERED WITH IN ANY WAY?

A NO, SIR.

Q OKAY. WAS THERE A BILL OF LADING OR WAS THERE PAPERWORK EXECUTED THERE AT THAT TIME?

A YES, SIR, THERE WAS.

Q OKAY. YOU HAVE A COPY OF THAT NOW?

A YES, SIR, I DO.

Q IS THIS A COPY -- OR IS THIS THE ORIGINAL BILL OF LADING THAT THE DEFENDANT IN THIS CASE SIGNED?

A YES, SIR, IT IS.

Q OKAY. I'M GONNA MARK THAT FOR I.D. AT THIS TIME.

THE COURT: ALL RIGHT.

MR. MAYE: PLEASE, MARK THAT FOR I.D. (STATE'S EXHIBIT #3 MARKED

FOR IDENTIFICATION.)

Q LET ME ASK YOU THIS: AFTER THE ITEMS OF FURNITURE WERE OFFLOADED AND MR. DELEON SIGNED, IS THAT THE BILL OF LADING?

A YES, SIR, HE DID.

Q WAS THAT DONE IN YOUR PRESENCE?

A YES, SIR, IT WAS.

Q DID YOU SEE ANY OF THESE ITEMS PREVIOUSLY -- I MEAN AFTER THAT, DID YOU SEE ANY OF THE ITEMS OF FURNITURE IN ANY CHANGED CONDITION? DID ANYBODY OPEN ANY OF IT IN FRONT OF YOU?

A NO, SIR.

MR. MAYE: I'M GOING TO RESERVE THE RIGHT TO RECALL HIM.

Q ANSWER ANY QUESTIONS THEY HAVE.

THE COURT: ALL RIGHT. CROSS.

CROSS-EXAMINATION

BY MR. HAWKE

Q WERE YOU THERE WHEN THE -- WHEN THE TRACTOR-TRAILER ITSELF WAS -- I KNOW Y'ALL TOOK POSSESSION OF IT, BUT AFTER IT GOT STUCK IN THE MUD? WERE YOU THERE WHEN Y'ALL BEGAN TO UNLOAD IT?

A I DON'T RECALL IF I WAS THERE RIGHT WHEN THEY STARTED OFFLOADING IT AT THE SHERIFF'S OFFICE BUT I WAS THERE---

Q OKAY.

A ---WHEN IT WAS BEING DONE.

Q ALL RIGHT. AND WHEN IT WAS INITIALLY BROUGHT HERE FROM THE BORDER, IT WAS SEALED UP. IS THAT RIGHT?

A CORRECT.

Q REMAINED SEALED WITH ALL THE ORIGINAL CONTENTS IN IT. IS THAT RIGHT?

A CORRECT.

Q AND THEN THE ONLY THING THAT HAD BEEN OFFLOADED WAS ONE CHIMNEY AT FREDY DELEON'S. RIGHT?

A OF THE CONTRABAND THERE WERE 13 PIECES OF FURNITURE THAT WERE ACTUALLY OFFLOADED AT MR. DELEON'S.

Q OKAY.

A BUT ONE WAS THE CHIMNEY. ONLY ONE CHIMNEY.

Q OKAY. ALL RIGHT. AND THEN – AND THEN WHEN YOU WENT TO SEE THE TRACTOR-TRAILER UNLOADED, ISN'T IT TRUE THAT 12 OTHER CHIMNEYS WERE LEFT ON THE TRAILER?

A I THINK THERE WERE A TOTAL OF -- DID YOU SAY 22? I DIDN'T HEAR WHAT YOU SAID.

Q I'M SORRY?

A I THINK THERE WERE 22 CHIMNEYS.

Q OKAY.

A I BELIEVE.

Q DO YOU – DO YOU REMEMBER YOUR TESTIMONY AT THE LAST TRIAL WHEN WE ASKED YOU HOW MANY CHIMNEYS WERE ON THE SEMI? YOU REMEMBER YOUR ANSWER THEN?

A I PROBABLY MISSPOKE. I THINK I GOT CONFUSED WITH THE ACTUAL 13 PIECES OF FURNITURE THAT WERE -- THAT WERE OFFLOADED.

Q WHAT I – WHERE – WHERE WERE 13 PIECES OFFLOADED?

A I THINK THERE WERE A COUPLE OF CHAIRS, MAYBE A TABLE – I DON'T

KNOW HOW TO DESCRIBE IT EXACTLY. A -- NOT AN ARMOIRE, BUT SOMETHING ALONG THOSE SORTS.

Q OKAY. BUT DO YOU REMEMBER TELLING US AT THAT TIME WHEN WE ASKED YOU HOW MANY OF THESE CHIMNEYS WERE INSIDE THE SEMI, AND YOU INDICATED THAT AT THAT TIME THAT AT THAT POINT, I BELIEVE, 12. IS THAT RIGHT?

A I MAY HAVE. ONCE AGAIN, I'M GONNA TELL YOU THAT I PROBABLY MISSPOKE AND GOT CONFUSED WITH THIS -- WITH THIS 13 NUMBER.

Q NOW I THINK -- WERE THERE ANY OTHER DELIVERIES TO YOUR KNOWLEDGE AND ANY -- TO ANY OTHER LOCATIONS OTHER THAN THE DELIVERY TO MR. DELEON?

A WE ATTEMPTED TO MAKE CONTACT WITH SOME OTHER INDIVIDUALS AT THE GAS STATION.

Q OKAY.

A BILLY'S.

Q ALL RIGHT. AND WHAT -- WHAT DO YOU MEAN BY THAT?

A MR. DELEON DIRECTED US TO BILLY'S WHERE WE WERE SUPPOSED TO MEET OTHER INDIVIDUALS TO -- TO OFFLOAD MORE PIECES OF FURNITURE.

Q OKAY. WAS THERE EVER ANY ATTEMPT TO OFFLOAD ANY PIECES OF FURNITURE IN ANY OTHER LOCATION?

A NO, SIR.

Q OKAY. DO YOU KNOW IF ANYTHING WAS OFFLOADED AT BILLY'S? OR ANY OTHER--

A NO, SIR, THERE WAS NOT.

Q ANY LOCATION BETWEEN DELEON'S STORE AND THE PLACE WHERE IT GOT

STUCK IN THE MUD?

A NO, SIR.

Q OKAY. I DON'T HAVE ANY MORE.

THE COURT: CROSS.

MR. SUSSMAN: YES, THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MR. SUSSMAN

Q AGENT MIZE, YOU WERE THERE IN LAREDO WHEN THE SEMI TOOK OFF FOR SOUTH CAROLINA?

A CORRECT, SIR.

Q WERE YOU THERE WHEN IT WAS OFFLOADED?

A NO, SIR.

Q WERE YOU THERE WHEN THE STUFF WAS LOADED BACK ON?

A NO, SIR.

Q DID YOU SEE SOME SORT OF ACCOUNT OR INVENTORY OF WHAT WAS ACTUALLY IN THE TRAILER?

A THEY MIGHT'VE SHOWN ME HOW MANY NUMBER OF PIECES OF FURNITURE, BUT I DON'T RECALL IT OFFHAND.

Q SO WHEN YOU LEFT LAREDO, TEXAS YOU HAD NO IDEA HOW MANY PIECES OF FURNITURE WERE IN THE TRAILER?

A I BELIEVE I WAS TOLD THAT THERE WERE A CERTAIN NUMBER OF CHIMNEYS, BUT AS FAR AS TOTAL NUMBER OF PIECES OF FURNITURE, I HAVE NO IDEA.

Q OKAY. SO THERE WERE PIECES OF FURNITURE IN THE TRAILER THAT WERE IN ADDITION TO THE CHIMNEYS?

A CORRECT.

Q AND BUT YOU DON'T KNOW HOW MANY PIECES OF FURNITURE WERE IN THERE?

A NO, I DON'T.

Q DID YOU -- DID YOU HAVE A DESCRIPTION OF WHAT TYPES OF FURNITURE WERE IN THERE?

A WHEN WE OPENED UP THE REAR OF THE TRAILER, I COULD SEE SOME CHAIRS AND ASSORTED PIECES OF WOODEN FURNITURE AND THEN THE CHIMNEYS.

Q WHEN YOU OPENED UP THE TRAILER WHERE?

A THE TRAILER WAS OPENED WHEN I ARRIVED, WHEN I GOT TO THE BRIDGE THAT DAY BEFORE WE LEFT. WE LOOKED IN THE BACK. IT WAS SEALED UP IN MY PRESENCE, AND THEN IT WAS NOT OPENED AGAIN UNTIL I OPENED IT WHEN WE GOT TO---

Q SO YOU SAW THE TRAILER OPEN?

A THEY OPENED THE TRAILER AND SHOWED IT TO US WHEN I WAS IN LAREDO. CORRECT.

Q BUT THEY NEVER UNLOADED ALL THE STUFF THAT WAS IN THE TRAILER?

A WE'RE TALKIN' ABOUT I GOT THERE ON THE 16TH. WHAT WAS DONE BETWEEN THE 14TH AND THE 16TH, I DON'T KNOW.

Q SO WHEN YOU GOT THERE ON THE 16TH THE TRAILER WAS OPEN?

A NO. IT WAS—

Q I THOUGHT YOU SAID WHEN YOU GOT THERE IT WAS OPEN AND YOU LOOKED INSIDE THE TRAILER.

A IT WAS OPENED AT THAT POINT. WHETHER OR NOT IT WAS OPEN AS SOON

AS I DROVE UP, I DON'T KNOW.

Q OKAY. SO IT WAS OPEN WHEN YOU ARRIVED AT THE -- ON THE 16TH IN LAREDO?

A I COULDN'T TELL YOU. I LOOKED IN THE BACK OF THE TRAILER. WHETHER OR NOT IT WAS OPEN WHEN I WALKED UP OR WHETHER OR NOT WE OPENED IT, I COULD NOT TELL YOU. I DON'T REMEMBER.

Q OKAY. BUT YOU DO REMEMBER LOOKING INSIDE THE TRAILER.

A I DO REMEMBER LOOKING INSIDE THE TRAILER.

Q ON THE 16TH.

A ON THE 16TH.

Q AND IT WAS LOADED WITH FURNITURE.

A CORRECT.

Q SOME OF WHICH YOU SAW SOME CHIMNEYS AND OR CHIMNEYS OR WHATEVER THEY'RE CALLED.

A YES, SIR.

Q AND THEN IT WAS SEALED IN YOUR PRESENCE.

A CORRECT, SIR.

Q ON THE 16TH.

A CORRECT, SIR.

Q AND THAT'S THE ONLY TIME IT WAS SEALED AS FAR AS YOU KNOW.

A I DON'T KNOW, SIR.

Q HUH?

A YEAH, THAT'S WHEN IT WAS SEALED IN MY PRESENCE, SIR.

Q AND HOW MANY SEALS WERE PLACED ON IT?

A JUST ONE, SIR.

Q OKAY. SO IT LEFT LAREDO WITH ONE SEAL.

A CORRECT, SIR.

Q YOU WERE IN THE TRUCK WITH THE DRIVER.

A NOT ORIGINALLY. I WAS IN A FOLLOW CAR BETWEEN HERE AND SLIGHDEL – I'M SORRY. BETWEEN LAREDO AND SLIGHDEL AND THEN ONCE SLIGHDEL, I WAS IN THE TRACTOR.

Q YOU WERE IN THE CONVOY THEN TO THE ---

A CORRECT.

Q ---SLIGHDEL. OKAY. SO YOU WERE THERE WHEN IT WAS UNLOADED AT TIENDA DELEON'S?

A YES, SIR, I WAS.

Q DID YOU HELP UNLOAD IT?

A YES, SIR, I DID.

Q AND YOU UNLOADED SOME PIECES OF FURNITURE.

A THAT'S CORRECT, SIR.

Q AND HOW MANY CHIMNEYS?

A JUST ONE CHIMNEY.

Q OKAY. AND DID YOU – DID SOMEONE DO A REPORT OF WHAT FURNITURE WAS UNLOADED AT THE STORE?

A I DON'T KNOW, SIR.

Q TUCKER WAS INVOLVED, WAS IN CHARGE OF THE INVESTIGATION AT THAT POINT?

A I BELIEVE SO, SIR.

Q HE'S A U.S. CUSTOMS AGENT OUT OF FLORENCE. IS THAT RIGHT? OR GREENVILLE. I'M SORRY. GREENVILLE.

A YES, SIR.

Q OKAY. TUCKER WAS IN CHARGE WHEN THE CHIMNEY WAS OPENED AT DELEON'S STORE?

A I DON'T KNOW IF IT HAD BEEN HANDED OVER TO THE STATE OR NOT AT THAT POINT BUT HE VERY WELL COULD'VE BEEN.

Q BUT YOU DON'T KNOW?

A NO, I DON'T KNOW.

Q BUT YOU WERE THERE.

A YES, SIR.

Q WHO GAVE THE ORDER TO OPEN THE CHIMNEY?

A I DON'T KNOW, SIR.

Q YOU DON'T KNOW?

A NO, SIR.

Q BUT YOU WERE THERE.

A I WAS IN THE AREA, YES, SIR.

Q WERE YOU INSIDE THE STORE?

A YES, SIR.

Q SO YOU WERE THERE WHEN IT WAS OPENED?

A YES, SIR.

Q WHO OPENED IT? WHO PHYSICALLY OPENED IT?

A I BELIEVE IT WAS A MEMBER OF THE SHERIFF'S DEPARTMENT, BUT I DON'T RECALL HIS NAME.

Q WAS HE OR SHE ACTING UNDER THE DIRECTION OF DEAN TUCKER?

A I DON'T KNOW, SIR.

Q BUT YOU WEREN'T AT THE FIELD WHERE THE SEMI WAS. I MEAN WHERE

THE SEMI WAS STUCK IN THE MUD, YOU WEREN'T OUT THERE, WERE YOU?

A YES, I WAS.

Q SO YOU WENT FROM THE STORE OUT TO WHERE THE SEMI WAS?

A WITH THE TRACTOR.

Q RIGHT. OKAY. AND THEN DID YOU LOOK INSIDE THE TRACTOR AT THAT POINT?

A NO, SIR.

Q I'M SORRY. INSIDE THE TRAILER.

A NO, SIR.

Q SO YOU DON'T KNOW WHAT WAS IN THE TRAILER WHEN IT GOT STUCK IN THE MUD?

A YES, SIR, I DO.

Q HOW DO YOU KNOW?

A BECAUSE THE TRAILER DOORS WERE THEN CLOSED ONCE WE LEFT THE TIENDA DELEON AND I ACCOMPANIED THE TRAILER ALL THE WAY TO THE POINT WHERE WE GOT STUCK.

Q AND THEN DID YOU LOOK INSIDE AT THAT POINT?

A NO, I DID NOT.

Q WELL, WHEN DID YOU LOOK INSIDE THE TRAILER AFTER YOU LEFT – AFTER IT GOT STUCK IN THE MUD?

A I DID NOT SEE INTO THE BACK OF THE TRAILER AGAIN UNTIL WE WERE AT THE SHERIFF'S OFFICE.

Q WELL, HAD IT BEEN OPENED PRIOR TO THAT TIME?

A NOT TO MY KNOWLEDGE.

Q AND SO WERE YOU -- DID YOU PARTICIPATE IN UNLOADING THE TRAILER

AT THE SHERIFF'S DEPARTMENT?

A I HELPED THEM, YES, SIR.

Q AND WHAT WAS -- HOW MANY CHIMNEYS WERE FOUND IN THERE?

A 21 OR 22. I CAN'T RECALL.

Q DID YOU DO A REPORT ON THAT?

A NO, I DID NOT.

Q DID SOMEONE DO A REPORT ON THAT?

A I DON'T KNOW, SIR.

Q BUT YOU DIDN'T.

A I DIDN'T.

Q WAS OTHER FURNITURE FOUND IN THERE?

A YES, SIR.

Q DID ANYBODY DO A REPORT ON WHAT FURNITURE WAS FOUND, ANY KIND OF INVENTORY DONE ON THE CONTENTS OF THE TRAILER?

A I DON'T KNOW, SIR.

Q WELL, WHO -- WHO WAS IN CHARGE OF THE INVESTIGATION WHEN THE STUFF WAS UNLOADED FROM THE TRAILER AT THE SHERIFF'S DEPARTMENT?

A I BELIEVE THE STATE WAS PROSECUTING THE INVESTIGATION AT THAT POINT.

Q AND WHEN DID THAT TAKE PLACE? WHEN WAS IT HANDED OVER TO THE STATE?

A I DON'T KNOW, SIR.

Q WHO WAS FOLLOWING THE TRAILER IN THE FIELD WHEN IT GOT STUCK IN THE MUD?

A I THINK THERE MAY HAVE BEEN A COUPLE CUSTOMS AGENTS ALONG WITH

I BELIEVE MR. PERRY WAS IN THE AREA. I THINK THERE MIGHT'VE BEEN A COUPLE OTHER MEMBERS OF LOCAL LAW ENFORCEMENT. BUT--

Q WAS THERE SOMEONE IN CHARGE

A I DON'T KNOW WHO WAS IN CHARGE OF THE TEAM FOLLOWIN' ME. THERE WAS A CONTROL SUPERVISOR AGENT FOR CUSTOMS.

Q WAS THAT WHO WAS RUNNIN' THE INVESTIGATION UP TO THAT POINT?

A I DON'T THINK SO, SIR. I THINK IT WAS MR. TUCKER AT THAT POINT.

Q TUCKER MEANING MR. TUCKER FROM THE GREENVILLE CUSTOMS AGENT?

A YES, SIR.

Q HE WAS RUNNIN' THE INVESTIGATION WHEN THE TRAILER GOT STUCK IN THE MUD?

A I BELIEVE SO, SIR.

Q THANK YOU, AGENT. THAT'S ALL I HAVE.

A THANK YOU, SIR.

THE COURT: MR. MILLER?

MR. MILLER: NOTHING, YOUR HONOR.

THE COURT: REDIRECT?

MR. MAYE: JUST ONE THING.

<u>REDIRECT EXAMINATION</u>

<u>BY MR. MAYE</u>

Q DID THE FURNITURE HAVE TO BE WRENCHED APART OBVIOUSLY TO GET THE CONTENTS OUT OF IT IN YOUR PRESENCE WHEN THEY WERE DOING THAT?

A YES, SIR, IT DID.

Q NOTHIN' ELSE.

THE COURT: RECROSS?

MR. HAWKE: NO, YOUR HONOR.

MR. SUSSMAN: NO, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.

MR. MAYE: ROGER LOWE.

ROGER LOWE, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q INVESTIGATOR LOWE, LET ME ASK YOU THIS: IDENTIFY YOURSELF FOR THE RECORD.

A ROGER LOWE.

Q MR. LOWE, LET ME ASK YOU THIS: BACK IN 2002 WERE YOU WORKING WITH THE EDGEFIELD COUNTY SHERIFF'S OFFICE?

A YES, SIR.

Q IN WHAT CAPACITY?

A I WAS CHIEF DEPUTY.

Q LET ME ASK YOU THIS: DID YOU HAVE AN OCCASION TO OPEN A CHIMNEY CONTAINING MARIJUANA AT THE TIENDA DELEON HERE IN EDGEFIELD COUNTY?

A YES, I DID.

Q AT WHOSE DIRECTION DID YOU OPEN THAT CHIMNEY?

A IT WAS AT THE DIRECTION OF THE U.S. CUSTOMS AGENT MS. DOWLING.

Q MS. DOWLING? SHE DIRECTED THAT YOU OPEN THAT? IS—

A YES, SIR.

Q —THAT CORRECT?

A THAT'S CORRECT.

Q OKAY. WHAT DID YOU FIND INSIDE OF THERE?

A WE FOUND 20 PACKAGES OF GREEN LEAFY SUBSTANCE. THEY WERE ALL VACUUM PACKED TOGETHER. THERE WAS 20 PACKAGES IN THERE.

Q DID YOU PERSONALLY TAKE CUSTODY OF THOSE 20 PACKAGES OF MARIJUANA?

A YES, SIR, I DID.

Q WHAT DID YOU DO WITH THOSE ITEMS?

A THEY WERE TAKEN TO THE EDGEFIELD COUNTY LAW ENFORCEMENT CENTER WHERE I WAS IN CHARGE OF MAINTAINING THE EVIDENCE.

Q YOU WERE THE EVIDENCE CUSTODIAN AT THAT TIME?

A YES, SIR.

Q OKAY. DID YOU MAINTAIN CONTINUOUS CUSTODY AND CONTROL OF THOSE 20 BAGS OF MARIJUANA THAT YOU SEIZED OUT OF TIENDA DELEON DURING THE COURSE OF TIME THAT YOU WERE EMPLOYED WITH THE SHERIFF'S OFFICE?

A YES, SIR, THE ENTIRE TIME.

Q WHEN DID YOU LEAVE THE EDGEFIELD COUNTY SHERIFF'S OFFICE?

A JULY THE 2ND 2002.

Q OKAY. WHAT WAS NECESSARY TO BE DONE TO THE CHIMNEYS TO ACTUALLY GET THE MARIJUANA OUT OF THEM? WHAT DID YOU HAVE TO DO TO THEM?

A I HAD TO USE A CROWBAR AND PRY THE NAILS OUT. THEY WERE NAILED AND STAPLED TOGETHER, AND SOME OF THE SLATS ON THE BACK I WAS ABLE TO PRY LOOSE TO EXPOSE THE CONTENTS.

Q WAS THE FURNITURE EFFECTIVELY DESTROYED BY THAT?

A YES, SIR.

Q WAS THAT NECESSARY TO GET THE ITEMS OUT?

A YES, THEY WERE RATHER LARGE PACKAGES.

Q LET ME ASK YOU THIS: DID YOU SUBSEQUENTLY AFTER OPENING THE ITEMS IN THE STORE, YOU SUBSEQUENTLY OPENED MULTIPLE OTHER ITEMS OF FURNITURE AT THE SHERIFF'S OFFICE?

A WE UNLOADED SOME MORE OF THE CHIMNEYS OFF OF A SEMI TRUCK AND OTHER ITEMS OF SHELVING AND TABLES AND THINGS LIKE THAT.

Q DID YOU THEN OPEN UP THE OTHER CHIMNEYS?

A YES, SIR, I DID.

Q AT WHOSE DIRECTION?

A THAT AGAIN WAS THE U.S. CUSTOMS AGENT DOWLING.

Q OKAY. WHAT HAPPENED TO THE CHIMNEYS AS A RESULT OF YOU TAKING THOSE ITEMS OUT? WHAT WAS NECESSARY TO BE DONE TO 'EM?

A WE HAD TO PRETTY MUCH DESTROY THEM LIKE I SAID, PRY THE BACKS AND IN SOME CASES THE TOPS CAME OFF TOO.

Q WOULD IT HAVE BEEN POSSIBLE AT THAT POINT IN TIME FOR YOU TO REASSEMBLE THEM OR WERE THEY PRETTY MUCH DESTROYED?

A NO, THEY WERE PRETTY MUCH DESTROYED. THEY WERE OF A VERY LIGHT CONSTRUCTION.

Q OKAY. THE ITEMS, WHAT SORT OF ITEMS DID YOU REMOVE FROM THE CHIMNEYS THERE?

A WE REMOVED ANOTHER TOTAL OF ANOTHER 380 PACKAGES OF MARIJUANA AND ONE PACKAGE OF SEEDS.

Q AND ONE PACKAGE OF SEEDS OUT OF THERE. OKAY. DID YOU MAINTAIN

CONTINUOUS CUSTODY AND CONTROL OF THOSE ITEMS FROM THAT DAY UNTIL YOU LEFT THE SHERIFF'S OFFICE?

A YES, SIR.

Q AND, AGAIN, WHAT DAY DID YOU LEAVE THE SHERIFF'S OFFICE?

A THAT WOULD'VE BEEN JULY THE 2ND OF 2002.

Q WHO DID YOU TURN THE EVIDENCE OVER TO AT THAT TIME WHEN YOU LEFT THE SHERIFF'S OFFICE?

A I GAVE THE EVIDENCE ROOM KEYS TO SHERIFF ADELL DOBEY.

Q TURNED THEM OVER TO SHERIFF DOBEY AT THAT TIME?

A YES, SIR.

Q OKAY. DO YOU HAVE THE PHOTOGRAPHS DEPICTING THE CHIMNEY?

A YES, I HAVE ONE PHOTOGRAPH OF THE CHIMNEY THAT I OPENED AT THE STORE.

MR. MAYE: I'D LIKE TO MARK THIS FOR I.D. (STATE'S EXHIBIT #4 MARKED FOR IDENTIFICATION.)

Q I SHOW YOU STATE'S FOUR AND ASK IF YOU CAN IDENTIFY THAT.

A YES, SIR, THAT'S THE BACK SIDE OF THE CHIMNEY THAT I OPENED UP AND THE CONTENTS ARE STACKED ON TOP OF THE CHIMNEY. ACTUALLY IT'S THE SIDE OF THE CHIMNEY. IT WAS LAYING ON ITS SIDE AT THE TIME THIS PHOTOGRAPH WAS TAKEN.

Q DOES THAT FAIRLY AND ACCURATELY REFLECT THE STATE OF THE CHIMNEY AND THE CONTENTS OF IT THERE AT THE STORE?

A YES, SIR, IT DOES.

Q OKAY. ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

CROSS-EXAMINATION

BY MR. HAWKE

Q SIR, WERE YOU THERE WHEN THE SEMI TRAILER WAS UNLOADED?

A I'M SORRY. WHERE?

Q AT MR. DELEON'S STORE TO START WITH.

A I WAS DOWN THE STREET. I WAS IN VIEW OF WHEN THE ITEMS WERE---

Q WHAT WAS THE REFERENCE POSITION YOU WERE IN?

A I WAS AT THE CMC MANUFACTURING BUILDING.

Q OKAY. AND YOU ACTUALLY SAW THE TRUCK PULL UP AND YOU SAW THE ITEMS OFFLOADED?

A YES, SIR.

Q OKAY. AND WHO WAS IN THE BACK OF THE TRUCK DIRECTING THE ITEMS BE REMOVED?

A FROM THE DISTANCE I WAS AT I COULDN'T IDENTIFY WHO IT WAS.

Q YOU COULDN'T TELL THAT—

A NO, SIR.

Q --ONE WAY OR THE OTHER? YOU HAVE ANY IDEA AS TO WHO WAS DIRECTING WHICH ITEMS WERE LEFT, DO YOU?

A NO, SIR.

Q DO YOU HAVE ANY IDEA OR ANY INFORMATION ABOUT WHO DIRECTED THAT THE ITEMS BE MOVED INTO THE STORE?

A NO, SIR.

Q OR THAT THE ITEMS BE LEFT AT THE STORE.

A NO, SIR.

MR. MAYE: YOUR HONOR, I'M GONNA OBJECT TO THE RELEVANCY AS TO

THE CHAIN OF CUSTODY AT THIS POINT IN TIME.

MR. HAWKE: NOW I'LL MOVE ON, JUDGE. I'M THROUGH WITH THAT.

Q DO YOU HAVE ANY IDEA AS TO -- WERE YOU THERE WHEN THEY LATER ON OFFLOADED ALL THE CHIMNEYS OFF THE TRAILER?

A AGAIN, WHERE WAS THAT AT?

Q NOT AT DELEON'S, BUT WHEN Y'ALL FINALLY ARRESTED EVERYBODY AND YOU UNLOADED THE CARGO TO SEE HOW MUCH -- HOW MANY CHIMNEYS THERE WERE.

A YES, SIR.

Q HOW MANY WERE THERE?

A 23.

Q OKAY. DID YOU COUNT THEM YOURSELF?

A YES, SIR.

Q DID YOU MAKE A REPORT OF THAT?

A NOT THAT I RECALL.

Q OKAY. HAD YOU HEARD THAT THERE WERE ANY OTHER DELIVERIES IN SALUDA COUNTY?

A NO, SIR.

Q OKAY. AND TO YOUR KNOWLEDGE WERE THERE ANY OTHER DELIVERIES ANYWHERE ELSE BEFORE?

A NO, SIR.

Q I DON'T HAVE ANYTHING FURTHER.

THE COURT: ALL RIGHT. MR. SUSSMAN.

CROSS-EXAMINATION

BY MR. SUSSMAN

Q SO. MY NAME IS WILLIAM SUSSMAN. I REPRESENT MR. AROJONA AND MR. HERNANDEZ. YOU SAID THAT THE CHIMNEY AT THE STORE WAS OPENED AT THE DIRECTION OF MS. DOWLING?

A THAT'S CORRECT.

Q AND THE CHIMNEYS AT THE SHERIFF'S DEPARTMENT WERE LIKEWISE OPENED AT MS. DOWLING'S DIRECTION?

A YES, SIR.

Q SO AT THE TIME THAT THE SEMI WAS TAKEN OVER TO THE SHERIFF'S DEPARTMENT, MS. DOWLING WAS STILL IN CHARGE OF THE INVESTIGATION?

A I BELIEVE SO AT THAT POINT.

Q IT'S YOUR UNDERSTANDING IT WAS STILL A FEDERAL INVESTIGATION AT THAT POINT?

A YES, SIR.

Q AND IT'S YOUR UNDERSTANDING THAT AGENT DOWLING WAS STILL IN CHARGE OF THE INVESTIGATION AT THAT POINT THAT THE SEMI WAS UNLOADED AT THE SHERIFF'S DEPARTMENT?

A I WAS UNDER THAT IMPRESSION, YES, SIR.

Q AND WHAT WAS OUR POSITION AT THE TIME?

A I WAS CHIEF DEPUTY AND EVIDENCE CUSTODIAN.

Q CHIEF DEPUTY OF THE SHERIFF'S DEPARTMENT?

A YES, SIR.

Q WOULD THAT BE SECOND IN COMMAND?

A YES, SIR.

Q AND SO YOU LEFT IN JULY OF 2002?
A CORRECT.
Q WHY DID YOU LEAVE?
A TO PURSUE ANOTHER CAREER.
Q WHAT DO YOU DO NOW?
A I'M SENIOR CODES INSPECTOR FOR CHARLESTON COUNTY, SOUTH CAROLINA.
Q HAVE YOU BEEN BACK TO THE SHERIFF'S DEPARTMENT TO DO ANYTHING INVOLVING THE CUSTODY OF THIS MARIJUANA SINCE JULY 2 OF 2002?
A NO, SIR.
Q HAVE YOU SEEN IT SINCE JULY?
A YES, SIR.
Q WHEN DID YOU SEE IT?
A AT THE PREVIOUS TRIAL THAT WE HAD HERE IN MARCH.
Q DID IT APPEAR TO BE IN THE SAME CONDITION IT WAS IN WHEN YOU LAST SAW IT?
A YES, SIR.
Q IT HADN'T BEEN TAMPERED WITH?
A NO, SIR.
Q DO YOU KNOW IF IT'S BEEN TESTED SINCE THE LAST TIME YOU SAW IT?
A I BELIEVE IT HAS BEEN TESTED SINCE MARCH.
Q SINCE MARCH OF THIS YEAR?
A THAT'S MY UNDERSTANDING.
Q WHO WAS IT THAT YOU BELIEVE TESTED IT?
A IT WOULD'VE BEEN DEPUTY CHRIS WASH OF THE SHERIFF'S OFFICE.

Q OF EDGEFIELD?

A YES, SIR.

Q THANK YOU, SIR. THAT'S ALL I HAVE.

THE COURT: MR. MILLER?

MR. MILLER: I DON'T HAVE ANYTHING AT THIS TIME, JUDGE.

MR. MAYE: STATE CALLS--

THE COURT: WAIT. Y'ALL HAVE SOMETHING ELSE?

MR. PUETZ: I JUST WANTED TO MAKE SURE I UNDERSTAND.

CROSS-EXAMINATION

BY MR. PUETZ

Q DID YOU SAY THAT YOU TOOK CUSTODY AND CONTROL OF THE 20 PACKAGES THAT CAME OUT OF THE CHIMNEY THAT WAS LOCATED AT TIENDA DELEON WHEN THEY WERE TAKEN OUT OF THAT?

A YES, SIR.

Q SO IT WASN'T ROOSEVELT YOUNG THAT TOOK CUSTODY AND CONTROL; IT WAS CHIEF INVESTIGATOR LOWE THAT TOOK CONTROL OF IT. IS THAT CORRECT?

A CHIEF DEPUTY, YEAH. EVIDENCE CUSTODIAN. CORRECT.

Q BUT CORRECT?

A YES, SIR.

Q AND YOUNG DID NOT TAKE CONTROL FROM THE STORE. CORRECT?

A NO, HE WAS PRESENT, BUT I TRANSPORTED IT TO THE EVIDENCE ROOM.

Q AND YOU'RE -- HOW LONG WERE YOU WITH THE SHERIFF'S DEPARTMENT OR *HOW LONG HAVE YOU BEEN INVOLVED IN LAW ENFORCEMENT?*

A I'VE BEEN INVOLVED IN LAW ENFORCEMENT SINCE OCTOBER OF 1976.

Q AND YOU -- I'M HANDING YOU WHAT HAS BEEN LABELED OR IDENTIFIED

AS DEFENDANT'S EXHIBIT #1. THAT IS A CHAIN OF CUSTODY THERE AT THE BOTTOM OF THAT, IS IT NOT?

A IT APPEARS TO BE WHAT THIS IS, YES, SIR.

Q AND THAT IS REFERRING TO THE MARIJUANA THAT WAS TAKEN NOT ONLY OUT OF THE CHIMNEY AT DELEON'S BUT AT THE MARIJUANA THAT WAS TAKEN OUT OF THE OTHER CHIMNEYS AT THE SHERIFF'S DEPARTMENT. IS THAT NOT CORRECT?

A I DON'T SEE WHERE IT SAYS THAT AT ALL.

Q IT INDICATES THAT IT WAS MARIJUANA, DOES IT NOT?

A RIGHT. THAT'S EXACTLY WHAT IT SAYS, SIR.

Q AND CORRECT ME IF I'M WRONG. BASED ON WHAT YOU'VE TOLD US, YOU WERE THE LOCAL -- FIRST LOCAL LAW ENFORCEMENT OFFICER THAT TOOK CUSTODY AND CONTROL OF ANY MARIJUANA THAT CAME OUT OF THAT SEMI WHETHER IT BE FROM DELEON'S OR FROM THE SEMI.

A YES, THAT'S CORRECT.

Q AND YOU'RE THE ONLY LOCAL LAW ENFORCEMENT OFFICER THAT TOOK CUSTODY AND CONTROL OF IT FROM MAY 18TH OF 2002 UP THROUGH JULY 2ND OF 2002 WHEN YOU LEFT THE SHERIFF'S DEPARTMENT. IS THAT CORRECT?

A THAT IS CORRECT.

Q AND IT WAS NEVER GIVEN TO ANYBODY ELSE, THAT IS, TO ROOSEVELT YOUNG OR ANY OTHER LAW ENFORCEMENT OFFICERS, LOCAL LAW ENFORCEMENT OFFICERS DURING THAT PERIOD OF TIME FROM MAY 18TH WHEN YOU TOOK IT AT DELEON'S STORE AT APPROXIMATELY 9 O'CLOCK A.M. YOU HAD IT IN YOUR CUSTODY AND CONTROL UP UNTIL JULY 2ND OF 2002. IS THAT CORRECT?

A YES, SIR, THAT'S CORRECT.

Q THAT'S ALL 900 AND SOME ODD POUNDS OF THAT MARIJUANA. IS THAT CORRECT?

A YES, SIR.

Q AND DO YOU HAVE A CHAIN OF CUSTODY FORM THAT YOU UTILIZED AND SIGNED IT OVER TO SOMEBODY ELSE ON JULY 2ND OF 2002 WHEN YOU LEFT THE SHERIFF'S DEPARTMENT?

A NO, SIR, I DON'T HAVE SUCH A FORM.

Q WHO DID YOU SIGN IT OVER TO OR GIVE IT TO?

A I GAVE THE KEY TO SHERIFF DOBEY.

Q THANK YOU.

THE COURT: ALL RIGHT. ANYTHING ELSE FOR THIS WITNESS?

MR. MAYE: NOTHIN' ELSE, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.

ADELL DOBEY, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q SHERIFF DOBEY, LET ME ASK YOU THIS: DURING THE COURSE OF THIS CASE DID YOU COME TO BE IN CUSTODY AND CONTROL OF ABOUT 905 POUNDS OF MARIJUANA IN THIS CASE?

A I DID.

Q WHEN?

A IT WAS JULY 2ND 2002.

Q OKAY. WHO DID YOU GET CUSTODY OF THAT FROM?

A CAPTAIN ROGER LOWE.

Q HOW WAS IT SECURED? HOW DID YOU SECURE IT ONCE YOU TOOK CUSTODY OF IT?

A IT WAS SECURED IN A VAULT INSIDE THE EVIDENCE ROOM.

Q A VAULT INSIDE THE EVIDENCE ROOM?

A THAT'S CORRECT.

Q DID ANYONE ELSE HAVE ACCESS TO THAT VAULT OTHER THAN YOU?

A NO, SIR.

Q UP UNTIL WHEN? HOW LONG DID YOU MAINTAIN CUSTODY AND CONTROL OF IT?

A UNTIL FEBRUARY THE 22ND OF THIS YEAR.

Q UNTIL FEBRUARY THE 22ND OF THIS YEAR?

A THAT'S CORRECT.

Q WHO AT THAT TIME DID YOU TURN OVER CUSTODY AND CONTROL OF THE 905 POUNDS OF MARIJUANA, AND I BELIEVE THERE WERE SOME SEEDS. IS THAT CORRECT?

A THAT'S CORRECT. IT WAS TURNED OVER TO LT. CHRIS WASH.

Q OKAY. WAS HE, IN FACT, MADE THE EVIDENCE CUSTODIAN FOR THE DEPARTMENT AT THAT TIME?

A THAT'S CORRECT.

Q DURING THE TIME THAT YOU HAD CUSTODY AND CONTROL OF THE DOPE THE 905 POUNDS OF MARIJUANA SEIZED, WERE THERE ANY CHANGES MADE OR WAS IT ALTERED OR CHANGED IN ANY WAY?

A NO, SIR.

Q DID ANYONE ELSE HAVE ACCESS TO IT DURING THAT TIME PERIOD?

A NO, SIR.

Q ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

THE COURT: CROSS?

MR. HAWKE: NO QUESTIONS.

THE COURT: MR. SUSSMAN, YOU HAVE ANY QUESTIONS?

CROSS-EXAMINATION

BY MR. SUSSMAN

Q SHERIFF DOBEY, YOU SAY YOU TOOK POSSESSION OF THE KEY TO THE EVIDENCE ROOM WHERE THE VAULT WAS LOCATED IN WHICH WAS LOCATED THE MARIJUANA.

A THAT'S CORRECT.

Q JULY SECOND 2002.

A THAT'S CORRECT.

Q AND YOU CONTINUOUSLY MAINTAINED POSSESSION OF THAT KEY UNTIL—

A FEBRUARY 22ND OF THIS YEAR.

Q AND THEN WHAT HAPPENED TO IT?

A IT WAS GIVEN TO LT. CHRIS WASH.

Q WHO?

A LT. CHRIS WASH.

Q AND HAS HE HAD CONTROL -- AS FAR AS YOU KNOW, HAS HE BEEN THE ONLY ONE WHO HAS HAD ACCESS TO THE MARIJUANA?

A THAT'S CORRECT.

Q THAT'S ALL I HAVE. THANK YOU, SIR.

THE COURT: MR. MILLER?

MR. MILLER: NOTHING, YOUR HONOR.

THE COURT: ANY REDIRECT?

MR. MAYE: NOTHING ELSE.

THE COURT: THANK YOU, SHERIFF. YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.

CHRIS WASH, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q INVESTIGATOR WASH, STATE YOUR NAME FOR THE RECORD.

A CHRIS WASH.

Q INVESTIGATOR WASH, LET ME ASK YOU THIS: DID YOU TAKE CUSTODY OF SOME 905 POUNDS OF MARIJUANA AND SEEDS THAT ARE THE SUBJECT OF THIS CASE?

A YES, SIR.

Q WHEN DID YOU TAKE CUSTODY AND CONTROL OF THOSE?

A FEBRUARY 22ND 2004.

Q WHO DID YOU RECEIVE CUSTODY AND CONTROL OF THOSE ITEMS FROM?

A SHERIFF ADELL DOBEY.

Q SHERIFF ADELL DOBEY. OKAY. LET ME ASK YOU THIS: DID YOU SUBSEQUENTLY PERFORM AN ANALYSIS ON ALL OF THOSE ITEMS THAT YOU SEIZED?

A YES, SIR.

Q WHAT FORM WAS THE MARIJUANA IN?

A BRICKS.

Q IT WAS IN BRICKS?

A YES, SIR.
Q DO YOU REMEMBER HOW MANY OF THEM THERE WERE?
A 400.
Q 400 BRICKS OF MARIJUANA?
A RIGHT.
Q ARE YOU CERTIFIED TO TEST MARIJUANA IN THIS STATE?
A YES, I AM.
Q WHO ARE YOU CERTIFIED BY?
A SOUTH CAROLINA ENFORCEMENT DIVISION.
Q WHEN DID YOU BECOME CERTIFIED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?
A JANUARY OF 2003.
Q JANUARY OF 2003?
A (NODDED YES.)
Q DID YOU RECEIVE SPECIALIZED TRAINING IN THE AREA OF MARIJUANA ANALYSIS?
A YES, I DID.
Q OKAY. WHAT TYPE OF SPECIALIZED TRAINING DID YOU RECEIVE?
A TRAINING FROM SLED AND ANALYSIS.
Q DID YOU RECEIVE A CERTIFICATION FROM THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?
A YES, I DID.
Q WHEN?
A JANUARY OF 2003.
Q SO AT THE TIME YOU TESTED THESE 400 PACKAGES WERE YOU CERTIFIED

BY SLED?

A YES, I WAS.

Q DID YOU GENERATE A WRITTEN REPORT OF YOUR TESTING?

A YES, SIR.

Q DO YOU HAVE IT WITH YOU?

A NO, I HAVE IT—

Q PLEASE, RETRIEVE IT.

A YES, SIR.

Q INVESTIGATOR WASH, WHAT KIND OF TEST DID YOU PERFORM ON THE ITEMS?

A I PERFORMED A MICROSCOPIC TEST AND A CHEMICAL TEST.

Q DID YOU PERFORM A MICROSCOPIC TEST AND A CHEMICAL TEST ON ALL OF THE MARIJUANA IN THIS CASE?

A YES, SIR.

Q EACH PACKAGE?

A EACH PACKAGE.

Q DID YOU PLACE SOME SORT OF NUMBER ON THEM TO KEEP UP WITH THE PACKAGES?

A YES, SIR.

Q OKAY. AND YOU GENERATED A CORRESPONDING REPORT THAT INDICATES THE NUMBER AND THE ITEM?

A YES, SIR.

Q TO KEEP AN INVENTORY OF IT?

A CORRECT.

Q DO YOU HAVE THE RESULTS OF THAT TEST WITH YOU NOW?

A YES, SIR.

Q OKAY. WHAT WERE THE RESULTS OF YOUR TEST?

A ALL THE PACKAGES---

MR. SUSSMAN: WE RESERVE THE RIGHT TO VOIR DIRE THIS EXPERT I THINK HE'S BEING OFFERED AS TO TEST THE MARIJUANA. WE RESERVE THE RIGHT UNDER COUNCIL –VS- THE STATE TO VOIR DIRE HIM ON HIS QUALIFICATIONS. WE DON'T WANT IT TO BE CONSIDERED AS BEING WAIVED. THE MAIN REASON HE'S BEING CALLED TODAY IS TO SHOW THE END CHAIN ON THE CUSTODY ISSUE. WE CERTAINLY DON'T WANT TO WAIVE OUR RIGHT TO VOIR DIRE HIM IN FRONT OF THE JURY IN REGARDS TO HIS QUALIFICATIONS BEFORE THE COURT QUALIFIES HIM AS AN EXPERT.

THE COURT: YES, SIR.

MR. SUSSMAN: THANK YOU.

THE COURT: IT'S NOTED. GO AHEAD.

Q WHAT WERE THE RESULTS OF YOUR TEST?

A ALL THE PACKAGES TESTED WERE POSITIVE FOR MARIJUANA.

Q DID YOU COME UP WITH A WEIGHT?

A 905 POUNDS.

Q OKAY. THERE WERE 400 PACKAGES?

A CORRECT.

Q WHAT WAS THE LIGHTEST OF ANY OF THOSE PACKAGES?

A I DON'T HAVE IT IN -- GENERATED IN THIS REPORT AS THE LIGHTEST.

Q OF 20 OF ANY OF THE 20 LIGHTEST DO YOU HAVE A TOTAL WEIGHT OF WHAT ANY OF THE 20 LIGHTEST WOULD'VE BEEN?

A NO, I DON'T.

Q HAVE YOU GENERATED THAT---

A YES, SIR.

Q DO YOU HAVE IT HERE?

A I DON'T HAVE IT HERE.

Q OKAY. THAT'S FINE. WE'LL TAKE CARE OF IT. HAVE YOU MAINTAINED CONTINUOUS CUSTODY AND CONTROL OF THE 905 POUNDS OF MARIJUANA IN EVERY PACKAGE THAT YOU TESTED?

A YES, I HAVE.

Q SINCE THAT TIME. UP UNTIL TODAY?

A YES, I HAVE.

Q DO YOU HAVE CUSTODY -- ARE YOU CONTINUING TO MAINTAIN CUSTODY AND CONTROL OF IT?

A YES, I AM.

MR. MAYE: YOUR HONOR, AT THIS TIME I WOULD MOVE TO ADMIT IT INTO EVIDENCE MARKED FOR I.D. I SURE DON'T WANT TO BRING 400 PACKAGES OF DOPE UP HERE. I'LL HANDLE IT HOWEVER THE COURT WISHES ME TO DO SO. WE'VE BEEN OVER AT LENGTH THE CHAIN AT THIS TIME. IT'S THE STATE'S CONTENTION AT THIS POINT IN TIME I WOULD BE MARKIN' IT FOR I.D. I WOULD RESERVE THE RIGHT TO RECALL THESE WITNESSES AND ASK IF THEY CAN IDENTIFY THIS AS BEIN' THE ITEMS THAT THEY HAD PREVIOUSLY TAKEN. BUT I DON'T WANT TO BRING ALL THAT DOPE UP HERE. I JUST BASICALLY -- I THINK WE'VE MET THE CHAIN. I'LL DO WHATEVER THE COURT ASKS OF ME FOR PURPOSES OF THE SUPPRESSION HEARING. WE'VE HAD THE DRUGS UP HERE BEFORE. I CAN HAUL 'EM ALL UP HERE AND HAVE 'EM IDENTIFIED THAT THAT'S THE ONES HE GOT FROM DOBEY; THAT'S THE ONES THAT HE TESTED IF THAT'S

NECESSARY. I JUST DON'T WANT TO TAKE UP A LOT OF TIME DOIN' ANYTHING LIKE THAT.

THE COURT: CROSS?

CROSS-EXAMINATION

BY MR. PUETZ

Q OFFICER WASH, NOW YOU SAID THAT YOU NUMBERED THESE BRICKS. IS THAT CORRECT?

A YES, SIR.

Q DID YOU USE THE SAME NUMBERS THAT THE PRIOR CHEMIST HAD USED?

A NO, SIR.

Q SO YOU -- AND THEY WERE ALREADY NUMBERED BEFORE YOU EVER GOT AHOLD OF 'EM, WEREN'T THEY?

A CORRECT.

Q AND SO YOU USED DIFFERENT NUMBERS THAN WHAT MS. GILLIAN USED. IS THAT CORRECT?

A YES, SIR.

Q AND DID YOU JUST WRITE THE SAME NUMBER THAT SHE HAD PUT ON THE BRICK OR DID YOU USE A COMPLETELY DIFFERENT NUMBER?

A IT'S A COMPLETELY DIFFERENT NUMBER.

Q AND WHAT WAS THE REASON WHY YOU DID NOT USE THE SAME NUMBERS THAT SHE HAD PUT ON ALL 400 BRICKS?

A IT MADE IT EASIER DURIN' THE TESTIN' PROCESS TO NUMBER AS I TESTED.

Q WERE THEY – WHAT WERE THEY JUST STACKED IN THIS EVIDENCE VAULT NOT IN NUMERICAL SEQUENCE WHEN YOU TOOK THEM OVER?

A CORRECT.

Q AND YOU WOULD AGREE OR YOU KNOW THAT ON JUNE 21ST OF 2002 THEY WERE IN SOMEBODY ELSE'S CUSTODY AND CONTROL, THAT IS, CANDACE GILLIAN. ISN'T THAT CORRECT? SHE'S WITH THE AIKEN COUNTY SHERIFF'S DEPARTMENT, ISN'T SHE?

A I BELIEVE SHE WAS, YES, SIR.

Q AND SHE ACTUALLY PERFORMED THE TESTS ON APPROXIMATELY 176 OF THE 400 BRICKS. ISN'T THAT CORRECT?

A. THAT'S WHAT IT SAYS IN HER REPORT, YES.

Q AND THAT REPORT WAS DATED JUNE 21ST OF 2002, WASN'T IT?

A YES, SIR.

Q AND IT INDICATES THAT IT WAS DONE AT THE AIKEN COUNTY SHERIFF'S DEPARTMENT, DOESN'T IT?

A NO, SIR.

Q DOES IT INDICATE WHERE IT WAS DONE?

A NO, SIR, I DON'T SEE WHERE IT SAYS THAT.

Q WHERE DOES IT INDICATE THAT SHE SIGNED HER REPORT? THAT WAS IN AIKEN, WASN'T IT? ON THE SECOND PAGE.

A CORRECT.

Q AND WHEN YOU DID YOUR ANALYSIS AND SIGNED THE REPORT YOU DID IT HERE IN EDGEFIELD I GUESS. IS THAT CORRECT?

A YES, SIR.

Q IF YOU HAD PERFORMED THE TEST IN AIKEN, WOULD YOU HAVE PUT THAT YOU SIGNED IT IN AIKEN?

A IF I – COULD YOU REPEAT THE QUESTION.

Q I SAID IF YOU HAD PERFORMED THE TEST IN AIKEN, WOULD YOU HAVE PUT

DOWN OR SIGNED IN AIKEN?

A WHEREVER I AM SIGNIN'. I MEAN THAT'S WHAT IT LOOKS LIKE TO ME.

Q AND YOU HAVE TO DO THE TEST WHERE YOUR EQUIPMENT IS. IS THAT CORRECT?

A SIR?

Q EQUIPMENT. YOU NEED EQUIPMENT TO DO THESE TESTS?

A YES, SIR.

Q DO YOU KNOW WHETHER OR NOT -- STRIKE THAT. WHY -- WHAT INSTRUCTIONS WERE GIVE TO YOU AS TO THE TESTING? WHO GAVE THEM TO YOU?

A THE SOLICITOR.

Q AND WHAT DID HE TELL YOU?

A TOLD ME TO TEST ALL THE MARIJUANA FROM THIS ABOVE CASE.

Q BUT CLEARLY BY THAT REPORT, THAT IS, THAT REPORT DATED JUNE 21ST OF 2002, IT APPEARS AS THOUGH THAT MARIJUANA WAS IN THE CUSTODY AND CONTROL OF CANDACE GILLIAN. DOESN'T IT?

A IT DOESN'T SAY EITHER WAY.

Q WELL, WHEN SHE WAS TESTING IT, SHE HAD TO HAVE CONTROL OF IT. ISN'T THAT CORRECT?

A SHE HAD TO HAVE SOME FORM OF CONTROL OVER IT, YES, SIR.

Q SOME WHAT?

A SOME FORM OF CONTROL OVER IT.

Q I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: MR. MILLER? OH, I'M SORRY. MR. SUSSMAN. I APOLOGIZE.

MR. SUSSMAN: THAT'S ALL RIGHT. I DON'T HAVE ANY QUESTIONS.

THE COURT: MR. MILLER?

CROSS-EXAMINATION

BY MR. MILLER

Q LT. WASH, I'M RECALLING HERE FROM THE LAST TIME THAT WE HAD ALL THIS MARIJUANA OUT, THERE WERE BANANA BOXES LOADED WITH BRICKS OF MARIJUANA.

A CORRECT

Q YOU TESTED EACH AND EVERY ONE OF 'EM INDIVIDUALLY. CORRECT?

A CORRECT.

Q PUT AN INDIVIDUAL LABEL ON EACH ONE OF THOSE BRICKS. CORRECT?

A CORRECT.

Q WHAT LABEL NUMBER WAS THE BIG TUBE FULL OF MARIJUANA SEEDS OR WHAT WERE ALLEGEDLY MARIJUANA SEEDS?

A DIDN'T HAVE A LABEL NUMBER.

Q IT DIDN'T HAVE A LABEL NUMBER. YOU DIDN'T TEST IT?

A NO.

Q OKAY. SO IT'S NOT A PART OF THIS REPORT.

A CORRECT.

Q THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

THE COURT: REDIRECT?

MR. MAYE: NOTHIN' ELSE.

THE COURT: THANK YOU. ANYTHING ELSE?

MR. HAWKE: I JUST GOT ONE. DO YOU KNOW HOW TO--

MR. MAYE: YOUR HONOR, I KNOW WE'RE IN CAMERA HERE, BUT IF 2 LAWYERS REPRESENT THIS ONE DEFENDANT. I JUST WANNA KNOW IF WE GOT 4

CROSS EXAMINATIONS OR EACH OF 'EM THEY GONNA TAKE TURNS 'CAUSE I'M GONNA OBJECT TO 4 CROSS-EXAMINATIONS IN THIS CASE. EITHER MR. SUSSMAN -- EXCUSE ME. EITHER MR. PUETZ OR MR. HAWKE'S GONNA HAVE TO REPRESENT HIM. BUT GETTIN' 4 BITES -- GETTIN' DOUBLE BITES AT THE APPLE ON THIS CASE BECAUSE THERE ARE TWO LAWYERS, I DON'T THINK THE RULE ALLOWS IT. I WANT 'EM TO SELECT WHO'S GONNA DO THE CROSS AND NOT ALL OF 'EM GET CROSS.

THE COURT: MR. HAWKE?

MR. HAWKE: I THINK HE'S CORRECT, JUDGE, AND IF WE HAVE ANY MORE QUESTIONS I'LL LET MR. PUETZ ASK IT. WE HAVE NONE, JUDGE.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

MR. MAYE: YOUR HONOR, I'VE GOT ONE BRIEF MATTER I WANT TO CALL.

ROGER LOWE, HAVING BEEN EARLIER SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION BY MR. MAYE

Q AGENT LOWE, LET ME ASK YOU ONE THING. DURIN' THE TIME THAT THE DRUGS WERE IN YOUR CUSTODY AND CONTROL, DID YOU BRING IN A CHEMIST AND ALLOW THEM TO HAVE ACCESS TO THE DRUGS?

A YES, SIR, I DID.

Q WHEN DID THAT TAKE PLACE? DO YOU REMEMBER?

A THAT WAS JUNE THE 21ST I BELIEVE IT WAS OF 2002.

Q OF 2002?

A UH-HUH.

Q AND WHERE DID THAT TAKE PLACE?

A IN THE EVIDENCE AREA AT EDGEDFIELD COUNTY LAW ENFORCEMENT CENTER.

Q DID YOU EVER LEAVE OR DID YOU EVER GIVE UP CUSTODY AND CONTROL OF THE DRUGS DURING THAT TIME?

A NO, SIR.

Q DID YOU ALLOW HER ACCESS FOR THE PURPOSE OF TESTING?

A YES, SIR, SHE CAME IN TO---

Q AND, AGAIN, WHERE WAS THAT DONE?

A AT THE EVIDENCE AREA OF THE LAW ENFORCEMENT CENTER, EDGEFIELD COUNTY

Q DID THE DRUGS EVER LEAVE THE EVIDENCE AREA?

A NO, SIR, THEY DIDN'T.

Q WHOSE EQUIPMENT DID SHE USE TO CARRY OUT THE TEST? DID SHE BRING HER EQUIPMENT?

A SHE BROUGHT HER OWN EQUIPMENT FROM AIKEN COUNTY.

Q BROUGHT HER OWN EQUIPMENT?

A YES, SIR.

Q ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

THE COURT: CROSS.

CROSS-EXAMINATION

BY MR. PUETZ

Q WELL, FIRST OF ALL, YOU SAY THIS HAPPENED ON JUNE 21ST OF 2002?

A I BELIEVE THAT WAS THE DATE, YES,SIR.

Q HOW DO YOU – DO YOU RECALL THAT; DID YOU READ THE DOCUMENT; HOW DO YOU KNOW THAT IT WAS JUNE 21ST OF 2002?

A IT WAS SHORTLY -- IT WAS ABOUT A MONTH AFTER THE SEIZURE, AFTER WE'D TAKEN IT INTO CUSTODY.

Q AND SO COULD IT HAVE BEEN JUNE 20TH OR JUNE 19TH OR JUNE 18TH OF 2002?

A NO, SIR. IT WAS EITHER THE 21ST OF 22ND. I'M NOT REALLY SURE. IT'S BEEN A COUPLE YEARS.

Q YOU'VE LOOKED OVER HER REPORT, HAVEN'T YOU, BEFORE YOU CAME IN HERE, AND THAT'S HOW YOU RECALL THE DATE?

A I THINK I MAY HAVE SAW HER REPORT.

Q AND YOU CERTAINLY KEPT NO RECORDS, DID YOU, OF WHO HAD ACCESS TO THE MARIJUANA FROM MAY 18TH OF 2002 THROUGH JULY 2ND OF 2002, DID YOU?

A DID I KEEP WRITTEN RECORDS? NO, SIR.

Q SO WHO WENT IN THE EVIDENCE ROOM FROM MAY 18TH THROUGH JULY 2ND 2002 YOU CAN'T TELL US, CAN YOU?

A YES, SIR. IT WAS MYSELF.

Q JUST YOURSELF?

A YES, SIR.

Q SO YOU'RE THE ONLY ONE THAT EVER WENT IN THERE.

A YES, SIR.

Q NOW BUT YOU HAVE NOTHING TO INDICATE THAT CANDACE GILLIAN WENT IN THERE ON WHATEVER DATE SHE WENT IN, DO YOU?

A JUST THE REPORT THAT SHE SUBMITTED.

Q RIGHT. THAT'S HER REPORT. I'M TALKIN' ABOUT YOUR RECORDS THAT YOU HAVE.

A NO, SIR.

Q DO YOU HAVE ANY RECORDS?

A NO, SIR, I DIDN'T.

Q AND DO YOU KNOW HOW MANY KEYS EXIST TO THIS EVIDENCE ROOM?

A THERE WERE 2 KEYS. THE SHERIFF HAD ONE AND I HAD ONE.

Q OKAY. SO IT REALLY WASN'T UNDER YOUR CONTROL. IT WAS UNDER YOUR CONTROL AND THE SHERIFF'S CONTROL FROM MAY 18 UP THROUGH JULY 2ND OF 2002. ISN'T THAT CORRECT?

A YES, SIR, THAT'S CORRECT.

Q AND TELL ME, YOU WEREN'T IN THERE WHILE SHE WAS DOING THESE TESTS, WERE YOU?

A YES, SIR, I WAS.

Q YOU WERE?

A YES, SIR, WE SPENT THE ENTIRE DAY.

Q YOU WERE IN THERE THE ENTIRE DAY?

A 8 HOURS.

Q DO YOU RECALL HOW MANY BAGS OR BRICKS SHE TESTED?

A SHE TOOK SAMPLES OF, I DON'T KNOW, 20 OR 30 REPRESENTATIVE SAMPLES.

Q AND HOW LONG WOULD IT TAKE HER OR DO YOU RECALL IT TAKING HER TO TEST ONE OF THESE 20 SAMPLES THAT SHE TOOK?

A JUST A FEW MINUTES. SHE WOULD TAKE THE SAMPLE AND BAG IT FOR LATER ANALYSIS. SHE WOULD JUST TAKE A LITTLE SAMPLE.

Q WAIT A MINUTE. DID SHE TEST IT IN THERE OR WAS SHE JUST RECEIVING – RETRIEVING SAMPLES?

A SHE WAS JUST RETRIEVING SAMPLES.

Q AND YOU'RE TELLING US THAT IT TOOK AN ENTIRE DAY TO RETRIEVE 20 SAMPLES OUT OF 400 BRICKS?

A WE WEIGHED THE ENTIRE – SHE WOULD WEIGH THE ENTIRE 400 BAGS SO

WE WOULD HAVE A COMPLETE TOTAL WEIGHT.

Q OKAY. SO WE TOOK AND WEIGHED 400 BRICKS AND RETRIEVED 20 SAMPLES. IS THAT CORRECT?

A I -- LIKE I SAID, IT'S BEEN A COUPLE YEARS. I COULDN'T TELL YOU HOW MANY SAMPLES IT WAS EXACTLY.

Q I UNDERSTAND. APPROXIMATELY 20 TO 30 OR WHATEVER.

A WHATEVER.

Q DID Y'ALL DO ANYTHING ELSE?

A NO. SHE WHEN SHE GOT DONE I LOCKED THE ROOM BACK UP AND SHE LEFT.

Q AND SO THE ACTUAL TESTING WAS NOT DONE HERE AT THE EDGEFIELD COUNTY SHERIFF'S DEPARTMENT THEN. IS THAT CORRECT?

A NO, SIR.

Q IT WAS DONE OVER IN AIKEN. IS THAT CORRECT?

A I ASSUME THAT'S—

Q AND YOU DID NOT HAVE CUSTODY AND CONTROL OVER THOSE 20 OR 30 SAMPLES THAT SHE TOOK OUT AND TOOK OVER TO AIKEN. IS THAT CORRECT?

A THE SAMPLES?

Q RIGHT.

A NO, SIR.

Q YOU DID NOT HAVE CONTROL OF THAT.

A NO.

Q DO YOU KNOW ABOUT HOW MUCH WEIGHT WAS INVOLVED IN THE SAMPLES THAT SHE TOOK?

A NO, SIR, I DON'T.

Q WAS IT WEIGHTED BEFORE -- THE 400 BRICKS WEIGHED BEFORE SHE TOOK THE SAMPLES?

A YES, SIR.

Q WAS IT WEIGHED AFTER THE 400 BRICKS WERE WEIGHED AFTER SHE TOOK THE SAMPLES?

A NO, SIR.

Q AND DID THE PLASTIC WRAPPING FROM EACH BRICK GIVE WEIGHT AS WELL?

A SHE OPENED ONE UP AND GOT A REPRESENTATIVE WEIGHT OF THE PLASTIC.

Q AND THEN JUST MULTIPLIED THAT BY 400. IS THAT CORRECT?

A I ASSUME THAT'S WHAT SHE DID.

Q OKAY. THANK YOU, SIR.

THE COURT: ALL RIGHT. MR. SUSSMAN?

CROSS-EXAMINATION

BY MR. SUSSMAN

Q MR. ROGERS (SIC), YOU ASSUME THAT'S WHAT SHE DID. SO YOU WEREN'T THERE WHEN SHE WEIGHED THE PLASTIC?

A NO, I SAID SHE DID WEIGH THE PLASTIC.

Q I THOUGHT YOU SAID YOU ASSUMED THAT'S WHAT SHE DID.

A NO. I ASSUMED SHE MULTIPLIED IT TIMES 400.

Q AND YOU REMEMBERING TESTIFYING JUST A LITTLE BIT AGO BEFORE YOU WERE CALLED BACK TO THE STAND, YOU JUST TESTIFIED A LITTLE BIT AGO. REMEMBER THAT?

A YES, SIR.

Q YOU REMEMBER WHEN MR. PUETZ ASKED YOU, I THINK ABOUT 2 OR 3 DIFFERENT TIMES THAT BETWEEN MAY 18TH AND JULY 2ND, NO ONE FROM LAW ENFORCEMENT HAD ANY ACCESS TO THIS MARIJUANA? YOU REMEMBER SAYING THAT'S CORRECT?

A I DIDN'T RELEASE IT TO ANYONE, NO.

Q YOU DON'T RECALL SAYING THAT NO ONE HAD ANY ACCESS TO IT?

A I REMEMBER SAYING NO ONE THAT I HADN'T RELEASED ANY BUT FOR TO—

Q AND WHEN YOU WERE ON CROSS-EXAMINATION OR ON DIRECT EXAMINATION PREVIOUSLY DID YOU RECOLLECT, DID YOU HAVE IN YOUR MIND THAT THIS MARIJUANA HAD BEEN TESTED BY SOMEONE THAT CAME OVER FROM AIKEN?

A YES, SIR.

Q YOU WEREN'T JUST RECENTLY REMINDED OF THAT?

A NO.

Q AND YOU JUST HAPPENED TO REMEMBER AFTER 2 YEARS THAT IT WAS ON JUNE 21ST OR JUNE 22ND 2002 WHEN THE TESTING TOOK PLACE?

A NO, SIR, I HAVE BEEN AWARE OF THAT EVER SINCE I CALLED AIKEN COUNTY AND REQUESTED THAT SOMEONE COME TO TEST IT.

Q AND HAVE YOU REVIEWED ANY RECORDS SINCE THEN, SINCE JUNE 21ST OR 22ND?

A NO, BEFORE THE REPORT WAS RETURNED TO EDGEFIELD COUNTY, I HAD ALREADY LEFT.

Q AND HAD YOU SEEN THAT REPORT SINCE YOU LEFT?

A I SAW A COPY OF THE REPORT EARLIER, BUT I DIDN'T STUDY IT.

Q THAT'S ALL I HAVE.

THE COURT: MR. MILLER?

MR. MILLER: NOTHIN', YOUR HONOR.

THE COURT: REDIRECT?

MR. MAYE: NOTHIN'.

THE COURT: ANYTHING ELSE OF THE WITNESS? THANK YOU, SIR. YOU MAY STEP DOWN. ANYTHING ELSE FROM THE STATE ON THE SUPPRESSION HEARING?

MR. MAYE: THAT'S IT, YOUR HONOR. THAT'S ALL WE HAVE.

THE COURT: ANYTHING FROM THE DEFENSE ON THE SUPPRESSION HEARING? ANY EVIDENCE?

MR. PUETZ: WE WOULD JUST SUBMIT THE REPORT.

THE COURT: OKAY. *MARK IT AS DEFENSE I.D. #1 PLEASE.* (*DEFENDANT'S* EXHIBIT #4 MARKED FOR IDENTIFICATION.) ALL RIGHT. I'M GONNA GO BACK HERE AND DO DRUG COURT AND THEN I'LL HEAR YOUR MOTIONS. (THE FOLLOWING OCCURRED THE NEXT DAY:) ALL RIGHT. YOU ALL HAVE MOTIONS?

MR. HAWKE: YES, YOUR HONOR. WE HAVE TWO ISSUES BEFORE THE COURT. ONE OF 'EM IS THE CHAIN OF CUSTODY. AND, JUDGE, THE MAIN FACT WHICH SUPPORTS THE CHAIN OF CUSTODY ARGUMENT IS THE FACT THAT THE ENTIRE TRAILER WAS TURNED OVER TO JOHN TUCKER. EXCUSE ME. DEAN TUCKER. AND DEAN TUCKER WAS NOT CALLED TO SHOW CHAIN OF CUSTODY WITH HIM. WE FEEL LIKE BECAUSE OF THAT THERE HAS BEEN NO ADEQUATE CHAIN OF CUSTODY. THE OTHER ISSUE, JUDGE, IS THE SEARCH AND SEIZURE, AND IN THAT REGARD WE FEEL LIKE THE EXTENDED BORDER SEARCH INVOLVED IN THIS CASE IS ONE THAT SHOULD NOT APPLY. A COUPLE OF REASONS: UNDER THE CIRCUMSTANCES OF THIS CASE, EVEN THOUGH THEY -- THEY SEALED -- THEY

CLAIM TO HAVE SEALED THE MARIJUANA IN THE -- THEY CLAIMED TO HAVE SEALED IT AT THE BORDER AND THEN BROUGHT IT HERE AND DELIVERED IT. THERE'S EVIDENCE IN THE PRELIMINARY HEARING TRANSCRIPT THAT THERE WERE OTHER DELIVERIES IN SALUDA COUNTY. THERE'S ALSO PREVIOUS SWORN TESTIMONY THAT THERE WERE 12 CHIMNEYS AND NOT 22 CHIMNEYS. I KNOW THAT THE OFFICER EXPLAINED THAT. SAID WELL HE WAS JUST MISTAKEN. BUT WE FEEL LIKE THAT HITS AN ISSUE AS TO WHETHER OR NOT THIS PACKET REMAINED SEALED.

THE OTHER THING, JUDGE, IS THAT THEY HAD PLENTY OF OPPORTUNITY, AN ADEQUATE OPPORTUNITY TO APPLY FOR A SEARCH WARRANT AND OBTAIN A SEARCH WARRANT IN THIS CASE, AND THERE WOULD'VE BEEN NO REASON WHY THEY COULDN'T, AND UNDER THESE CIRCUMSTANCES, WE FEEL LIKE THE EXTENDED BORDER SEARCH DOES NOT APPLY. WE FEEL LIKE THE -- IF THE EVIDENCE IS ALLOWED IN THIS PARTICULAR CASE, IT WOULD VIOLATE OUR CLIENT'S RIGHTS TO THE 4TH, 5TH AND 6TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND THE APPLICABLE PROVISIONS OF THE SOUTH CAROLINA CONSTITUTION THAT ARE COMPARABLE THERETO. AND FOR THOSE REASONS WE WOULD ASK THE COURT TO GRANT A MOTION TO DISMISS AND MOTION TO SUPPRESS.

MR. SUSSMAN: JUDGE, ON BEHALF OF MR. ARJONA AND MR. HERNANDEZ WE WOULD JOIN IN THAT MOTION.

MR. MILLER: AS WOULD MR. GUERRERO, YOUR HONOR.

THE COURT: BASED UPON WHAT'S BEEN PRESENTED, THE COURT FINDS THAT THE MOTIONS SHOULD BE DENIED. THE COURT FINDS THAT THERE IS SUFFICIENT EVIDENCE RELATED TO THE CHAIN OF CUSTODY, AND THAT THE

EXTENDED BORDER DOCTRINE APPLIES IN THIS CASE TO ELIMINATE THE WARRANT REQUIREMENT. WE DISCUSSED THE EXTENDED BORDER DOCTRINE AT LENGTH AT THE LAST TRIAL. AND I SUPPOSE THAT MAYBE WE SHOULD INCORPORATE SOME OF THAT BY REFERENCE AT THIS POINT BECAUSE I BELIEVE A TRANSCRIPT WAS OBTAINED FROM THE LAST TRIAL, AND THAT WAS A NEW CONCEPT TO ME AT THAT POINT, BUT THERE WERE MORE WITNESSES AT THIS TRIAL THAN THERE WERE AT THE LAST TRIAL, AND IT APPEARS THAT BASICALLY THE LAW PROVIDES THAT WHEN SOMETHING CROSSES THE BORDER INTO THE UNITED STATES AND THERE'S EVIDENCE AS WAS PRESENTED HERE THAT THE ITEMS WERE SEALED AND THEN MOVED TO ANOTHER LOCATION IN THE UNITED STATES, THAT BASICALLY THE BORDER IS CONSIDERED TO MOVE WITH THOSE ITEMS. SO THE MOTION TO SUPPRESS THE MARIJUANA AND THE MOTION TO DISMISS THE CASES, THOSE ARE BOTH DENIED ON CHAIN OF CUSTODY AND SEARCH AND SEIZURE. ANYTHING ELSE FROM THE STATE?

MR. PUETZ: JUDGE, I HAD MOVED -- FILED A MOTION AS TO PLEAD AND BAR TO THE RETRIAL OF FREDY DELEON IN LIGHT OF THE FACT THAT ON MARCH 24TH OF 2004, THIS COURT WENT AHEAD AND SWORE A JURY THAT WAS IMPANELED TO TRY THIS CASE, AND ON MARCH 25TH A MISTRIAL WAS GRANTED. ADMITTEDLY, WE MOVED FOR THE MISTRIAL, BUT JUST TO FLUSH THAT OUT A LITTLE BIT, I WENT BACK AND READ MR. MAYE'S OPENING STATEMENT. HE TOLD THE LAST JURY THAT EACH AND EVERY BUNDLE OF THE MARIJUANA THAT WAS GOING TO BE ADMITTED INTO EVIDENCE HAD BEEN TESTED WHICH WAS ABSOLUTELY UNTRUE. HE ALSO REALIZED BASED UPON MR. MILLER'S MOTION SHORTLY BEFORE ROOSEVELT YOUNG CAME AND TESTIFIED, WE OBJECTED TO THE INTRODUCTION OF THE MARIJUANA GIVEN THERE WAS NOT A CHAIN OF CUSTODY OR THAT THEY

HAD NOT ESTABLISHED A COMPLETE CHAIN OF CUSTODY.

IT'S OBVIOUS NOW THAT ON JUNE 15TH OF 2004 THAT CHRIS WASH WENT AHEAD AND DID, IN FACT, RETEST EACH -- AND DID TEST EACH AND EVERY BUNDLE. SO HE CURED THAT PROBLEM.

HE ALSO NOW HAS EACH AND EVERY WITNESS WITH THE EXCEPTION OF DEAN TUCKER HERE TO ESTABLISH HIS CHAIN OF CUSTODY. ALSO, ON PRIOR TO EACH PARTY GIVING THEIR OPENING STATEMENT, THE COURT INSTRUCTED THE STATE NOT TO MAKE ANY MENTION OF THE LEDGER AND ONE OF THE FIRST THINGS THAT ROOSEVELT TESTIFIED ABOUT ON CROSS-EXAMINATION WAS THE LEDGER.

I'VE GONE BACK AND REREAD THOSE QUESTIONS THAT WERE PUT TO HIM. THEY WERE DEALING WITH THE SEBASTIAN EXPORTACIONES. NOTHING TO DO WITH ANY CONNECTION BETWEEN THE GREEN THUNDERBIRD AND FREDY DELEON. IT'S OUR POSITION THAT, IN FACT, THE STATE WAS LOOKING FOR AN OPPORTUNITY TO END THE CASE THAT FIRST TIME SO THAT THEY COULD GO BACK AND CURE UP THE CHAIN OF CUSTODY, TEST ALL THE MARIJUANA AND BE READY TO GO THE SECOND TIME. UNFORTUNATELY, THAT VIOLATES OUR CLIENT'S 5TH AMENDMENT PRIVILEGE AS GRANTED TO HIM THAT HE SHALL NOT BE TWICE PUT IN JEOPARDY. AND FOR THOSE REASONS WE WOULD ASK THE COURT TO PROHIBIT AND TO END THIS CASE AT THIS POINT AS IT RELATES TO FREDY DELEON.

MR. SUSSMAN: WE WOULD JOIN IN THAT MOTION ON BEHALF OF ALFREDO AVILA-AROJONA AND RAPHEL HERNANDEZ.

MR. MILLER: AND AS TO MR. GUERRERO, YOUR HONOR.

THE COURT: THANK YOU. THE MOTION FOR A RETRIAL OF THE CASE AS TO EACH DEFENDANT IS DENIED. THE RECOLLECTION OF THE COURT IS THAT THE

MOTION FOR MISTRIAL WAS GRANTED ON THE DEFENSE COUNSEL'S MOTION. MR. YOUNG WAS ASKED -- I HAVEN'T READ THE TRANSCRIPT AND I HAVEN'T REVIEWED THIS MATTER AT ALL SINCE WE WERE LAST TOGETHER ON THIS CASE, BUT MY RECOLLECTION WAS THAT MR. YOUNG WAS BEING ASKED QUESTIONS ABOUT IF HE HAD ANY PROOF OR ANY OTHER PROOF -- AND I COULD BE WRONG ABOUT THAT, AND I THOUGHT WHAT HE DID WAS LOGICAL. THE WITNESSES WERE NOT BROUGHT OUT AND SPECIFICALLY INSTRUCTED BY THE COURT. I DO NOT BELIEVE DOUBLE JEOPARDY IS NOT VIOLATED BY A RETRIAL. ANYTHING ELSE?

MR. HAWKE: NO, YOUR HONOR.

MR. PUETZ: JUDGE, THE ONLY OTHER THING I AM GOING TO MOVE IN LIMINE THERE WERE A NUMBER OF QUESTIONS THAT WERE PUT TO AGENT MIZE AND I SUSPECT THAT THE STATE WILL DO IT AGAIN AS IT RELATES TO THE ACCUSED THE REACTION WHEN THEY SAW AGENT MIZE, I.E., THAT THEY WERE, QUOTE, SURPRISED. IN SUM, I THINK THAT IT IS SPECULATIVE AND THERE IS NO WAY FOR ANY OF THESE AGENTS TO READ OUR CLIENTS' MINDS AND I CERTAINLY WOULD ASK THE COURT IN LIMINE TO PROHIBIT THE STATE FROM ONCE AGAIN TRYIN' TO ESTABLISH SOME GUILTY BENT OF MIND BASED UPON THEIR REACTION TO SEEING OFFICERS.

THE COURT: ANYTHING ELSE?

MR. MAYE: YOUR HONOR, THE ONLY THING I WOULD SAY IS THEY CERTAINLY CAN'T TESTIFY TO THEIR STATE OF MIND, BUT AS TO THEIR PHYSICAL REACTION TO SEEING THAT UNDERCOVER OFFICER COME BACK (UNINTELLIGIBLE) CERTAINLY THEY CAN DESCRIBE THE PHYSICAL REACTION THAT THEY SAW AT THAT POINT IN TIME. THE JURY CAN DRAW WHATEVER CONCLUSIONS THEY WANT TO FROM THAT. THAT'S INVADING THE PROVINCE OF THE JURY. THE OFFICER

CERTAINLY WOULD BE ALLOWED TO TESTIFY AS TO THE PHYSICAL REACTION THAT HE OBSERVED AS A RESULT OF IT RE-ENCOUNTERING THESE INDIVIDUALS WEARING A BADGE AROUND HIS NECK.

THE COURT: THE WITNESS CAN TESTIFY AS TO WHAT HE SAW, HEARD. HE CAN'T INTERPRET IT BEYOND THAT.

MR. MAYE: YES, SIR. WE'LL INSTRUCT THEM TO ABIDE BY THE COURT'S RULING.

THE COURT: WE HAVE ALL THE JURORS?

MR. MILLER: YOUR HONOR, I HAVE 2 BRIEF MATTERS TO TAKE UP.

THE COURT: YES, SIR, MR. MILLER.

MR. MILLER: YOUR HONOR, ON BEHALF OF HONORIO GUERRENO BEFORE THE TRIAL IN MARCH, WE DISCUSSED THE FACT THAT THE SOLICITOR WAS NOT GOING TO BRING UP THE IMMIGRATION STATUS OF THE DEFENDANTS AS IT'S NOT RELEVANT TO THE CASE, AND CERTAINLY MR. MAYE DID INDICATE THAT HE WOULD NOT HAVE ANY INTENTION TO DO THAT AT THE TIME.

I JUST WANTED TO MAKE THAT ON THE RECORD FOR THIS TRIAL AND MAKE THAT SAME MOTION IN LIMINE THAT THE IMMIGRATION STATUS NOT BE DISCUSSED BY ANY OF THE WITNESSES. FURTHERMORE, THERE WAS DISCUSSION AND I STILL HAVE NOT RECEIVED ANY KIND OF CONFIRMATION OF THIS, OF POSSIBLE STATEMENTS MADE BY MY CLIENT TO SOME INVESTIGATORS. I DON'T KNOW WHO THOSE INVESTIGATORS ARE. WHEN WE TALKED ABOUT IT THE LAST TIME, SOLICITOR MAYE INDICATED THAT HE DIDN'T HAVE ANY INTENTION OF BRINGING ANYTHING THAT THEY SAID BECAUSE THERE IS NOTHING IN WRITING TO THE INVESTIGATORS OUT DURING HIS CASE IN CHIEF. PROVIDED THAT THE SOLICITOR IS STILL TAKING THAT POSITION WITH BOTH OF THOSE ISSUES I JUST

WANTED TO PUT IT ON THE RECORD SO AS TO PROTECT THE RIGHTS OF MY CLIENT.

MR. SUSSMAN: I WOULD JOIN IN THAT REQUEST IN REGARD TO MY TWO CLIENTS.

MR. HAWKE: WE JOIN AS WELL, YOUR HONOR.

THE COURT: THANK YOU. DO YOU INTEND TO GO INTO THE IMMIGRATION STATUS OF THESE--

MR. MAYE: NO, SIR, YOUR HONOR. I AGREED TO THAT LAST TIME. I'LL INSTRUCT MY WITNESSES NOT TO SAY ANYTHING ABOUT THEIR STATUS AS ILLEGAL ALIENS. I'VE LOOKED AT THE RESEARCH ON THAT AND OTHER THAN SOME FACTS ISSUES THAT'S THE ONLY THING THAT IT CAN COME INTO PLAY. WE DON'T INTEND TO DO THAT.

ADDITIONALLY, I BELIEVE LAST TIME IT WAS GRANTED BY THE COURT -- THERE'S BEEN REPEATED ATTEMPTS TO CROSS EXAMINE THESE FEDERAL OFFICERS ON THE FEDERAL GOVERNMENT'S VERSUS THE STATE GOVERNMENT'S DECISION ON WHETHER OR NOT TO SEEK OR DECLINE PROSECUTION IN THIS CASE. AT THE SAME TIME THAT THE FEDERAL OFFICER WAS INQUIRING THE FEDERAL AUTHORITIES ABOUT THE PROSECUTION OF THIS CASE, THE STATE OFFICERS, SPECIFICALLY, OFFICER COBY PERRY CALLED ME PERSONALLY AND ASKED ME ABOUT STATE PROSECUTION ON THIS CASE WHICH I GAVE HIM THE GREEN LIGHT ON. THEY TOLD ME A FACTUAL SCENARIO. I GAVE HIM THE GREEN LIGHT. TOLD HIM IT WAS A GOOD CASE, THAT WE WERE GONNA PROSECUTE IT.

THAT'S NO MORE ADMISSIBLE IN THIS CASE THAN ANY DECISION BY THE FEDERAL GOVERNMENT TO SEEK OR DECLINE PROSECUTION. THE ULTIMATE DECISION OF INNOCENCE OR GUILT IN THIS CASE OR WHETHER OR NOT THIS IS A GOOD OR A BAD CASE IS THAT OF THE JURY. TO SAY THAT SOME OTHER ENTITY

MADE SOME COMMENT ABOUT THE GUILT OR INNOCENCE OF THESE DEFENDANTS OR WHETHER OR NOT THIS IS A GOOD OR BAD CASE OR NOT IS NOT TO COME BEFORE THIS JURY IS THE STATE'S POSITION IN THIS CASE. NO MORE SO WOULD IT BE PERMISSIBLE FOR THE OFFICER TO TESTIFY THAT I SAID THIS WAS A WONDERFUL CASE AND THESE GUYS WERE GUILTY WHEN THEY TALKED TO ME. AND THOSE EVENTS OCCURRED SIMULTANEOUSLY. I STILL WOULD MOVE IN LIMINE THAT THERE BE NO MENTION OF THAT DURING THE TRIAL OR, SPECIFICALLY, DURING OPENING STATEMENTS. IT JUST HAS NO RELEVANCE IN THIS CASE AND IT'S SPECIFICALLY NOT PROHIBITED -- I MEAN NOT PERMITTED.

THE COURT: ALL RIGHT. LET ME GET BACK TO THE MOTION THEY MADE. WHAT ABOUT STATEMENTS? ANY STATEMENTS OF ANY OF THESE DEFENDANTS?

MR. MAYE: NO STATEMENTS. I DON'T INTEND TO USE ANY OF THEIR STATEMENTS.

THE COURT: ALL RIGHT. YOU ALL WANNA BE HEARD ON THIS FEDERAL PROSECUTION ISSUE?

MR. SUSSMAN: YES, YOUR HONOR. I DO HAVE A COMMENT ON IT. I WOULD THINK THAT UNDER BRADY -VS- MARYLAND THAT ONE PARTICULAR LAW ENFORCEMENT GROUP DECIDED THAT WAS PROBABLY THE CASE FOR WHATEVER REASON THAT MIGHT TEND TO LEAD TOWARD SOME EXCULPATORY INFERENCE THAT COULD BE MADE BY THE JURY, AND THEREFORE UNDER BRADY -VS- MARYLAND, NOT ONLY IS IT DISPOSABLE (SIC) BUT I THINK ALSO IT COULD BE SOMETHING THAT COULD BE TIED IN AND ARGUED TO THE JURY OR TRYING ELICIT FROM ANY OF THESE OFFICERS. IT WAS A FEDERAL INVESTIGATION FROM THE VERY BEGINNING UNTIL ALMOST TO THE VERY END. THERE WAS SOME REASON WHY IT BECAME A STATE INVESTIGATION. AND IF THAT'S BECAUSE THE LAW

ENFORCEMENT OFFICERS INVOLVED HAVE A PROBLEM WITH THE CASE, I WOULD THINK THAT THAT COULD BE ARGUED AND THAT WOULD BE SOMEWHAT EXCULPATORY, AND THEREFORE WE SHOULD BE ABLE TO EXPLORE IT AND ARGUE IT TO THE JURY.

THE COURT: ANYONE ELSE?

MR. MILLER: YOUR HONOR, TO LIMIT THAT ARGUMENT -- NOT TO LIMIT IT BUT TO HONE IN ON A PARTICULAR ISSUE, I WOULD JOIN IN MR. SUSSMAN'S MOTION AS TO THE FEDERAL PROSECUTION AS A WHOLE BECAUSE SPECIFICALLY I THINK THAT WE SHOULD BE ABLE TO POINT OUT THAT WHEN THE DRIVER WAS DETAINED IN MEXICO THAT THE FEDERAL AUTHORITIES ELECTED NOT TO PROSECUTE OR NOT TO PURSUE THE DRIVER IN MEXICO WHO HAS BEEN RELEASED BACK TO MEXICO THE SAME DAY.

THAT'S COMPLETELY RELEVANT IN THIS CASE BECAUSE THE FEDERAL AUTHORITIES MADE EXACTLY THE DETERMINATION THAT WE'RE CALLING ON THE JURY TO MAKE. IF THIS GUY WAS AN INNOCENT THIRD PARTY THAT DIDN'T HAVE ANYTHING TO DO WITH IT AND THEY -- HE WENT ON BACK TO MEXICO AND HE ONLY DROVE THE TRUCK OVER, AND HE DIDN'T KNOW WHAT WAS INSIDE THE TRUCK AND SO THEN HE WAS RELEASED BACK TO MEXICO, I THINK IT'S COMPLETELY RELEVANT TO OUR CLIENT'S SITUATION TO SAY OUR CLIENT ALSO DID NOT KNOW WHAT WAS GOIN' ON AND THEY'RE IN A DIFFERENT SITUATION BECAUSE THEY'RE IN THE STATE OF SOUTH CAROLINA AND THERE WAS THIS DRIVER WHO WAS IN THE STATE OF TEXAS WHENEVER THERE IS EVIDENCE IN THE INVESTIGATIVE REPORTS THAT THE ASSISTANT U.S. ATTORNEY FOR LAREDO, TEXAS WAS CONTACTED AND DECLINED TO PROSECUTE, AND THEY LET THAT INDIVIDUAL GO RIGHT BACK ACROSS THE BORDER.

THE COURT: ANYTHING ELSE?

MR. HAWKE: WE WOULD JUST JOIN INTO DEFENDANTS' ARGUMENTS THAT HAVE BEEN MADE THUS FAR.

THE COURT: YES?

MR. MAYE: YOUR HONOR, THE ONLY THING I WOULD SAY IS THAT'S A COMPLETELY DIFFERENT ISSUE AND I DON'T HAVE ANY -- I DON'T HAVE ANY POSITION ON THAT.

I THINK THEY CAN DEVELOP THAT TO THE EXTENT THAT THEY WOULD LIKE TO, BUT ANY COMMENTS BY A U.S. ATTORNEY ON DECLINING PROSECUTION IN THIS CASE, YOUR HONOR, MAY BE HEARSAY TO BEGIN WITH.

ANYBODY THAT MADE ANY STATEMENTS ABOUT DECLINING FEDERAL PROSECUTION, THOSE ARE HEARSAY ISSUES, YOUR HONOR.

IF THERE IS ANY EVIDENTIARY VALUE TO THEM, THEY WOULD BE EXCLUDED FROM THIS COURT ON THE BASIS OF HEARSAY, AND, YOUR HONOR, OUR POSITION THAT'S NO MORE ADMISSIBLE BEFORE THIS COURT THAN MY STATEMENTS BACK TO OFFICER PERRY ABOUT THIS BEIN' A GOOD CASE, TO SEEK WARRANTS, TO SEEK PROSECUTION IN THIS CASE. ULTIMATELY THE DECISION AS TO WHETHER OR NOT TO CHARGE AN INDIVIDUAL OR NOT GOES BACK TO THE ABILITY TO DRAW WARRANTS IN FRONT OF A MAGISTRATE, TO GET INDICTMENTS BEFORE A GRAND JURY AND A CHARGING DECISION BASED ON AN EXECUTIVE BRANCH, YOUR HONOR, OR THE PROSECUTION, THE STATE, IN THIS CASE, AND IT JUST HAS NO PLACE IN THIS CASE, YOUR HONOR, TO ARGUE THE MERITS OF THIS CASE BASED ON WHO CHOSE TO PROSECUTE IT. WE'VE GOT TRUE-BILLED INDICTMENTS FROM THE EDGEFIELD COUNTY GRAND JURY. OBVIOUSLY THERE WAS ENOUGH TO GET INDICTMENTS HERE FROM BRINGIN' IN THE FACT THAT -- OR

THE ATTEMPT TO BRING IN THE FACT THAT THERE WAS A DECISION MADE BY SOMEBODY THAT'S UNAVAILABLE HERE. LIKE I SAID, IT WOULD BE BASED ONLY ON HEARSAY, YOUR HONOR. THERE WOULD BE NO WAY TO BRING THAT IN BECAUSE -- WE MAINTAIN THAT POSITION, YOUR HONOR.

THE COURT: ANYTHING ELSE, GENTLEMEN?

MR. SUSSMAN: JUST REALLY AS FAR AS THE HEARSAY ARGUMENT, IT WOULD SIMPLY BE A MATTER OF THERE BEING AN EXCEPTION IN REGARDS TO SHOWING A COURSE OF CONDUCT OF THE INVESTIGATION -- OF THE INVESTIGATOR AS TO ACTUALLY TOOK UP THE INVESTIGATION. SO THEREFORE ANY COMMENT MADE BY THE U.S. ATTORNEY JUST TO SAY THAT IT WAS DECLINED WOULD BE TO SHOW A COURSE OF CONDUCT AS TO WHO TOOK OVER THE CASE.

THE COURT: WELL, WITH THE EXCEPTION THAT WAS NOT DISPUTED, THE COURT FINDS IT DOESN'T FALL UNDER BRADY. YOU'D HAVE TO HAVE THE RIGHT WITNESSES HERE EVEN IF IT DID. AND IT'S IRRELEVANT. SO THE IN LIMINE RULING OR THE PRELIMINARY RULING OF THE COURT IS THAT'S NOT ADMISSIBLE. WE HAVE ALL THE JURORS YET?

THE CLERK: YES, SIR.

THE COURT: STATE READY?

MR. MAYE: YOUR HONOR, I'D LIKE TO HAVE JUST ONE SECOND TO MAKE SURE ALL MY WITNESSES ARE HERE. I WANTED -- AM PREPARED TO ARGUE THIS MOTION NOW. I JUST WANT A BRIEF BREAK.

THE COURT: DEFENSE READY?

MR. HAWKE: YES, YOUR HONOR.

MR. MILLER: YES, YOUR HONOR.

MR. SUSSMAN: YES, YOUR HONOR.

THE COURT: EVERYBODY READY?

MR. SUSSMAN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. WE'RE AT EASE FOR A COUPLE OF MINUTES.

MR. MAYE: THANK YOU, YOUR HONOR. (THERE WAS A BRIEF RECESS.)

THE COURT: YOU NEED AN OFFICER OUT HERE?

MR. MAYE: AGENT COBY PERRY, YOUR HONOR, HE'S IN REHAB THIS MORNING. HE WAS IN AN AUTO ACCIDENT. HE'S GOING TO JOIN US AS SOON AS HE CAN.

THE COURT: ALL RIGHT. BRING THE JURY.

(THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)

LADIES AND GENTLEMEN, THE FIRST THING I MUST DO IS HAVE YOU PLACED UNDER OATH. PLEASE, STAND AND RAISE YOUR RIGHT HAND. THE CLERK WILL ADMINISTER YOUR OATH.

(THE JURY WAS SWORN AT 9:46 A.M.) LADIES AND GENTLEMEN, THE FIRST THING I'M GOING TO DO IS I'M GOING TO THROUGH AND EXPLAIN TO YOU HOW COURT USUALLY OPERATES AS FAR AS JUST LOGISTICAL MATTERS, AND THEN I'M GOING TO TELL YOU HOW I EXPECT THE CASE TO BEGIN. I WON'T GO THROUGH THE WHOLE THING, BUT I'LL TELL YOU HOW WE GET STARTED. AND THEN I'M GOING TO GIVE YOU SOME INSTRUCTIONS YOU HAVE TO FOLLOW THROUGHOUT THE TRIAL. IT'LL TAKE ABOUT 10 MINUTES. PLEASE, BEAR WITH ME AND LISTEN CAREFULLY. NORMALLY WE WILL START WITH YOU FOLKS AT 9:30 IN THE MORNING. NORMALLY WE'LL GO UNTIL ABOUT 1 O'CLOCK FOR LUNCH. YOU USUALLY HAVE AT LEAST AN HOUR, TYPICALLY, AN HOUR AND 15 MINUTES OR AN HOUR AND A HALF FOR LUNCH. THAT GIVES YOU A LITTLE BIT OF TIME TO MAKE PHONE CALLS OR MAYBE RUN ERRANDS OR SOMETHING, AND WE USUALLY

BREAK FOR THE DAY, AS I TOLD YOU YESTERDAY, AROUND 5:30. YOU NOW KNOW AS MUCH AS I KNOW ABOUT HOW YOUR DAY IS LIKELY TO GO. WE HAVE TO MAKE ADJUSTMENTS IN THAT SCHEDULE FROM TIME TO TIME, AND IF I SEE THAT WE'RE GOING TO DEVIATE FROM IT SUBSTANTIALLY, I'LL LET YOU KNOW. IF YOU HAVE SOME SORT OF MAJOR EVENT GOING ON IN YOUR LIFE, IF YOU HAVE LONGSTANDING PLANS OR COMMITMENTS, PLEASE, LET ME KNOW ABOUT THOSE THINGS. I MEAN IF IT'S YOUR 25TH WEDDING ANNIVERSARY AND YOU ALL HAVE PLANNED TO GO OUT, AND I RUN INTO A SITUATION WHERE I'M THINKING ABOUT GOING INTO A LITTLE LONGER WITH THE TESTIMONY BECAUSE OF A PROBLEM WITH A WITNESS OR SOMETHING, I'D REALLY LIKE TO KNOW YOUR SITUATION WHILE I'M MAKIN' THAT CALL. SO, YOU KNOW, DON'T SIT THERE SILENTLY. LET THE BAILIFF KNOW AND THEN THEY'LL LET ME KNOW AND WE'LL HANDLE IT FROM THERE.

NOW THE WAY THAT THE CASE IS GOING TO BEGIN IS THAT I'M FIRST GOING TO RECOGNIZE THE STATE AND THE DEFENSE, COUNSEL, FOR THEIR OPENING STATEMENTS. IN THESE OPENING STATEMENTS, THE LAWYERS CANNOT ARGUE. OPENING STATEMENTS ARE PERMITTED TO BE INTRODUCTORY, AN OUTLINE, AN OVERVIEW. THEY CANNOT AMOUNT TO WHAT WE CALL ARGUMENT. WHEN THE OPENING STATEMENTS ARE FINISHED, THEN I'LL CALL UPON THE STATE TO PRESENT ITS EVIDENCE. THE STATE BROUGHT THESE CHARGES AND THE STATE HAS THE ENTIRE BURDEN OF PROOF. THE STATE HAS TO PROVE EVERY DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

NOW MANY TIMES, FOLKS, I MAY USE THE TERM CASE IN THE SINGULAR. I MAY NOT SAY CASES. IT'S JUST HABIT, AND I'M SORRY, BUT REMEMBER THROUGHOUT THIS TRIAL THAT THERE ARE FOUR SEPARATE DEFENDANTS AND

FOUR SEPARATE AND DISTINCT CHARGES, AND YOU HAVE TO EVALUATE EACH OF THOSE CASES ON THEIR OWN MERIT OR LACK OF MERIT. THEY'RE JUST BEING TRIED TOGETHER FOR PURPOSES OF CONVENIENCE BECAUSE THEY ARE ALLEGED TO HAVE ARISEN FROM A COMMON FACTUAL SITUATION. BUT THOSE ARE ALL JUST ALLEGATIONS. AND THE DEFENDANTS ARE PRESUMED INNOCENT.

NOW ONCE THE CASE OF THE STATE IS PRESENTED AND THEY'VE COMPLETED THEIR CASE IN CHIEF, THE SOLICITOR WILL ANNOUNCE TO ME THAT THE STATE RESTS. WHEN HE DOES THAT, I HAVE TO SEND YOU BACK TO THE JURY ROOM AND I HAVE TO DISCUSS SOME LEGAL ISSUES WITH THE ATTORNEYS. THAT'S HOW WE'RE GOING TO GET STARTED WITH THE CASE.

NOW, FOLKS, IT'S REALLY IMPORTANT THAT YOU UNDERSTAND SOME THINGS. FIRST OF ALL, YOU JUST TOOK AN OATH IN WHICH YOU PROMISED US THAT YOU'RE GOING TO DECIDE THESE CASES BASED ON THE EVIDENCE AND THE LAW. SO YOU NEED TO KNOW WHERE THOSE THINGS ARE GONNA COME FROM. THE EVIDENCE COMES FROM THE SWORN TESTIMONY OF WITNESSES. EVIDENCE MAY ALSO COME IN THE FORM OF EXHIBITS.

NOW AN EXHIBIT COULD BE ANYTHING TANGIBLE THAT'S MARKED INTO THE RECORD OF THE CASE. IT CAN BE A PHOTOGRAPH, A MAP, A CHART, ANYTHING TANGIBLE. IF SOMETHING IS EVIDENCE WITH CERTAIN EXCEPTIONS, YOU WILL HAVE THOSE THINGS IN THE JURY ROOM WITH YOU WHEN YOU DECIDE THE CASE OR YOU'LL HAVE ACCESS TO THEM IF YOU NEED TO LOOK AT THEM WHEN YOU'RE DECIDING THE CASES.

NOW IT'S IMPORTANT THAT YOU UNDERSTAND THAT WHAT THE LAWYERS SAY IS NOT EVIDENCE. I WANT YOU TO PAY ATTENTION TO THE LAWYERS BECAUSE THEY FACILITATE THE INTRODUCTION OF THE EVIDENCE, BUT WHAT

THEY SAY, WHAT COMES OUTTA THEIR MOUTHS IS NOT EVIDENCE. THE EVIDENCE COMES FROM THE WITNESSES AND THE EXHIBITS. THERE'S ONE EXCEPTION TO THE RULE I JUST TOLD YOU ABOUT WHAT THE LAWYERS SAYING NOT BEING EVIDENCE. IF WE COME ACROSS IT IN THE TRIAL, I'LL TELL YOU ABOUT IT. OTHERWISE I WON'T BURDEN YOU WITH IT.

NOW, FOLKS, YOU KNOW WHERE THE EVIDENCE COMES FROM. THE OTHER PART OF THAT OATH WAS THAT YOU SWORE THAT YOU WOULD APPLY THE LAW. THE LAW COMES FROM ME. IT'S MY JOB TO DECIDE THE LAW IN THE CASE THAT APPLIES TO THE CASE AND TO TELL IT TO YOU AT THE END OF THE TRIAL. SO THAT'S WHERE IT COMES FROM. THE EVIDENCE COMES FROM THE WITNESSES AND EXHIBITS; THE LAW COMES FROM ME.

NOW WHILE YOU HAVE PROMISED US THAT YOU'RE GOING TO DECIDE THESE CASES BASED ON THE EVIDENCE AND THE LAW, AND YOU MUST DO THAT, I AM NOT TELLING YOU TO LEAVE YOUR COMMON SENSE AT HOME. WE WANT YOU TO USE YOUR COMMON SENSE. WE WANT YOU TO USE YOUR SENSE OF LOGIC AND REASON AND YOUR GOOD JUDGMENT. THAT'S WHY WE HAVE A JURY. SO JUST UNDERSTAND WE WANT YOU TO USE THAT COMMON SENSE. IT JUST MAKES GOOD COMMON SENSE THAT YOU KEEP AN OPEN MIND ABOUT THESE CASES AND THAT YOU DON'T MAKE UP YOUR MIND ABOUT THESE CASES UNTIL YOU KNOW ALL THE EVIDENCE AND YOU'VE HEARD THE LAW. SO WE INSIST ON A RULE THAT'S VERY HARD TO FOLLOW BUT YOU HAVE TO FOLLOW IT. AND THAT RULE I'VE ALREADY TOLD YOU BUT I HAVE TO REITERATE IT NOW. DO NOT DISCUSS THIS CASE IN ANY WAY AMONG YOURSELVES UNTIL I TELL YOU TO. ONCE I TELL YOU TO BEGIN YOUR DELIBERATIONS, THEN WE WILL WAIT ON YOU. DON'T TALK ABOUT THE PEOPLE INVOLVED IN THE CASE; DON'T TALK ABOUT THE TYPE OF CASE IT IS;

DON'T TALK ABOUT THE CASE IN ANY WAY AMONG YOURSELVES UNTIL I TELL YOU TO.

NOW THAT'S REALLY HARD TO FOLLOW BECAUSE YOU 13 FOLKS MAY FEEL YOU HAVE VERY LITTLE IN COMMON EXCEPT YOU ALL LIVE IN EDGEFIELD COUNTY AND YOU GOT DRAWN ON THIS CASE. SO THE LOGICAL THING THAT YOU'RE GONNA WANNA TALK ABOUT IF YOU LEAVE THIS ROOM IS WHAT JUST HAPPENED IN THIS CASE. YOU HAVE TO RESIST THAT TEMPTATION AND NOT DISCUSS THE CASE UNTIL I TELL YOU TO.

NOW, AGAIN, I HAVE TO GO OVER WHAT I MENTIONED TO YOU YESTERDAY. DON'T DISCUSS THE CASE WITH ANYONE ELSE; DON'T LET ANYBODY ELSE DISCUSS IT WITH YOU. IF ANYBODY ATTEMPTS TO CONTACT YOU AND DISCUSS THE CASE WITH YOU, REPORT THAT TO ME SO THAT I CAN DEAL WITH IT. WHEN YOU LEAVE THE COURTHOUSE, WHEN YOU'RE OUTSIDE THAT JURY ROOM BACK THERE, MAKE SURE THAT YOU DON'T DISCUSS THE CASE IN ANY WAY WITH ANYBODY UNTIL THE WEEK IS COMPLETELY OVER.

NOW IF THERE IS ANY MEDIA COVERAGE OF THE TRIAL, GET AWAY FROM IT AND THEN REPORT TO ME WHAT YOU SAW, HEARD OR READ THROUGH THE MEDIA. IT'S VERY IMPORTANT, LADIES AND GENTLEMEN, THAT YOU UNDERSTAND THAT THERE ARE 2 JUDGES IN THIS COURTROOM. I'M THE JUDGE OF THE LAW. IT'S MY JOB TO PRESIDE OVER THE CASE, RULE OVER LEGAL ISSUES -- RULE ON LEGAL ISSUES AND TO TELL YOU THE LAW AT THE END OF THE CASE. YOU'RE THE OTHER JUDGE. IT'S EXTREMELY IMPORTANT THAT YOU UNDERSTAND THAT YOU ARE THE ONLY JUDGE OF THE FACTS. ONLY YOU GET TO DECIDE, FOR EXAMPLE, IF EVIDENCE IS BELIEVABLE OR NOT. ONLY YOU GET TO DECIDE WHAT WEIGHT, IF ANY, EVIDENCE SHOULD HAVE.

NOW FROM TIME TO TIME DURING THIS TRIAL, THE LAWYERS MAY FEEL THAT THE OTHER SIDE SOMEONE IS TRYING TO PUT SOMETHING BEFORE YOU THAT'S NOT PROPER FOR THE JURY TO CONSIDER, AND IF THAT SITUATION ARISES, THESE LAWYERS HAVE TAKEN AN OATH JUST LIKE YOU AND I HAVE TAKEN AN OATH, AND THEY HAVE AN OBLIGATION TO STAND UP AND OBJECT AND ASK ME TO MAKE A RULING.

IF THAT HAPPENS, AND I EXPECT IT WILL, I MAY SEND YOU OUT OF THE COURTROOM. NO ONE KNOWS GOING INTO A TRIAL IF WE'RE GONNA HAVE -- FOLKS, SIT DOWN. SIT DOWN. --

NO ONE KNOWS GOING INTO A TRIAL IF WE'RE GONNA HAVE ONE OBJECTION OR 101 OBJECTIONS. IF WE HAVE A LOTTA OBJECTIONS, JUST CHALK IT UP TO GOOD EXERCISE --

Y'ALL PAY ATTENTION TO ME, PLEASE. DON'T LOOK BACK THERE, PLEASE. THAT'S THE WHOLE POINT OF MAKIN' PEOPLE SIT. --

IF I HAVE TO SEND YOU OUTTA THE COURTROOM A LOTTA TIMES, JUST CHALK IT UP TO GOOD EXERCISE. DON'T BE CONCERNED ABOUT WHAT WE'RE DOIN' OUT HERE. THAT'S MY JOB. IF I DO MAKE A RULING THAT ALLOWS YOU TO CONSIDER SOMETHING, IN OTHER WORDS, I OVERRULE THE OBJECTION AND ALLOW THE MATTER TO COME BEFORE YOU, PLEASE, UNDERSTAND THAT I HAVE NOT LOOKED TO SEE WHETHER THAT THING IS BELIEVABLE OR NOT. HADN'T CROSSED MY MIND BECAUSE THAT'S NOT MY JOB; IT'S YOUR JOB. I HAVEN'T THOUGHT ABOUT WHETHER IT'S ENTITLED TO ANY WEIGHT BECAUSE THAT'S NOT MY JOB. IT'S YOUR JOB. ALL I HAVE DONE IS LOOK TO SEE IS THAT THING SOMETHING THAT FITS WITHIN THE RULES FOR THE JURY TO CONSIDER, AND IF I BELIEVE IT IS, I LET IT COME BEFORE YOU, AND YOU DECIDE WHETHER TO BELIEVE

IT AND YOU DECIDE WHETHER IT'S ENTITLED TO ANY WEIGHT. IF I DO SUSTAIN AN OBJECTION AND NOT ALLOW IT TO COME BEFORE YOU, THEN IT'S NOT PROPER FOR YOU TO CONSIDER AND YOU HAVE TO PUT THAT TOTALLY OUTTA YOUR MIND WHATEVER THAT THING WAS.

NOW THE FINAL THING I WANNA TELL YOU, LADIES AND GENTLEMEN, IS I WANNA THANK YOU. YOU ALL HAVE OTHER THINGS TO DO AND OTHER PLACES TO BE AND I KNOW THAT AND I'LL NEVER FORGET IT. AND I PROMISE YOU THAT IF YOU'RE WAITING ON US, WE'RE WORKING. I DO NOT KNOW IF WE'LL HAVE TIMES WHEN YOU'LL BE BACK THERE WAITING FOR US FOR EXTENDED PERIODS OF TIME, BUT I DO KNOW THIS: IF YOU'RE EVER WAITING ON US, WE'RE WORKING. THERE WILL NEVER BE A SITUATION WHERE WE'RE SITTING AROUND DRINKING COFFEE AND TELLING JOKES WHILE YOU'RE WAITING ON US. I KNOW YOU HAVE OTHER THINGS TO DO, AND I PROMISE YOU I'LL DO EVERYTHING IN MY POWER NOT TO WASTE YOUR TIME. TO HONOR THAT COMMITMENT TO YOU, I'LL SHUT MY MOUTH NOW AND I'LL RECOGNIZE THE ATTORNEYS TO MAKE THEIR OPENING STATEMENTS. I INVITE YOUR ATTENTION.

FOLKS, IF Y'ALL NEED TO LEAVE, YOU CAN LEAVE NOW. BUT NOW I'M NOT RELEASIN' YOU. I DON'T KNOW IF YOU'RE SUPPOSED TO BE IN HERE OR NOT.

SEQUESTRATION IS ORDERED. WE CAN FLESH THAT OUT DURIN' THE BREAK.

YES, MA'AM?

A JUROR: CAN WE TAKE NOTES?

THE COURT: YES, MA'AM.

A JUROR: WE CAN?

THE COURT: BUT I HAVE TO GIVE YOU AN INSTRUCTION. LADIES AND

GENTLEMEN, IT'S FINE WITH ME IF YOU TAKE NOTES.

IF YOU WANNA TAKE NOTES, I'LL GET THE CLERK TO GET YOU A LEGAL PAD AND PEN OR PENCIL, AND IT'S ABSOLUTELY FINE WITH ME IF YOU TAKE NOTES.

JUDGES WHO DO NOT ALLOW JURORS TO TAKE NOTES, THE PRIMARY REASON THEY GIVE IS THAT THEY FEEL WHENEVER YOU GET BACK THERE AND YOU START DELIBERATING, IF ONE JUROR HAS WRITTEN DOWN A NOTE THAT THE OTHER JURORS WILL YIELD IMPROPERLY TO WHAT WAS WRITTEN DOWN ON THE PIECE OF PAPER AND GIVE AN UNDUE DEFERENCE TO THE WRITTEN RECOLLECTION VERSUS THE MENTAL RECOLLECTION.

I DON'T BUY INTO THAT. YOU FOLKS YOU KNOW WHAT YOU REMEMBER AND WHAT YOU DON'T REMEMBER OR WHAT YOU HAVE SOME QUESTION ABOUT AND IT'S FINE WITH ME IF YOU TAKE NOTES. AND I TRUST YOU ALL TO DECIDE THE FACTS OF THE CASE. IF WE DO ALLOW YOU TO TAKE NOTES, WE'RE ASKED TO HAVE 3 RULES. FIRST, WHEN YOU LEAVE THE COURTROOM DURING ANY BREAKS, YOU HAVE TO LEAVE THE NOTES IN THE COURTROOM. SO YOU HAVE TO JUST TURN THEM FACE DOWN IN YOUR CHAIR. DURING EXTENDED BREAKS, THE BAILIFFS WILL TAKE POSSESSION OF THEM AND SECURE THEM, BUT WE DO NOT READ ANYBODY'S NOTES. WE DON'T LOOK AT YOUR NOTES. THE SECOND THING IS THAT WHEN YOU DO GO BACK TO YOUR JURY ROOM TO DELIBERATE AT THE END OF THE CASES, YOU WILL HAVE YOUR NOTES WITH YOU. YOU MAY LOOK AT YOUR NOTES, BUT YOU MAY NOT PHYSICALLY SHOW THE NOTES TO ANY OTHER JUROR.

NOW YOU CAN LOOK AT THEM AND THEN YOU CAN SAY WHATEVER YOU LIKE, BUT YOU CAN'T SAY LOOK I GOT IT RIGHT HERE, SEE. YOU CAN'T DO THAT.

AND FINALLY, AT THE END OF THE TRIAL, YOUR NOTES HAVE TO BE DESTROYED. YOU HAVE TO GIVE THEM TO THE BAILIFF. AGAIN, WE DON'T READ THEM, BUT THE BAILIFF WILL TEAR THEM INTO LITTLE PIECES AND THROW THEM AWAY. THERE WILL BE NO RECORD OF WHAT NOTES YOU MADE, AND YOU CAN'T KEEP A RECORD OF WHAT NOTES YOU MADE. THEY HAVE TO BE DESTROYED AT THE END OF THE TRIAL. ANY OF YOU WANT TO TAKE NOTES, RAISE YOUR HAND, AND I'LL HAVE THE CLERK BRING YOU A LEGAL PAD. 3. IF YOU CHANGE YOUR MIND DURING THE TRIAL AND YOU DECIDE YOU WANT A LEGAL PAD, JUST LET US KNOW AND WE'LL GET THAT FOR YOU.

CAN YOU GET ME 3 PADS AND PENS, MR. DUNN. WHILE HE'S DOIN' THAT, LET ME GO AHEAD AND TAKE THIS BRIEF OPPORTUNITY TO TELL YOU, I THINK YOU ALL SAW YESTERDAY THAT WE HAVE AN INTERPRETER.

WE HAVE A DIFFERENT INTERPRETER TODAY. THEY'RE WITH THE SAME COMPANY, BUT IT'S A DIFFERENT PERSON. HE'S BEEN PLACED UNDER OATH OUTSIDE YOUR PRESENCE TO TRANSLATE VERBATIM. AND BECAUSE OF THE -- JUST THE WAY THE COURTROOM'S LAID OUT, THEY HAVE DECIDED THAT THEY'LL JUST SIT OVER THERE IN THAT OTHER JURY BOX AND HAVE THE INTERPRETER FACE AWAY SO THAT HIS VOICE DOESN'T COME IN YOUR DIRECTION AND SORTA DISTRACT YOU, BUT IT MAY BE A LITTLE DISTRACTING AT FIRST, BUT I THINK YOU'LL -- EVENTUALLY IT'LL JUST BE BACKGROUND NOISE TO YOU, BUT IF IT IS A DISTRACTION, LET ME KNOW, AND WE'LL TRY TO ATTEND TO IT AND TRY TO COME UP WITH A BETTER WAY OF DOING IT, BUT I DON'T KNOW THAT WE CAN COME UP WITH MUCH BETTER THAN WHAT THEY CAME UP WITH THEMSELVES.

ALL RIGHT. MR. MAYE, YOU'RE RECOGNIZED FOR YOUR OPENING STATEMENT.

MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR?

THE COURT: YES, SIR.

MR. MAYE: GOOD MORNING, LADIES AND GENTLEMEN. MY NAME IS ERVIN MAYE, AND IT'S MY PRIVILEGE TO BE HERE TODAY. I REPRESENT THE STATE OF SOUTH CAROLINA. I'M AN APPOINTED ASSISTANT SOLICITOR AND I WORK UNDER THE DIRECTION OF YOUR ELECTED SOLICITOR MR. DONNIE MYERS. HE'S GOT THE 11TH CIRCUIT WHICH IS LEXINGTON, MCCORMICK, EDGEFIELD AND SALUDA COUNTIES. I USUALLY TAKE CARE OF MCCORMICK, EDGEFIELD AND SALUDA COUNTIES ALONG WITH MY PARTNER HERE MR. MIZZELL SEATED AT THE STATE'S TABLE WITH ME.

LADIES AND GENTLEMEN, I'LL SUBMIT TO YOU YOU'RE GONNA HEAR A LOTTA EVIDENCE AND A LOTTA TESTIMONY, BUT IT ULTIMATELY BOILS DOWN TO A PRETTY SIMPLE CASE. I SUBMIT TO YOU THAT THE STATE OF SOUTH CAROLINA IS GONNA PROVE TO YOU BEYOND A REASONABLE DOUBT THESE FOUR INDIVIDUALS SEATED OVER HERE IN THE OTHER JURY BOX, MR. FREDY DELEON DEMAYO WHO RUNS THE TIENDA DELEON UP HERE IN TRENTON, SOUTH CAROLINA, A LITTLE MEXICAN GROCERY STORE JUST UP FROM BILLY'S SUPER STORE UP 25 THERE. THE THREE OTHER INDIVIDUALS, MR. HONORIO HERNANDEZ GUERRERO, MR. RAPHEL PEREZ HERNANDEZ AND MR. ALFREDO AVILIA-AROJONA ARE NOT FROM EDGEFIELD COUNTY. THEY'RE INVOLVED WITH TRAFFICKING OR BRINGING IN ABOUT $1.5 WORTH OF MARIJUANA INTO EDGEFIELD COUNTY. ABOUT 905 POUNDS. I SUBMIT TO YOU YOU'RE GONNA SEE THIS DRUG, THESE DRUGS, THIS MARIJUANA AND IT'S GONNA FILL THIS COURTROOM. IT'S JUST BALES AND BALES OF IT, TIGHTLY COMPRESSED MARIJUANA.

TO BEGIN THIS CASE WE'VE GOTTA GO BACK TO MAY THE 14TH 2002. A LONG

WAY FROM EDGEFIELD COUNTY.

I'M TALKIN' ABOUT LAREDO, TEXAS. AND YOU'RE GONNA HEAR FROM SEVERAL AGENTS FROM THE UNITED STATES CUSTOMS SERVICE.

THE UNITED STATES CUSTOMS SERVICE, I THINK YOU'LL HEAR HAS CHANGED NAMES. I THINK NOW WITH ITS REORGANIZATION, IT'S UNDER IMMIGRATION AND CUSTOMS ENFORCEMENT. THE BORDER PATROL, THE I.N.S. AND THE CUSTOMS HAVE NOW COMBINED, BUT BACK THEN IT WAS THE UNITED STATES CUSTOMS SERVICE.

AND THE CUSTOMS SERVICE PRIMARY MISSION IS TO OVERSEE THOSE THINGS THAT COME IN AND OUT OF THE UNITED STATE WHETHER IT'S PEOPLE OR GOODS OR MATERIALS.

AND I THINK YOU'RE GONNA HEAR FROM THE TESTIMONY OF THE WITNESSES IN HERE, THEY'RE GONNA PAINT A PRETTY VIVID PICTURE OF WHAT GOES ON DOWN THESE BORDER CHECKPOINTS. SPECIFICALLY IN LAREDO THERE'S A BRIDGE CALLED THE WORLD TRADE BRIDGE.

AND YOU'RE GONNA HEAR TESTIMONY IN THIS CASE THAT THOUSANDS OF TRACTOR-TRAILER TRUCKS, CARS, PEOPLE ON FOOT, ALL SORTS OF CONVEYANCES OF ANY KIND ARE GOIN' BACK AND FORTH ACROSS THIS BRIDGE DOWN THERE AT LAREDO BETWEEN THE UNITED STATES AND MEXICO. ONE OF THE FIRST WITNESSES, I SUBMIT TO YOU, YOU'RE GONNA HEAR FROM IS AN INSPECTOR. HIS NAME IS RICK GAONA. HE'S BEEN WORKIN' FOR THE CUSTOMS SERVICE. THE TESTIMONY YOU'RE GONNA HEAR IS THAT HE'S BEEN WORKING FOR SOME PERIOD OF TIME THERE. AND ONE OF THE THINGS THAT HE'S RESPONSIBLE FOR IS LOOKIN' FOR CONTRABAND. LOOKING FOR THINGS THAT SHOULD NOT BE COMIN' INTO THE UNITED STATES. INSPECTOR GAONA RAN THE

GIANT X-RAY MACHINE.

AND I SUBMIT TO YOU THE TESTIMONY YOU'RE GONNA HEAR -- THIS X-RAY MACHINE IS NOT LIKE THE ONE THAT WE WHEEL AROUND IN THE DENTIST'S OFFICE, PUT IT UP TO YOUR MOUTH THERE AND THAT GOES AROUND THE FLOOR WHILE THEY TAKE THE PICTURES.

BUT THIS IS AN X-RAY MACHINE THAT IS LITERALLY BIG ENOUGH FOR AN ENTIRE TRACTOR-TRAILER TRUCK TO ROLL INTO. THEY CAN LOOK IN THERE AND THEY CAN SEE INSIDE THE TRACTOR-TRAILER TRUCK.

AND YOU'RE GONNA SEE A PHOTOGRAPH I SUBMIT TO YOU IN THIS CASE IN EVIDENCE THAT SHOWS THE OUTLINE OF THIS TRACTOR-TRAILER TRUCK. YOU CAN SEE THE ENGINE BLOCK AND THE PARTS OF THE TRUCK, AND ALSO BACK IN THE BACK YOU CAN SEE THE CARGO AREA. SEE, THE CUSTOMS SERVICE, THE TESTIMONY IS GONNA SHOW IN THIS CASE LOOKS FOR CERTAIN ITEMS IN WHICH CONTRABAND CAN BE CONCEALED IN. DRUGS AND OTHER THINGS THAT ARE NOT SUPPOSED TO COME INTO THE COUNTRY.

AND ONE OF THE THINGS THAT THEY'RE PARTICULARLY LOOKING FOR, WOODEN FURNITURE AND POTTERY. AND THE AGENTS ARE GONNA TELL YOU THEY'RE LOOKIN' FOR THOSE THINGS BECAUSE A LOTTA THOSE THINGS HAVE THE ABILITY TO HAVE CONCEALED COMPARTMENTS INSIDE OF THEM. FURNITURE BY ITS CONSTRUCTION. POTS, CLAY POTS THAT THEY CAN STACK 'EM UP AND THINGS CAN BE PUT INSIDE OF 'EM IN AN ATTEMPT TO HIDE 'EM AND CONCEAL 'EM IN ORDER TO GET 'EM ACROSS THE BORDER. YOU'RE GONNA HEAR TESTIMONY IN THIS CASE THAT THEY WERE LOOKIN' AT THESE ITEMS, ONE REASON BECAUSE OF WHAT THEY WERE, WOODEN FURNITURE, A WHOLE TRACTOR-TRAILER TRUCK FULL OF WOODEN FURNITURE, AND YOU'RE GONNA SEE THAT FURNITURE, KINDA

NAILED TOGETHER OUTTA OLD PALLETS AND THAT SORTA THING.

I SUBMIT TO YOU THE STATE'S GONNA SHOW IN THIS CASE THE FURNITURE IS JUST A SHELL. IT'S JUST A SHELL DESIGNED TO CONCEAL THIS MILLION AND A HALF DOLLARS WORTH OF MARIJUANA. BUT THAT AGENT HE CAN LOOK AS THAT THING WENT THROUGH THE X-RAY MACHINE, HE COULD CLEARLY SEE IN THERE ALL THESE DARK SPOTS SHOWING THAT SOMETHING WAS HIDDEN INSIDE THIS FURNITURE BECAUSE THE X-RAY JUST CUTS RIGHT THROUGH THE WOOD. BUT THE TIGHTLY COMPRESSED BAILS OF MARIJUANA SHOW UP AS BIG BLACK SPOTS. AND HE WHEELED HIS TRACTOR-TRAILER TRUCK OVER TO ONE SIDE TO INVESTIGATE. YOU'RE GONNA HEAR FROM THE INSPECTOR THAT YOU DON'T DESTROY THE FURNITURE TO GET IT OUT ALTHOUGH IT LATER TAKES COMPLETELY BEATIN' AND BANGING THIS FURNITURE APART TO GET IT OUTTA THERE. THEY HAVE TO LITERALLY WRENCH IT APART AND TEAR IT OPEN TO EVENTUALLY GET THE MARIJUANA OUT OF IT.

BUT HE AND SOME OTHER INSPECTORS, THEY PRY OPEN THE CORNER OF THIS THING AND THEY POKE UP IN THERE WITH A KNIFE AND THEY PUT A PROBE UP IN THERE AND THEY PULL OUT A LITTLE BIT A THAT MARIJUANA. BECAUSE THEY SUSPECT THAT'S WHAT IT IS, AND THEY DO A LITTLE FIELD TEST OF IT AND IT TESTS POSITIVE FOR MARIJUANA. AND THEY KNOW THAT'S WHAT THEY'VE GOT. I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW IN THIS CASE THEY COULD'VE STOPPED THEN. BUT ONE OF THE THINGS THAT THE CUSTOMS SERVICE WANTS TO DO IS TO SEE WHERE THESE THINGS ARE GOING. THEY WANNA KNOW WHERE THE MARIJUANA WAS GOIN' IN THE UNITED STATES IN AN EFFORT TO SWEEP OUT AND FIND OTHER CO-CONSPIRATORS AND OTHER PEOPLE THAT ARE INVOLVED IN TRAFFICKING LARGE QUANTITIES OF MARIJUANA. SO THEY SEAL IT BACK UP AND

THEY PUT IT BACK IN THE TRAILER AND THEY CALL IN INVESTIGATORS FROM THE CUSTOMS SERVICE.

THE INVESTIGATORS FROM THE CUSTOMS SERVICE GO TO A TRUCKING COMPANY BECAUSE I SUBMIT THAT THE TESTIMONY YOU'RE GONNA HEAR THE WAY THINGS COME ACROSS THE BORDER IS THINGS ARE DROPPED ON THE MEXICAN SIDE.

THEY'RE LITTLE OLE SHORT-HAUL TRUCK DRIVERS THAT PULL THESE LITTLE OLE SHORT TRACTOR-TRAILERS BACK AND FORTH JUST FOR A LITTLE SHORT DISTANCE THERE. THEY DROP 'EM ON THE YARD ON THE MEXICAN SIDE, THEY GO INTO THE CUSTOMS AREA, AND THESE DRIVERS JUST GO BACK AND FORTH ALL THE TIME WITH THESE LITTLE SHORT HAULS AND THEY DROP THE TRAILER.

ONCE THE THING'S CLEARED CUSTOMS, THEY GO OVER TO ANOTHER SHIPPING YARD AND THEN TRUCKING COMPANIES, TYPICALLY FROM THE UNITED STATES OR CANADA OR OTHER PLACES ON THIS SIDE OF THE BORDER, HAVE TRACTOR TRAILER TRUCKS THERE. THEY PICK THE TRAILERS UP AND THEY DELIVER 'EM ON TO THEIR DESTINATIONS IN THE UNITED STATES AND CANADA AND AREAS THAT WOULD BE CROSSING THE BORDER THERE. SO THESE DRIVERS MAKE THESE LITTLE SHORT HAULS. WELL, THEY INTERCEPT THIS DRIVER THERE WITH THAT MARIJUANA. BUT THEY INVESTIGATE AND THEY DECIDE THAT HE'S NOT INVOLVED AND THEY LET HIM GO. THEY DON'T CHARGE THIS DRIVER, THE LITTLE SHORT HAUL GUY. KINDA LIKE UPS BRINGING PACKAGES.

BUT IN THIS CASE THEY GET WITH THE TRUCKING COMPANY WHO'S GOT A DRIVER AND THE TRUCKING COMPANY AGREES TO COOPERATE IN THIS CASE. THEY SAY WE'VE GOT THIS MARIJUANA. THEY TELL 'EM ABOUT IT, GOT THIS

LOAD OF FURNITURE TO CONCEAL THIS MARIJUANA. WE NEED YOUR HELP. SOME TRUCKING COMPANY SAID SURE WE'LL COOPERATE. AND THEY PROVIDE A LEGITIMATE DRIVER. BUT A UNITED STATES CUSTOMS SERVICE AGENT YOU'RE GONNA LEARN THAT A GUY NAMED PAT MIZE HE GETS IN THE TRUCK AS WELL ACTING LIKE HE'S GOING ALONG WITH THE TRUCK DRIVER TO LOAD AND UNLOAD. AND THEY COME UP FROM THE BORDER OF LAREDO, TEXAS. GET UP TO LOUISIANA. THEY SPEND THE NIGHT. AND THEY GET UP HERE TO SALUDA, SOUTH CAROLINA, AND THERE'S A WHOLE CARAVAN OF CUSTOMS AGENTS. THEY SEAL IT BACK UP AT THE BORDER THERE AND THEY BRING IT UP AND THEY'RE GONNA GO ON AND CARRY OUT THE DELIVERY TO THE PLACE IT'S SUPPOSED TO BE DELIVERED.

I SUBMIT THE EVIDENCE IS GONNA SHOW YOU THAT IT'S FREDY DELEON AT THE TIENDA DELEON WHOSE SHIPPING DOCUMENTS HAVE GOT HIS NAME ON IT AND THEY'RE COMIN' TO DELEON'S GROCERY STORE THE TIENDA DELEON HERE IN TRENTON, SOUTH CAROLINA.

BUT THE CUSTOMS SERVICE DOWN AT LAREDO, TEXAS, THEY DON'T KNOW MUCH ABOUT THE BACKGROUND OF EDGEFIELD COUNTY. THEY DON'T KNOW MUCH ABOUT ALL THE PLACES AND PEOPLE HERE. SO WHILE THEY'RE ON THE WAY UP HERE THEY CALL SLED. SOUTH CAROLINA LAW ENFORCEMENT DIVISION. THEY CALL THE SHERIFF'S DEPARTMENT IN EDGEFIELD. THEY GET AIKEN COUNTY NARCOTICS GUYS FROM AIKEN COUNTY. THEY GET CUSTOMS AGENTS FROM HERE IN SOUTH CAROLINA. THEY GATHER TOGETHER A WHOLE TEAM OF LAW ENFORCEMENT PEOPLE. AND PRIOR TO THE 18TH OF MAY, SATURDAY MORNIN', THEY GET TOGETHER AND THEY HAVE A MEETING AND THEY DECIDE THEY'LL GO AND THEY'LL CARRY OUT THIS DELIVERY OUT THERE TO TIENDA DELEON, MR.

FREDY DELEON'S STORE. THEN THEY'LL SWEEP FOR THE CO-DEFENDANTS, THEY'LL LOOK AROUND AND SEE WHERE THIS STUFF'S GOIN' TO, AND THEN THEY'LL DESCEND ON IT, AND THEY'LL ARREST 'EM.

LADIES AND GENTLEMEN, THAT NEXT DAY, THAT SATURDAY MORNIN' LAW ENFORCEMENT OFFICERS ARE SPREAD OUT ALL AROUND.

THEY GO UP HERE TO BILLY'S SUPER STORE, AND THEY GO UP HERE TO THE PLANT RIGHT ACROSS FROM THE STORE. THEY GO DOWN THE ROAD TO (UNINTELLIGIBLE) AND THEY SPREAD OUT ALL OVER THE PLACE.

AND AGENT PAT MIZE HE GETS IN THAT TRACTOR TRAILER TRUCK WITH THE DRIVER AND THEY GO TO TIENDA DELEON. AND THEY SEE FREDY THERE. THERE'S ALSO – THERE'S A BOX VAN THERE THAT THE EVIDENCE IS GONNA SHOW IS MR. DELEON'S. THERE'S ALSO A GREEN FORD THUNDERBIRD THERE. THERE ARE 3 GUYS THERE. AGENT MIZE IS THERE WITH THE DRIVER, AND THEY'RE PLAYIN' ALONG WITH THIS LIKE IT'S A STANDARD DEAL JUST LIKE UPS OR FED EX COMIN' TO YOUR HOUSE. THESE 3 GUYS GET TOGETHER AND ONE OF THE 3, ONE OF THE 2 IN THE THUNDERBIRD, NOT MR. DELEON, THE TESTIMONY I SUBMIT TO YOU YOU'RE GONNA HEAR IS A GUY WITH A REALLY BAD COMPLEXION, AND THERE'S ANOTHER MEXICAN GUY THERE. THE GUY WITH THE BAD COMPLEXION GETS UP INSIDE THE TRACTOR TRAILER TRUCK, AND THEY SELECT OUT CERTAIN PIECES OF FURNITURE.

I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW THERE ARE OVER 130 ITEMS OF FURNITURE. SOME OF 'EM ARE THESE FAKE WOODEN FIREPLACES. YOU'RE GONNA SEE THOSE. THOSE ARE THESE KINDA CRUDE, LOOK LIKE ARMOIRES OR SOME KINDA CHEST OF DRAWERS KINDA THING THAT ARE NAILED TOGETHER LIKE THIS. SOME OF 'EM ARE CHEAP CHAIRS AND THAT SORTA THING.

BUT IN PARTICULAR EMPHASIS IN THIS CASE, LADIES AND GENTLEMEN. THE EVIDENCE IS GONNA SHOW YOU ARE THESE WOODEN CHIMNEYS BECAUSE UP THERE IN THE TOP OF 'EM ARE THE MANTLE PIECE IN THIS OLD FAKE CHIMNEY THEY GOT LINED WITH CARBON PAPER AND THEY GOT THESE TIGHTLY COMPRESSED BALES OF MARIJUANA JAMMED UP IN THERE. KINDA LIKE MAXWELL HOUSE COFFEE. IT'S JUST SHRUNK RIGHT DOWN SO THEY CAN GET AS MUCH OF IT AS THEY POSSIBLY CAN IN THE SMALLEST SPACE. AND IT'S JAMMED UP THERE INSIDE THIS (UNINTELLIGIBLE). THESE WOODEN CHIMNEYS ARE THE ONES THAT HAVE THE MARIJUANA IN 'EM. AND THE EVIDENCE IS GONNA SHOW AND YOU CAN LOOK AT THE PHOTOGRAPHS. THAT'S BACK KINDA TOWARDS THE BACK OF THE TRAILER. THEY GO UP IN THERE AND THEY SELECT CERTAIN ITEMS OF FURNITURE, AND THEY OFF LOAD ABOUT 13 PIECES OF FURNITURE THERE AT MR. DELEON'S STORE.

I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW THAT MOST OF IT IS JUST JUNK AND THAT'S WINDOW DRESSING. BUT THEY OFF LOAD ONE OF THOSE CHIMNEYS THERE, ONE OF THOSE FIREPLACES AND GIVE IT TO MR. DELEON THERE. HE TAKES IT AND PUTS IT INSIDE THE STORE AND LOCKS THE STORE BACK UP. 20 BRICKS OF TIGHTLY COMPRESSED MARIJUANA. I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW $50,000 WORTH OF IT GOES INTO MR. DELEON'S STORE. PULL OUTTA THERE. MR. DELEON LOCKS HIS STORE UP, AND HE SIGNS FOR 13 PIECES OF THE FURNITURE. THEN HE GOES OUT AND DIRECTS THE DRIVERS, THE AGENT, AGENT MIZE AND THIS DRIVER FROM THE TRUCKING COMPANY, HE GETS OUT THERE IN FRONT OF THE STORE AFTER THEY DO THAT AND DIRECTS 'EM TO GO DOWN TO BILLY'S SUPER STORE. GO BACK DOWN HERE AND HE POINTS TO BILLY'S SUPER STORE. HE CAN'T REALLY CONVEY TO THEM THE COMPLETE

DIRECTION. SO HE WHIPS OUT A PHONE AND SAYS MY WIFE AND THEY GET DIRECTIONS. MR. DELEON INDICATES THAT HIS WIFE IS GONNA GIVE 'EM DIRECTIONS TO GO DOWN TO THE STORE.

AND, LADIES AND GENTLEMEN, WHEN THE DRIVER AND THE AGENT DRIVE THAT TRACTOR TRAILER UP DOWN THERE TO BILLY'S THEY DON'T AT FIRST SEE ANYBODY.

BUT AFTER JUST A MINUTE, THAT SAME GREEN THUNDERBIRD WITH THE GUY WITH THE BAD COMPLEXION AND A GUY, I SUBMIT TO YOU, YOU'RE GONNA LEARN NAMED RAMOS THAT WORKED UP HERE AT LEMAN'S NURSERY THAT LIVED IN A TRAILER UP HERE AT LEMAN'S NURSERY, THEY'RE THE GUYS IN THE THUNDERBIRD.

THEY COME WHEELIN' BACK IN TO BILLY'S SUPER STORE. THIS GREEN THUNDERBIRD. BEHIND 'EM IS ONE OF THESE BIG RENTAL TRUCKS LIKE A RYDER TRUCK, AND IN THE CAB OF THAT RYDER TRUCK ARE THESE OTHER THREE INDIVIDUALS. ALFREDO AVILA-AROJONA. RAPHAEL GUERREREZ (PHONETIC) HERNANDEZ. HONORIO HERNANDEZ GUERRERO. THEY'RE DRIVIN' A BIG RYDER TRUCK RIGHT BEHIND THE GREEN THUNDERBIRD. THEY WHEEL IN THERE TOGETHER.

BY THIS TIME THAT TRACTOR TRAILER TRUCK IS KINDA BACKED UP THERE ON THE EDGE WHERE ALL THE TRACTORS PARK. THE THUNDERBIRD SLIDES UP THERE AND BACK RIGHT IN THE TAIL OF IT IS THIS BOX TRUCK, AND THEY PULL UP THERE AND THEY STOP. THEY ROLL UP THERE TOGETHER AND THE BOX TRUCK BLOCKS IN THE TRACTOR TRAILER TRUCK SO THEY CAN'T GO ANYWHERE. SO THEY CAN'T PULL OUT. AND THE GUYS IN THE THUNDERBIRD GET OUT, AND ONE OF 'EM GOES UP AND TRIES TO GET IN THE CAB OF THE TRACTOR TRAILER TRUCK.

TRYIN' TO HIGHJACK IT. TRYIN' TO TAKE OVER. GET IN THERE. THE AGENT IN THE CASE WHO'S CONCERNED ABOUT THIS CIVILIAN DRIVER WHO'S JUST BEIN' A GOOD SAMARITAN HELPIN' OUT THE CUSTOMS SERVICE, HE'S CONCERNED FOR HIS SAFETY, AND THIS AGENT IS ALSO, HE'S GOT A PISTOL, AND HE'S ALSO GOT A WALKIE TALKIE THAT HE'S HOLDIN' DOWN AND HE'S TRYIN' TO CHAT IN BECAUSE SPREAD OUT ALL AROUND THERE ARE ALL THESE OTHER AGENTS THAT ARE TRYIN' TO KEEP A EYE ON THINGS AND RUN SURVEILLANCE. SLED. AIKEN COUNTY. OTHER AGENCIES. THEY'RE ALL SPREAD OUT ALL OVER THE PLACE.

NOW THEY'RE NOT IN MARKED CARS AND WEARING A UNIFORM. THEY'RE DRIVIN' LITTLE PICKUP TRUCKS, LOOKIN' AS SCRUFFY AS THEY CAN AND SPREAD OUT ALL OVER THE PLACE IN ORDER TO KEEP AN EYE ON WHAT'S GONNA HAPPEN HERE. BUT AGENT MIZE IS NOT GONNA LET THIS GUY GET IN THIS TRACTOR TRAILER TRUCK. HE'S PULLIN' AND HE'S TRYIN' TO KEEP HIM FROM GETTIN' IN AND HE SHOOED HIM AWAY TELLIN' HIM HE CAN'T GET IN THE TRACTOR TRAILER TRUCK BECAUSE IF ANYBODY GETS IN THERE WITH HIM, HE'S LOST CONTROL OF THE OPERATION. IF HE ALLOWS ANYBODY TO GET IN THERE AND TAKE OVER CONTROL OF THAT, HE CAN'T CALL FOR HELP; HE CAN'T TELL THEM WHERE THEY'RE GOIN'. HE CAN'T DO ANYTHING. HE'S LOST CONTROL. BUT THEY DON'T LET HIM GET IN. AND AFTER A LITTLE BIT THE GUYS GET BACK IN THE THUNDERBIRD AND THEY INDICATE THEY 'EM WANT TO FOLLOW 'EM, FOLLOW AWAY FROM BILLY'S SUPER STORE.

I SUBMIT TO YOU IN THIS CASE THE EVIDENCE IS GONNA SHOW THEY DON'T WANT THE LIGHT OF DAY. THAT'S A PUBLIC PLACE UP THERE. THEY NEED TO GO OFF SOMEWHERE WHERE NOBODY CAN SEE THIS 'CAUSE THEY'RE GONNA OFF LOAD ALL THIS MARIJUANA AND ALL THIS FURNITURE OVER THERE. NEED TO

GET OFF SOMEWHERE ELSE. SO THEY GET OFF THERE AND THEY FOLLOW 'EM. HERE'S THE THUNDERBIRD UP FRONT, THE BOX LAYIN' BACK BEHIND, AND THE TRACTOR TRAILER TRUCK WITH AGENT MIZE AND THE DRIVER AND ALL THAT MARIJUANA IN ALL THOSE CHIMNEYS IN THE BACK AND THEY START DOWN 25. THEY GO OUT PAST JACKIE'S PEACH STAND AND THEY GO UP AND THEY END UP ON PADGETT ROAD. YOU TURN OFF TO THE RIGHT BUT YOU GO ON DOWN THERE A LITTLE BIT BY JACKIE'S, KINDA SOME KINDA LUMBER MILL OR SOMETHIN'. WE'RE TALKIN' ABOUT THIS RED CLAY KINDA SANDY DIRT ROADS. AND THEY PULL OFF IN THERE AND THESE ROADS GO UP AND ON CASH ROAD RUNS UP THERE KINDA BESIDE SOME FIELDS AND ALL AND COMES BACK UP INTO EDGEFIELD COUNTY. BUT THEY START IN THERE FOLLOWIN' THAT THUNDERBIRD AND FOLLOWIN' THE BOX VAN.

I SUBMIT TO YOU ONE THING THE EVIDENCE IS GONNA SHOW THEY DIDN'T COUNT ON IN THIS CASE IS WHEN IT RAISE HERE IN EDGEFIELD COUNTY THAT RED MUD AROUND HERE IS PRETTY STICKY, AND SO THEY GET DOWN THERE ON PADGETT ROAD AND THAT THING JUST TURNS INTO A QUAGMIRE WHEN YOU GET ON UP THERE ON THE REALLY DESOLATE NOT TRAVELED PORTION OF THE ROAD WHEN THEY GET UP THERE AND TRY TO GET ON PADGETT ROAD, LO AND BEHOLD, THEY ALL BOG DOWN. JUST STUCK IN THE MUD. AND THEY'RE TRYIN' TO GET ON DOWN THERE, AND THE AGENT IN THE TRACTOR TRAILER TRUCK AND THE GUYS IN THE BOX VAN, THEY GETTIN' STUCK AND THEY'RE TRYIN' TO GO FORWARD. THEY TRY TO FOLLOW 'EM DOWN HERE. THEY GET BEHIND THAT THUNDERBIRD, JUST KEEP GETTIN' STUCK OVER AND OVER AGAIN BECAUSE THE AGENTS IN THIS CASE, I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW, THEY WANNA TAKE THIS THING TO ITS ULTIMATE DESTINATION SO THEY CAN SWEEP UP EVERYBODY

THAT'S INVOLVED IN THIS TRAFFICKIN' RING. THEY WANT TO GET EVERYBODY THAT'S INVOLVED. AND THEY'RE GONNA KEEP GOIN' UNTIL THEY TAKE IT TO ITS CONCLUSION TILL THEY FIND OUT WHERE IT'S GOIN' SO THEY CAN GET 'EM ALL. AND THEY KEEP TRYIN' TO GET ON OUT, BUT ULTIMATELY THE RED MUD JUST OVERTAKES 'EM, AND THEY CAN'T GET OUT. THEY'RE ALL STUCK. SO HERE ARE THESE THREE OVER HERE IN THE RYDER TRUCK ARE ALL BOGGED DOWN. HERE'S THE AGENT IN THE TRACTOR TRAILER TRUCK AND THE DRIVER THEY'RE BOGGED DOWN. THE GUYS IN THE THUNDERBIRD AT THIS POINT IN TIME THEY KNOW NOTHIN'S GOIN' ANYWHERE THAT DAY. THEY TAKE OFF, THE GUYS IN THE THUNDERBIRD.

I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW THAT EVEN THOUGH THERE WERE AGENTS EVERYWHERE, THERE ARE A LOTTA BACK ROADS AROUND HERE AND YOU CAN'T COVER EVERY EXIT. AND THE GUYS IN THE THUNDERBIRD GET AWAY. OLE RAMOS AND THE GUY WITH THE POCK MARK FACE, HE'S GONE.

I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW LATER THEY FIND THAT GREEN THUNDERBIRD JUST TOTALLY ABANDONED UP HERE AT THE GROCERY STORE JUST DOWN THE ROAD HERE. THEY JUST DITCH IT, LEAVE IT, TAKE OFF RUNNIN' AWAY. THESE GUYS ARE GONE. LAW ENFORCEMENT DOESN'T CATCH 'EM. BUT AT THAT POINT IN TIME THE THUNDERBIRD GETS AWAY AND THEY'RE ALL BOGGED DOWN, AGENTS ARE BACK THERE WATCHIN' THE STORE, THEY DECIDED EVERYBODY THEY GOT SO FAR, THEY GONNA SWEEP UP AND GRAB, AND THAT'S WHAT THEY DO. THE SHERIFF OF EDGEFIELD COUNTY AND HIS MEN ARE OUT THERE. THEY DESCEND OUT THERE ON THAT FIELD AND THEY CATCH THESE 3 GUYS THAT ARE IN THE BOX TRUCK. THEY SWEEP THEM UP AND THE AGENTS ALL DESCEND ON MR. DELEON AND HIS GROCERY STORE.

NOW THEY DON'T PULL IN WITH LIGHTS AND SIREN, BUT THEY SLIDE IN IN THEIR CARS AND THEY GO UP IN THERE, AND BY THIS TIME MR. DELEON IS GONE. SEE, HE LOCKED THE PLACE UP THE FIRST TIME THEY WERE THERE. HE'S NOT THERE. BUT YOU SEE, THE AGENTS WERE WATCHIN' HIM. WHEN HE LEAVES OUT OF HIS STORE UP THERE, WHERE DOES HE GO? HE GOES STRAIGHT UP THERE TO LEMAN'S NURSERY WHERE MR. RAMOS WORKS. RIGHT UP THERE WHERE MR. RAMOS LIVES AND WORKS. WHICH, BY THE WAY, IS RIGHT IN THE PATH OF WHERE THE TRACTOR TRAILER TRUCK'S GONNA GO BY WHERE IT ENDS UP DOWN THERE ON PADGETT ROAD 'CAUSE THERE'S AN AIKEN COUNTY OFFICER TAYLOR HE FOLLOWED HIM IN HIS TRUCK.

I SUBMIT TO YOU THE AGENT ALSO FOLLOWED HIM ON DOWN TO AIKEN COUNTY. SOMEWHERE ALONG THE LINE HE GETS A CALL ON THE CELL PHONE. THE AGENT SAYS HE'D SEEN HIM TALKIN' ON THE CELL PHONE. AND HE TURNS AROUND AND HE GOES BACK TO THE STORE. BUT BY THE TIME HE GETS BACK TO THE STORE, HE GOT SURPRISED BECAUSE THE AGENTS ARE IN THERE. THEY'RE WAITIN' ON HIM. AND THEY TAKE 'EM DOWN. THEY BUST OPEN THAT CHIMNEY. CUSTOMS SERVICE DIRECTS 'EM TO OPEN UP THE CHIMNEY INSIDE MR. DELEON'S STORE. IT'S PUT BACK THERE IN THE BACK PART; NOT OUT THERE.

I SUBMIT TO YOU THE EVIDENCE IS GONNA SHOW THIS IS A GROCERY STORE; IT AIN'T A FURNITURE STORE. BUT BACK THERE IN THE BACK THEY GOT JAMMED IN THERE ALL THIS FURNITURE, TABLES AND CHAIRS AND ALL OF THAT, BUT MOST SPECIFICALLY THAT WOODEN CHIMNEY WITH THOSE 20 BAGS OF COMPRESSED MARIJUANA, AND THEY BUST IT OPEN. CATCH 'EM RIGHT THERE. AND THEY ARREST 'EM. AND THEY'RE CHARGED WITH TRAFFICKIN' IN MARIJUANA.

I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT'S WHAT THE FACTS ARE GONNA SHOW IN THIS CASE.

I JUST ASK THAT EACH OF YOU PAY VERY CLOSE ATTENTION TO WHAT'S GOIN' ON IN THIS CASE, AND LISTEN TO ALL THE TESTIMONY FROM ALL OF THE AGENTS.

USE YOUR COMMON SENSE IN THIS CASE, YOUR HONOR -- LADIES AND GENTLEMEN. THE JUDGE IS GONNA CHARGE -- HIS HONOR IS GONNA CHARGE YOU WITH WHAT THE LAW IS AT THE CONCLUSION OF THIS CASE.

WHAT THEY'RE CHARGED WITH IS TRAFFICKING MARIJUANA.

WHAT THE STATE'S GONNA SHOW IS THAT NOT JUST THAT ONE PARTICULAR HAD IT, BUT THEY CONSPIRED AND THEY AGREED AND THESE WERE PEOPLE ALL ACTIN' IN CONCERT. SOME OF 'EM WERE RECEIVIN' IT, PROVIDIN' A PLACE FOR IT TO COME TO AND MAKING THE ARRANGEMENTS HERE LOCALLY. SOME OF 'EM HAULIN' IT. THE 3 GUYS IN THE RYDER TRUCK. TRAFFICKIN' IN MARIJUANA. THE JUDGE IS GONNA TELL YOU ABOUT WHAT TRAFFICKING ENCOMPASSES. SOMETIMES THAT'S JUST AN AGREEMENT GETTIN' TOGETHER CONSPIRIN' AND DIRECTIN', NOT DIRECTLY HAVIN' IT AND HOLDIN' IT IN YOUR HANDS.

BUT AT THE CONCLUSION OF ALL THE TESTIMONY IN THIS CASE AND AFTER THE JUDGE CHARGES YOU THE LAW IN THIS CASE, YOU GONNA GO BACK AND DELIBERATE IN THIS CASE. THE STATE AT THAT TIME WE'RE GONNA ASK YOU FOR A GUILTY VERDICT FOR MR. FREDY DELEON FOR TRAFFICKIN' IN MARIJUANA. WE'RE GONNA ASK YOU FOR A GUILTY VERDICT FOR MR. HONORIO HERNANDEZ GUERRERO FOR TRAFFICKIN' IN MARIJUANA. FOR MR. RAPHAEL PEREZ HERNANDEZ FOR TRAFFICKIN' IN MARIJUANA. FOR MR. ALFREDO AVILA-

AROJONA FOR TRAFFICKIN' IN MARIJUANA

THE COURT: ALL RIGHT. MR. HAWKE, YOU WANT TO MAKE AN OPENING STATEMENT?

MR. HAWKE: YES, YOUR HONOR. THANK YOU. GOOD MORNIN'. (RESPONSE FROM THE JURY.) IT'S MY PLEASURE TO BE HERE ON BEHALF OF FREDY DELEON. I JUST WANT TO REMIND YOU WHAT THE JUDGE TOLD YOU. THERE'S NO EVIDENCE THAT'S BEEN PRESENTED IN THIS CASE. WE ASK THAT YOU WAIT TILL THE WITNESSES GET ON THE STAND AND SEE WHAT'S REALLY INVOLVED IN THIS PARTICULAR CASE.

YOU WILL SEE THAT FREDY DELEON WAS BORN IN MEXICO ON OCTOBER 26TH 1976. HE'S THE SON OF THOMAS DELEON AND TERESA TAMAYO ARILLA (PHONETIC). THAT'S WHY YOU HEAR HIS NAME SOMETIMES REFERRED TO AS FREDY DELEON TAMAYO BECAUSE THEY HAVE -- THEY MAINTAIN SURNAMES OF BOTH THEIR MOM AND DAD SOMETIMES. AS A CHILD HE WORKED IN THE OPAL MINES AND HE IMMIGRATED HERE 8 YEARS AGO. HE DID THAT TO TRY TO START A BUSINESS AND MAKE A BETTER LIFE FOR HIS FAMILY BECAUSE OF HIS FATHER AND HE HAS OTHER KIN FOLK HERE.

HE WORKED AT THE AVONDALE FACTORY FOR A FEW YEARS. HE ALSO WORKED AT SOME OF THE NURSERIES AROUND HERE AND HE ALSO DID CONSTRUCTION WORK. AND HE SAVED HIS MONEY AND HE WORKED HARD TILL HE COULD GET HIM A LITTLE BUSINESS. HE OPENED UP A LITTLE MEXICAN TIENDA. I DON'T KNOW IF Y'ALL MIGHT BE FAMILIAR WITH THE TIENDA DELEON. IT'S A LITTLE STORE IN TRENTON, SOUTH CAROLINA. IT'S ON THE CORNER. IT'S JUST A LITTLE MEXICAN STORE WHERE THEY BASICALLY STOCK THINGS THAT YOU CAN ONLY GET FROM MEXICO LIKE SOME OF THE, YOU KNOW, JALAPENOS

THAT THEY LIKE AND SOME OF THE SPICES AND THE FOODS AND THINGS THAT ARE TRULY AUTHENTIC MEXICAN. THEY COME DIRECTLY FROM MEXICO THAT HE HAS IMPORTED TO DISTRIBUTE TO THE PEOPLE HERE.

BASICALLY YOU GOTTA UNDERSTAND HOW HE WORKS HIS BUSINESS 'CAUSE A LOT OF THE MEXICANS THAT COME HERE CAN'T GET DRIVER'S LICENSE. THEY CAN'T COME TO DRIVE TO SEE HIM TO SHOP AND THINGS LIKE THAT. THEY'RE NOT ELIGIBLE FOR LICENSES AND MANY OF 'EM ARE NOT A CITIZEN. THEY COME HERE TO WORK IN THE FARMS AROUND HERE AND NURSERIES AND THINGS LIKE THAT. AND SO WHAT HE DOES TO HELP OUT THESE FOLKS, HE ACTUALLY HAS A VAN THAT HE GOES OUT AND HE TAKES ORDERS AT THE NURSERIES AND THE OTHER PLACES WHERE THEY WORK. GROCERY ORDERS. AND BASICALLY WHAT HE DOES IS HE COMES BACK AND GETS THEIR GROCERIES AND TAKES GROCERIES TO EACH ONE OF 'EM. AND HE'S BEEN DOIN' THAT FOR A GOOD WHILE.

HE'S ALSO TRIED TO HELP 'EM IN SOME WAY AND HE HAS THIS OTHER LITTLE BUSINESS THAT HE'S DEVELOPED WHERE THEY TRY TO SEND MONEY BACK HOME TO THEIR FAMILIES MANY TIMES TO HELP THEM TAKE CARE OF THEIR FAMILIES FROM WORKING OVER HERE AND GENERALLY SEND MONEY HOME TO TAKE CARE OF THEIR FAMILY. THE PROBLEM IS A LOT OF TIMES IN MEXICO THE MONEY GETS STOLEN OUT OF THE MAIL. BUT ANYWAY THERE'S A BUSINESS, ELECTRONIC TRANSFER BUSINESS THAT HE BECAME ASSOCIATED WITH WHICH WOULD HELP THEM ELECTRONICALLY TO TRANSFER THE FUNDS FOR A SMALL PERCENTAGE OF THE WHATEVER AMOUNT IS TRANSFERRED IN ORDER TO GET THE FUNDS SAFELY TO THE FOLKS IN MEXICO. AND HE MAKES A LITTLE BIT OF MONEY ABOUT 2 OR 3 HUNDRED DOLLARS A MONTH ON THAT. AND HE MAKES HIS OTHER

MONEY FROM HIS LITTLE MEXICAN SHOP.

YOU'LL SEE THAT HE ALSO HAD A SECOND STORE FOR A WHILE. AS A MATTER OF FACT, THEY'D JUST GOT IT OPEN WHEN THIS PARTICULAR CASE HAPPENED. SINCE THEN HE'S LOST THAT STORE 'CAUSE TRYIN' TO GET THIS CASE RESOLVED. HE OBVIOUSLY NO LONGER RUNS THAT AT THE TIME. HE DID HAVE THESE TWO GROCERY STORES LITTLE DOMESTIC -- THEY'RE NOT GROCERY STORES. THEY'RE MORE LIKE A LITTLE SHOP WHERE HE SELLS THESE MEXICAN ITEMS.

YOU'LL SEE AT THE TIME THIS PARTICULAR THING -- THIS PARTICULAR INCIDENT HAPPENED HE HAD -- WAS MARRIED TO TERESA GONZALEZ. HE'D BEEN MARRIED TO HER SINCE JULY 14TH 1999. HE HAS A CHILD 3 YEARS OF AGE BORN SEPTEMBER 3RD 2000.

HE WAS RUNNING HIS TWO SHOPS; HE WAS RUNNIN' HIS DELIVERY TRUCK, AND HE WAS TRANSFERRING FUNDS TO MEXICO. YOU'LL SEE THAT AT THIS TIME DURIN' HIS ENTIRE LIFE HE'S NEVER BEEN ARRESTED, NEVER BEEN CHARGED WITH ANYTHING, NEVER BEEN IN ANY TROUBLE, NEVER EVEN BEEN A SUSPECT. HE'S LIVED IN THIS COMMUNITY FOR 8 OR 9 YEARS AND NOBODY INVESTIGATED FOR NARCOTICS OR HAD ANY SUSPICIONS OF HIM BEING INVOLVED WITH ANY ILLEGAL ACTIVITY WHATSOEVER. HIS NAME HAD NEVER EVEN COME UP IN INVESTIGATIONS.

YOU'LL SEE THAT AT THE TIME HE WAS LIVING IN A -- HE HAD MANAGED TO GET AN ACRE OF LAND. HE HAD A ONE -- A SINGLE-WIDE MOBILE HOME, VERY MODERATELY FURNISHED OR WHATEVER. HE HAD A USED CAR. AND THEN OTHER THAN THAT THE ONLY OTHER ASSETS THAT HE OWNED WAS THE ASSETS RELATED TO HIS BUSINESS WHICH WAS A -- ONE OF THESE DELIVERY TRUCKS

AND THE BUSINESS ITSELF.

YOU WILL SEE THAT FREDY DELEON IS NOT DO ANY DRUGS, HAS NEVER DONE ANY DRUGS. HE DOESN'T HAVE ANY DRUGS. HE DIDN'T HAVE ANY LARGE AMOUNTS OF MONEY IN HIS HOUSE. HE DIDN'T HAVE ANY DRUG PARAPHERNALIA AROUND HIS HOUSE. HE DIDN'T HAVE THOSE DIGITAL SCALES THAT MANY TIMES YOU FIND IN DRUG INVESTIGATIONS. HE DIDN'T HAVE ANY PACKAGE OF MATERIAL AND THINGS LIKE THAT.

YOU'LL SEE THAT THE INVESTIGATORS WILL TELL YOU IN NARCOTICS CASES ONE OF THE MAIN THINGS THEY USE WHEN THEY GET SOME INFORMATION ABOUT SOMEBODY THEY GET PROBABLE CAUSE.

THE THING THAT THEY DO IS THEY TELL YOU WHAT THEY EXPECT TO FIND IN THESE DRUG DEALERS' HOUSES, THE PEOPLE THAT ARE DEALING DRUGS OR WHATEVER. AND THEY HAVE THIS LIST OF ITEMS EVERY TIME THAT THEY ROUTINELY FIND EVERY TIME THEY SEARCH OR -- NOT EVERY TIME, BUT WHEN THEY SEARCH THEIR HOUSE THEY ALWAYS FIND OR GENERALLY FIND DRUGS. THEY FIND LARGE AMOUNTS OF CASH. THEY FIND DRUG PARAPHERNALIA. THINGS THAT ARE USED TO USE THE DRUGS. THEY FIND SCALES OR DIGITAL SCALES, THINGS LIKE THAT BECAUSE THEY HAVE TO RE-DIVIDE UP WHATEVER THEY GET IN ORDER TO RESELL IT. THEY HAVE TO, YOU KNOW, ACCURATELY WEIGH IT. MOST KEEP DIGITAL SCALES AND THINGS LIKE THAT. THEY ALSO HAVE TO REPACK IT. IN OTHER WORDS, THEY CAN'T TAKE A LOAD OF DRUGS AND REDISTRIBUTE IT WITHOUT REPACKAGING IT. SO WHAT THEY FIND A LOT OF TIMES IS PACKAGING MATERIAL.

YOU'LL SEE THAT, LIKE I SAID, NOBODY EVER HAD ANY INDICATION OR ANYTHING THAT FREDY DELEON HAD BEEN INVOLVED IN ANYTHING BECAUSE HE

HAD NOT. AND YOU WILL SEE THAT AT THE TIME THIS PARTICULAR INCIDENT OCCURRED IT WAS ALSO -- HE HAD A CERTAIN GROUP OF -- THAT HE DEALT WITH ORDERING THE MEXICAN FOOD TO GET THE ITEMS THAT HE GOT, DISTRIBUTORS AND THINGS LIKE THAT. IT'S NOT SO MUCH CONTACTING DIRECTLY SOMEBODY FROM MEXICO DISTRIBUTORS AND THINGS LIKE THAT, BUT YOU'LL SEE THAT THERE'S SOME COMPANIES AND SOME PEOPLE INVOLVED IN THIS PARTICULAR. I'M GONNA MENTION SOME OF IT. SEBASTIAN EXPORTACIONES. JAMCO INTERNATIONAL. BORDER CARRIERS. OKAY?

YOU'RE GONNA SEE THAT SEBASTIAN EXPORTACIONES IS A COMPANY IN MEXICO THAT SHIPPED THIS PARTICULAR SHIPMENT ACROSS OR TO THE BORDER. YOU'RE GONNA SEE THAT JAMCO INTERNATIONAL IS THE DISTRIBUTOR THAT WAS IN CHARGE OF PICKING UP THE SHIPMENT. AND THEY THEN GO TO SEE THE BORDER CARRIERS IS THE TRUCKING COMPANY THAT WAS SUPPOSED TO ACTUALLY TRY AND BRING THE ITEMS HERE. AND YOU'RE GONNA SEE THAT HE HAS NEVER HAD ANY PRIOR CONTACT OR DEALINGS AT ALL WITH SEBASTIAN EXPORTACIONES; NEVER HAD ANY PRIOR DEALINGS WITH JAMCO; NEVER HAD ANY PRIOR DEALINGS WITH BORDER CARRIERS; NEVER UTILIZED THESE PEOPLE; CONTACTED 'EM IN ANY WAY, SHAPE OR FORM THROUGH THE MAIL, THROUGH THE LOCAL PHONE OR ANYTHING.

YOU'RE GONNA SEE THAT WHAT HAPPENED WAS HE GOT APPROACHED BY A MAN NAMED FLACO (PHONETIC). FLACO IS A GUY WHO CAME UP TO HIM AND SAID THAT HE HAD A DEAL WHERE HE COULD GET SOME MEXICAN FURNITURE AND COULD BRING IT HERE AND HE COULD SELL THE MEXICAN FURNITURE AND HE COULD GET IT AT A REAL GOOD DEAL AND THEY WOULD SELL THE FURNITURE AND THEY WOULD MAKE SOME MONEY. OKAY? AND HE SAID WHY DON'T YOU DO

IT. WHY DO YOU NEED ME. HE SAID WELL I CAN'T GET IT SHIPPED TO MY HOUSE. THEY WON'T SHIP IT TO ME BECAUSE I DON'T OWN A BUSINESS. YOU OWN A BUSINESS AND I CAN GET IT SHIPPED TO YOUR BUSINESS IF YOU WILL GIVE ME YOUR BUSINESS ADDRESS AND ALL THAT, AND WE'LL SELL IT AND WE'LL MAKE SOME MONEY. WELL, HE'S THINKIN' THAT THIS IS A REASONABLE THING TO DO. SO WHAT HE DOES IS HE TELLS HIM, SAYS OKAY ALL RIGHT YOU CAN SHIP IT HERE. AND SO WHAT HE DOES IS HE GIVES THIS GUY HIS ADDRESS AND HIS INFORMATION AND HAS THE FURNITURE SHIPPED HERE. AND HE'S THINKIN' WE'RE GONNA SELL SOME MEXICAN FURNITURE AND MAKE SOME MONEY AND EVERYTHING'LL BE OKAY.

BUT WHAT HAPPENED IS YOU WILL SEE THAT FLACO CALLS AND MAKES ALL THESE ARRANGEMENTS OR WHATEVER, AND YOU'LL SEE THAT FREDY DELEON AS SOON AS ALL THIS GOES DOWN AND EVERYTHING, IN ORDER TO HELP THEM FIND THIS MAN AND SHOW THEM WHO THIS MAN WAS -- AND ANYWAY MADE THESE ARRANGEMENTS AS SOON AS FREDY DELEON FOUND OUT WHAT EVERYBODY WAS HERE ABOUT, ALL THESE AGENTS ARE IN HIS PLACE, HE SAID LISTEN I'VE GOT SECURITY CAMERAS I KEEP IN MY STORE. WE'VE GOT IT ON VIDEO.

AND SO WHAT HE DOES HE GIVES THEM THE ACTUAL VIDEO. HE GIVES THEM AN ACTUAL COPY OF THIS VIDEO. HE SAYS LISTEN THIS GUY'S PICTURE IS ON IT. WHAT THEY DO WITH THAT, THE DETECTIVE PUT IT IN THE EVIDENCE LOCKER OR A SAFE OR SOMETHING AT THE SHERIFF'S DEPARTMENT AND IT SITS THERE. IT SITS THERE UNTIL MARCH WHEN WE HAVE A HEARING -- A PREVIOUS HEARING ON THIS MATTER AND NOBODY EVER EVEN LOOKED AT IT. NOBODY DID ANYTHING TO FIND OUT WHO THIS GUY WAS. NOBODY DID ANY INVESTIGATION

WHATSOEVER.

YOU'LL SEE THAT WHEN THIS PARTICULAR DELIVERY CAME ON NOT ONLY DID HE NEVER PREVIOUSLY OR AFTER THIS HAVE ANY CONNECTION WITH BORDER CARRIERS AND SEBASTIAN EXPORTACIONES AND JAMCO INTERNATIONAL, HE'S NEVER HAD ANY CONNECTION WITH THIS DRIVER JOSE (UNINTELLIGIBLE). HE'S NEVER HAD ANY CONNECTION WITH LAREDO, TEXAS, OR HAD ANYTHING TO DO WITH ANY CONTRACT AT ALL WITH LAREDO, TEXAS, OR THE PLACE IN MEXICO WHERE THIS ORIGINATED OR RUIZ FLORES (PHONETIC) WHO IS THE BOSS OF THE DRIVER IN MEXICO OR WITH THE DRIVER WHO WAS SUPPOSED TO BRING HIM ACROSS. AND YOU WILL SEE TO THIS DAY THERE HAS BEEN NONE.

YOU'LL SEE THAT, OF COURSE, WHEN THEY CAME ACROSS THE BORDER IT WAS -- FIRST OF ALL, YOU GOT TO UNDERSTAND THE WAY THEY SHIP THESE THINGS. THEY -- WHEN SHIPPERS SHIP THINGS, IN ORDER TO MAINTAIN THE LOAD AND MAKE SURE THAT IT HAS NOT BEEN TAMPERED WITH, THEY PUT SEALS ON IT. TAMPER PROOF SEALS. AND ON EACH ONE OF 'EM THEY DO. WHEN THIS PARTICULAR SHIPMENT CAME ACROSS IT HAD 3 SEALS ON IT. WHOEVER WAS SHIPPING THIS WANTED TO MAKE SURE THAT THIS SHIPMENT WAS NOT TAMPERED WITH AND IT'S KNOWN -- AND THE AGENT WILL TELL YOU WITHIN THE INDUSTRY THIS IS COMMON WITH WHAT SHIPPERS DO. IN ORDER TO MAKE SURE THE LOAD IS NOT TAMPERED WITH OR ANYTHING LIKE THAT THEY PUT SEALS ON IT. THIS ONE HAD 3 ON IT WHEN IT CAME ACROSS THE BORDER.

WHEN THE AGENTS X-RAYED IT, THEY X-RAYED IT FOR A COUPLE OF REASONS. NUMBER ONE, IT WAS A NEW SUPER, SOMEBODY THEY WEREN'T FAMILIAR WITH, AND THE ITEMS THAT THEY HAD TO DEAL WITH FURNITURE

WHICH IS SOMETIMES USED TO SECRET DRUGS OR WHATEVER. SO THEY X-RAYED IT. THEY SEE SOME THINGS IN THERE THAT LOOKS LIKE IT MIGHT BE CARRYIN' DRUGS. SO THEN AT THAT POINT IN TIME THEY TAKE THE 3 SECURITY SEALS OFF. THEY EXAMINE EVERYTHING. TAKE A SAMPLE MAKE SURE IT'S GOT MARIJUANA. THEN THEY LOAD IT BACK UP AND THEY PUT ONE SEAL. OKAY? SO THEY PUT A WHOLE DIFFERENT SEAL ON IT.

YOU'RE GONNA SEE THAT THE DEALERS THAT WERE TRANSFERRIN' THESE PARTICULAR ITEMS DID EVERYTHING THEY COULD TO CONCEAL THE DRUGS POSSIBLE. THEY HAD PUT IT IN A SEALED -- THEY HAD SEAL WOOD CHIPS IN THERE TO CUT DOWN ON THE SMELL. THE MARIJUANA WAS VACUUM SEALED. AND IF YOU LOOK AT THIS STUFF IT LOOKS LIKE CHEAP FURNITURE. THAT'S THE BEST I CAN DESCRIBE IT. THAT'S POORLY MADE FURNITURE. THAT'S ALL IT IS. IT DOESN'T LOOK LIKE ANYTHING ELSE. IF YOU LOOKED AT IT -- IF Y'ALL LOOKED AT IT IF YOU JUST SAW IT HERE YOU'D SAY WELL IT'S CHEAP FURNITURE OR WHATEVER.

YOU'LL SEE THAT THE DRIVER THAT WAS ON BOARD THE FIRST THING THAT THEY DID WAS THEY TAKE HIM TO A ROOM AND THEY TALK TO HIM AND THEY SAY DID YOU KNOW ANYTHING ABOUT THIS MARIJUANA. AND HE GOES NO I JUST CAME ACROSS THE BORDER FROM MEXICO. YOU KNOW, I DON'T KNOW ANYTHING ABOUT IT. AND YOU WILL SEE THAT THEY RELEASED HIM AND DIDN'T ARREST HIM OR DIDN'T CHARGE HIM. THEY DIDN'T DO ANYTHING BECAUSE YOU'LL SEE THAT IN THIS PROFESSION IT'S NOT UNCOMMON FOR THEM TO DECEIVE PEOPLE ALONG THE LINE TO GET THE SHIPMENT HERE. OKAY? TO LIE TO WHOEVER THEY HAVE TO LIE TO, TO DECEIVE WHOEVER THEY HAVE TO DECEIVE IN ORDER TO GET THE SHIPMENT HERE. SO THEY GET WITH HIM AND THEY SAY DO

YOU HAVE ANY KNOWLEDGE AND HE SAYS NO. THEY LET HIM GO.

THEN YOU'LL SEE THEY GO TO THE PEOPLE AT BORDER CARRIERS. I DON'T KNOW IF BORDER CARRIERS HAVE ANY DEALINGS WITH THESE DEALERS OR NOT. BUT THEY SAY WE'LL HAUL IT FOR YOU. YOU GIVE ME SOME MONEY ON THE BACK SADDLE (PHONETIC) OR WHATEVER. BUT THEY TAKE BORDER CARRIERS AND THEY GET THEIR REPRESENTATIVE, AND HE SIGNS A DOCUMENT SAYIN' I DON'T KNOW ANYTHING ABOUT THIS; I DIDN'T – YOU KNOW, I DIDN'T KNOW WHAT WE WERE SHIPPIN'. I THOUGHT WE WERE SHIPPIN' FURNITURE JUST LIKE EVERYBODY ELSE THINKS THAT THEY'RE SHIPPIN' FURNITURE, AND THEY LET HIM GO. THEY DO NOT CHARGE HIM WITH THIS THAT – THAT HE DIDN'T HAVE ANY KNOWLEDGE ABOUT WHAT'S GOIN' ON. THE DEALER HAS TOLD HIM THEY'RE SHIPPING FURNITURE. TOLD THE DRIVER THEY'RE SHIPPING FURNITURE. TOLD THE SHIPPER HE'S SHIPPING FURNITURE.

AND THEN YOU'LL SEE THAT WHAT THEY DO AT THAT PARTICULAR POINT IN TIME, THEY TAKE AND LOAD UP – THEY GET A DRIVER FROM BORDER CARRIERS. BORDER CARRIERS SAYS YEAH WE'LL SIGN THIS LETTER WE DON'T KNOW ANYTHING; WE'LL GIVE YOU A FREE DRIVER, AND THEY GIVE 'EM A FREE DRIVER AND – TO DRIVE 'EM OVER HERE. AS LONG AS YOU LEAVE US OUTTA THIS. SO ANYWAY, THEY GET BORDER CARRIERS TO GIVE 'EM A DRIVER. THEY PUT AN AGENT ON IT. AND YOU GOTTA UNDERSTAND THEY ARE DEALING WITH HISPANIC FOLKS FROM ALL THROUGH THIS THING. AND YOU'RE GONNA SEE THAT CUSTOMS HAD SEVERAL AGENTS THAT SPOKE SPANISH AVAILABLE TO GO ON THIS TRIP. YOU'LL SEE THAT FOR SOME REASON THEY GOT ABOUT THE ONLY NON-SPANISH SPEAKING CUSTOMS AGENT AVAILABLE TO RIDE ON THIS PARTICULAR SHIPMENT. SO HE HAD NO IDEA WHAT ANYBODY WAS SAYING. YOU'LL SEE THAT

THEY HAD RECORDING DEVICES, AUDIO RECORDING DEVICES IN ORDER TO LET US HEAR OR MAKE US HEAR -- LET US HEAR WHAT WENT ON OUT THERE. BUT THEY DIDN'T USE THOSE.

YOU'LL SEE THAT THEY HAD VIDEO AVAILABLE, BUT THEY DIDN'T USE THAT EITHER. YOU'LL SEE THAT WHAT THEY DID IS THAT THEY PUT HIM ON BOARD AND THEY COME HERE AND THEY GO TO SET UP THIS PARTICULAR DELIVERY.

NOT ONLY DID THEY NOT DO THE RECORDING OF THE VIDEO; THEY'RE NOT EVEN MAKING NOTES. THEY'RE NOT EVEN MAKING NOTES ABOUT WHAT WAS GOING ON. AS A MATTER OF FACT, ONE OF THE AGENTS YOU'RE GONNA HEAR FROM DIDN'T EVEN WRITE HIS SUMMARY UNTIL 6 MONTHS LATER. 6 MONTHS AFTER THIS HE SITS DOWN AND GOES OH LET ME WRITE DOWN WHAT'S HAPPENED 6 MONTHS AGO AND THEN HE'S GONNA COME IN HERE AND TESTIFY.

YOU'RE GONNA SEE THAT-- THAT EVEN THOUGH THEY DON'T KNOW WHAT WAS SAID; THEY DIDN'T BRING A -- A TRANSLATOR, YOU'LL SEE THAT THEY DIDN'T EVEN GO AND SEE IF THERE WERE -- NOBODY'S EVEN TRIED TO SEE WHO CALLED AND ORDERED THIS FROM JAMCO INTERNATIONAL FROM SEBASTIAN EXPORTACIONES. AND I'M GONNA TELL YOU WHY IN JUST A MINUTE.

THE DAY OF THIS INCIDENT THEY DECIDED TO DELIVER HERE IN EDGEFIELD COUNTY WAS A NIGHT -- IT WAS RAININ' ALL DAY LONG. IT GOT TO WHERE IT WAS RAINING SO HARD AT ONE POINT THAT -- AND YOU'LL HEAR INVESTIGATOR YOUNG TALK ABOUT HIM AND HIS SURVEILLANCE. I SAID WELL WHAT'D YOU DO; HE SAID NOT MUCH, I COULDN'T SEE 18 FOOT AWAY FROM ME IT WAS RAINING SO HARD.

YOU'LL SEE THEY HAD TEAMS OF OFFICERS AND ALL KINDA GOVERNMENT

VEHICLES OUT IN -- UNMARKED GOVERNMENT VEHICLES, BUT GOVERNMENT VEHICLES NONETHELESS. OUT THERE RUNNIN' SURVEILLANCE. MOST OF 'EM WEREN'T WITHIN ANY VISUAL SIGHT OF ANY OF 'EM.

YOU'LL SEE THAT NOT ONE OF THESE OFFICERS WAS CARRYING AN AUDIO RECORDER. NOT ONE OF 'EM WAS CARRYING A VIDEO RECORDER. NOBODY TOOK ANY PICTURES OF ANYTHING AS IT WENT DOWN. AND YOU'LL SEE THAT WHAT HAPPENS IS THEY FINALLY GET TO FREDY DELEON AND TELL ME WHAT -- LET ME JUST TELL YOU SOMETHING: DESPITE ALL THIS HIDING, DESPITE SEEING THAT EVERYBODY KNEW EVERYTHING ELSE, THIS SHIPMENT IS SHIPPED TO FREDY DELEON WITH HIS NAME ON IT TO HIS HOME; NOT TO HIS BUSINESS. THE ADDRESS THEY HAD ON IT IS TO HIS HOME WHERE HIS DAUGHTER, HIS LITTLE DAUGHTER AND HIS WIFE LIVE. THAT'S THE ADDRESS THAT THEY HAD. BUT INSTEAD, THEY TAKE IT TO HIS SHOP. JUST THINK ABOUT THAT.

NOW FREDY DELEON WHO IS SUPPOSEDLY WAITING ON 905 POUNDS OF MARIJUANA, OKAY, AND EXPECTING A SHIPMENT OF MARIJUANA SEES THIS TRACTOR TRAILER ACCORDING TO THE STATE.

NOW YOU'LL SEE THAT THEY PULL UP, AND THE FIRST THING THEY FIND OUT IS HE DOESN'T HAVE ANYWHERE TO PUT IT. HE DOESN'T HAVE ANYWHERE TO STORE IT. HIS STORAGE ROOM IS ALL KINDA -- HE'S GOT A LITTLE BIDDY STORAGE ROOM FROM ABOUT THAT WALL TO ABOUT HERE AND ABOUT AS LONG AS FROM HERE TO THERE TO PUT THIS WHOLE TRACTOR TRAILER LOAD OF FURNITURE IN. OKAY? THAT'S ALREADY ABOUT 3 FOURTHS FULL WITH GOODS AND STUFF FROM THE STORE. SO YOU SEE WHAT HAPPENS IS FREDY IS THERE. HE'S THERE, HE SAYS OKAY YOU GOT THE FURNITURE. THEY SAID WELL CAN WE UNLOAD SOME OF IT HERE. HE SAYS IT'LL BE ALL RIGHT. I DON'T HAVE MUCH

ROOM BUT WHATEVER YOU CAN YEAH YOU CAN PUT WHATEVER YOU CAN IN IT. THEY TAKE -- FREDY DOESN'T SELECT ANY FURNITURE. HE DOESN'T GO IN AND SAY OH YEAH I WANT THAT PIECE; I WANT THIS PIECE HERE WITH THE MARIJUANA; I WANT THIS PIECE HERE WITH THE MARIJUANA. HE DOESN'T SELECT ANYTHING. ONE OF THESE GUYS GETS WITHIN THE BACK OF THE TRUCK AND HE STARTS TAKING ITEMS OFF FROM THE BACK OF THE TRUCK. AND WHAT HE TAKES IS 13 PIECES OF FURNITURE. MOST OF IT'S CHAIRS. THAT'S ALL THEY'VE GOT ROOM FOR. CHAIRS. AND THEN HE TAKES ONE CHIMNEY AND TAKES IT OFF THE BACK OF THE TRUCK.

WELL, THEY NOT EVEN SURE -- THEY'RE HAVING TO MAKE ARRANGEMENTS IN THE STORAGE ROOM JUST TO MAKE SOME ROOM TO PUT SOME OF THIS STUFF IN THERE.

SO THEY TAKE AND SET IT UP AGAINST THE OUTSIDE OF THE BUILDIN' AND IT'S RAININ'. IT'S RAININ' ALL OVER. YOU THINK FREDY CARED? HE DON'T CARE. IT'S JUST A BUNCHA OLD FURNITURE. I MEAN HE'S -- AND THEN WHAT THEY DO IS THEY TAKE THIS FURNITURE AND -- AND THEY SET IT OUT THERE AND FREDY SAID WELL WE DON'T HAVE ROOM FOR ALL THIS AND FREDY SAYS WHAT DO Y'ALL WANNA DO. THEY SAY LET'S LOAD IT BACK UP. AND THE AGENT AND THE DRIVER SAY NO, Y'ALL LEAVE THAT HERE. Y'ALL LEAVE THAT HERE. AND WE'LL GO AND DELIVER THIS OTHER WHEREVER. THEN THEY DECIDE -- THAT'S WHEN THEY ALL LOAD BACK UP. OKAY? AND THEY GOTTA GET SOME TO FREDY. THEY GOTTA GET SOME TO FREDY. SO ANYWAY THEY TAKE THAT AND THEY PUT IT IN THE STORAGE ROOM. AND FREDY DELEON AT THIS POINT IN TIME -- AND HE GOES OKAY I GOT THIS FURNITURE HERE; THEY'RE TAKIN' THE OTHER FURNITURE WHEREVER. YOU'RE GONNA SEE THAT HE DOESN'T SELECT THE FURNITURE. HE DOESN'T SAY

WHERE WE GOIN' WITH THIS LOAD, AND 850 POUNDS OF HIS MARIJUANA, IF YOU BELIEVE IT, JUST TAKES OFF DOWN THE ROAD. YOU KNOW WHAT HE DOES? HE GETS IN HIS TRUCK AND HE GOES TO SELL GROCERIES. HE GETS IN HIS TRUCK, HE'S SO CONCERNED ABOUT THIS 850 POUNDS THAT JUST DROVE OFF, HE GETS IN HIS TRUCK AND HE GOES SELLS GROCERIES.

NOW THIS IS ALSO WHILE HE'S SUPPOSEDLY GOT 40 OR 50 POUNDS IN HIS STORE ROOM. AND HE DOESN'T DO ANYTHING TO IT. HE DOESN'T TOUCH IT. HE DOESN'T TRY TO OPEN IT. HE DOESN'T GO SEE WHAT IT IS. HE DON'T TAKE AND TRY TO HIDE IT. BECAUSE HE THINKS HE'S GOT FURNITURE. HE GOES BACK OUT TO GO SELL SOME GROCERIES. ALL RIGHT? AND YOU GOTTA UNDERSTAND THE GUY THAT UNLOADED IT AND THE GUYS THAT ARE DIRECTING WHERE TO TAKE THIS STUFF, THEY WERE NEVER ARRESTED. THEY – THEY SAY OKAY IT AIN'T GONNA WORK HERE, WE'RE GOIN' THIS WAY. THE ONLY THING FREDY DOES IS THEY'RE TRYIN' TO TELL THE TRUCK DRIVER AND THE AGENT WHERE TO GO AND THEY CAN'T – THEY CAN'T SPEAK ANY ENGLISH. THEY TRY TO GET FREDY TO TELL THEM HOW TO GO TO BILLY'S. FREDY CAN'T TELL 'EM HOW TO GO TO BILLY'S. HE GETS HIS WIFE ON THE PHONE AND SAYS THEY WANT YOU TO GO TO BILLY'S. THEY GO TO BILLY'S AND FREDY GOES ON HIS WAY SELLIN' THESE GROCERIES.

NOW TWO – TWO OF THESE GUYS, I'M NOT SURE WHETHER IT'S THE TWO THAT UNLOADED OR THE SAME ONES IN THE THUNDERBIRD. THEY MAY BE, MAY NOT. I'M A LITTLE CONFUSED ABOUT THAT. THEY DIRECT EVERYBODY IN THE TRUCK TO GO TO BILLY'S, AND I'M SURE YOU'RE ALL FAMILIAR WITH BILLY'S IF YOU LIVE IN THIS AREA. IT'S A BIG GROCERY STORE SLASH ALL IN ONE STORE WITH GAS AND EVERYTHING YOU CAN GET THERE. ANYWAY THEY GO UP THERE.

YOU'LL SEE THAT WHEN THEY GET UP THERE, THE THUNDERBIRD IS TELLING THEM -- TELLIN' EVERYBODY WHERE TO GO.

BASICALLY, IT'S THE PASSENGER IN THE THUNDERBIRD, THE ONE WITH THE POCK MARKS ON HIS FACE -- THAT'S THE BEST WAY TO DESCRIBE HIM BECAUSE NOBODY EVER GOT HIS NAME; NOBODY EVER FOUND HIS ADDRESS; NOBODY GOT ANY I.D. INFORMATION; NOBODY TOOK A PHOTOGRAPH OF HIM; NOBODY ARRESTED HIM; NOBODY RECORDED HIM, HE'S RUNNIN' THE SHOW, MAKIN' ALL THE CALLS, TELLIN' EVERYBODY WHERE TO GO WITH THESE DRUGS.

AND THEN YOU'RE GONNA SEE THAT NOT ONLY DOES HE SHOW UP WITH THIS THUNDERBIRD, BUT NOW HE HAS A BOX TRUCK THAT HE'S HIRED THESE 3 INDIVIDUALS TO MOVE SOME FURNITURE.

AS A MATTER OF FACT, ONE GUY -- AND I DON'T WANT TO DO THEIR CASE; THEY'LL TELL YOU ABOUT IT.

ONE GUY HE'S JUST OFF WORK AND HE'S HELPIN' HIS COUSIN 'CAUSE HIS COUSIN SAID WE NEED SOME HELP MOVIN' FURNITURE. HE'S NOT EVEN GETTIN' PAID. BUT ANYWAY, THE GUYS IN THE THUNDERBIRD NOW HAVE NOW HAVE HIRED THESE OTHER GUYS AND BROUGHT THEM IN A BOX TRUCK, AND THEN THEY TAKE THEM AND THEY TELL EVERYBODY LET'S GO, FOLLOW US WE'RE HEADIN' OUT. AND YOU'RE GONNA SEE THAT FREDY DELEON DID NOT RENT THE BOX TRUCK, DIDN'T HAVE ANY CONNECTION TO THE BOX TRUCK. YOU'RE GONNA SEE THAT THESE 3 INDIVIDUALS HAVE NEVER MET FREDY DELEON BEFORE. HE DIDN'T KNOW THEM AT ALL. THEY DIDN'T KNOW HIM AT ALL. YOU'RE GONNA SEE THAT, BASICALLY, THESE 3 FOLKS WERE, I THINK, WERE FROM NORTH CAROLINA AND WERE HIRED TO UNLOAD THIS FURNITURE. YOU'LL SEE THAT WHAT HAPPENED AT THIS POINT IN TIME -- AND I THINK THIS IS REALLY KEY AS TO WHY FREDY AND

THESE 3 ARE HERE IS THEY GO DOWN THIS ROAD AND THERE ARE CUSTOMS AGENTS EVERYWHERE, NARCOTICS AGENTS EVERYWHERE, LOCAL LAW ENFORCEMENT. I MEAN THEY GOT ALL THESE FOLKS.

THEY GO DOWN THIS DIRT ROAD AND THE TRACTOR TRAILER -- FIRST OF ALL, THE BOX TRUCK GETS STUCK. THEY STAY OUT THERE FOR ABOUT AN HOUR AND A HALF OR SO TRYIN' TO MOVE IT. THEY GET IT GOIN'. THE TRACTOR TRAILER GETS STUCK; THE BOX TRUCK GETS STUCK. THEY FINALLY THEY CAN'T GO ANYWHERE. THEY GET STRUCK (SIC); THEY GET COMPLETELY STUCK. THE THUNDERBIRD WHO IS IN THE FRONT WITH THE 2 GUYS TELLIN' EVERYBODY WHERE TO GO, WHAT TO DO WITH THIS MARIJUANA, WHATEVER, NOBODY BLOCKED THE END OF THE ROAD; NOBODY CUT THEM OFF. AND THEY -- I DON'T KNOW WHY BUT I DON'T KNOW WHAT THE CHANGE IN THE SEALS ON THE TRUCK; I DON'T KNOW IF THEY SAW TOO MANY FORD CROWN VICS OR WHATEVER GOVERNMENT CARS THERE WERE DRIVIN' DOWN THERE THAT DAY AND GOT NERVOUS, BUT THEY JUST LEFT. ABSOLUTELY LEFT.

AND YOU'LL SEE THAT INSTEAD OF FINDING OUT THE ULTIMATE DESTINATION OF ALL THIS MARIJUANA THEY JUST LEFT THE 3 GUYS HIRED TO UNLOAD THE FURNITURE AND ONE GUY TO GIVE 'EM A PLACE TO DELIVER.

YOU'LL SEE THAT THERE'S NO DOUBT WHATSOEVER THAT THE 2 GUYS THAT GOT AWAY KNEW WHAT WAS IN (UNINTELLIGIBLE) BECAUSE ONE OF THEM LEFT HIS FORD THUNDERBIRD COMPLETELY ABANDONED. HE MOVED AWAY FROM HIS HOME. HE HADN'T BEEN BACK TO HIS JOB. HE IS GONE. THE OTHER GUY ABSOLUTELY GONE. IF YOU HAVE ANY DOUBT ABOUT WHO KNEW WHAT WAS IN THIS LOAD AND WHO WAS DIRECTING EVERYTHING, THAT'S THE 2 GUYS.

NOW YOU'LL SEE THAT WHEN THEY GET TO DELEON'S THEY COME BACK --

BY THE TIME HE'S COME BACK, THEY'VE GOT AGENTS IN THERE OR WHATEVER. HE COMES BACK AFTER HAVIN' -- HE GOES OUT TO TRY TO SELL SOME FOOD OR WHATEVER AND THEN IT'S RAININ' SO HARD HE SAYS IT'S JUST A WASTE OF TIME. HE COMES BACK. WHEN HE COMES BACK, THERE'S AGENTS ALL OVER HIS PLACE. HE SAYS WHAT'S GOIN' ON. HIS WIFE HAS ALREADY DIRECTED THEM TO WHERE THIS FAKE CHIMNEY THING IS. THEY'VE POPPED IT OPEN AND THEY HAVE ALL THESE DRUGS. RIGHT?

AND YOU'LL SEE THAT WHEN THEY SEARCH HIS PLACE, HIS BUSINESS OR WHATEVER, WHEN THEY LOOK THEY DON'T FIND ANY DRUGS, ANY SCALES, ANY DRUG PARAPHERNALIA, ANY PACKAGING MATERIALS, ANY OF THOSE THINGS THAT I TOLD YOU THEY REGULARLY FIND WHEN THEY GET A DRUG DEALER. AND YOU GOTTA UNDERSTAND IF THEY REALLY THINK THAT HE'S A DRUG DEALER, ALL THEY HAD TO DO AT THIS POINT IN TIME THEY HAD ALL THIS MARIJUANA AT HIS PLACE, THEY GONNA TELL YOU AGAIN WE CAN USE THAT AS PROBABLE CAUSE. WE CAN GO OUT AND SEARCH HIS HOUSE AND SEARCH HIS HOME, SEARCH HIS BUSINESS, ANYTHING ELSE. NOBODY DID. NOBODY EVEN DID THAT. YOU'RE GONNA SEE THAT ROOSEVELT YOUNG WILL TELL YOU HE DIDN'T THINK HE WAS A DRUG DEALER. AND HE'S THE LEAD NARCOTICS INVESTIGATOR FOR EDGEFIELD COUNTY.

NOW THEY HAD TO ACTUALLY TELL FREDY WHAT WAS IN THIS CHIMNEY. HE DOESN'T BELIEVE 'EM. THEY TELL HIM THE SAME THING. AND HE SAYS WELL LISTEN YOU KNOW -- YOU KNOW, THE ONLY THING I KNOW IS I WAS SUPPOSED TO GET SOME FURNITURE, YOU KNOW, AND, YOU KNOW, AND HERE'S THE TABLE WE GOT, YOU KNOW, ALL THAT. YOU GOTTA UNDERSTAND WHEN THEY COME TO SEARCH THIS DAY -- TO SEARCH HIS BUSINESS, THEY DON'T CALL HIM UP AND

SAY WE'RE COMIN'. THEY JUST SHOW UP. HE DIDN'T KNOW THEY WERE COMIN', AND THEY FIND NOTHIN'. ABSOLUTELY NOTHIN'. YOU'LL SEE THEY NEVER SEARCHED HIS HOME, HIS CARS, HE WORK TRUCK, ANYTHING LIKE THAT.

THE ONLY THING THAT FREDY DELEON HAS DONE HE'S BEEN THE VICTIM OF A DRUG DEAL. JUST LIKE THE DRIVER. JUST LIKE THE CARRIER. THIS IS WHAT THEY DO.

YOU'RE GONNA SEE THAT IT'S VERY UNLIKELY FOR A DRUG DEALER TO COME UP AND SAY LISTEN I GOT 1000 POUNDS OF MARIJUANA I'D LIKE TO BRING INTO YOUR SPOT. THINK THAT'LL BE OKAY? NO. HE'S BEEN USED LIKE EVERYBODY ELSE. AND THE REASON HE WAS USED IS BECAUSE THE 2 MAIN GUYS, THE GUYS THAT GOT AWAY WHEN THEY LOOKED AROUND.

SO WHO DO WE HAVE? AND THERE THEY SIT.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL TAKE ABOUT A 10-MINUTE BREAK. I NEED YOU TO GO BACK TO THE JURY ROOM. DON'T DISCUSS THE CASE. LEAVE YOUR NOTES IN THE JURY BOX, PLEASE. (THERE WAS A BRIEF RECESS.) (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.)

MR. SUSSMAN: JUDGE?

THE COURT: SIR?

MR. SUSSMAN: SINCE I'M REPRESENTING 2 DEFENDANTS I WOULD LIKE AT SOME POINT TO PUT ON THE RECORD THEY DON'T -- THEY WAIVE ANY CONFLICT. WE DID THE LAST TIME, BUT WE PROBABLY OUGHT TO REDO IT WHENEVER YOU WANNA--

THE COURT: OKAY.

MR. SUSSMAN: --DO IT MAYBE AFTER LUNCH BREAK BEFORE THE JURY COMES IN.

THE COURT: ALL RIGHT. JUST REMIND ME. ALL RIGHT. BRING THE JURY. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) ALL RIGHT, MR. SUSSMAN.

MR. SUSSMAN: MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

MR. HAWKE: YOUR HONOR, MAY WE APPROACH?

THE COURT: SURE. (THERE WAS A BENCH CONFERENCE OUT OF THE HEARING OF THE JURY AND OFF THE RECORD.) ALL RIGHT. MR. SUSSMAN, YOU'RE RECOGNIZED.

MR. SUSSMAN: THANK YOU, YOUR HONOR.

LADIES AND GENTLEMEN OF THE JURY, MY NAME IS WILLIAM SUSSMAN AGAIN. I'M AN ATTORNEY. I PRACTICE IN GEORGIA AND SOUTH CAROLINA.

I'M PLEASED TO BE HERE BEFORE YOU TODAY, AND I'M ALSO PLEASED TO TELL YOU THAT MY COMMENTS WILL BE EXTREMELY BRIEF. SO PERHAPS WE CAN GET OUTTA HERE IN TIME FOR LUNCH. WE WANNA TELL YOU THOUGH WHO THESE FELLOWS ARE AND SHOW THEM TO YOU AGAIN SO YOU KNOW WHO WE'RE TALKIN' ABOUT. I'D LIKE TO INTRODUCE MY CLIENTS TO YOU. I'VE GOT -- ALFREDO, WOULD YOU STAND UP, PLEASE. THIS IS ALFREDO AVILA-AROJONA. HE'S 28 YEARS OF AGE. HE WAS IN THIS COUNTRY APPROXIMATELY A YEAR WORKING IN CHARLOTTE, NORTH CAROLINA WHEN HE WAS ARRESTED. RAPHAEL HERNANDEZ. THIS IS RAPHAEL WHO IS 22 YEARS OF AGE. HE WAS, AGAIN, HERE APPROXIMATELY A YEAR WORKING BEFORE HE WAS ARRESTED. AND THEN ALSO REGARDING FREDY DELEON, I'VE GOTTEN PERMISSION FROM COUNSEL TO INTRODUCE HIM AS WELL. FREDY? THIS IS FREDY DELEON. AND YOU'VE HEARD ABOUT HIM ALREADY SO. AND MR. MILLER WILL INTRODUCE HIS CLIENT TO YOU.

IN THIS CASE AND IN THE OPENING STATEMENTS, THE ATTORNEYS ARE SUPPOSED TO TELL YOU WHAT THEY EXPECT THE EVIDENCE TO SHOW.

AND THAT'S ONE OF THE REASONS WHY MY COMMENTS WILL BE VERY BRIEF BECAUSE THERE'S REALLY NO EVIDENCE FOR ME TO TALK ABOUT IN TERMS OF WHAT WILL BE SHOWN ABOUT MY CLIENTS OTHER THAN THE FACT THAT THEY WERE MERELY PRESENT, THAT THEY WERE THERE WHEN THE TRUCK GOT STUCK. THEY WERE NOT AT THE BORDER.

THEY'RE NAMES ARE NOWHERE ON ANY PAPERWORK. THEY WERE NOT AT FREDY'S STORE. MY 2 CLIENTS WERE NOT EVEN DRIVING. THEY WERE JUST PASSENGERS IN A RYDER TRUCK AND WERE IN THE TRUCK THAT WAS STUCK IN THE MUD AND WERE SWEPT UP, AS MR. MAYE PUT IT, IN THIS ARREST. THAT IS THE EXTENT OF THE EVIDENCE ON MY CLIENTS IN THIS CASE. INTERESTINGLY ENOUGH, IT WAS ALLUDED TO PREVIOUSLY, THE DRIVER OF THE SEMI THAT WAS LOADED WITH THIS FURNITURE THAT STOPPED AT THE BORDER IN LAREDO, TEXAS, THE DRIVER OF THE SEMI, THE TRACTOR TRAILER, WHO WAS PRESENT WITH THE SEMI WAS LET GO. AND AS YOU TAKE NOTES, AND I'M GLAD YOU ARE, I'LL BE CURIOUS TO SEE AT THE END OF THE CASE HOW MANY NOTES YOU'VE TAKEN MENTALLY OR PHYSICALLY IN REGARDS TO ALFREDO AND RAPHAEL. AND THAT'S WHY AT THE END OF THE CASE I'M GONNA ASK YOU TO FIND THEM NOT GUILTY. THANK YOU.

THE COURT: THANK YOU, MR. SUSSMAN. OF COURSE, NO ONE IS GOING TO BE PHYSICALLY LOOKIN' AT YOUR NOTES. YOU SAID YOU'D BE INTERESTED TO SEE HOW MANY NOTES THEY HAD TAKEN. NOBODY'S GONNA LOOK AT YOUR NOTES. THAT WAS A FIGURATIVE STATEMENT; NOT A LITERAL STATEMENT. ALL RIGHT. NOW, MR. MILLER, WE'RE TO YOU. YOU'RE RECOGNIZED.

MR. MILLER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

THE COURT: YES.

MR. MILLER: LADIES AND GENTLEMEN, MY NAME IS DAVID MILLER AND I'M AN ATTORNEY FROM AIKEN.

MY CLIENT IS HONORIO GUERRERO.

MR. GUERRERO, AS YOU'VE ALREADY HEARD BEFORE, WAS THE GUY WHO WAS DRIVING THE RYDER BOX TRUCK, THE RENTAL TRUCK. NOT THE 18 WHEELER. NOT THE TRUCK WITH THE MARIJUANA ON IT.

IN FACT, YOU'LL FIND OUT AFTER ALL THE EVIDENCE IS PUT BEFORE YOU THAT NEITHER MR. GUERRERO NOR THE 2 GENTLEMEN THAT WERE WITH HIM EVER EVEN SAW THE INSIDE OF THE TRUCK THAT HAD THE MARIJUANA ON IT. THEY NEVER TOUCHED ANY OF THE FURNITURE THAT HAD THE MARIJUANA INSIDE OF IT. THEY NEVER TOUCHED ANY OF THE MARIJUANA ITSELF. THAT TRUCK, THE 18 WHEELER, WAS STUCK OUT THERE ON PADGETT ROAD OR OFF PADGETT ROAD AND IT WAS CLOSED UP.

AND YOU'LL HEAR FROM, MOST LIKELY, AGENT MIZE WHO WAS ALSO THERE AT THE SCENE, THAT AT ONE POINT IN TIME MR. GUERRERO AND ONE OF HIS FRIENDS THAT WAS RIDING WITH HIM ACTUALLY LEFT THE SCENE. WALKED DOWN TO THE END OF THE ROAD SEARCHING FOR A CELL PHONE SIGNAL FOR SOMEBODY TO HELP HIM GET THEIR VEHICLE UNSTUCK. AT THAT TIME THEY DIDN'T EVEN KNOW THE 18 WHEELER WAS STUCK. THE 18 WHEELER COULDN'T GO ANYWHERE BECAUSE THE RYDER TRUCK WAS RIGHT IN FRONT OF IT. BUT HE ACTUALLY WALKED ALL THE WAY TO THE END OF THE ROAD TO SEE IF, NUMBER ONE, HE COULD GET A CELL PHONE SIGNAL OR, NUMBER TWO, IF SOMEBODY OUT THERE COULD HELP. AND THEN THEY WALK BACK.

YOU'LL HEAR ABOUT THE FACT THAT WHEN THE POLICE ARRIVED ON THE SCENE CASTING THIS NET, SWEEPING THESE GUYS UP AS IT HAD BEEN, MY CLIENT ACTUALLY THOUGHT THAT THE POLICE WERE THERE AND WERE GONNA HELP THEM GET THE CAR UNSTUCK. NOBODY RAN. NOBODY MADE ANY ATTEMPT TO FLEE. THEY TALKED TO THE POLICE AND THE POLICE PLACED THEM UNDER ARREST. SAID YOU ARE INVOLVED WITH THIS. BUT THEY WEREN'T. AND THEY WERE, IN FACT, AS IT HAS BEEN ALLUDED TO BEFORE, UNWILLING PARTICIPANTS IN THE THING.

I CAN GIVE YOU SOME GOOD NEWS, AND THAT IS SIMPLY THIS: I ALONG WITH MR. SUSSMAN, COMING AT THE END OF THE LINE, MOST OF THE THINGS, MOST OF THE QUESTIONS THAT NEED TO BE ASKED, THE EVIDENCE THAT NEEDS TO BE INTRODUCED IS GONNA BE INTRODUCED BEFORE I STAND UP. AND I'M THE LAST ONE IN THE CHAIN OF ATTORNEYS HERE. SO GENERALLY WHENEVER I GET UP, YOU KNOW IT'S ALMOST OVER WITH. AT LEAST FOR THAT PARTICULAR WITNESS. SO THAT DOES GIVE YOU SOMETHING TO LOOK FORWARD TO.

WHAT I WOULD ASK THOUGH IS THAT YOU KEEP AN OPEN MIND; YOU HEAR EVERYTHING THAT'S SAID; YOU EXAMINE THE EVIDENCE AS IT IS ENTERED, AND AT THE CONCLUSION OF THE CASE, I ASK YOU -- I WILL ASK YOU TO DO WHAT IS RIGHT, AND TO DO WHAT IS JUST. THERE'S NO QUESTION, EVERYONE HERE CAN AGREE THAT 900 POUNDS OF MARIJUANA WAS BROUGHT INTO EDGEFIELD COUNTY, AND THAT'S A TERRIBLE THING. EVERYBODY AGREES ABOUT THAT. EVERYBODY AGREES, AS FAR AS I KNOW, THAT THOSE 2 GUYS IN THAT GREEN THUNDERBIRD KNEW EXACTLY WHAT WAS GOIN' ON THE ENTIRE TIME. BUT JUSTICE REQUIRES THAT MR. HONORIO GUERRERO HAS NOT SHOWN TO HAVE ACTUAL KNOWLEDGE OR CONSTRUCTIVE KNOWLEDGE OF WHAT WAS INSIDE

THAT FURNITURE. HE NEVER LAID EYES ON IT.

YOU MUST FIND HIM NOT GUILTY BECAUSE KNOWINGLY, YOU WILL SEE, IS ONE OF THE VERY FIRST ELEMENTS OF THE STATE'S CHARGE IN THE INDICTMENT. IT SAYS THAT HE DID KNOWINGLY AND INTENTIONALLY DO THAT LONG LIST OF THINGS THE JUDGE TALKED ABOUT BEFORE. SO IF HE DIDN'T KNOW THERE WAS MARIJUANA INSIDE THERE, HE CAN'T BE GUILTY OF THE CHARGE NAMED IN THE INDICTMENT.

AND IT'S GONNA BE DIFFICULT FOR YOU ON THE FACTS THAT ARE GONNA BE VERY CLEAR THAT THERE'S 900 POUNDS OF MARIJUANA -- AND THE SOLICITOR IS EXACTLY RIGHT -- STACKED UP HERE IN FRONT OF YOU, IT'S GONNA COVER MOST OF THIS FLOOR -- IT'S GONNA BE VERY DIFFICULT FOR YOU TO LOOK AT THAT MARIJUANA AND SAY NONE OF THESE PEOPLE ARE GOIN' TO JAIL FOR IT? BUT YOU -- JUSTICE REQUIRES THAT YOU KEEP THE STATE TO ITS BURDEN AND MAKE THE STATE PROVE EACH AND EVERY ELEMENT OF THE OFFENSE CHARGED BEFORE YOU FIND THAT THESE GENTLEMEN ARE GUILTY. AND I BELIEVE THAT AT THE CONCLUSION OF THIS CASE -- I WILL ASK YOU AT THE CONCLUSION OF THIS CASE TO RENDER A VERDICT WHICH SAYS POSSIBLY THROUGH NO FAULT OF THE STATE; POSSIBLY THE STATE COULD'VE DONE SOMETHING BETTER -- FOR WHATEVER REASON, THE STATE FAILED TO MEET ITS BURDEN ON AT LEAST ONE ELEMENT, AND THEREFORE, THE STATE'S CASE AS A WHOLE HAS TO FAIL. THANK YOU.

THE COURT: CALL YOUR FIRST WITNESS, SOLICITOR.

MR. MAYE: STATE CALLS RICK GAONA.

RICARDO GAONA, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q INSPECTOR GAONA, WILL YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHERE YOU NOW WORK.

A I PRESENTLY WORK IN LAREDO, TEXAS AT THE PORT OF LAREDO. I WORK AT BRIDGE #2, RIGHT OUTSIDE BRIDGE 2.

Q WHERE WERE YOU EMPLOYED AND WHAT WAS YOUR AGENCY CALLED IN 2002?

A IN 2002 IT WAS CALLED U.S. CUSTOMS SERVICE.

Q OKAY. CUSTOMS. HOW LONG HAD YOU BEEN WITH CUSTOMS OR HOW LONG HAVE YOU BEEN WITH THEM?

A I WAS EMPLOYED IN FEBRUARY 1997.

Q OKAY. HOW MUCH TIME OF THAT HAVE YOU SPENT DOWN AT LAREDO WORKING AT THE BORDER FOR YOUR AGENCY?

A CAN YOU, PLEASE, REPEAT THE QUESTION.

Q HOW LONG OF THE TIME THAT YOU'VE BEEN WORKING FOR CUSTOMS HAVE YOU BEEN DOWN THERE IN LAREDO? WHEN DID YOU GO TO LAREDO?

A PRIOR TO ME WORKING WITH CUSTOMS I DID LIVE IN LAREDO I WANNA SAY 4 YEARS BECAUSE MY WIFE IS FROM LAREDO, TEXAS.

Q LET ME DIRECT YOUR ATTENTION TO MAY 14TH 2002. WERE YOU WORKIN' IN YOUR CAPACITY AS A CUSTOMS AGENT AT THAT TIME?

A MAY 14, 2002, I WAS WORKING WITH U.S. CUSTOMS AS AN INSPECTOR, YES.

Q OKAY. WHAT WERE YOU DOIN' FOR CUSTOMS ON THAT DAY? WHAT WERE YOUR JOB RESPONSIBILITIES?

A ON MAY 14TH 2002 I WAS ASSIGNED TO THE WORLD TRADE BRIDGE WHICH

IS AN IMPORT LOT IN LAREDO, TEXAS AND I WAS ASSIGNED TO THE -- IN ONE OF THE N.I.I. EQUIPMENTS THAT WE HAVE. N.I.I.—

Q N.I.I., WHAT IS THAT?

A N.I.I. IS NON INTRUSIVE INSPECTION STATION. IT'S AN X-RAY CALLED THE VACIS -- VACIS 2. THAT'S THE NAME OF THE X-RAY. THAT'S V AS IN VICTOR A-C-I-S-2

Q SO IT'S LIKE A GIANT X-RAY MACHINE?

A IT IS AN X-RAY MACHINE THAT X-RAYS TRAILERS AND VEHICLES WHATEVER WE WANT TO X-RAY.

Q DO YOU HAVE ANY SPECIALIZED TRAINING IN OPERATING THAT PIECE OF EQUIPMENT?

A YES. EVERY INSPECTOR THAT'S ASSIGNED OR THAT OPERATES ANY N.I.I. EQUIPMENT HAS TO BECOME CERTIFIED TO OPERATE THAT PARTICULAR EQUIPMENT, AND ONCE YOU GET CERTIFIED YOU HAVE TO HAVE A CERTIFICATE THAT STAYS THERE IN OUR RECORDS FOR THAT PARTICULAR EQUIPMENT.

Q WERE YOU, IN FACT, CERTIFIED AT THAT TIME?

A THAT IS CORRECT, SIR. YES.

Q WHERE DID YOU RECEIVE YOUR SPECIALIZED TRAINING IN OPERATING THAT EQUIPMENT?

A MY TRAINING WAS RECEIVED THERE AT THE PORT OF LAREDO IN LAREDO, TEXAS.

Q OKAY. HOW LONG HAD YOU BEEN OPERATING THAT PARTICULAR PIECE OF EQUIPMENT?

A PRIOR TO MAY 14TH APPROXIMATELY ABOUT 3 YEARS. PRIOR TO MAY 13TH 2002.

Q TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT WORKIN' AT THE PORT OF LAREDO IS LIKE. WHAT'S GOIN' ON THERE? HOW ARE THINGS COMIN' AND GOIN' THERE? WHAT TYPE OF ACTIVITY'S THERE?

A WELL, ON THAT PARTICULAR DAY MAY 14, 2002, I WAS ASSIGNED TO THE IMPORT LOT. WORKING AT THE IMPORT LOT IN LAREDO, TEXAS IS VERY HECTIC. THERE'S A LOTTA TRAFFIC. YOU'RE LOOKING AT – WORKING AT THE IMPORT LOT YOU'RE LOOKING IN BETWEEN 35 AND 45 HUNDRED TRAILERS AT CROSS ON ANY – ON A MONDAY THROUGH FRIDAY. IT'S VERY HECTIC. IT'S A LOTTA TRAFFIC.

Q OKAY. SO YOU HAD BEEN OPERATING THIS PARTICULAR PIECE OF EQUIPMENT FOR SOMETIME. ABOUT HOW MANY TRUCKS A DAY WERE YOU X-RAYING AT THAT TIME?

A ON A GIVEN SHIFT, ON ONE GIVEN SHIFT, AND I'M SPEAKING 8 TO 4 OR 4 TO 12 'CAUSE WE'RE OPEN – THE IMPORT LOT IS OPEN 8 TO 4, 4 TO 12 – I WOULD SAY ABOUT 120, 130 TRAILERS PER SHIFT. WE AVERAGE ABOUT LET'S SAY 12, 20 TRAILERS AN HOUR.

Q DURING THAT SHIFT DID ONE PARTICULAR TRAILER COME TO YOUR ATTENTION AND RECEIVE TIGHT SCRUTINY ON THAT DAY?

A CAN YOU REPEAT THE QUESTION.

Q DURING THAT SHIFT OR DURING THAT DAY ON THE 14TH DID ANY TRAILER COME THROUGH THAT RECEIVED TIGHT SCRUTINY FROM YOU?

A ON THIS PARTICULAR DAY, YES, THERE WAS. THERE WAS ONE PARTICULAR TRAILER THAT I – THAT I NOTICED AN ANOMALY INSIDE OF THE COMMODITY OF THE TRAILER THAT WE HAD QUESTION ABOUT, YES.

Q WHAT'S AN ANOMALY? WHAT ARE YOU TALKIN' ABOUT?

A AN ANOMALY TO US IS A TERMINOLOGY THAT WE USE. IT'S A

DISCREPANCY THAT'S FOUND WITHIN THE COMMODITY OF THE TRAILER OR THE TRAILER ITSELF.

Q OKAY. DID YOU KNOW WHAT WAS INSIDE OF THE TRAILER? DID YOU HAVE ANYTHING THAT INDICATED TO YOU WHAT WAS INSIDE THE TRAILER?

A BEFORE WE X-RAY ANY TRAILER, ANY MERCHANDISE WE HAVE TO KNOW AS INSPECTORS, WE HAVE TO KNOW WHAT'S INSIDE OF THE TRAILER. WE HAVE TO KNOW WHAT WE'RE DEALIN' WITH.

Q HOW DO YOU KNOW THAT?

A WE KNOW THAT BECAUSE WE HAVE BEFORE US WHAT WE CALL A MANIFEST, A CUSTOMS MANIFEST THAT'S PREPARED BY A U.S. CUSTOMS BROKER WHICH IS A MIDDLE MAN FOR THE PEOPLE THAT MAKE IMPORTATIONS OF GOODS.

Q WHAT'S THE FLOW OF THAT PAPERWORK THROUGH THE PORT OF LAREDO THERE? HOW DOES THAT WORK? SOMEONE COMES IN WITH A TRAILER AND THEY'VE GOT THE MANIFEST, HOW DOES THAT WORK?

A THE WAY IT WORKS IS WE HAVE WHAT WE CALL PRIMARY LANES. OKAY? AT THE IMPORT LOT WE HAVE WHAT WE CALL PRIMARY LANES. I BELIEVE WE HAVE 8 PRIMARY LANES. THE TRAILERS THAT ARE COMING FROM MEXICO THEY HAVE TO STOP AT ONE OF THESE PRIMARY LANES, AND IF THEY HAVE GOODS IN THE TRAILER THEY HAVE TO PREPARE -- THEY HAVE TO PRESENT, NOT PREPARE, PRESENT TO AN INSPECTOR, ONE OF US, A MANIFEST. THEY HAVE TO HAVE A MANIFEST.

Q WHERE DOES THAT PIECE OF PAPER THEN GO ONCE THEY PREPARE THE MANIFEST? THE MANIFEST IS TURNED OVER TO Y'ALL; WHERE DOES THAT GO?

A THE MANIFEST IS GIVEN TO US. IT'S 2 COPIES. HAS 2 COPIES OF THE MANIFEST. IT'S GIVEN TO US AND THE INSPECTOR WHAT WE DO IS WE WORK

WHAT WE CALL -- WE WORK THE MANIFEST.

IT'S GOT A PRE FILE NUMBER ON THE MANIFEST. THE MANIFEST WHAT IT STATES IT HAS A PRE FILE NUMBER WHATEVER CUSTOMS BROKER THAT THEY USED. IT HAS A DESCRIPTION OF THE MERCHANDISE. IT HAS ON THERE A TRAILER NUMBER, THE QUANTITY OF THE MERCHANDISE, LIKE FOR INSTANCE LIKE SO MANY PIECES OF WOODEN FURNITURE.

AND WHAT WE DO IS WE WORK THE ENTRY AND IF IT'S A GENERAL, WE CALL IT GENERAL. IT'S NOT AN INTENSIVE EXAM. WHAT WE DO IS WE WORK THE ENTRY. WE KEEP A COPY OF THE MANIFEST AND ONE COPY IS GIVEN TO THE DRIVER AT HIS EXIT. EVERY DRIVER AT THAT IMPORT LOT MUST HAVE AN EXIT AND A STAMP BY US. IT'S SIGNED BY US. AND IF HE'S GOOD TO GO, WE GIVE HIM A COPY; WE STAMP IT AND HE PRESENTS THAT TO THE EXIT GATE. THERE'S ANOTHER INSPECTOR THERE THAT VERIFIES THAT THIS PARTICULAR TRAILER IS ACTUALLY A GENERAL, GOOD TO GO DOWN THE ROAD AND HE'S AT THE COMPOUND.

IF NOT, IF IT'S NOT A GENERAL WHAT WE DO IS WE AS INSPECTORS, WE HOLD ON TO THE MANIFEST. WE HOLD ON TO BOTH COPIES. WE CANNOT GIVE THE DRIVER A COPY OF THE MANIFEST BECAUSE THAT PARTICULAR SHIPMENT WAS SELECTED FOR AN INTENSIVE EXAM, WHAT WE CONSIDER AN INTENSIVE EXAM WHICH IS PROBABLY GONNA END UP AT THE X-RAYS OR IS GONNA END UP AT THE DOCK FOR OFFLOADING PURPOSES AND FOR US TO CHECK WHATEVER WE WANNA CHECK.

Q THE TRAILER IN WHICH YOU FOUND THE ANOMALIES, DID YOU HAVE A MANIFEST BEFORE YOU FOR THAT TRAILER?

A YES, I DID. I DID HAVE A COPY OF THE MANIFEST, THAT IS CORRECT.

Q I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 2 FOR I.D. IS THAT A FAIR AND ACCURATE COPY OF THE MANIFEST FOR THE TRAILER IN WHICH YOU NOTICED THE ANOMALIES?

A THAT IS CORRECT.

MR. MAYE: YOUR HONOR, I MOVE TO ADMIT THIS INTO EVIDENCE.

THE COURT: SUBJECT TO PREVIOUS OBJECTIONS?

MR. HAWKE: YOUR HONOR, THE ONLY OBJECTION WE HAVE IS ON THE BASIS OF HEARSAY AND THAT THE PERSON THAT PREPARED THE DOCUMENT IS NOT AVAILABLE FOR CROSS-EXAMINATION.

MR. SUSSMAN: WE JOIN IN THAT OBJECTION ALSO. IT'S UNCLEAR HOW HE GOT THE POSSESSION OF IT AND WHO ACTUALLY TOOK POSSESSION OF IT INITIALLY. FOR THOSE REASONS WE OBJECT.

THE COURT: MR. MILLER?

MR. MILLER: YOUR HONOR, DEFENDANT GUERRERO WOULD JOIN IN THE MOTION.

THE COURT: ALL RIGHT. FOR REASONS STATED PREVIOUSLY, THE OBJECTION IS OVERRULED. MARK IT IN EVIDENCE, MADAM COURT REPORTER.

(STATE'S EXHIBIT #2 RECEIVED IN EVIDENCE.)

Q AGENT GAONA, LET ME ASK YOU THIS: IN THE REGULAR COURSE OF BUSINESS WITH CUSTOMS, ARE MANIFESTS PREPARED -- OR MANIFESTS DO THEY ACCOMPANY THE TRUCKS AS THEY GO THROUGH IN THE REGULAR COURSE OF BUSINESS? IS THAT STANDARD PRACTICE OR PAPERWORK?

A IN THE IMPORT LOT? YES. EVERY DRIVER MUST IF HE HAS GOODS IN THE TRAILER OR HIS TRUCK OR WHATEVER, THEY MUST HAVE A MANIFEST AND PRESENT IT TO ONE OF THE INSPECTORS. FAILURE TO DO SO -- AND THEY KNOW

THIS -- FAILURE TO DO SO RESULTS IN A PENALTY OR FINE AND WE WOULD GET 'EM FOR NO MANIFEST. SO THEY KNOW THEY HAVE TO PRESENT A MANIFEST TO US.

Q DOES THE SHIPMENT GET THROUGH WITHOUT A MANIFEST?

A NO. DEFINITELY NOT.

Q LET ME ASK YOU THIS: LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 1 FOR IDENTIFICATION. CAN YOU IDENTIFY THAT?

A YES, I CAN SIR. VERY EASILY. YES.

Q WHAT IS THAT?

A THIS WHAT I HAVE BEFORE ME WHAT YOU JUST GAVE ME IS A COPY OF THE N.I.I. EQUIPMENT THAT I WAS OPERATING. IT'S A VACIS. IT'S A COPY OF AN IMAGE.

Q IS THAT A FAIR AND ACCURATE IMAGE OF THE TRAILER IN WHICH YOU SAW THE ANOMALIES?

A YES, IT IS, SIR.

Q HOW CAN YOU MATCH---

MR. MAYE: YOUR HONOR, MOVE TO ADMIT THIS INTO EVIDENCE AT THIS TIME.

THE COURT: ALL RIGHT.

MR. HAWKE: YOUR HONOR, WE WOULD OBJECT TO THIS. AN ADEQUATE FOUNDATION ABOUT THE X-RAY HAS NOT BEEN MET.

MR. SUSSMAN: WE WOULD JOIN IN THAT OBJECTION AND ALSO IF THERE'S ANY CERTIFICATION REQUIRED FOR AGENT GAONA---

A THAT'S CLOSE ENOUGH.

MR. SUSSMAN: GAONA. I'VE BEEN PRACTICING THIS SINCE YESTERDAY.

THAT THERE'S NO CERTIFICATION WITH REGARD TO HIS OPERATION OF THE MACHINE.

MR. MILLER: DEFENDANT GUERRERO JOINS IN THE OBJECTION AS WELL.

THE COURT: MARK IT IN EVIDENCE, PLEASE. (STATE'S EXHIBIT #1 RECEIVED IN EVIDENCE.) OBJECTIONS ARE OVERRULED.

Q AGENT GAONA, I'M GONNA ASK YOU TO COME DOWN OFF THE STAND AND SHOW THE LADIES AND GENTLEMEN OF THE JURY WHAT YOU'RE TALKIN' ABOUT ANOMALIES, WHAT YOU SAW IN THAT TRAILER.

A WHEN I SAY ANOMALY, AN ANOMALY IS A DISCREPANCY THAT IS IN THE MERCHANDISE IN THE TRAILER OR THE TRAILER ITSELF. IN THIS PARTICULAR PICTURE THAT I HAVE BEFORE ME, YOU HAVE A PICTURE OF A TRAILER WHICH IS EXHIBITED IN WINDOW C.

WHAT WE DO IS WE HAVE A CAMERA, IT FOCUSES ON THE PARTICULAR TRAILER WE HAVE BEFORE US AND WE CAPTURE IT ON WINDOW C WHICH IS THE TRAILER THAT WE HAVE IN QUESTION TODAY. THIS PARTICULAR TRAILER HAS WOODEN FURNITURE AND I KNOW THAT BECAUSE I HAVE A MANIFEST BEFORE ME. WOODEN FURNITURE. I'M LOOKING AT THIS MANIFEST RIGHT HERE AND IT STATES 133 BUNDLES OF FURNITURE. AND THEREFORE I KNOW WHAT'S IN THE TRAILER. FOR SAFETY PURPOSES WE HAVE TO KNOW WHAT'S INSIDE THE TRAILER. I'M NOT GONNA OPEN UP A TRAILER IF IT CONTAINS HAZARDOUS MATERIAL. I'M NOT GONNA DO THAT. SO THAT'S WHY WE KNOW THIS MUCH OF WHAT'S IN THE TRAILER. IN THIS PARTICULAR ONE THIS PARTICULAR IMAGE, WHEN I SAY ANOMALY, THAT'S WHAT I MEAN BY ANOMALIES. THE X-RAY SYSTEM IT EMITS X-RAYS THROUGHOUT THE -- RADIATION -- I'M SORRY -- THROUGHOUT THE MERCHANDISE. THAT'S WHAT I MEAN BY ANOMALIES. AND I WROTE THAT

THAT'S MY WRITING THERE. I WROTE ON THERE CHECK THESE ANOMALIES WHICH ARE THOSE DARK STATED AREAS IN THE PICTURE THERE. YOU CAN TELL OVER HERE YOU DON'T HAVE ANYTHING LIKE THAT TOWARD THE FRONT. BUT TOWARD THE BACK HERE AND THE MIDDLE, THAT'S WHAT I MEAN BY ANOMALIES. OR DISCREPANCIES.

Q YOU CAN RETAKE THE STAND. YOU SAID THERE WAS WOODEN FURNITURE IN THERE. WHAT'S SIGNIFICANT ABOUT WOODEN FURNITURE? WHAT IS THE SIGNIFICANCE OF THAT?

A WOODEN FURNITURE AT THE PORT OF LAREDO---

Q YES.

A ---AND I'M SPEAKING FOR THE PORT OF LAREDO. I WANT TO GET THIS UP IN THERE SINCE I JOINED THE WAS NOW CUSTOMS FOR PROTECTION. IT USED TO BE U.S. CUSTOMS. WOODEN FURNITURE GETS CHECKED A LOT. CERAMIC POTTERY. THOSE TYPE OF COMMODITIES GET CHECKED A LOT BECAUSE WE HAVE FOUND -- WE HAVE DISCOVERED SEIZURES OF CONTRABAND WITHIN THAT TYPE OF COMMODITIES COMING INTO OUR PORT.

Q SO ONCE YOU HAD THE -- WELL, LET ME ASK YOU THIS: DOES THE MANIFEST YOU HAVE THERE, IMAGE YOU GOT OFF THE X-RAY MACHINE, DOES THIS MATCH UP? HOW CAN YOU TELL IT'S THE SAME VEHICLE?

A I CAN TELL IT'S THE SAME VEHICLE BECAUSE IF YOU LOOK AT THE MANIFEST, THE MANIFEST HAS ON THERE THE NUMBER -- THE NUMBER OF THE TRAILER. EVERY TRAILER HAS A NUMBER THAT'S IDENTIFYING THAT PARTICULAR TRAILER. IF YOU LOOK AT THE MANIFEST IT SAYS 638A ADAM ZERO LIMA ZERO 97 WHICH IS THE SAME NUMBER AS IN WINDOW C. WHEN WE -- WHEN WE TAKE AN IMAGE OF THE TRAILER.

Q THOSE MATCH?

A YES, THEY DO.

Q WHAT DID YOU DO ONCE YOU DISCOVERED THE ANOMALIES AND YOU GENERATED THE PRINTOUT WHICH YOU SAW IN THE X-RAY MACHINE? WHAT WAS THE NEXT THING THAT YOU DID?

A PROCEDURE THERE IS ONCE WE FIND ANOMALY, THIS PARTICULAR CASE, I CONTACTED MY SUPERVISOR WHICH WAS ANNA MANDINA MARTIN WHICH IS NO LONGER WITH THE CUSTOMS SERVICE. SHE'S RETIRED. BUT I CONTACTED THE SUPERVISOR, TOLD HER WHAT I HAD, AND I PHYSICALLY ESCORTED THIS PARTICULAR TRAILER TO THE DOCK MYSELF.

Q LET ME ASK YOU THIS -- THIS IS GONNA SOUND LIKE A SILLY QUESTION. THE CONTENTS AND THE ITEMS IN THAT TRAILER, WHAT COUNTRY WERE THEY COMING FROM?

A THESE CONTENTS OR THE MERCHANDISE WERE COMING FROM NUEVO LAREDO, MEXICO.

Q THEY WERE COMING FROM THE COUNTRY OF MEXICO?

A THEY WERE DEFINITELY COMING FROM THE COUNTRY OF MEXICO, AND I HAVE SOME DOCUMENTS THAT CAN SUPPORT THAT.

Q OKAY. IT WAS COMING FROM MEXICO.

A DEFINITELY.

Q OKAY. THIS IS GONNA SOUND EVEN MORE SILLY. WHAT COUNTRY WERE THEY COMIN' INTO?

A THEY PRESENTED A MANIFEST IN THE COUNTRY OF THE UNITED STATES OF AMERICA.

Q WAS THERE, IN FACT, A BORDER CROSSING WITH THE ITEMS THAT WERE IN

THAT TRAILER THAT YOU WERE LOOKIN' AT ON THE X-RAY MACHINE?

A YES, SIR.

Q OKAY. SO CONTINUE TO TELL THIS JURY WHAT YOU DID ONCE YOU MADE THE INITIAL DISCOVERY OF THE ANOMALIES. WHAT HAPPENED NEXT?

A ONCE I DISCOVERED THE ANOMALY, AS I MENTIONED BEFORE, I CONTACTED OUR SUPERVISOR. I PHYSICALLY ESCORTED THIS PARTICULAR TRAILER TO WHAT WE CALL AN INTENSIVE DOCK. INTENSIVE DOCK. THAT'S WHERE WE TOOK THE TRAILER. I OPENED UP -- I HAD THE DRIVER OPEN UP THE DOORS.

Q OKAY.

A WE BACKED THAT PARTICULAR TRAILER ONTO THE DOCK FOR OFFLOADING.

Q OKAY.

A IF WE HAVE ANY ANOMALY, IF WE HAVE ANYTHING THAT WE WANT TO CHECK, WE BACK IT UP ONTO THE DOCK, OPEN THE DOORS AND WE OFFLOAD THE MERCHANDISE. IN THIS PARTICULAR CASE WE -- I INSTRUCTED WHAT WE CALL STEVEDORES WHICH WORK FOR THE CUSTOMS BROKER TO OFFLOAD THIS MERCHANDISE 100 PERCENT. SO I HAD 'EM OFFLOAD ALL 133 PIECES AND I CHECKED WHERE I THOUGHT THAT THE ANOMALIES WERE LOCATED.

Q WAS THAT DONE ALL IN YOUR PRESENCE?

A YES, SIR. IT HAS TO BE DONE ALL IN MY PRESENCE, YES.

Q DID ANY OF THOSE ITEMS OF FURNITURE OR ANY OF THOSE ITEMS EVER GET OUTSIDE OF YOUR VIEW OR CUSTODY AND CONTROL AT THAT TIME?

A DEFINITELY NOT.

Q OKAY. SO WHAT HAPPENS NEXT AFTER YOU OFFLOAD ALL THE ITEMS?

Q NOW, BASICALLY, Y'ALL SET UP A TEAM TO GO DO THE DELIVERY. AM I CORRECT?

A YES, SIR.

Q AND IN THAT TEAM YOU HAD APPROXIMATELY 5 OR 6 AGENTS -- LET'S SEE, 6 AGENTS. AM I CORRECT?

A YES.

Q T.S. JOSE HERNANDEZ, CARLOS CARDENAS, YOURSELF, PATRICK MIZE, NUERVONI PEREZ AND ARTURO ROCHA?

A YES, SIR.

Q IS THAT CORRECT? AND I THINK 4 OF THE 6 MR. HERNANDEZ, CARDENAS, PEREZ AND ROCHA ALL SPOKE SPANISH?

A YES.

Q CORRECT? AND NONE OF THEM WERE PLACED IN THE VEHICLE. AM I CORRECT?

A THEY WERE NOT PLACED IN THE VEHICLE. LIKE I SAID IT BEFORE, THE TRUCK DRIVER OF BORDER CARRIERS FELT VERY COMFORTABLE WITH AGENT MIZE AND FOR SAFETY REASONS HE -- HE FELT MORE COMFORTABLE WITH HIM. THAT'S WHY AGENT MIZE WAS PLACED IN THAT TRACTOR-TRAILER. AND BASED ON HIS EXPERIENCE, HE HAS UNDERCOVER EXPERIENCE AND OUR FORE AND FOREMOST DEAL WITH THAT DRIVER WAS PROTECTION FOR HIM, AND HE WANTED -- HE ASKED FOR AGENT MIZE TO BE IN THAT VEHICLE. AGENT MIZE AGREED TO DO SO. AND, AGAIN, AGENT MIZE FIT THE ROLE, IF YOU COULD SAY, AS A TRUCK DRIVER IN THAT THEY, YOU KNOW, KIND OF RESEMBLED EACH OTHER'S APPEARANCE AND THAT ROLE WOULD BE SUITED FOR THE DELIVERY THAT WE WERE MAKING. WE WANTED IT TO BE A SUCCESSFUL AND SAFE

WHAT'S THE NEXT THING THAT YOU DID?

A I OFFLOADED THE MERCHANDISE, AND I CALLED THE ASSISTANCE OF A CANINE UNIT WHICH WAS AL MCCAULEY, HIS NAME'S AL MCCAULEY, AT THE TIME. I CALLED FOR THE ASSISTANCE OF HIS CANINE DOG TO RUN THE WHAT WE CALL RUN THE MERCHANDISE.

Q WHAT IS THAT FOR?

A HIS DOG GAVE A POSITIVE ALERT FOR NARCOTICS.

Q SO WHAT HAPPENED NEXT?

A AT THAT TIME I GOT AND ONCE I SAW AND ONCE THE CANINE TOLD ME THAT YES THERE WAS A POSITIVE ALERT TO THE -- TO THE PRESENCE OF NARCOTICS WITHIN THE COMMODITY, WE ESCORTED THE DRIVER OF THIS PARTICULAR TRACTOR, WE ESCORTED HIM INTO THE HOLDING AREA.

Q OKAY. LET ME ASK YOU THIS: YOU DETAINED THE DRIVER. IS THAT CORRECT?

A WE HAVE TO DETAIN THE DRIVER, YES.

Q WHAT KIND OF DRIVER WAS THIS? WHAT TYPE OF DRIVER IS THIS? EXPLAIN WHAT THESE DRIVERS DO.

A WHAT THESE DRIVERS DO IS ALL THEY DO IS BRING -- THEY BRING THE TRACK -- THEY'RE TOLD, I GUESS TOLD MY MEXICAN -- THEIR BOSSES, WHATEVER, THEY DRIVE FROM NUEVO LAREDO, MEXICO INTO LAREDO, MEXICO (SIC). FROM POINT A TO POINT B. THAT'S WHAT THEY DO. THE HOOK UP THAT PARTICULAR TRAILER NUMBER AND THEY BRING IT FROM NUEVO LAREDO INTO LAREDO, TEXAS.

Q ABOUT HOW FAR IS THAT?

A YOU'RE LOOKIN' AT ABOUT -- WELL, IT'S RIGHT ACROSS THE RIVER. IT'S

JUST ABOUT MAYBE —

Q SHORT HAUL?

A YEAH. SHORT HAUL. MAYBE 10, 15 MILES MAYBE. IT DEPENDS WHERE THE WAREHOUSE IS LOCATED.

Q THESE GUYS ARE THEY DOIN' THAT OCCASIONALLY OR ARE THEY DOIN' THAT REPETITIVELY, HOW DOES THAT HAPPEN? WHAT ARE THOSE DRIVERS CALLED?

A THESE DRIVERS THEY'RE CALLED DRAYAS (PHONETIC).

Q DRAYAS DRIVERS?

A DRAYAS DRIVERS. AND WE SEE THESE DRIVERS ON A DAILY BASIS. I MEAN I KNOW DRIVERS THAT COME THROUGH THERE 4, 5, 6 TIMES A DAY. AND YOU ALREADY KNOW THEIR FACES. SO THEY COME THROUGH ON A DAILY BASIS.

Q OKAY. SO YOU GOT THE DRIVER IN CUSTODY; YOU OFFLOAD THE STUFF. WHAT'S THE NEXT THING THAT YOU DID AFTER YOU GOT THE POSITIVE HIT FROM THE DOG?

A ONCE THE – AND LIKE I SAID WHILE AGO, ONCE I SECURED THE DRIVER – 'CAUSE I HAVE TO SECURE THE DRIVER. THE DRIVER IS THE MASTER OF THE CONVEYANCE AND FOR THE U.S. CUSTOMS SERVICE HE IS RESPONSIBLE. WHAT WE DID IS – WHAT I DID WAS IS I WENT TO ONE OF THE PIECES OF FURNITURE WHERE I THOUGHT THE SUSPECT AREA WAS, AND I PHYSICALLY GOT A CROWBAR AND I MANEUVERED MY WAY INTO THE AREA SUSPECT, AND I FOUND SOME PLASTIC BAGS, SOME – IT WAS A BUNDLE WRAPPED WITH SOME PLASTIC BAGS IN THERE. WHAT I DID IS I GOT MY KNIFE, AND I PROBED ONE OF THE PACKAGES WITH MY KNIFE AND IT REVEALED A GREEN LEAFY SUBSTANCE. THAT GREEN LEAFY SUBSTANCE I GOT A LITTLE PIECE OF IT AND I WENT AND GOT A TEST KIT

AND I TESTED IT FOR MARIJUANA 'CAUSE I THOUGHT IT WAS MARIJUANA, IT BEING A GREEN LEAFY SUBSTANCE. I GOT A TEST KIT AND I TESTED IT AND IT TESTED POSITIVE FOR MARIJUANA.

Q OKAY. BASED ON YOUR EXPERIENCE AND TRAINING THE GREEN LEAFY SUBSTANCE YOU LOOKED IT EVEN PRIOR TO RUNNING THE TEST KIT, WHAT DID YOU BELIEVE THAT SUBSTANCE TO BE?

A MARIJUANA.

Q ONCE YOU GOT A POSITIVE HIT ON YOUR TEST, YOU DISCOVERED THAT, WHAT DID YOU DO WITH THAT PIECE OF FURNITURE OR WHAT WAS THE NEXT STEP THAT YOU MADE AFTER YOU GOT THAT HIT?

A IMMEDIATELY AFTER I KNEW THAT IT WAS MARIJUANA BECAUSE I KNEW I GOT A TEST RESULTS, I TRIED AS BEST AS POSSIBLE TO TRY TO PUT THAT PIECE OF FURNITURE BACK INTACT. TRY TO PUT IT BACK INTACT AND I -- THAT'S WHEN I CONTACTED SECTOR. I CONTACT SECTOR, WHICH SECTOR IS -- TO TRY TO GET AHOLD OF THE DUTY AGENT.

Q GET AHOLD OF THE DUTY AGENT. WHAT WAS THE NEXT THING THAT HAPPENED AFTER YOU DID THAT?

A AFTER I DID THAT, THE DUTY AGENT CAME DOWN. SHE TOOK A LOOK AT THE PIECES OF FURNITURE AND SHE INSTRUCTED ME TO LOAD IT BACK ONTO THE TRAILER.

Q WHAT HAPPENED NEXT?

A WELL, I DID AS SHE TOLD ME TO DO. I INSTRUCTED -- I INSTRUCTED THE STEVEDORES TO LOAD IT BACK UP, AND I TRIED TO LOAD IT BACK UP AS IT WAS WHEN WE OFFLOADED IT. WE LOADED IT BACK ONTO THE TRAILER.

Q WHY WERE YOU TRYIN' TO LOAD IT BACK IN THAT FASHION?

A WELL, WHENEVER WE GET A SEIZURE, WE HAVE TO CONTACT -- WE HAVE TO CONTACT OUR DUTY AGENT. I TRIED TO LOAD IT BACK AND PUT IT BACK INTACT AND TRIED TO LOAD IT BACK THE WAY WE OFFLOADED IT BECAUSE IN CASE OF THE AGENTS -- THE AGENTS NOW COME IN. WE HAVE TO CONTACT THE AGENTS. THEY COME IN AND THEY DO THEIR INVESTIGATION. AND THEY MAY WANT TO -- ATTEMPT TO DO A WHAT WE CALL THE CONTROLLED DELIVERY.

Q SO YOU GOT THE STUFF LOADED BACK UP. WHAT'D YOU DO WITH THE TRAILER THEN? WHAT WAS THE NEXT STEP?

A THE TRAILER WAS -- THE MERCHANDISE WAS LOADED ON THE TRAILER; THE TRAILER WAS BACKED UP AGAINST OUR DOCK, AND IT WAS BEING -- WE HAVE TO TAKE GUARD -- WE HAVE TO GUARD THIS TRAILER.

Q OTHER THAN THE TEST THAT YOU PERFORMED AND PRIED OPEN AND PUT BACK DID THE MERCHANDISE THAT HAD COME ACROSS THE BORDER, DID IT CHANGE IN ANY FASHION DURING THE TIMES THAT YOU WERE INITIALLY INVOLVED UNTIL THE TIME THAT YOU ENDED YOUR INVOLVEMENT AND THE TRAILER WAS PACKED UP?

A NO, SIR. THE ONLY MINOR CHANGE THAT WOULD'VE BEEN DONE WAS THE LITTLE PRYING THAT I DID TO TRY TO GET A SAMPLE OF WHAT I THOUGHT WAS NARCOTICS WHICH WAS. IT ENDED UP BEING NARCOTICS. BUT THAT'S THE ONLY LITTLE THING THAT I DID. AND THEN WE LOADED IT BACK UP ON THE DOCK -- I MEAN THE TRAILER.

Q WOULD YOU HAVE BEEN ABLE TO GET ALL THE MARIJUANA OUT WITHOUT DESTROYING THE FURNITURE?

A THAT WOULD'VE BEEN IMPOSSIBLE. IF THEY WOULD'VE TOLD ME TO TAKE IT DOWN RIGHT THERE AND THEN, I WOULD'VE HAD TO DESTROY THE FURNITURE.

Q OKAY. WHAT AGENTS OR INSPECTORS OR INVESTIGATORS ON THE INVESTIGATION SIDE DID YOU THEN -- DID YOU HAVE CONTACT WITH LATER? IN REGARDS TO THIS MATTER.

A ON THIS PARTICULAR CASE I CONTACTED SECTOR. WE HAVE TO CONTACT SECTOR. THEY GET AHOLD OF THE DUTY AGENT. I ASKED THEM I TELL THEM I NEED TO TALK TO THE DUTY AGENT. THIS PARTICULAR CASE THE DUTY AGENT WAS MICHELLE WILLIAMS. SHE RESPONDED.

Q OKAY. MICHELLE WILLIAMS. IS HER NAME DIFFERENT NOW?

A SHE RECENTLY GOT MARRIED. HER NAME NOW IS MICHELLE WILLIAMS DOWLING.

Q MICHELLE DOWLING.

MR. MAYE: BEG THE COURT'S INDULGENCE. LET ME ASK YOU THIS: WHAT TYPE OF, WHAT KIND OF ITEM OF FURNITURE WAS IT WHICH YOU PRIED OPEN TO GET THE SAMPLE OF MARIJUANA OUT? WHAT IS THE DESCRIPTION OF THAT PIECE, THAT PARTICULAR PIECE OF FURNITURE? WHAT WAS IT? DO YOU REMEMBER?

A WELL, THE DESCRIPTION WAS WOOD FURNITURE. HOWEVER, IT WAS A CHIMNEY, A WOOD CHIMNEY.

Q OKAY. IT'S KIND OF A WOOD CHIMNEY? LET ME JUST ASK YOU THIS, AGENT: DID YOU RECEIVE SPECIALIZED TEST – TRAINING IN THE AREA OF TESTING NARCOTICS?

A YES. YES, I DID, SIR. THAT WAS AT THE – WHEN I WENT TO THE TRAINING SCHOOL AT FLETC. FLETC FEDERAL LAW ENFORCEMENT TRAINING CENTER IN GEORGIA.

Q ALL RIGHT. HOW MUCH TRAINING OR HOW MUCH SPECIALIZED TRAINING DID YOU RECEIVE IN THAT REGARD?

A EVERY INSPECTOR HAS TO GO TO THAT TRAINING. IT'S A 3-MONTHS TRAINING.

Q 3-MONTHS TRAINING? HAVE YOU PREVIOUSLY TESTED AND UTILIZED THAT TEST KIT IN THE PAST?

A MANY TIMES, SIR.

Q MANY TIMES.

A MANY TIMES.

Q DURING THE REGULAR COURSE OF YOUR JOB?

A DURING THE REGULAR COURSE OF MY JOB, YES.

MR. MAYE: I WANT TO RESERVE THE RIGHT TO RECALL THIS WITNESS. I DON'T HAVE ANY MORE QUESTIONS AT THIS TIME.

THE COURT: CROSS-EXAMINATION.

MR. HAWKE: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. HAWKE

Q DO YOU HAVE YOUR MANIFEST WITH YOU?

A THE MANIFEST I HAVE IT RIGHT HERE.

Q NOW THESE MANIFESTS ARE THEY SORT OF A FORM THAT'S FILLED OUT -- THE MANIFEST THAT YOU HAVE HERE, IT STARTS OFF AS SORT OF BASICALLY A BLANK FORM THAT SOMEBODY FILLS OUT INFORMATION?

A I'M SURE IT STARTED AS A BLANK PIECE OF PAPER, YES.

Q OKAY. AND DO YOU HAVE ANY IDEA WHO PREPARED THIS MANIFEST?

A THIS PARTICULAR MANIFEST WAS PREPARED BY U.S. CUSTOMS BROKER WHICH IS A MIDDLE MAN FOR THE IMPORTER OF RECORD.

Q OKAY. IS THAT WHAT THAT BROKER IS IDENTIFIED HERE AS JAMCO

INTERNATIONAL? IS THAT RIGHT?

A THAT IS CORRECT, SIR.

Q AND HOW DO YOU KNOW THAT THEY PREPARED IT?

A I KNOW THAT BECAUSE IT HAS THEIR PRE-FILE ENTRY NUMBER WHICH IS WC1 AND THEN IT HAS THE NAME OF THE BROKER AS REFERENCE AND THEN BROKER NAME JAMCO INTERNATIONAL. BUT EVERY BROKER – EVERY BROKER HAS THEIR WHAT WE CALL A FIGHTER (PHONETIC) CODE WHICH IS THE FIRST THREE NUMBERS OF THEIR PRE-FILE.

Q OKAY. AND YOU DON'T KNOW WHERE THEY GOT THE INFORMATION THAT THEY USED TO FILL OUT THIS FORM.

A NO, I DON'T.

Q OKAY. AND YOU DON'T KNOW WHO PROVIDED THAT INFORMATION.

A NO, I DON'T.

Q OKAY. AND THE MANIFEST INDICATES THAT THIS PARTICULAR SHIPMENT IS COMING FROM WHERE?

A THIS MANIFEST STATES -- WELL, YOU LOOK ON HERE, IT HAS THE CONSIGNEE, NAME OF THE CONSIGNEE BUT IT ALSO HAS THE---

Q THAT'S WHERE IT'S ORIGINATED FROM.

A IT ORIGINATED FROM SEBASTIAN EXPORTACIONES SA DECV OUT OF THAT WHATEVER JALISCO.

Q I EXPECT THAT THAT'S A PROVINCE OR SOMETHIN' IN MEXICO?

A THAT WOULD BE A CITY IN THE STATE OF JALISCO.

Q ALL RIGHT. AND THE DRIVER IS WHO?

A THE DRIVER ON THIS PARTICULAR SHIPMENT WAS JOSE ROWIN (PHONETIC) CONTRARAS (PHONETIC).

Q OKAY. AND DID YOU DETERMINE WHO HIS BOSS WAS?

A NO, I DIDN'T.

Q AND DID ANYBODY DO ANY FOLLOW-UP TO DETERMINE WHO, IN FACT, CONTACTED SEBASTIAN EXPORTACIONES AND ORDERED THESE ITEMS?

A I DON'T KNOW. THAT'S NOT MY AREA.

Q OKAY. IT'S MY UNDERSTANDING THAT YOUR ROLE IN THIS KIND OF A CASE IS YOU'RE THERE TO FIND DRUGS. IS THAT RIGHT?

A THAT'S MY ONLY JOB IS TO FIND DRUGS OR NOW TERRORISTS.

Q AND ONCE YOU FIND THE DRUGS, THE FOLLOW-UP INVESTIGATION IS SUPPOSED TO BE DONE BY WHO?

A BY THE AGENTS.

Q OKAY. THE AGENTS IN THIS CASE WOULD BE WHO?

A IN THIS PARTICULAR CASE IT WAS MICHELLE DOWLING. MICHELLE WILLIAMS.

Q OKAY. WOULD THAT ALSO INCLUDE THE OTHER AGENTS THAT WORKED WITH HER?

A ANY AGENTS THAT ASSISTED HER, YES.

Q OKAY. HAVE YOU RECEIVED ANY INFORMATION THAT ANYBODY CONTACTED ANYBODY AT SEBASTIAN EXPORTACIONES TO DETERMINE WHO, IN FACT, ORDERED THIS SHIPMENT?

A NO.

Q OKAY. AND AS PART OF YOUR JOB, DO YOU EVER FOLLOW UP WITH THAT?

A WHAT I CAN DO I CAN GET IN THE SYSTEM BACK HOME AND FIND OUT LIKE HOW MANY – HOW MANY SHIPMENTS THAT EXPORTACIONES – TALKIN' THE PERSON THAT SHIPPED IT?

Q RIGHT.

A I CAN FIND OUT HOW MANY -- HOW MANY SHIPMENTS CONSIGNEE WHICH IN THIS CASE YOU SEE THE NAME OF THE CONSIGNEE. I CAN FIND ALL THAT INFORMATION. I HAVE ACCESS TO ALL KIND OF INFORMATION.

Q DID YOU DO—

A BUT ON THIS PARTICULAR ONE, NO, I DIDN'T.

Q IN OTHER WORDS, NOBODY EVER ASKED YOU TO GO BACK AND SAY HEY CHECK HOW MANY TIMES WE'VE HAD ORDERS FROM SEBASTIAN EXPORTACIONES COME THROUGH HERE OR ANYTHING LIKE THAT.

A IN THIS PARTICULAR CASE, NO.

Q OKAY. AND WOULD YOU BE INVOLVED IN ANY FOLLOW-UP AS FAR AS CHECKIN' THE PHONE RECORDS TO AND FROM EITHER JAMCO INTERNATIONAL OR SEBASTIAN EXPORTACIONES OR ANY OF THAT?

A THAT'S NOT MY JOB. THAT'S NOT MY AREA.

Q ALL RIGHT. AND WOULD THAT HAVE BEEN UP TO THE INVESTIGATORS IF THEY WANTED TO FOLLOW THAT UP?

A I'M ASSUMING THAT IS CORRECT, SIR.

Q THIS PARTICULAR MARIJUANA IT WAS SECRETED I GUESS IN THE BACK OF THIS SHIPMENT. IS THAT RIGHT? CAN YOU HOLD IT UP ONE SECOND AND LET'S LOOK AT IT. ALL RIGHT. CAN YOU SHOW -- I THINK YOU POINTED OUT TO THE JURY ONE TIME BUT AM I CORRECT THAT THIS PART BACK HERE IS WHERE THE MARIJUANA IS?

A THAT IS CORRECT, SIR.

Q AND ONCE YOU UNLOADED IT, DID THEY ALSO HAVE SOME CEDAR CHIPS AND THINGS IN THERE TO HIDE THE SMELL?

A I DON'T RECALL THAT, SIR.

Q DO YOU REMEMBER?

A I DON'T RECALL THAT.

Q WELL, WHEN YOU – WHEN YOU GOT THE – THE CHIMNEY'S OUT AND YOU INITIALLY LOOKED AT THEM, COULD YOU SEE MARIJUANA?

A I COULD NOT SEE IT WHEN I – JUST BY OFFLOADING?

Q YES.

A NO. NO, I COULD NOT.

Q DID YOU SMELL MARIJUANA?

A NO, I COULD NOT.

Q OKAY. BY USING YOUR 5 SENSES THAT GOD HAS GIVEN US ALL, WERE YOU ABLE JUST BY YOUR NORMAL SENSES TO DETERMINE ANY MARIJUANA WAS IN THESE ITEMS?

A I KNEW SOMETHING WAS IN THERE THAT SHOULDN'T HAVE BEEN THERE. DEFINITELY.

Q ALL RIGHT. BUT YOU'D HAD THE X-RAY PRIOR TO THAT.

A ONLY THE X-RAY. BUT THE X-RAY'S NOT GONNA TELL YOU WHAT TYPE OF NARCOTICS IT IS OR WHAT IT IS.

Q I GOTCHU.

A IT'S JUST AN ANOMALY.

Q BUT MY POINT IS IF YOU JUST LOOKED AT IT, IT LOOKED LIKE SOME RAGGED SORTA FURNITURE. IS THAT RIGHT?

A IT WAS FURNITURE BUT WITH AN ANOMALY IN IT.

Q I UNDERSTAND.

A THAT NEEDED TO BE CHECKED.

Q AND THE ONLY REASON THAT YOU KNEW THERE WAS ANY ANOMALY IN IT WAS BECAUSE YOU HAD RAN IT THROUGH AN X-RAY MACHINE AND SAW THE ANOMALY.

A THAT IS CORRECT.

Q OKAY. IF YOU JUST LOOKED AT IT WITH YOUR OWN NORMAL SENSES LIKE THE REST OF US WOULD HAVE WITHOUT AN X-RAY MACHINE, YOU WOULD NOT KNOW THAT THERE'S AN ANOMALY IN IT. IS THAT RIGHT?

A THAT IS CORRECT. I WISH I HAD THAT.

Q OKAY. AND IN ORDER FOR YOU TO EVEN KNOW THERE'S MARIJUANA IN THERE, YOU HAD TO GET A CROWBAR AND POP IT OPEN.

A FIRST OF ALL, TO HAVE A BETTER CASE WHAT WE DO IS WE RUN A CANINE. FIRST WE GET THE CANINE UNIT AND HE CAN SMELL THE PRESENCE OF SOMETHING IN NARCOTICS BECAUSE THEY'RE TRAINED FOR NARCOTICS. MARIJUANA, COCAINE, WHATEVER MAY BE. SO THEREFORE I GET THE CANINE FIRST, YOU KNOW, TO BUILD A LITTLE BETTER CASE AND, YOU KNOW, GET MORE PROBABLE CAUSE IN THIS.

Q I UNDERSTAND. BUT IF YOU WERE A PERSON WHO DIDN'T HAVE A TRAINED NARCOTICS DOG YOU WOULDN'T BE ABLE TO TELL WITHOUT THE HELP OF THIS X-RAY MACHINE AND THIS TRAINED NARCOTICS DOG AS TO KNOW THERE'S MARIJUANA IN THERE.

A NO, UNLESS I OFFLOADED.

Q OKAY. AND THEN IN ORDER FOR YOU TO BE ABLE TO ACTUALLY KNOW THERE'S MARIJUANA IN THERE WITH YOUR OWN SENSES OTHER THAN THIS X-RAY AND OTHER THAN THIS DOG, YOU HAD TO GET A CROWBAR TO POP OFF THE TOP. IS THAT RIGHT?

A THAT IS CORRECT.

Q AND DID YOU YOURSELF PRINT A REPORT OF YOUR FINDINGS IN REGARD TO THIS CASE?

A I DO HAVE THE REPORT WITH ME THOUGH. YES, WE HAVE TO DO A REPORT ON ANY SEIZURE THAT WE GET. ANYTHING THAT WE DO, A WANTED PERSON, A STOLEN TRAILER, ANYTHING, WE HAVE TO GENERATE A REPORT.

Q ALL RIGHT. AND DID YOU REVIEW IT IN ORDER TO PREPARE YOURSELF FOR THE TESTIMONY YOU'RE GIVING IN THIS CASE?

A ON THIS PARTICULAR CASE I HAD TO BECAUSE IT WAS OVER 2 YEARS OLD.

Q OKAY.

MR. HAWKE: YOUR HONOR, IF I MAY, IS THERE ANY WAY I COULD REVIEW HIS REPORT BRIEFLY JUST TO SEE IF THERE'S ANYTHING ELSE I NEED TO COVER WITH HIM? IT WASN'T AVAILABLE BEFORE THEN.

THE COURT: YES, SIR.

Q OKAY. DO YOU HAVE IT, SIR?

A YES, I DO. IT'S RIGHT HERE.

MR. HAWKE: JUST ONE SECOND.

Q NOW I SEE AT ONE TIME THAT A SUBJECT JOSE ROWIN CONTRARAS WAS DETAINED?

A HE WAS THE DRIVER OF THE TRACTOR. THAT IS CORRECT.

Q AND HE WAS RELEASED TO SA DECV. RIGHT?

A THAT IS CORRECT.

Q WHY DID YOU DETAIN HIM AND SEND HIM OVER TO ANOTHER AGENT?

A REPEAT YOUR QUESTION.

Q WHY DID Y'ALL HAVE HIM DETAINED AND SEND HIM TO ANOTHER AGENT?

A THE DRIVER OF THE CONVEYANCE FOR OUR PURPOSES FOR CUSTOMS' PURPOSES ANY TIME WE GET A SEIZURE OF ANY SORT, HE'S THE MASTER OF THE CONVEYANCE. HE IS RESPONSIBLE -- AT THAT TIME HE IS RESPONSIBLE FOR WHAT'S IN THE TRACTOR TRAILER, WHATEVER. THIS PARTICULAR CASE HE WAS DETAINED, AND ONCE THE AGENTS CAME IN, THEY TOOK OVER OF HIS CUSTODY.

Q OKAY. AND YOU DETAINED HIM BECAUSE HE'S GOT A LOAD OF MARIJUANA ON THE BACK OF HIS TRUCK BASICALLY.

A THAT IS CORRECT.

Q OKAY. AND THEN AT THAT POINT IN TIME HE'S TAKEN WITH HIS AGENT AND WHAT DID THEY DO IN THIS CASE?

A SIR, I CANNOT SPEAK FOR THE AGENTS. I MEAN I HAVE AN IDEA, BUT I DON'T KNOW.

Q ARE YOU AWARE OF WHAT ULTIMATELY HAPPENED TO HIM?

A HE WAS RELEASED.

Q OKAY. BASICALLY WOULD IT BE FAIR TO SAY THAT HE WAS RELEASED -- DO YOU KNOW WHY HE WAS RELEASED?

A NO, I DON'T. I TAKE IT HE HAD NO -- THAT'S THE AGENTS. I DON'T KNOW.

Q ALL RIGHT. GENERALLY AS PART OF YOUR JOB FROM TIME TO TIME DO YOU HAVE DRIVERS THAT HAVE BEEN DECEIVED IN ORDER TO CARRY ILLEGAL DRUGS ACROSS THE BORDER?

A AGAIN, YOU'RE ASKING A QUESTION THAT'S THE AGENTS SIDE OF THE DEAL. MY JOB IS JUST TO FIND THE NARCOTICS. WE CALL THE AGENTS. THEY TAKE OVER THE CASE AFTER THAT.

Q ARE YOU AWARE OF DRIVERS ON NUMEROUS OCCASIONS BEING RELEASED AFTER IT'S DETERMINED THAT THEY HAVE NO KNOWLEDGE OF THE

DRUGS?

A YES.

Q AND THAT THEY DO NOT EVEN KNOW THAT THEY'RE ON THE TRUCK.

A THAT IS CORRECT.

Q AND---

MR. HAWKE: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

THE COURT: MR. SUSSMAN?

CROSS-EXAMINATION

BY MR. SUSSMAN

Q DO YOU HAVE ARREST POWERS?

A YES, I DO, SIR.

Q DO YOU RECEIVE SOME SORT OF CERTIFICATION TO RUN THE VACIS MACHINE?

A YES, I DO, SIR.

Q BASICALLY, AN OPERATOR'S PERMIT?

A THAT IS CORRECT, SIR.

Q DO YOU HAVE THAT WITH YOU?

A NO, I DO NOT.

Q DO YOU KNOW WHEN YOUR PERMIT WAS ISSUED?

A EXACTLY WHEN I DO NOT KNOW.

Q YOU KNOW WHEN IT EXPIRES?

A NO, I DON'T. ALL THAT INFORMATION'S BACK AT THE PORT.

Q I THINK YOU SAID YOU ACTUALLY WERE PRESENT WHEN THE FURNITURE WAS UNLOADED FROM THE TRAILER?

A YES, SIR.

Q AND WERE YOU PRESENT WHEN IT WAS LOADED BACK ON THE TRAILER?

A YES, SIR.

Q WAS AGENT DOWLING THERE WHEN IT WAS LOADED BACK ON THE TRAILER?

A SHE WAS THERE, YES, THAT IS CORRECT.

Q WAS AGENT PAT MIZE THERE?

A I DON'T RECALL AGENT PAT MIZE BEING THERE, NO.

Q DO YOU KNOW WHO HE IS?

A YES, I DO KNOW WHO HE IS, PAT MIZE IS, YES.

Q ARE YOU BILINGUAL?

A YES, I AM, SIR.

Q HAVE YOU EVER BEEN INVOLVED IN ANY CONTROLLED DELIVERIES BEFORE?

A THAT'S NOT MY AREA, NO.

Q YOU DON'T KNOW ALL THESE -- YOU NEVER GO ON THESE DELIVERIES WHICH ARE BROUGHT INTO THE UNITED STATES?

A NO. CONTROLLED DELIVERIES, NO. THAT'S THE AGENTS' SIDE.

Q ARE THERE BILINGUAL AGENTS AT THE PORT THAT CAN GO ON THESE CONTROLLED DELIVERIES?

A YES, DEFINITELY THERE IS.

Q THAT'S ONE OF THE REASONS SO THEY CAN SPEAK SPANISH AND ENGLISH WHEN THESE THINGS ARE DELIVERED INTO THE--

A I'M ASSUMING SO, SIR.

Q WELL--

A I'M ASSUMING THIS, YEAH.

Q NOW YOU HAD TALKED BRIEFLY WITH MR. MAYE ABOUT DREDGE DRIVERS. REMEMBER THAT CONVERSATION?

A THAT IS CORRECT. DREDGE DRIVERS, YES.

Q AND YOU SAID THEY'RE SHORT-HAUL DRIVERS?

A YES, SIR.

Q JUST ACROSS THE RIVER AND BACK.

A NUEVO LAREDO. AND IN THIS CASE NUEVO LAREDO TO LAREDO, TEXAS.

Q THE DRIVER IN THIS CASE WAS A MR. CONTRARAS?

A MR. JOSE ROWIN CONTRARAS.

Q DID I SAY THAT CORRRECTLY? CONTRARAS?

A YEAH, THAT'S RIGHT. CONTRARAS. RIGHT.

Q DO YOU KNOW HIM?

A NO, SIR.

Q DO YOU KNOW WHERE HE'S FROM?

A NO, I DO NOT, BUT I CAN GO BACK TO THE REPORT. I HAVE THE REPORT WHICH I BELIEVE YOU HAVE OVER THERE. YOU DIDN'T GIVE IT BACK TO ME. NO, I'VE GOT IT RIGHT HERE. SORRY. I'VE GOT IT. THIS GENTLEMAN BY THE NAME OF JOSE CONTRARAS DOMINGOS GAVE ME AN ADDRESS OR GAVE ME SOME TYPE OF DOCUMENT THAT HAS AN ADDRESS OUT OF NUEVO LAREDO, TAMULIPAS.

Q SO HE LIVES IN LAREDO?

A HE LIVES IN NUEVO LAREDO, MEXICO.

Q HE LIVES WHERE?

A NUEVO LAREDO. NUEVO LAREDO IS THE BORDER CITY TO LAREDO, TEXAS. THAT'S MEXICO. NUEVO LAREDO IS MEXICO.

Q OKAY. HOW FAR AWAY IS THAT FROM LAREDO?

A RIGHT ACROSS THE RIVER. 5, 10, 15 MINUTES.

Q AND THE MANIFEST OR YOUR NOTES REFLECT THAT THE SEMI ORIGINATED IN CASTILLO, TEXAS?

A I'M SORRY, SIR. REPEAT THAT.

Q IT ORIGINATED IN CASTILLO, CASTILLE.

A I DON'T KNOW -- I DON'T UNDERSTAND YOUR QUESTION, SIR.

Q WHERE DID THE TRACTOR TRAILER ORIGINATE FROM?

A I DON'T KNOW.

Q YOU DON'T HAVE A MANIFEST THAT TELLS YOU THAT?

A THE TRACTOR OR THE TRAILER?

Q THE TRAILER.

A I DON'T KNOW WHERE THE TRAILER CAME FROM. I DO KNOW WHERE THE MERCHANDISE CAME FROM, BUT NOT THE TRAILER ITSELF. IT'S COMIN' FROM MEXICO. THAT'S ALL I KNOW.

Q YOU DON'T KNOW WHERE THIS MERCHANDISE WAS LOADED ONTO THE TRAILER?

A NO, I DO NOT, NO.

Q OKAY. YOU DON'T KNOW WHERE MR. CONTRARAS PICKED THE TRAILER UP?

A NO, BUT I CAN ONLY ASSUME THAT HE PICKED IT UP AT---

Q NOW YOU SPOTTED THE ANOMALIES IN THE TRAILER.

A SIR?

Q YOU SPOTTED THE ANOMALIES IN THE TRAILER.

A YES.

Q YOU SPOTTED THE ANOMALIES IN THE TRAILER.

A YES, SIR.

Q AND YOU OFFLOADED THE TRAILER 100 PERCENT.

A I OFFLOADED THE MERCHANDISE 100 PERCENT.

Q AND EVENTUALLY YOU TESTED AND FOUND SOME MARIJUANA IN ONE OF THE PIECES OF FURNITURE.

A YES, SIR.

Q THE DRIVER WAS THEN DETAINED.

A THE DRIVER WAS DETAINED.

Q BY YOU.

A BY ME.

Q AND HE WAS STILL DETAINED WHEN YOU DISCOVERED THE MARIJUANA.

A THAT IS CORRECT.

Q THEN HE WAS LET GO.

A THAT IS CORRECT.

MR. SUSSMAN: MAY I APPROACH THE WITNESS AND SEE THIS REPORT THAT I HAVEN'T SEEN BEFORE?

THE COURT: YES, SIR.

Q YOU PREPARED THESE NOTES ON YOUR OWN.

A THAT IS MY REPORT GENERATED BY ME.

Q BASED ON YOUR INVOLVEMENT WITH THE CASE.

A ON MY SIDE, YES.

Q ORIGINALLY RUBIN CONTRARAS DOMINGOS – I WITHDRAW THAT PARTIAL QUESTION. NOW IT SAYS IN HERE SELECTIVITY BY D-A-U MAURISIO VADARI (PHONETIC) TARGETED THE SHIPMENT BASED ON FIRST TIME CONSIGNEE AND LOW ENTRY VALUE. WHO IS MAURISIO VADARI?

A MAURISIO VADARI IS A SENIOR INSPECTOR THAT WORKED THERE WITH US.

Q AND SO HE WAS THE ONE THAT ACTUALLY TARGETED THIS PARTICULAR SHIPMENT AS IT CAME TO THE PORT?

A THIS PARTICULAR SHIPMENT, EVERY SHIPMENT IS TARGETED AND IT'S EXAMINED, AND WE DO CHECKS, CROSS CHECKS 24 HOURS BEFORE THE TRAILER EVEN ARRIVES AT OUR PORT.

Q BUT HE'S THE ONE THAT ORIGINALLY CAME IN CONTACT WITH THE DRIVER?

A WITH THE DRIVER, NO. HE NEVER HAD CONTACT WITH THE DRIVER.

Q WHO HAD CONTACT WITH THE DRIVER?

A THE DRIVER -- THE DRIVER JOSE CONTRARAS PRESENTED A MANIFEST TO THE PRIMARY INSPECTOR WHICH WAS LACONE (PHONETIC) I THINK WAS HIS NAME.

Q WERE YOU PRESENT WHEN THAT HAPPENED?

A NO, I WAS NOT. I WAS AT THE X-RAY.

Q SO YOU DIDN'T WITNESS THIS MANIFEST BEING HANDED OVER TO THE INITIAL CONTACT AT THE BORDER.

A THAT IS CORRECT, SIR, BUT THAT'S STANDARD PROCEDURE. IT GOES FROM INSPECTOR'S HANDS TO INSPECTOR'S HANDS. NOBODY ELSE GETS INVOLVED WITH THAT.

Q BUT YOU DID NOT WITNESS THAT TRANSFER OF THE MANIFEST.

A AT THE TIME HE PRESENTED THE MANIFEST HE GAVE IT TO LACONE. I WAS NOT PRESENT, NO.

Q AND THEN SO WOULD THAT MANIFEST HAVE COME INTO MR. VADORI'S HANDS?

A NO, I DON'T SEE WHY HE WOULD HAVE TO GET IT, NO.

Q OKAY.

A 'CAUSE HE WORKS FOR THE D.A.U. DEPARTMENT.

Q NOW THE VACIS X-RAY APPARENTLY WAS RUN BY YOU AND INSPECTOR AGUIELERO (PHONETIC).

A JOSE FINO AGUIELERO THAT IS CORRECT. THERE HAS TO BE 2 INSPECTORS THAT OPERATE THAT PARTICULAR SYSTEM. THERE HAS TO BE 2 CERTIFIED INSPECTORS THERE AT ALL TIMES. ONE TO GROUND GUIDE AND ONE TO VIEW THE IMAGES INSIDE. THIS PARTICULAR CASE – THIS PARTICULAR CASE I WAS THE ONE THAT WAS VIEWING THE IMAGES. I WAS INSIDE.

Q WHAT DID MR. AGUIELERO DO?

A SHE'S THE ONE – SHE'S WHAT WE CALL A GROUND GUIDE BECAUSE IT'S VERY EXPENSIVE EQUIPMENT; WE HAVE TO MAKE SURE THE TRAILER DOESN'T RUN OFF COURSE OR WHATEVER IT HITS RUN OFF THE RAMPS OR WHATEVER. BECAUSE YOU'RE LOOKIN' AT A LOTTA MONEY.

Q SO WHEN THEY – WHEN YOU ESCORTED MR. CONTRARAS THE DRIVER INTO DETENTION, HE WAS PATTED DOWN WITH NEGATIVE RESULTS?

A ONCE I GOT A CANINE ALERT, THAT IS CORRECT. WE HAVE TO PAT DOWN EVERY PERSON. IN THIS PARTICULAR CASE, YES. I PATTED HIM DOWN MYSELF.

Q DIDN'T HAVE ANYTHING ON HIM.

A NO, HE DIDN'T HAVE ANYTHING. YOU KNOW, FOR SAFETY REASONS WE HAVE TO MAKE SURE HE DOESN'T HAVE A WEAPON OR ANYTHING LIKE THAT.

Q GRACIOUS. OH, ONE MORE THING. ON THE MANIFEST YOU HAVE THAT IN FRONT OF YOU?

A YES, I DO.

Q OKAY. ON THE MANIFEST CAN YOU SHOW THE JURY WHERE AVILA -- ALFREDO AVILA-ARONJA IS ON THERE.

A CAN I SHOW 'EM WHO'S ON THERE? WHO DID YOU SAY?

Q MR. AVILA. ALFREDO AVILA.

A ALFREDO AVILA. I'M SORRY. I DON'T SEE ANYBODY BY -- ALFREDO AVILA --

Q I CAN'T HEAR YOU.

A I DON'T SEE ANYBODY ALFREDO AVILA ON THERE.

Q HOW ABOUT RAPHAEL HERNANDEZ? DO YOU SEE HIM ON THERE?

A NO. I DON'T SEE RAPHAEL HERNANDEZ EITHER.

Q THANK YOU.

THE COURT: MR. MILLER?

MR. MILLER: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. MILLER

Q HONORIO GUERRERO DOESN'T APPEAR ON THE MANIFEST, DOES HE?

A I'M SORRY?

Q HONORIO GUERRERO?

A NO, IT DOES NOT.

MR. MILLER: THAT'S THE ONLY QUESTION I HAVE, YOUR HONOR.

THE COURT: REDIRECT.

REDIRECT EXAMINATION

BY MR. MAYE

Q WHO DOES IT SHOW THE SHIPMENT GOING TO HERE IN THE UNITED STATES?

A IT SHOWS, THE NAME OF CONSIGNEE SHOWS FREDY DELEON.

Q FREDY DELEON.

A FREDY DELEON TIENDA DELEON. 216 BREEZY OAKS, TRENTON, SOUTH CAROLINA.

Q THANK YOU.

THE COURT: RECROSS?

MR. HAWKE: YES.

RECROSS EXAMINATION

BY MR. HAWKE

Q YOU KNOW WHO GAVE 'EM THAT NAME? YOU HAVE ANY PROOF AS TO WHO CALLED IN THAT INFORMATION?

A I'M SORRY. I CAN'T HEAR YOU, SIR. CAN YOU GET A LITTLE CLOSER.

Q NO PROBLEM. DO YOU HAVE ANY PROOF OR ANY KNOWLEDGE AS TO WHO CALLED IN THAT INFORMATION THAT WAS PREPARED BY JAMCO?

A NO, NOT ME. NO.

Q THAT'S ALL I HAVE.

THE COURT: MR. SUSSMAN? ANYTHING ELSE?

RECROSS EXAMINATION

BY MR. SUSSMAN

Q ONE QUESTION I FORGOT TO ASK: WAS THE TRAILER BACKED UP IN YOUR PRESENCE?

A THE TRAILER WAS -- NOT IN MY PRESENCE. BY THE -- BY THE AGENTS.

Q YOU WEREN'T THERE WHEN IT WAS RESEALED.

A NO. NO.

THE COURT: MR. MILLER?

MR. MILLER: NOTHING FURTHER, YOUR HONOR.

THE COURT: ANYTHING FURTHER OF THIS WITNESS?

MR. MAYE: I HAVE NO MORE QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. YOU NEED TO GO BACK WHERE YOU WERE. DON'T DISCUSS YOUR TESTIMONY WITH ANYBODY ELSE. THANK YOU. LADIES AND GENTLEMEN, WE'LL TAKE A 10-MINUTE BREAK AND GET YOU BACK OUT HERE. DON'T DISCUSS THE CASE. JUST LEAVE YOUR NOTES IN THE COURTROOM, PLEASE. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) WHO'S THE NEXT WITNESS?

MR. MAYE: MICHELLE DOWLING.

THE COURT: WE'RE AT EASE. Y'ALL GIVE SOME THOUGHT TO WHETHER YOU WANT TO BREAK FOR LUNCH NOW OR BREAK FOR LUNCH 30 MINUTES INTO IT.

MR. MAYE: JUDGE, IF WE'VE GOT A LONG WITNESS WE MIGHT AS WELL—

THE COURT: WELL, I JUST SENT THE JURY BACK THERE. SO SOME OF THEM PROBABLY STEPPED IN THE RESTROOM. LET'S JUST TAKE A BRIEF RECESS AND THEN I'LL BRING 'EM OUT HERE AND LET 'EM GO TO LUNCH. (THERE WAS A BRIEF RECESS.) (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) AFTER CONFERRING WITH THE LAWYERS IT APPEARS THE NEXT WITNESS IS GONNA BE RATHER LENGTHY. SO WE'LL JUST BREAK FOR LUNCH NOW RATHER THAN JUST GETTING STARTED WITH THAT WITNESS AND STOPPING FOR LUNCH. I NEED YOU BACK, FOLKS, IN AN HOUR AND 15 MINUTES. SO THAT'S A QUARTER TILL 2. IS THAT RIGHT? I NEED YOU BACK IN THE JURY ROOM AS YOU REPORTED THIS MORNING AT A QUARTER TILL 2. LEAVE YOUR NOTES HERE. IF YOU'D WRITE YOUR NAME SOMEWHERE ON THAT PAD, THE BAILIFF WILL TAKE THEM AND GIVE

THEM BACK AFTER LUNCH BREAK. OKAY. JUST GIVE THOSE TO THE BAILIFF ON YOUR WAY OUT, AND SHE'LL PUT THEM SOMEWHERE AND GIVE THEM BACK TO YOU WHEN YOU COME BACK IN THE COURTROOM AFTER LUNCH. I NEED YOU BACK AT 2:15. DON'T DISCUSS -- I MEAN 2:45 -- WHAT DID I SAY? 1:45. DON'T DISCUSS THE CASE. THANK YOU. YOU'RE FREE TO GO. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) ALRIGHT. THOSE OF YOU WHO ARE OUT ON BOND, YOU NEED TO UNDERSTAND THAT THE CASE WILL CONTINUE WHETHER YOU'RE HERE OR NOT. MAKE ABSOLUTELY SURE THAT YOU'RE BACK HERE. AN HOUR AND 15 MINUTES OR ANY SOONER TIME THAT THE LAWYERS TELL YOU TO BE BACK. DO ALL 3 UNDERSTAND THEY'RE ON BOND?

THE INTERPRETER: YES, SIR.

THE COURT: NOW MR. AVILA-ARONJA AND MR. HERNANDEZ, YOU HAVE THE SAME ATTORNEY, MR. SUSSMAN. YOU HAVE A RIGHT TO HAVE A DIFFERENT ATTORNEY EACH OF YOU. MR. SUSSMAN HAS INDICATED TO THE COURT THAT THE 2 OF YOU WANT HIM TO REPRESENT YOU. ASK THEM IF THAT'S CORRECT.

THE INTERPRETER: YES.

THE COURT: OKAY. DO EITHER OF THEM BELIEVE THAT MR. SUSSMAN HAS A CONFLICT OF INTEREST IN REPRESENTING BOTH?

THE INTERPRETER: IT'S ALL OKAY.

THE COURT: OKAY. ARE EITHER OF THEM TRYIN' TO BLAME THE OTHER IN SOME WAY?

THE INTERPRETER: NO. NO.

THE COURT: ALRIGHT. TELL THEM THAT I FIND THAT THEY HAVE WAIVED ANY CONFLICT OF INTEREST AND THAT MR. SUSSMAN MAY REPRESENT BOTH. TELL THEM THAT THEY MUST LET ME KNOW IMMEDIATELY IF THEY ARE UNHAPPY

WITH THEIR ATTORNEY OR IF THEY WANT A DIFFERENT ATTORNEY REPRESENTING THEIR INTEREST. DO THEY UNDERSTAND? DO THEY UNDERSTAND? I NEED TO PUT IT ON THE RECORD, MR. HUNT. DO THEY UNDERSTAND?

THE INTERPRETER: YES, I'D LIKE HIM TO CONTINUE.

THE COURT: COURT IS IN RECESS UNTIL 1:45.

MR. HAWKE: YOUR HONOR, COULD I MAKE ONE BEG AND PLEA?

THE COURT: SURE.

MR. HAWKE: IS THERE ANY WAY WE COULD BREAK ON TIME TONIGHT?

THE COURT: I'LL DO MY VERY BEST.

MR. HAWKE: THAT'S ALRIGHT WITH ME. IF YOU CAN. I MEAN IT WOULD BE GREAT, BUT I'M SCARED TO ASK FOR ANYTHING. THAT WOULD BE ON THE CUTTIN' EDGE TO GET THERE.

THE COURT: I DON'T CARE WHEN WE BREAK AS LONG AS WE FINISH THE CASE.

MR. HAWKE: YES, SIR.

THE COURT: AS LONG AS WE FINISH THE CASE THURSDAY OR FRIDAY.

MR. HAWKE: OKAY.

THE COURT: ALRIGHT. Y'ALL GONNA TELL THE SEQUESTERED WITNESSES THAT WE'RE AT LUNCH. I DIDN'T WANT 'EM SITTIN' BACK THERE NOT KNOWIN'. (THERE WAS A LUNCH RECESS.) STATE READY FOR THE JURY?

MR. MAYE: STATE'S READY.

THE COURT: DEFENSE READY?

MR. HAWKE: YES, YOUR HONOR.

MR. SUSSMAN: YES, SIR.

MR. MILLER: YES, SIR. (THE FOLLOWING OCCURRED IN THE PRESENCE OF

THE JURY.) CALL YOUR NEXT WITNESS, SOLICITOR.

MR. MAYE: STATE CALLS MICHELLE DOWLING.

MICHELLE DOWLING, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q AGENT DOWLING, WHERE ARE YOU NOW EMPLOYED?

A I AM NOW EMPLOYED WITH IMMIGRATION AND CUSTOMS ENFORCEMENT WHICH IS FORMERLY KNOWN AS U.S. CUSTOMS.

Q AND HOW LONG HAVE YOU BEEN WITH CUSTOMS?

A ABOUT 7 YEARS.

Q ABOUT 7 YEARS. YOU WERE FORMERLY STATIONED IN LAREDO. IS THAT CORRECT?

A YES, SIR.

Q WHERE ARE YOU STATIONED NOW?

A FAIRFAX, VIRGINIA.

Q LET ME DIRECT YOUR ATTENTION BACK TO THE DAY OF 2002 TO THE CASE AT HAND HERE. HOW DID YOUR INVOLVEMENT IN THIS CASE COME ABOUT?

A I RESPONDED TO A DUTY CALL ON MAY 14TH 2002 REGARDING A SEIZURE OF MARIJUANA THAT WAS LOCATED IN WOODEN FURNITURE INSIDE A TRACTOR-TRAILER.

Q WHAT HAPPENED WHEN YOU ARRIVED THERE? WHERE WAS THAT? WHERE DID YOU GO TO?

A I WENT TO THE WORLD TRADE BRIDGE IN LAREDO, TEXAS; RESPONDED TO THE DUTY CALL. WHEN I GOT THERE TO THE BRIDGE WITH THE OTHER INSPECTOR

-- I'M SORRY -- WITH THE OTHER AGENT, I INTERVIEWED THE PRIMARY INSPECTOR, THE SECONDARY INSPECTOR, THE CANINE HANDLER AND I ALSO INTERVIEWED THE DRIVER FOR THAT PARTICULAR TRACTOR-TRAILER.

Q *DID YOU SEE AGENT GAONA THERE OR INSPECTOR GAONA THERE, DID YOU* COMMUNICATE WITH HIM?

A YES, I DID.

Q BASED ON THAT WHAT DID YOU DO? WHAT HAPPENED ONCE YOU ARRIVED AND INTERVIEWED THOSE PEOPLE? WHAT DID YOU DO?

A I OBSERVED WHAT WAS CONTAINED IN THE WOODEN FURNITURE WHICH WAS AN UNKNOWN AMOUNT OF THE GREEN LEAFY SUBSTANCE WHICH WAS LATER FIELD TESTED POSITIVE FOR MARIJUANA. FROM THAT POINT INTERVIEWED THE DRIVER TO DETERMINE IF HE WAS INVOLVED WITH THIS CASE, AND THEN FROM THERE I CALLED THE U.S. ATTORNEY'S OFFICE IN ORDER TO TALK ABOUT THE CONTROLLED DELIVERY THAT WE WANTED TO DO TO TRENTON, SOUTH CAROLINA, AND TO FIND OUT IF WE WERE GONNA GET PROSECUTION OR NOT ON THAT PARTICULAR DRIVER.

Q OKAY. LET ME ASK YOU THIS: WHAT CONDITION WERE THE FURNITURE AND TRAILER AND ALL, WHAT CONDITION WERE THEY IN WHEN YOU ARRIVED?

A EVERYTHING WAS INTACT. THE ONLY THING THAT WAS TAKEN FROM ONE OF THE PIECES OF FURNITURE WAS A SMALL AMOUNT OF THE GREEN LEAFY SUBSTANCE WHICH WAS FIELD TESTED POSITIVE FOR MARIJUANA. THAT PARTICULAR PIECE OF WOODEN FURNITURE WHICH WAS THE CHIMNEY WAS PUT BACK TOGETHER AND BACK ON THE TRUCK, AND NOTHING ELSE WAS TOUCHED.

Q LET ME ASK YOU THIS: DURING THE ENTIRE TIME THAT YOU HAD ANY CONTACT WITH THE FURNITURE OR THE TRAILER, DID ANYBODY CHANGE, ADD OR

ALTER ANYTHING IN REGARD TO THE FURNITURE OR ANY OF THE CONTENTS IN YOUR PRESENCE?

A NO, THEY DID NOT.

Q DURING THE ENTIRE TIME THAT YOU WERE INVOLVED IN IT, DID CUSTOMS MAINTAIN CUSTODY AND CONTROL?

A YES, WE DID.

Q WHY DID YOU -- NOW YOU SAY YOU INTERVIEWED THE DRIVER.

A YES, I DID.

Q DID YOU CHARGE THE DRIVER?

A NO, I DID NOT.

Q WHY DID YOU NOT CHARGE THE DRIVER?

A MYSELF AND OTHER AGENTS INTERVIEWED THE DRIVER. HIS DEMEANOR WAS NORMAL. HE WASN'T NERVOUS BY ANY MEANS. THE TIMES THAT HE SAID THAT HE PICKED UP THAT PARTICULAR TRACTOR-TRAILER IN THE YARD IN NUEVO LAREDO MATCHED HIS MEXICAN MANIFEST WHICH IS ALSO CALLED A MEXICAN PEDIMENTO (PHONETIC). THOSE TIMES MATCHED WITH WHAT HIS STORY WAS. HE PICKED UP THAT PARTICULAR TRAILER AT 3:30 ON MAY 14TH 2002. HE ENTERED THE PORT OF ENTRY AT U.S. CUSTOMS AT 4:17 P.M. THAT'S ABOUT 45 MINUTES MORE OR LESS, AND HE WASN'T ABLE -- HE WOULD NOT -- IT WOULD NOT BE HUMANLY POSSIBLE TO LOAD THAT AMOUNT OF NARCOTICS IN THAT FORM AND FASHION INTO THE WOODEN CHIMNEYS. THEREFORE THE TIMES THAT WENT BY THE 45 MINUTES, HIS STORY CHECKED OUT. WE FELT THAT HE HAD ABSOLUTELY NO KNOWLEDGE OF THOSE NARCOTICS IN THAT TRACTOR-TRAILER.

Q WHAT TYPE OF DRIVER WAS HE?

A HE'S A DREDGE DRIVER. AND WHAT THAT IS HE'S A MEXICAN DRIVER. HE

IS ONLY ALLOWED TO PICK UP TRACTOR-TRAILERS IN MEXICO, DRIVE THEM ACROSS THE PORT OF ENTRY THROUGH U.S. CUSTOMS, DROP THEM OFF AT A LOCAL YARD IN LAREDO, TEXAS. AND HE WILL DO THIS NUMEROUS TIMES THROUGHOUT THE DAY. HE IS PAID TO GO BACK AND FORTH. HE IS NOT ALLOWED TO GO PAST LAREDO, TEXAS.

Q IS HE A PRIVATE INDIVIDUAL OR IS HE EMPLOYED BY SOME COMPANY?

A HE'S EMPLOYED BY A COMPANY.

Q OKAY. AND BASED ON YOUR INVESTIGATION OF HIM, YOU DID NOT DECIDE TO CHARGE HIM.

A THAT'S RIGHT.

Q OKAY. WHAT DID YOU DO IN REGARD TO -- ONCE YOU GOT THE GO AHEAD ON A CONTROLLED DELIVERY, WHAT DID YOU DO TO PREPARE FOR THAT?

A TO PREPARE FOR IT WE JUST -- WE CALLED THE U.S. CUSTOMS AGENT AT THE RECEIVING END WHICH WAS IN GREENVILLE, SOUTH CAROLINA, BUT THIS PARTICULAR SHIPMENT WAS GOING TO TRENTON, SOUTH CAROLINA. CALLED THEM; TOLD THEM WHAT WE HAD. WE HAD AN UNKNOWN AMOUNT OF MARIJUANA LOCATED IN THIS TRAILER; WOULD THEY BE WILLING TO ACCEPT THE DELIVERY; THEY ACCEPTED. AND AT THAT TIME WE JUST GATHER NUMEROUS AGENTS AT OUR END TO GET, YOU KNOW, ADDITIONAL VEHICLES READY FOR THE TRIP. AND WE ALSO CONTACT THE CARRIER COMPANY WHICH IS BORDER CARRIERS. WE APPROACHED THE MANAGER, AND HE SAID THAT HE WAS WILLING TO COOPERATE 100 PERCENT IN WHATEVER THAT WE NEEDED, AND THEY PROVIDED A DRIVER FOR US FROM LAREDO, TEXAS TO SOUTH CAROLINA FOR THE DELIVERY OF THE FURNITURE.

Q OKAY. DO YOU KNOW THE NAME OF THE COMPANY THE DRIVER WORKED

FOR? WAS HIS NAME CONTRAR (PHONETIC)?

A HIS NAME WAS JOSE CONTRAR DOMINQUEZ (PHONETIC).

Q DO YOU KNOW THE COMPANY HE WORKED FOR?

A FROM THE TOP OF MY HEAD I DON'T REMEMBER EXACTLY WHAT COMPANY. THERE ARE SEVERAL COMPANIES INVOLVED IN THIS TRANSACTION. YOU HAVE THE EXPORTING COMPANY WHICH IS SEBASTIAN. YOU HAVE JAMCO BROKERS WHICH IS THE U.S. CUSTOMS BROKER IN LAREDO, TEXAS. HE DIDN'T WORK FOR EITHER ONE. HE WORKED FOR A SEPARATE COMPANY IN -- ON THE MEXICAN SIDE, AND THEY JUST GO BACK AND FORTH ALL DAY LONG.

Q OKAY. DID BORDER CARRIERS IS THAT JUST THE TRUCKING COMPANY LIKE ROADWAY OR ONE OF THE BIG TRUCKING COMPANIES THAT—

A YES, IT IS. IT'S EQUIVALENT TO UPS, FED-EX, ROADWAY EXPRESS IN THAT THEY DON'T GET INVOLVED IN THE ACTUAL SHIPMENT. THEY'RE JUST PAID, YOU KNOW, A CERTAIN AMOUNT OF MONEY TO TRANSPORT MERCHANDISE FROM POINT A TO POINT B. THEY'RE JUST A LOCAL CARRIER.

Q HOW ABOUT THE DREDGE DRIVERS? IS THAT WHAT THEY DO AS WELL?

A THAT'S WHAT THEY DO AS WELL IS THEY TAKE UP THE MERCHANDISE. THEY DON'T KNOW EXACTLY WHAT KIND OF MERCHANDISE IS IN THE TRAILER. THEY FIND, YOU KNOW, THE MEXICAN MANIFEST SAYING THIS IS WHAT I RECEIVED THIS TRAILER WITH SUCH AND SUCH MERCHANDISE. THEY DON'T ACTUALLY OPEN UP THE TRAILER. EVERYTHING'S INTACT. FROM MEXICO THEY DROP IT OFF ONTO THE U.S. SIDE IN LAREDO, TEXAS AT WHATEVER YARD THEY'RE INSTRUCTED TO DO SO.

Q DO RECORDS INDICATE THAT IT WAS SEALED WHEN HE PICKED IT UP? THE DELIVERY WAS ALREADY SEALED WHEN HE PICKED IT UP?

A YES, IT WAS.

Q OKAY. WAS THERE INDICATION TO YOU ON THIS SIDE THAT THE SEAL HAD BEEN BROKEN OR ALTERED IN ANY WAY?

A NO, IT WAS NOT. IT WAS INTACT.

Q OKAY. HE ONLY HAD, WHAT, 45 MINUTES?

A HE HAD 45 MINUTES FROM THE TIME THAT HE ACTUALLY PICKED UP THE TRACTOR-TRAILER IN NUEVO LAREDO, MEXICO AND CROSSED INTO THE UNITED STATES THROUGH THE U.S. CUSTOMS PORT OF ENTRY. AND KEEP IN MIND THERE ARE LONG LINES AND THIS AND THAT, BUT IT WOULD TAKE ABOUT 45 MINUTES TO AN HOUR DEPENDING ON THE TRAFFIC TO GET TO THE U.S. SIDE.

Q OKAY. WHICH -- IS THERE ANY PARTICULAR AGENT DOWN THERE THAT PARTICIPATED IN THE CONTROLLED DELIVERY? WHAT AGENTS DID YOU ASSEMBLE THERE? WHO ELSE CAME ON THE SCENE WHEN YOU SUMMONED OTHER AGENTS?

A CARLOS CARTEHANA (PHONETIC) HE'S A SPECIAL AGENT WITH U,S. CUSTOMS. GEOVANI PEREZ (PHONETIC) IS ALSO SPECIAL AGENT. PATRICK -- BRIAN PATRICK MIZE SPECIAL AGENT. ART ROCHA (PHONETIC) SPECIAL AGENT. AND MY SUPERVISOR JOSE HERNANDEZ.

Q OKAY. WHEN DID Y'ALL LEAVE DOWN -- WELL, LET ME ASK YOU THIS: WAS THE TRAILER LATER SEALED IN YOUR PRESENCE THERE?

A YES, IT WAS. AFTER THE MERCHANDISE WAS PUT BACK ONTO THE TRAILER AND LEFT INTACT IN PLACE, WE WENT AHEAD AND CLOSED THE DOORS IN THE BACK OF THE TRAILER AND RESEALED THAT PARTICULAR TRAILER SO NOBODY COULD GET INTO IT UNTIL THE FINAL DELIVERY OR THE DELIVERY TO TRENTON, SOUTH CAROLINA. SO IT WAS RESEALED WITH THE NON-TAMPERED

SEAL.

Q YOU COULD TELL IF SOMEBODY TAMPERED WITH THAT SEAL?

A I—

MR. PUETZ: OBJECTION. LEADING, JUDGE.

THE COURT: SUSTAINED.

Q WHO ELSE WAS PRESENT WHEN THE TRAILER WAS SEALED AND THE TAMPER SEAL WAS PUT ON?

A SPECIAL AGENT BRIAN MIZE.

Q WHEN DID Y'ALL LEAVE LAREDO, TEXAS COMIN' UP HERE?

A ON MAY 16TH 2002, WE LEFT ABOUT 11 A.M.

Q OKAY. WHERE DID Y'ALL FIRST GO TO?

A WE DROVE TO SLIGHDELL, LOUISANA. SPENT THE NIGHT THERE. AND THEN WE CONTINUED TO TRENTON, SOUTH CAROLINA, WHICH WE GOT IN TRENTON ON THE 17TH ABOUT 10 P.M.

Q OKAY. WHAT DID Y'ALL DO AFTER YOU ARRIVED HERE TO SET UP AND CARRY OUT THE CONTROLLED DELIVERY?

A WE MET WITH THE OTHER CUSTOMS AGENTS AND LOCAL LAW ENFORCEMENT. WE BRIEFED WITH THEM VERY SHORTLY. THE FOLLOWING MORNING ON MAY 18TH 2002 WE MET ABOUT 6 A.M. OR SO, HAD A BRIEFING OF WHAT WAS GONNA TAKE PLACE THAT MORNING WHEN WE MADE THE ACTUAL DELIVERY TO DELEON'S STORE.

Q WAS CONTACT MADE WITH DELEON PRIOR TO DELIVERY?

A YES, IT WAS.

Q WHAT FOR?

A THE DRIVER OF THAT ACTUAL TRACTOR-TRAILER CALLED THE COMPANY

BORDER CARRIERS AND STATED I NEEDED, YOU KNOW -- THAT HE NEEDED EXACT DIRECTIONS ON HOW TO GET TO THE PARTICULAR STORE IN TRENTON, SOUTH CAROLINA. THE COMPANY WOULD CALL NUMEROUS TIMES TO MR. DELEON'S STORE AND DROP—

MR. HAWKE: YOUR HONOR, THERE'S NO EVIDENCE OF THAT.

THE COURT: YOUR HONOR, DISREGARD THE LAST STATEMENT OF THE WITNESS. THAT'S HEARSAY.

Q JUST SAY WHAT YOU OBSERVED AND SAW.

A OKAY.

Q NOT WHAT SOMEBODY ELSE SAID.

A OKAY.

Q OKAY. WHAT WAS YOUR ROLE OR WHAT WERE YOU GONNA DO IN AN ATTEMPT TO MAKE A CONTROLLED DELIVERY OUT HERE TO MR. DELEON?

A WHAT WAS MY ROLE?

Q WHAT WERE YOU GONNA DO?

A JUST SUPPORT THE CUSTOMS AGENTS AND LOCAL LAW ENFORCEMENT AND WHAT THEY DECIDED WOULD BE BEST BECAUSE ONCE WE TURN OVER THE ACTUAL SHIPMENT OF NARCOTICS, WE'RE THERE AS THE SHIPPING OFFICE. WE'RE JUST THERE TO ASSIST IN WHATEVER THAT THEY NEED AND TO HELP THEM OUT.

Q OKAY. WHO WENT ON THE CONTROLLED DELIVERY WITH THE DRIVER?

A BRIAN MIZE.

Q WHY DID BRIAN MIZE GO?

A WELL, THERE WERE A COUPLE OF REASONS. BRIAN MIZE HE'S A SPECIAL AGENT WITH U.S. CUSTOMS IN LAREDO, TEXAS, BUT PRIOR TO THAT, HE WAS A POLICE OFFICER AT A CITY DEPARTMENT. HE HAD QUITE A BIT OF EXPERIENCE

WORKING UNDERCOVER AND WHATNOT. THE DRIVER FELT VERY SAFE WITH PATRICK MIZE. THEY DEVELOPED A BOND DRIVING FROM SLIGHDELL, LOUISANA TO TRENTON, SOUTH CAROLINA. THE DRIVER FELT VERY COMFORTABLE WITH HIM. AND MOST OF ALL, PATRICK MIZE RODE WITH HIM BECAUSE FOR SAFETY REASONS. HERE YOU HAVE AN INNOCENT DRIVER WHO – WHO MORE OR LESS, YOU KNOW, HIS LIFE IS IN JEOPARDY IN DRIVING THE SHIPMENT FROM POINT A TO POINT B AND PATRICK MIZE IS THERE FOR SAFETY REASONS, AND HE ALSO HAD A FIREARM WITH HIM OF COURSE.

Q WHAT KIND OF RACE WAS THIS DRIVER OR WHAT WAS HIS—

A THE DRIVER WAS CANADIAN AND WE THOUGHT THAT PATRICK MIZE WOULD BE BEST SUITED IN DRIVING WITH HIM BECAUSE THEY MORE OR LESS, YOU KNOW, WERE THE SAME RACE. PATRICK MIZE ALSO LOOKED LIKE MORE OR LESS A TRUCK DRIVER IN THAT HE WAS KINDA SCRUFFY LIKE THAT TRACTOR-TRAILER DRIVER. IT WOULD LOOK BETTER OR MORE REALISTIC TO HAVE PATRICK MIZE WITH THIS PARTICULAR DRIVER THAN ONE OF THE HISPANIC AGENTS. IT WOULD JUST PLAY THE PART AND MAKE IT LOOK MORE REALISTIC.

Q OKAY. NOW I BELIEVE YOU PREVIOUSLY STATED THAT YOU WERE TO WORK ON SURVEILLANCE. IS THAT CORRECT?

A THAT'S CORRECT.

Q OKAY. DID YOU PARTICIPATE IN SURVEILLANCE OR TRY TO ASSIST DURING THE CONTROLLED DELIVERY?

A YES, I DID.

Q LET ME ASK YOU THIS: AFTER THE CONTROLLED DELIVERY TO DELEON'S STORE, DID YOU HAVE AN OCCASION TO GO TO THE STORE?

A YES, I DID.

Q OKAY. WHAT WERE THE CIRCUMSTANCES OF THAT OCCASION OF GOING TO THE STORE YOURSELF?

A WE ENCOUNTERED THE ACTUAL BUSINESS OF DELEON LA TIENDA STORE. THE FURNITURE WAS ALREADY OFFLOADED AT THIS POINT. SO WE MADE THE DECISION TO ENTER THE STORE TO FIND OUT, YOU KNOW, THE CIRCUMSTANCES BEHIND THAT. SO WHEN LAW ENFORCEMENT ENTERED THE STORE I ACCOMPANIED THEM AS WELL AND FROM THERE, JUST WENT ON WITH THE INVESTIGATION.

Q LET ME ASK YOU THIS: WERE THE CHIMNEYS OPENED IN YOUR PRESENCE?

A IN MY PRESENCE, YES.

Q WHO OPENED THE CHIMNEYS?

A LOCAL LAW ENFORCEMENT.

Q AT WHOSE DIRECTION?

A AT MY DIRECTION BECAUSE I'M A FEDERAL AGENT. I HAD NEXUS TO THE BORDER. THEREFORE, WE HAD CONSTANT VIEW OF IT FROM LAREDO, TEXAS TO TRENTON, SOUTH CAROLINA. WE GAVE THEM THE AUTHORITY TO GO AHEAD AND OPEN THE CHIMNEYS.

Q OKAY. LET ME ASK YOU THIS: I SHOW YOU A PHOTOGRAPH AND ASK YOU IF YOU CAN IDENTIFY THAT.

A THIS IS THE WOODEN FURNITURE THAT WAS LOCATED IN THAT PARTICULAR TRACTOR-TRAILER---

MR. SUSSMAN: YOUR HONOR, I WOULD OBJECT TO HER DESCRIBING THE DOCUMENT OR PHOTOGRAPH. IT'S NOT IN EVIDENCE.

MR. PUETZ: WE CERTAINLY WOULD OBJECT TO THE INTRODUCTION OF THE PICTURE AS IT RELATES TO OUR MOTION THAT WE HAD FILED BEFORE. THE

SUPPRESSION.

THE COURT: ALRIGHT. THE OBJECTION RAISED BY MR. SUSSMAN ON THE BASIS OF THERE NOT BEING A FOUNDATION LAID AND THE DOCUMENT OR THE PHOTOGRAPH NOT BEING IN EVIDENCE IS SUSTAINED. YOU HAVE TO GET IT IN BEFORE SHE STARTS TELLIN' WHAT IT IS. I'M SORRY. YOU HAVE TO GET THE DOCUMENT -- THE EXHIBIT IN EVIDENCE BEFORE SHE STARTS DESCRIBING WHAT IT SHOWS.

MR. MAYE: YES, SIR.

THE COURT: AS FOR THE SECOND ISSUE, THAT'S NOTED AND HOPEFULLY PRESERVED. ALRIGHT. GO AHEAD.

MR. SUSSMAN: YOUR HONOR, WE WOULD JOIN IN THE SAME MOTION THAT MR. PUETZ MADE.

THE COURT: WELL, RIGHT NOW I'M SAYING I SUSTAINED YOUR OBJECTION. I HAVEN'T ALLOWED IT IN.

Q LET ME ASK YOU THIS: AGENT, DID YOU SEE THE CHIMNEY INSIDE THE STORE THERE?

A YES, I DID.

Q YOU DID?

A YES.

Q WHEN WAS IT OPENED -- IN YOUR PRESENCE?

A IT WAS IN MY PRESENCE.

Q OKAY. LET ME ASK YOU THIS: DOES THE ITEM YOU HAVE IN FRONT OF YOU DOES THAT FAIRLY AND ACCURATELY REFLECT THE CHIMNEY AS YOU SAW IT INSIDE DELEON'S STORE THERE?

A YES, IT DOES.

MR. MAYE: YOUR HONOR, I'D MOVE TO ADMIT THIS INTO EVIDENCE.

THE COURT: ALRIGHT. SUBJECT TO PREVIOUS OBJECTIONS. MARK IT IN EVIDENCE, MADAM COURT REPORTER. (STATE'S EXHIBIT #5 RECEIVED IN EVIDENCE.)

Q I SHOW YOU STATE'S 5. WHAT CONDITION IS THE CHIMNEY IN, THE ITEMS IN THAT PHOTOGRAPH?

A IT HAD TO BE BROKEN INTO IN ORDER TO GET THE PACKAGES OUT OF THE CHIMNEY.

Q WOULD IT HAVE BEEN POSSIBLE TO TAKE THE MARIJUANA OUT WITHOUT DESTROYING -- TEARING UP THE CHIMNEY IN ORDER TO DO SO?

A ABSOLUTELY NOT.

Q OKAY. WOULD YOU COME DOWN AND SHOW THE LADIES AND GENTLEMEN OF THE JURY THE CHIMNEY AND THE ITEMS. (THE WITNESS COMPLIED.) YOU CAN RETAKE THE STAND. DID YOU OBSERVE THE SUBSTANCE THAT WAS IN THE BUNDLES ON TOP OF THE CHIMNEY IN THE PHOTOGRAPH?

A YES, I DID.

Q WHAT DID THEY APPEAR TO BE TO YOU?

A A GREEN LEAFY SUBSTANCE WHICH WAS MARIJUANA.

Q OKAY. HOW MANY BUNDLES WERE THERE AT THE STORE WHEN THE CHIMNEY WAS OPENED?

A 20 BUNDLES.

Q 20 BUNDLES?

A YES, SIR.

Q INSIDE THE STORE.

MR. PUETZ: I WOULD OBJECT TO HIS REPEATEDLY REPEATING THE

ANSWER THAT'S GIVEN BY THE WITNESS.

THE COURT: DON'T ECHO.

Q WHERE DID YOU GO AFTER YOU WERE IN THE STORE? WHERE'S THE NEXT PLACE THAT YOU WENT?

A WE WENT TO LOCAL LAW ENFORCEMENT, THEIR FACILITY TO -- IS IT SOUTH CAROLINA -- THE SHERIFF'S OFFICE.

Q OKAY.

A EDGEFIELD COUNTY. AND WE OFFLOADED THE REMAINDER OF THE MERCHANDISE IN THAT TRAILER AND BROKE OPEN THE CHIMNEY TO RETRIEVE ALL THE MARIJUANA BUNDLES.

Q WHO DIRECTED LOCAL LAW ENFORCEMENT TO OPEN THE CHIMNEYS?

A THAT WOULD BE MYSELF. I DID.

Q I NEXT HAND YOU 3 PHOTOGRAPHS AND ASK YOU TO LOOK AT THESE. DO THOSE 3 PHOTOGRAPHS FAIRLY AND ACCURATELY REPRESENT THE SCENE WHERE THE FURNITURE WAS OFFLOADED AND OPENED AT YOUR DIRECTION AT THE SHERIFF'S OFFICE?

A YES, IT DOES.

MR. MAYE: YOUR HONOR, I MOVE TO ADMIT THESE INTO EVIDENCE.

THE COURT: SUBJECT TO PREVIOUS OBJECTION.

MR. HAWKE: YES, SIR.

MR. SUSSMAN: YES, SIR.

MR. MILLER: YES, SIR.

THE COURT: MARK 'EM IN EVIDENCE, PLEASE, MA'AM. (STATE'S EXHIBITS 6, 7 AND 8 RECEIVED IN EVIDENCE.)

Q AGENT DOWLING, WILL YOU SHOW THE JURY WHAT'S SHOWN IN THE

PHOTOGRAPHS. (THE WITNESS COMPLIED.) AGENT DOWLING, WHAT ARE THE NUMBERS OF THOSE 3 YOU JUST SHOWED THE JURY?

A 6, 7 AND 8.

Q STATE'S 6, 7 AND 8. PRIOR TO THE ITEMS OF FURNITURE BEING OPENED, WAS THERE ANY CHANGE IN THEM FROM WHEN YOU SAW THEM WHEN THE TRAILER WAS SEALED IN TEXAS?

A NO.

MR. MAYE: BEG THE COURT'S INDULGENCE.

THE COURT: YES, SIR.

Q LET ME HAND YOU THESE TWO THINGS AND ASK YOU – DON'T DESCRIBE WHAT THEY ARE – I ASK YOU IF YOU CAN IDENTIFY THOSE.

A YES, SIR. THE MEXICAN PEDIMENTO WHICH IS THE MEXICAN MANIFEST.

Q IS – ARE THOSE DOCUMENTS IN MEXICAN MANIFEST THAT YOU COMPARED THAT THE DRIVER HAD?

A YES, IT IS.

MR. MAYE: YOUR HONOR, WE'D OFFER THIS IN EVIDENCE.

MR. PUETZ: WE CERTAINLY WOULD OBJECT AS IT RELATES – BASED UPON HEARSAY AND THE FACT THAT IT WOULD DEPRIVE OUR RIGHT OF CONFRONTATION.

THE COURT: ANYONE ELSE?

MR. SUSSMAN: WE JOIN IN THAT OBJECTION.

MR. MILLER: WE JOIN, YOUR HONOR.

MR. PUETZ: ADDITIONALLY, THEY ARE IN SPANISH.

THE COURT: YOU WISH TO BE HEARD?

MR. MAYE: GIVEN THE FACT THEY'RE IN SPANISH, I'M NOT GONNA

ATTEMPT TO. SHE'S ALREADY TESTIFIED AS TO THE TIMES. I WITHDRAW IT.

THE COURT: ALRIGHT. THANK YOU.

MR. MAYE: I'M GONNA RESERVE THE RIGHT TO RECALL THIS WITNESS FOR A BRIEF MATTER, BUT THAT'S ALL I HAVE AT THIS TIME.

THE COURT: CROSS?

MR. HAWKE: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. HAWKE

Q NOW YOU WERE THE ORIGINAL CASE AGENT THAT MR. GYON -- THE ONE THAT RUN THE X-RAY MACHINE.

A INSPECTOR GAONA.

Q INSPECTOR. INSPECTOR GAONA TURNED THE FOLLOW UP INVESTIGATION OVER TO YOU. IS THAT CORRECT?

A YES.

Q AND THEN IT WAS YOUR JOB IN COORDINATION WITH OTHER AGENTS TO DO A FOLLOW UP INVESTIGATION AND CONTROLLED DELIVERY. IS THAT RIGHT?

A IT WAS MY JOB TO INTERVIEW THE DRIVER THAT PARTICULAR DAY AND TO MAKE THE DECISION ON A CONTROLLED DELIVERY.

Q OKAY. AND THE FIRST THING YOU DID, I THINK, OTHER THAN -- YOU FIRST GOT YOUR BACKGROUND FROM YOUR AGENTS. AM I CORRECT?

A EXCUSE ME?

Q YOU GOT THE BACKGROUND OF THIS CASE FROM YOUR AGENTS?

A THE BACKGROUND OF THE CASE FROM THE INSPECTORS AT THE WORLD TRADE BRIDGE IN LAREDO, TEXAS.

Q ALRIGHT. AND THEN YOU WENT TO INTERVIEW THE DRIVER.

A YES, I DID.

Q ALRIGHT. AND YOU WENT AND SPOKE TO HIM AND AFTER SPEAKING TO HIM YOU CONFIRMED THAT HE DID NOT HAVE ANY KNOWLEDGE OF WHAT HE WAS CARRYING.

A THE DETERMINATION THAT MYSELF AND THE OTHER AGENTS THAT WERE THERE FOR THAT INTERVIEW, WE MADE THE DETERMINATION THAT HE HAD ABSOLUTELY NO KNOWLEDGE OF THE NARCOTICS IN THAT TRAILER.

Q OKAY. IN OTHER WORDS, HE WAS JUST SOMEBODY THAT APPARENTLY THESE DRUG DEALERS THAT WERE SHIPPING THE DRUGS HAD ENLISTED TO USE HIM TO GET THE DRUGS ACROSS. IS THAT RIGHT?

A WOULD YOU REPHRASE YOUR QUESTION.

Q SURE. HE WAS ONE OF THE PERSONS THAT THE DRUG DEALER HAD BASICALLY ENLISTED TO GET THE DRUGS ACROSS.

A THAT'S NOT TRUE.

Q HUH?

A THAT'S NOT TRUE.

Q ALRIGHT. CAN YOU TELL ME DID THE DRUG DEALER COME TO HIM THEN AND SAY LISTEN I HAVE THESE DRUGS I WANT TO GET THEM ACROSS OR DOES HE REPRESENT TO HIM THAT HE'S SHIPPING FURNITURE?

A THAT'S NOT HOW IT WORKS ON THE BORDER.

Q HUH?

A THAT'S NOT HOW IT WORKS AT THE BORDER.

Q OKAY. EXPLAIN TO ME WHAT YOU THINK THE DRUG DEALER DID IN THIS CASE WITH THIS DRIVER. HOW WOULD YOU DESCRIBE THE RELATIONSHIP?

A WHAT IS NORMALLY THE CASE IS THE DREDGE DRIVER HAS NO IDEA

WHAT'S GOING ON. HE MAKES SEVERAL TRIPS ON A DAILY BASIS TO AND FROM MEXICO. HE'S TOLD BY HIS COMPANY TO HOOK UP TO THIS PARTICULAR TRAILER, DROP THAT TRAILER OFF IN LAREDO, TEXAS. THAT'S THE ONLY INFORMATION THAT HE GETS.

Q OKAY. AND THE INFORMATION THAT HE HAD THAT'S BEEN RELAYED TO THE COMPANY THAT HE WORKED FOR WAS THAT HE WAS HAULING WHAT?

A WHATEVER IT SAYS ON THE MEXICAN MANIFEST.

Q DO YOU HAVE THAT MEXICAN MANIFEST? DO YOU HAVE THE ENGLISH VERSION OF THE MANIFEST?

A THIS IS THE U.S. MANIFEST.

Q OKAY. WHAT DOES IT SAY HE'S HAULIN'?

A 133 BUNDLES OF FURNITURE AND HANDICRAFTS.

Q OKAY. FURNITURE AND HANDICRAFTS. SO SOMEBODY MADE THESE PEOPLE THINK, EITHER HIS COMPANY OR HIM, THINK THAT HE WAS HAULING FURNITURE AND HANDICRAFTS. RIGHT?

A THAT'S WHAT IT SAYS ON THE MEXICAN MANIFEST.

Q WOULDN'T YOU THINK THE SOURCE OF THAT INFORMATION MIGHT BE THE DRUG DEALER WHO'S TRYING TO SMUGGLE THE DRUGS ACROSS?

A THAT'S NOT THE CASE.

Q SO YOU THINK THIS IS JUST SOME INNOCENT INFORMATION THAT SOMEBODY PUT OUT THERE, NOT FROM SOME DRUG DEALER? YOU DON'T THINK THAT THE DRUG DEALER THAT IS TRYIN' TO BRING 905 POUNDS OF MARIJUANA OVER HERE TO SOUTH CAROLINA WHATEVER IS THE SOURCE OF THE INFORMATION AND THE MANIFEST WHERE IT SAYS BRINGING OVER FURNITURE AND HANDICRAFTS?

A THAT'S NOT HOW IT WORKS. YOU HAVE A DRUG DEALER IN THE INTERIOR OF MEXICO. HE CAN TELL ANY ONE OF HIS EMPLOYEES TO SET THIS UP WITH A SHIPPING COMPANY SUCH AS THE EQUIVALENT OF UPS, FED-EX, ROADWAY SAYING, YOU KNOW, I WANT THIS SHIPPED, THIS MERCHANDISE SHIPPED INTO THE U.S. HE DOESN'T -- THE ACTUAL DRUG DEALER DOESN'T HAVE TO MAKE THE PHONE CALL. HE CAN HAVE ANY ONE OF HIS PEOPLE MAKE THE PHONE CALL.

Q OH, I UNDERSTAND. OKAY. I UNDERSTAND. BUT HE DOESN'T TELL THEM, LISTEN I HAVE 103 -- 33 PIECES OF FURNITURE THAT'S LOADED WITH 905 POUNDS OF MARIJUANA I WANT TO SHIP ACROSS. HE DOESN'T TELL THEM THAT OR HAVE HIS PEOPLE TELL THEM THAT. DOES HE?

A NO, BUT IT'S ALWAYS THE CASE THAT IT'LL BE A LOW ENTRY VALUE WHICH THE WOODEN FURNITURE WAS.

Q THAT'S NOT MY QUESTION. THAT'S NOT WHAT HE TELLS THEM, IS IT? HE LIES TO THEM AND SAYS NO I DON'T HAVE DRUGS HERE; WHAT I HAVE HERE IS FURNITURE AND HANDICRAFTS. AM I CORRECT?

A HE TELLS THE SHIPPING COMPANY I HAVE WOODEN FURNITURE TO SHIP.

Q SO HE LIED TO THEM.

A LIKE I SAID BEFORE, IT ISN'T THE DRUG DEALER MAKING THE PHONE CALL. IT COULD BE ANYBODY.

Q OKAY. SOMEBODY ON BEHALF OF THE DRUG DEALER. OKAY? I KNOW YOU DON'T WANT TO SAY IT'S THE DRUG DEALER. BUT SOMEBODY THAT HE DIRECTS TO SAY OR TELL THESE SHIPPERS THAT LISTEN WHAT I AM SHIPPING HERE IS FURNITURE, FURNISHINGS AND HANDICRAFTS; NOT DRUGS. RIGHT?

A RIGHT.

Q NOW AND BECAUSE OF THAT, ONCE YOU DISCOVERED THAT, YOU BELIEVE

THE DRIVER AND THE DRIVER'S HONESTLY DOING HIS WORK. BRINGIN' THESE TRAILERS ACROSS, YOU DO NOT ARREST HIM AFTER YOU DETAIN HIM AND QUESTION HIM. IS THAT RIGHT?

A THAT'S RIGHT. HE HAD ABSOLUTELY NO KNOWLEDGE, AND I DON'T MAKE THAT DECISION. I REPORT THE FACTS TO THE U.S. ATTORNEY'S OFFICE AND THEY'RE THE ONES THAT MAKE THAT ULTIMATE DECISION IF HE SHOULD BE ARRESTED OR NOT.

Q NOW I GOTCHU. AND SO IN THIS PARTICULAR CASE THEY DO NOT ARREST HIM.

A THAT'S CORRECT.

Q NOW THEN YOU – THEN YOU ALSO DEALT WITH THE BORDER CARRIERS. IS THAT RIGHT?

A YES.

Q NOW IF BORDER CARRIERS HAD SOME RELATIONSHIP WITH THE DRUG DEALER OVER IN MEXICO THEN THEY WOULD GET A KICKBACK FOR ALL THESE DRUGS, HOW WOULD YOU HAVE DETERMINED THAT?

A THEY WOULDN'T HAVE A RELATIONSHIP WITH ANYBODY IN MEXICO. THEY'RE JUST HIRED BY THE U.S. CUSTOMS BROKER WHICH IS JAMCO TO HAUL MERCHANDISE FROM POINT A TO POINT B. IT WOULD BE EQUIVALENT, LIKE I SAID, TO FED-EX OR UPS.

Q OKAY.

A THEY'RE THE SIMPLE CARRIER. THEY'RE NOT GONNA – YOU KNOW, I'VE HAD CASES IN THE PAST THAT WE'VE INTERCEPTED A NARCOTICS SHIPMENT THROUGH FED-EX AND UPS. YOU WOULDN'T NECESSARILY ARREST THE DRIVER OF – YOU KNOW, THE ONE DRIVING THE VEHICLE OR THE EMPLOYEES IN THAT

STORE. THIS IS A CARRIER. AND THIS IS EQUIVALENT TO THOSE COMPANIES.

Q WHO WERE THE PEOPLE WHO CONTACTED SEBASTIAN -- CONTACTED JAMCO TO ACT AS THE BROKER FROM MEXICO? WHO WAS THE COMPANY?

A I CAN'T TELL EXACTLY.

Q WOULD YOU LOOK AT THE MANIFEST, PLEASE. WHO DO THEY SAY THE ORIGINATING SHIPPER IS?

A THE EXPORTING COMPANY IS SEBASTIAN.

Q AND THAT'S THE COMPANY IN MEXICO THAT SUPPOSEDLY LOADED UP THESE FURNITURE PIECES. IS THAT CORRECT?

A THAT'S RIGHT.

Q OKAY. AND THEN THEY HIRED JAMCO TO -- TO BE BROKERS YOU SAY. RIGHT?

A THEY'LL CALL JAMCO TO MAKE ALL THE ARRANGEMENTS.

Q AND THEN JAMCO HIRES WHO?

A JAMCO DOESN'T HIRE ANYBODY. THEY--

Q I THOUGHT YOU JUST SAID JAMCO HIRED BORDER CARRIERS.

A WHAT THEY DO IS THEY GET THE PAPERWORK IN LINE. IF YOU HAVE TO MAKE A FORMAL ENTRY THROUGH U.S. CUSTOMS AT THE BORDER, IF YOUR MERCHANDISE IS OVER $2000, YOU HAVE TO HAVE THE PROPER PAPERWORK. SO JAMCO WILL PREPARE THAT PAPERWORK FOR THE INDIVIDUAL.

Q WHICH INDIVIDUAL?

A PREPARE THE PAPERWORK EITHER FOR THE INDIVIDUAL THAT'S SHIPPING THE MERCHANDISE OR THE INDIVIDUAL THAT'S RECEIVING IT.

Q I DON'T WANT TO TALK ABOUT SOME INDIVIDUAL. I WANT TO TALK ABOUT WHO IN THIS CASE, WHO PREPARED THE PAPERWORK FOR 'EM.

A THE MANIFEST IS PREPARED FOR U.S. CUSTOMS IN ORDER TO BRING THE MERCHANDISE IN.

Q ALRIGHT. LET'S START FROM THE BEGINNING. WHO IS THE SHIPPER AND WHO HAS TO HAVE A MANIFEST TO GET IT ACROSS.

A SEBASTIAN IS THE EXPORTING COMPANY.

Q OKAY.

A AND THE PERSON WHO HAS TO HAVE THE MANIFEST IN ORDER TO BRING IT IN IS THE TRACTOR TRAILER DRIVER.

Q OKAY.

A THE DREDGE DRIVER.

Q SO SEBASTIAN HIRED JAMCO AND GET THIS BROKER TO PREPARE THE PAPERWORK FOR THIS DRIVER TO BRING OVER THIS LOAD OF FURNITURE. IS THAT RIGHT?

A YES.

Q OKAY. AND THEN JAMCO GETS BORDER CARRIERS TO SHIP IT THE REST OF THE WAY. RIGHT?

A YES.

Q AND BECAUSE OF THAT YOU DIDN'T THINK THAT THERE WAS ANY RELATIONSHIP WHATSOEVER BETWEEN BORDER CARRIERS AND SEBASTIAN EXPORTACIONES?

A THEY'RE SHIPPING COMPANIES. THEY DON'T GET INVOLVED IN THE ACTUAL – WHAT ACTUAL MERCHANDISE IS TO BE PLACED. LIKE I SAID THEY'RE THE COMPANY THAT GETS PAID TO DO THE ACTUAL SHIPPING. THAT'S LIKE IF AN INDIVIDUAL GOES INTO A UPS OR FED-EX, THEY'RE GOING TO PAY THEM A CERTAIN AMOUNT TO HAVE PACKAGE A MAILED FROM, YOU KNOW, TEXAS TO

TRENTON, SOUTH CAROLINA. THEY'RE THE SHIPPERS.

Q AND ONCE YOU – AT THAT TIME YOU DETERMINED THEY'RE THE SHIPPERS, AND AT THAT POINT IN TIME THEY DON'T HAVE ANY KNOWLEDGE OF IT, SO YOU DID NOT ARREST THOSE PEOPLE.

A BASED ON MY TRAINING AND EXPERIENCE, THE CARRIER/SHIPPERS, THEY'RE NOT INVOLVED. I'VE HAD CASES WITH UPS AND FED-EX JUST AS WELL THAT THEY ARE NOT INVOLVED. YOU ALWAYS TRY TO GET THE PERSON ON THE DOMESTIC SIDE WHICH IS THE U.S. WE DON'T EVER HAVE COOPERATION WITH MEXICO. WE DON'T HAVE JURISDICTION IN MEXICO. I CANNOT CALL SEBASTIAN -- THEY DON'T HAVE TO COOPERATE, THEY DON'T HAVE TO RETURN MY PHONE CALLS. I WANT TO GET THE PEOPLE ON THE U.S. SIDE. THAT'S WHERE MY JURISDICTION IS IN THE U.S.

Q SO YOU WERE AFTER SOMEBODY ON THE U.S. SIDE. IS THAT RIGHT?

A MY TARGETS ARE GONNA BE IN THE U.S. THE PERSON THAT'S RECEIVING THE MARIJUANA.

Q OKAY. AND SO ANYWAY, YOU GET SOMEBODY -- I THINK THIS – LET ME SHOW YOU THIS HERE. DID YOU HAVE A REPRESENTATIVE OF BORDER CARRIERS EXECUTE THAT DOCUMENT FOR YOU?

A THAT WAS THE TRUCK DRIVER FOR BORDER CARRIERS.

Q OKAY. AND YOU HAD HIM EXECUTE A DOCUMENT SAYING HE HAD NO KNOWLEDGE OF CONTRABAND IN THIS TRAILER?

A THE REASON WHY THIS PETITION WAS GENERATED—

Q THAT'S NOT MY QUESTION. MY QUESTION IS DID YOU HAVE HIM SAY HE HAD NO KNOWLEDGE OF CONTRABAND IN THE TRAILER?

A WE DIDN'T HAVE HIM SAY IT. HE -- THAT WAS THE KNOWN FACT THAT

THEY WERE NOT INVOLVED WHATSOEVER.

Q OKAY. BUT IT'S SOMETHING YOU REQUESTED THAT HE PUT IN WRITING AND GIVE TO YOU.

A THE SEIZE PROPERTY SPECIALIST REQUESTED IT IN ORDER TO GIVE HIM BACK THAT PARTICULAR TRAILER BACK TO THE COMPANY BECAUSE THEY WERE NOT INVOLVED.

Q OKAY. AND AS A RESULT OF THAT, ONCE YOU DETERMINED THAT THEY DID NOT HAVE ANY KNOWLEDGE, OF COURSE, YOU DID NOT ARREST HIM.

A THAT'S RIGHT. THAT'S LIKE ARRESTING THE UPS TRUCK DRIVER AND HIS VEHICLE. THAT DOESN'T MAKE ANY SENSE.

Q OKAY. I UNDERSTAND THAT. I COMPLETELY AGREE WITH YOU. AND YOU WOULD AGREE WITH ME, WOULD YOU NOT, THAT IF SOMEBODY HAD BEEN LIED TO BY SOMEBODY INVOLVED WITH THE DRUG DEALERS AND THEY HAD BEEN DECEIVED AND THEY ARE THINKING THEY ARE GETTING FURNITURE WHEN, IN FACT, THEY ARE GETTING DRUGS, THEY SHOULDN'T BE ARRESTED.

A DEPENDS ON THE INVESTIGATION. DEPENDS ON THE CASE. AND LIKE I SAID, WE DON'T EVER GET COOPERATION FROM MEXICO. I DON'T HAVE JURISDICTION IN MEXICO. THEREFORE, I CANNOT CONTACT THE MEXICAN COMPANIES, SEBASTIAN OR WHOEVER, BECAUSE WE'RE JUST NOT GOING TO GET THAT COOPERATION.

Q THAT'S NOT MY QUESTION. MY QUESTION IS DO YOU AGREE WITH ME THAT PEOPLE WHO ARE LIED TO BY DRUG DEALERS AND GIVEN THE REPRESENTATION THAT THERE'S ONLY FURNITURE AND NOT DRUGS AND HAVE NO KNOWLEDGE THAT THEY ARE INVOLVED IN HAULING DRUGS AND POSSESSING DRUGS SHOULD NOT BE ARRESTED.

A YOU HAVE TO TAKE IT CASE-BY-CASE BASIS.

MR. HAWKE: JUDGE, I'D ASK FOR HER TO ANSWER ME.

THE COURT: HE'S ASKIN' YOU -- LISTEN.-- ASK THE QUESTION AGAIN.

Q DO YOU AGREE WITH ME THAT SOMEBODY WHO HAS BEEN LIED TO BY A DRUG DEALER---

A UH-HUH.

Q ---WHO HONESTLY BELIEVES THAT THEY HAVE FURNITURE IN THEIR POSSESSION AND NOT DRUGS, AND DON'T KNOW ANYTHING ABOUT DRUGS SECRETED IN THE FURNITURE THAT THEY HAVE, THAT THEY SHOULD NOT BE ARRESTED? YES OR NO?

A IF I HAVE TO ANSWER YES OR NO, OF COURSE NO. SOMEBODY HAS BEEN DELIBERATELY DECEIVED. BUT, AGAIN, YOU NEED TO TAKE IT CASE-BY-CASE BASIS.

Q AND THAT'S EXACTLY WHAT YOU DID WITH THE DRIVER, ISN'T IT?

A THE TRACTOR-TRAILER DRIVER, THE DREDGE DRIVER—

Q YES. YES. AND THAT'S EXACTLY WHAT YOU DID WITH BORDER CARRIERS, ISN'T IT?

A YES.

Q DO YOU KNOW WHAT, IF ANYTHING, FREDY DELEON WAS TOLD WHEN HE AGREED TO ALLOW THE FURNITURE TO BE SHIPPED TO HIS PLACE?

A I WASN'T PRESENT FOR THAT CONVERSATION.

Q HAVE YOU FOUND OUT ANY INFORMATION?

A WHAT HE ACTUALLY SAID?

Q WHAT HE WAS TOLD.

A NO.

EXECUTION OF A CONTROLLED DELIVERY AND IF YOU WERE TO THROW IN A HISPANIC PASSENGER WITH A WHITE MALE DRIVER FROM CANADA, IT WOULD THROW OFF THE WHOLE OPERATION, AND WE WANTED TO DO EVERYTHING AS SAFE AS POSSIBLE.

Q BUT YOU ALSO IN ADDITION -- YOU DON'T HAVE ANY PEOPLE AT THE BORDER OF LAREDO AND TEXAS WHO ARE WHITE PEOPLE THEN WHO SPEAK SPANISH IN CUSTOMS?

A IN LAREDO, TEXAS?

Q IN LAREDO, TEXAS WHERE YOU WERE COMIN' FROM?

A NOT FLUENT.

Q NOT FLUENT. OKAY.

A WE'RE NOT REQUIRED TO TAKE SPANISH CLASSES.

Q LET ME ASK YOU THIS: YOU KNEW YOU WERE DEALING WITH HISPANIC SPEAKING OR SPANISH SPEAKING FOLKS, DIDN'T YOU?

A YOU CAN ASSUME SO WITH THE LAST NAME.

Q AND BY HAVING – BY CHOOSING TO HAVE THE AGENT THAT YOU DID, YOU LOST ANY ABILITY TO UNDERSTAND ANY OF THE CONVERSATION THAT WAS GOIN' ON OUT THERE IN HIS PRESENCE, DIDN'T YOU?

A AGENT MIZE UNDERSTANDS A LITTLE BIT OF SPANISH SO HE KNEW MORE OR LESS WHAT WAS SAID.

Q HE KNEW WHAT WAS SAID.

A AND, AGAIN, HE WAS THROWN IN THERE FOR SAFETY REASONS.

Q OKAY. AND YOU ALSO HAD HIM ASSIGNED -- WHAT DOES P.H. MEAN?

A PHOTO.

Q PHOTO. AND WHAT DOES THAT MEAN? WHAT WAS HE SUPPOSED TO DO?

A WHAT YOU'RE LOOKING AT THERE IS AN OPERATIONAL PLAN FOR THE LAREDO, TEXAS OFFICE. IT'S A PROPOSAL, IF YOU WILL, ON ONCE WE GET TO THE FINAL DESTINATION WHICH IS TRENTON, SOUTH CAROLINA. HIS JOB DUTIES, IF NEEDED, WOULD BE TAKE PHOTOS, BUT THAT WASN'T NEEDED. SOMEBODY ELSE DID THAT.

Q OKAY. AND SO DID YOU GET HIM A CAMERA?

A I'M SURE HE HAD HIS OWN CAMERA.

Q OKAY.

A AND THAT'S NOT WRITTEN IN STONE. THAT'S A PROPOSAL OF WHAT PEOPLE WILL BE DOING.

Q DOESN'T IT SAY IT WAS APPROVED?

A YES.

Q OKAY. SO IT'S A PROPOSAL THAT WAS SUBMITTED AND APPROVED FOR THE WAY YOU'RE GOIN' TO CONDUCT THE SURVEILLANCE. AM I RIGHT?

A PROPOSAL OF A -- YOU CAN ANTICIPATE CERTAIN THINGS TO HAPPEN, OF COURSE, IN A CONTROLLED DELIVERY. YOU HOPE FOR THE BEST. AND IT WAS A VERY SUCCESSFUL CONTROLLED DELIVERY.

Q NOW NOBODY TOOK ANY PICTURES OF ANY PART OF THE DELIVERY OR ANY PART OF THE TRUCK DEALER STUFF, ANY OF THE THINGS THAT HAPPENED OUT THERE. DID THEY?

A YOU HAD AGENT MIZE AS AN UNDERCOVER TRUCK DRIVER. NOBODY'S GONNA BE TAKIN' PICTURES OF THEM STUCK IN THE MUD. I MEAN THAT WOULD JEOPARDIZE THE WHOLE CASE.

Q AND NOBODY GOT ANY VIDEO, ANY KINDA PHOTOGRAPHS OR ANYTHING OF THE 2 INDIVIDUALS WHO ARE NOW GONE.

A I CAN'T ANSWER THAT BECAUSE I WAS WITH THE OTHER TEAM THAT WENT INTO THE STORE.

Q LET ME ASK YOU, DID YOU SEE ANY OF IT?

A SEEN ANY?

Q I THOUGHT YOU WERE THE CASE AGENT. HAVE YOU SEEN ANY PHOTOGRAPHS OF THE 2 PEOPLE THAT ARE GONE?

A I HAVE NOT.

Q HAVE YOU SEEN ANY VIDEO OF THE 2 PEOPLE THAT ARE GONE?

A I HAVE NOT. I'M THE CASE AGENT UP TO A CERTAIN POINT, SIR, AND THEN I TURN IT OVER.

Q WOULD YOU TELL THIS JURY ALL THE AUDIO RECORDINGS YOU HAVE OF THE 2 PEOPLE THAT ARE GONE.

A I HAVE NOT HEARD ANY AUDIO.

Q WELL, DID YOU BOTHER TO GO LOOK AT THE VIDEO OF MR. DELEON SURRENDERING TO YOUR AGENTS WHEN THEY ARRESTED HIM?

A AT THIS POINT I'M NOT THE CASE AGENT. THAT'S NOT -- I TURNED OVER THE CASE TO OTHER CASE AGENTS IN THE AREA. SO IT'S NOT MY RESPONSIBILITY AT THIS POINT.

Q THAT'S SOMEBODY ELSE'S RESPONSIBILITY, ISN'T IT?

A DEPENDS ON WHERE THE CASE GOES.

Q WELL, IT'S NOT YOURS, IS IT?

A NOT AT THIS POINT, NO, SIR.

Q OKAY. YOU REMEMBER AT THE END OF THIS THERE BEING A DIRECTION FROM YOUR SUPERVISOR?

A IT WAS MY ACTING GROUP SUPERVISOR, AND WHAT IT SAYS HERE—

Q FIRST OF ALL, LET'S IDENTIFY HIM. WHO WAS YOUR ACTING GROUP SUPERVISOR?

A ARTURO ROCHA.

Q AND ARTURO ROCHA AT THE END OF THIS INVESTIGATION, WHAT IS THE LAST ENTRY HE MAKES ABOUT WHAT IS SUPPOSED TO BE DONE WITH THIS CASE?

A DEFENDANTS IN STATE CUSTODY AWAITING TRIAL. CASE AGENT WILL EXHAUST ALL POSSIBLE LEADS. CASE AGENT IS NOT REFERRING TO ME. CASE AGENT IS THE STATE AGENT.

Q OKAY. SO YOU'RE NOT THE CASE AGENT NOW.

A LIKE I SAID, I WAS THE CASE AGENT STARTING -- ORIGINATING FROM LAREDO, TEXAS UNTIL I TURNED IT OVER IN TRENTON, SOUTH CAROLINA.

Q HAVE YOU FOLLOWED UP ANY LEADS?

A THAT'S NOT MY JOB TO DO SO, SIR. WHEN YOU DO A CONTROLLED DELIVERY--

Q IS THAT NO--

THE COURT: HOLD ON.

MR. HAWKE: I JUST WANT TO KNOW IF SHE'S SAYING YES OR NO.

Q HAVE YOU FOLLOWED UP ANY LEADS?

A WHEN YOU DO A CONTROLLED DELIVERY IT'S NOT YOUR--

MR. HAWKE: YOUR HONOR, I WOULD ASK THAT SHE ANSWER MY QUESTION. IT'S A VERY DIRECT QUESTION.

Q HAVE YOU FOLLOWED UP ANY LEADS?

A NO. IT'S NOT MY JOB TO DO SO.

THE COURT: YOU CAN EXPLAIN YOUR ANSWER, MA'AM.

A THANK YOU.

THE COURT: I DIDN'T -- I HAVEN'T RULED, BUT---

A EXCUSE ME?

THE COURT: I NEVER RULED. SINCE Y'ALL WENT ON WITHOUT ME, I'LL JUST LET YOU KEEP ON GOIN'. YOU CAN EXPLAIN YOUR ANSWER.

A OKAY. I'M THE CASE AGENT IN LAREDO, TEXAS UNTIL WE REACH OUR FINAL DESTINATION WHICH IS TRENTON, SOUTH CAROLINA, AND AT THAT TIME IT WILL BE TURNED OVER TO FEDERAL OR STATE AGENTS. AND AT THAT TIME THEY CAN EXHAUST ANY LEADS THEY CHOOSE TO DO SO.

Q DO YOU KNOW IF IT'S ANYBODY?

A EXCUSE ME?

Q DO YOU HAVE ANY KNOWLEDGE OF ANYBODY FOLLOWING UP ANY LEADS?

A I'M NOT SURE WHAT THEY DID WITH THEIR CASE.

Q IS THAT NO?

A I DON'T HAVE ANY KNOWLEDGE. AT THAT POINT I TURNED OVER THE CASE. IT'S NOT MY RESPONSIBILITY.

Q DID YOU EVER DO ANYTHING OR HAS ANY PART OF YOUR INVESTIGATION EVER TURNED UP ANY PRIOR PHONE CALL BETWEEN FREDY DELEON AND SEBASTIAN EXPORTACIONES?

A YOU NORMALLY WITH DOMESTIC PHONE NUMBERS---

Q I -- IF YOU WOULD---

MR. HAWKE: JUDGE, I WOULD ASK THAT SHE ANSWER MY QUESTION FIRST AND THEN IF SHE WANTS TO EXPLAIN, THEN I DON'T HAVE ANY PROBLEM WITH IT. MY QUESTION, YOUR HONOR, IS HAS SHE TURNED UP ANY PRIOR PHONE CALLS FROM FREDY DELEON TO SEBASTIAN EXPORTACIONES AS A PART OF HER

INVESTIGATION.

A NO. AND THE REASON BEING---

THE COURT: WAIT A MINUTE. DAD GUM IT, IF Y'ALL ASK ME TO RULE, WAIT TILL I RULE. YOU HAVE TO ANSWER HIS QUESTION. THEN YOU MAY EXPLAIN YOUR ANSWER. THANK YOU.

MR. HAWKE: THANK YOU.

Q DO YOU REMEMBER THE QUESTION?

A YES.

Q YOU ANSWER IT AND THEN YOU CAN EXPLAIN WHATEVER YOU---

A MY ANSWER IS NO, AND THE REASON BEING IS THAT ANY TIME YOU SUBPOENA A DOMESTIC PHONE NUMBER SUCH AS FREDY DELEON'S, IF THERE ARE ANY MEXICAN OR INTERNATIONAL PHONE CALLS ON THAT SUBPOENA, YOU CANNOT GET THE SUBSCRIBER INFORMATION. SO IT'S PRETTY MUCH A DEAD END WHEN YOU DEAL WITH MEXICAN PHONE NUMBERS. SO IT WOULD REALLY BE A WASTE OF TIME TO SUBPOENA THAT PARTICULAR PHONE NUMBER BECAUSE THE MEXICAN PHONE NUMBER WILL NOT SHOW UP ON THE PHONE TOLLS, AND IF BY CHANCE IT DID, THE SUBSCRIBER INFORMATION FOR THAT INDIVIDUAL IN MEXICO WILL NOT SHOW UP. SO IT'S A DEAD END, AND WE THEREFORE WE DON'T SUBPOENA THOSE PARTICULAR PHONE NUMBERS, AND NORMALLY THE CASE, THEY'LL USE A CALLING CARD OR SOMETHING ELSE. THEY'RE NOT GONNA USE A CELL PHONE OR HOUSE PHONE TO MAKE THOSE PHONE CALLS INTO MEXICO.

Q I'M SURE YOU PULLED ALL THOSE RECORDS AND LOOKED. DIDN'T YOU?

A AGAIN, SIR, WHAT I JUST TRIED TO EXPLAIN IS THAT MEXICAN PHONE NUMBERS WILL NOT SHOW UP ON A SUBPOENA.

Q DID YOU OR DID YOU NOT PULL HIS PHONE RECORDS TO LOOK AND SEE IF

HE MADE ANY PHONE CALLS TO THIS PLACE IN MEXICO JUST ANY TIME PRIOR TO THIS DELIVERY?

A NO, I DID NOT.

Q THANK YOU. DID YOU SEE IF HE MADE ANY PHONE – DID YOU CHECK TO SEE IF THERE WAS ANY OR HAVE YOU DISCOVERED ANY WRITTEN CORRESPONDENCE OR MAIL BETWEEN HIM AND SEBASTIAN EXPORTACIONES AT ANY TIME PRIOR TO THIS DELIVERY?

A NO, BUT THEY DON'T HAVE TO CORRESPOND IN THAT WAY. IT CAN BE IN PERSON. IT CAN BE, YOU KNOW, TYPICALLY IN CASES LIKE THIS IT WOULD BE IN PERSON OR TO BE BY OTHER MEANS; NOT BY TELEPHONE OR BY CORRESPONDENCE BY LETTER.

Q OKAY. DID YOU SEE WHERE HE MADE A TRIP TO MEXICO TO DEAL WITH SOMEBODY IN SEBASTIAN EXPORTACIONES, CHECK HIS PASSPORT OR CHECK ANYTHING?

A NO. WE CHECK FOR CROSSINGS ON HIS ACTUAL NAME AND IT WAS NEGATIVE. BUT THAT DOESN'T MEAN ANYTHING.

Q I THOUGHT YOU SAID IT MIGHT BE DONE IN PERSON AND NOW YOU'RE TELLIN' ME YOU DIDN'T—

A RIGHT. YOU CAN HAVE—

Q WAIT. I'M NOT FINISHED. YOU SAID IT COULD LIKELY BE DONE BY PERSON AND NOW YOU'RE TELLIN' ME YOU CHECKED TO SEE IF HE WENT THERE IN PERSON AND IT CAME BACK NOTHIN'. HE HADN'T EVEN HAD—

A WELL, THIS IS WHAT CAN HAPPEN IS YOU CAN HAVE THE MEXICAN SIDE COMING INTO THE U.S. AND THEY CAN MEET IN THE U.S. OR EVEN IF FREDY DELEON DECIIDES TO GO INTO MEXICO, JUST BECAUSE I RAN HIS NAME, DOESN'T

MEAN HE DIDN'T ENTER.

Q OKAY. ALRIGHT. DID YOU FIND ANY PHONE CALLS BETWEEN FREDY DELEON AND JAMCO INTERNATIONAL ANY TIME PRIOR TO THIS SHIPMENT ARRIVING?

A NO, I DID NOT.

Q DID YOU FIND ANY CORRESPONDENCE LIKE MAIL OR ANYTHING BACK AND FORTH BETWEEN HIM AND JAMCO INTERNATIONAL AT ANY TIME PRIOR TO THIS DELIVERY?

A NO, I DID NOT.

Q OKAY. DID YOU FIND THAT ANY PHONE CALLS FROM FREDY DELEON AND ANYBODY IN LAREDO, TEXAS PRIOR TO THIS DELIVERY?

A NO, I DID NOT.

Q DID YOU FIND ANY CORRESPONDENCE LIKE LETTERS THAT WERE MAILED IN THE MAIL BACK AND FORTH BETWEEN HIM AND ANYBODY IN LAREDO, TEXAS?

A NO.

Q DID YOU EVER FIND ANY PHONE CALLS THAT HE MADE TO BORDER CARRIERS IN REGARDS TO -- AT ANY TIME PRIOR TO THIS SHIPMENT?

A NO.

Q ANY LETTERS TO BORDER CARRIERS ANY TIME PRIOR TO THIS SHIPMENT?

A NO.

Q EVER SEE, DID THEY HAVE ANY CONTACT TO YOUR KNOWLEDGE WITH A JOSE ROBAR, THE DRIVER. JOSE ROBAR CONTRARAS.

A JOSE?

Q BETWEEN HIM AND MR. DELEON.

A NO.

Q OKAY. DID YOU -- WERE YOU EVER ABLE TO TURN UP ANY INFORMATION THAT FREDY DELEON HAD MADE ANY PHONE CALLS TO PLACE THIS ORDER?

A NO PHONE CALLS FROM FREDY DELEON, BUT THERE'S OTHER MEANS TO MAKE THESE KINDS OF CONTACTS. NOT JUST BY PHONE OR LETTER CORRESPONDENCE.

Q OKAY. YOU SAID THERE'S OTHER MEANS. DID YOU FIND ANY -- ANY OTHER MEANS THAT HE'S HAD TO BE IN TOUCH WITH ANY OF THESE PEOPLE I JUST WENT THROUGH. YOU SAID THERE'S OTHER MEANS. I JUST WANT--

A THERE ARE OTHER MEANS. PEOPLE DON'T NORMALLY -- BASED ON MY TRAINING AND EXPERIENCE, PEOPLE AREN'T GONNA MAKE PHONE CALLS FROM THEIR HOME OR FROM A CELL PHONE. THEY'RE GONNA MEET IN PERSON, MAYBE ON THE U.S. SIDE OR MAYBE A FAMILY TRIP, YOU KNOW, MONTHS PRIOR INTO MEXICO. THEY CAN MAKE THESE DEALS ALL DAY LONG. IT DOESN'T HAVE TO BE BY CELL PHONE OR HOME PHONE.

Q I DON'T WANT YOU TO SPECULATE ABOUT WHAT MIGHT HAPPEN. I WANT YOU TO TELL ME WHAT YOU FOUND OUT FREDY DELEON DID. DID HE DO ANY OF THAT THAT YOU KNOW OF?

A PHONE CALLS?

Q ANY OF THESE THINGS YOU TALKED ABOUT. MEETING WITH PEOPLE AND ALL THESE OTHER WAYS YOU SAY THIS CAN TAKE PLACE. I WANT YOU TO TELL THIS JURY WHAT EVIDENCE YOU HAVE THAT HE MET WITH SOMEBODY FROM SEBASTIAN EXPORTACIONES, JAMCO INTERNATIONAL, SOMEBODY FROM LAREDO, TEXAS WITH BORDER CARRIERS, JOSE REBAR CONTRARAS. AND YOU TELL THEM WHAT YOU FOUND OUT HE DID THAT'S IN REFERENCE TO MEETING WITH THESE PEOPLE.

A THERE'S DIFFERENT AVENUES HE COULD'VE TAKEN—

Q NO, NO, NO. TELL ME WHAT YOU FOUND THAT HE DID IN REFERENCE TO MEETING WITH THESE PEOPLE. ANYTHING. TELL THEM.

A FOR ONE, TO MEET WITH THESE PEOPLE, HE'S THE CONSIGNEE ON THIS MANIFEST, SIR. HE'S THE ONE RECEIVING THE GOODS.

Q ALRIGHT. YOU GOT THE CONSIGNEE. YOU GOT HIM – AS A MATTER OF FACT, HE ALSO A FIRST TIME CONSIGNEE, ISN'T HE?

A YES, HE IS.

Q THAT MEANS THAT HE'S NEVER – HIS NAME HAS NEVER APPEARED AS A CONSIGNEE ON ANY DOCUMENTS THAT Y'ALL HAD BEFORE. IS THAT RIGHT?

A THAT'S RIGHT.

Q FIRST TIME.

A FIRST TIME AND THAT BASED ON MY TRAINING AND EXPERIENCE FIRST TIME CONSIGNEES ARE A HIGH RISK.

Q ANYTHING YOU'VE EVER HAD – YOU TOLD ME THAT ONE THING. TELL US EVERYTHING ELSE THAT YOU'VE GOT THAT SHOWS THAT FREDY HAD CONTACT WITH SEBASTIAN EXPORTACIONES, JAMCO INTERNATIONAL, SOMEBODY FROM – ANYBODY IN LAREDO, TEXAS, BORDER CARRIERS OR JOSE REBAR CONTRARAS. TELL EVERYTHING THAT YOU HAVE ON HIM AND LET THIS JURY KNOW RIGHT NOW.

MR. MAYE: YOUR HONOR, I'M GONNA OBJECT. I'M NOT EVEN SURE THAT'S A QUESTION. I'M GONNA OBJECT TO THE FORM. IF HE WANTS TO ASK HER A QUESTION, THAT'S ALRIGHT. BUT I'M GONNA OBJECT TO A SOLILOQUY.

MR. HAWKE: SHE HAS – MA'AM?

THE COURT: SIR?

MR. HAWKE: JUDGE, SHE SAID THERE'S ALL THESE OTHER WAYS. HE CAN LEAD---

MR. MAYE: YOUR HONOR, I'M GONNA OBJECT TO HIM TESTIFYIN'. WE CAN TAKE THIS UP OUTSIDE THE PRESENCE OF THE JURY. THESE ARE NOT IN THE FORM OF A QUESTION.

MR. HAWKE: I'LL REPHRASE THE QUESTION, JUDGE.

THE COURT: YEAH. I'M NOT ALEX TREBEC. I MEAN YOU ALL CAN – HE CAN ASK HER WHAT SHE HAS SPECIFICALLY AGAINST THAT DEFENDANT. ASK YOUR QUESTION.

Q OKAY. TELL THIS JURY WHAT EVIDENCE THAT YOU HAVE THAT HE HAS MET IN ANY ONE OF THESE WAYS YOU JUST DESCRIBED WITH SEBASTIAN EXPORTACIONES, JAMCO INTERNATIONAL, SOMEBODY IN LAREDO, TEXAS; BORDER CARRIERS, JOSE REBAR CONTRARAS?

A WHAT EVIDENCE OF THIS INDIVIDUAL THE DEFENDANT—

Q RIGHT.

A —FREDY DELEON HAS HAD ANY CORRESPONDENCE WITH THE COMPANIES THAT YOU JUST MENTIONED?

A THESE SECRET MEETINGS THAT YOU TELL US ABOUT. THERE'S NO – I DON'T HAVE RECORD OF PHONE TOLLS OR WRITTEN CORRESPONDENCE LIKE YOU WERE SAYING.

Q IS IT FAIR TO SAY YOU DON'T HAVE ANY EVIDENCE OF HIM MEETING WITH ANY OF THESE PEOPLE OR ANY OF THESE GROUPS?

A I DON'T KNOW OF HIM ACTUALLY MEETING WITH ANYBODY, BUT THAT'S NOT HOW CONSPIRACY WORKS.

Q YOU DON'T HAVE ANY EVIDENCE, DO YOU?

A I DO HAVE EVIDENCE.

Q ALRIGHT. THAT'S WHAT I WANT YOU TO TELL THEM. TELL THEM WHAT THE EVIDENCE IS THAT HE HAS MET WITH SOMEBODY FROM SEBASTIAN EXPORTANCIONES, JAMCO INTERNATIONAL, LAREDO -- ANYBODY IN LAREDO, TEXAS; ANYBODY FROM BORDER CARRIERS; ANYBODY NAMED JOSE REBAR CONTRARAS. TELL 'EM WHAT YOU HAVE.

A EVIDENCE PER SE OF HIM ACTUALLY MEETING WITH THESE INDIVIDUALS?

Q YES.

A NO, WE DON'T. BUT WE HAVE EVIDENCE ON A MANIFEST THAT HE IS THE RECEIVER OF THE GOODS. HIS NAME'S ON HERE, FREDY DELEON; HIS STORE, TIENDA DELEON, THE ADDRESS, HIS HOME ADDRESS OF 216 BREEZY OAKS, TRENTON, SOUTH CAROLINA, AND HE'S SIGNED FOR THE MERCHANDISE.

Q AND YOU DON'T HAVE ANY IDEA WHO PROVIDED THAT INFORMATION, DO YOU?

A HE WOULD HAVE TO PROVIDE THAT INFORMATION OR---

Q NO, NO. DO YOU HAVE ANY PROOF, ANY DIRECT PROOF THAT FREDY DELEON PROVIDED THAT INFORMATION?

A NO.

Q NOW YOU HAVE A -- THIS -- WHEN THE 2 GENTLEMEN SHOWED UP IN THE GREEN FORD THUNDERBIRD AND A BOX TRUCK SHOWED UP WITH THESE 3 GENTLEMEN IN IT, MR. DELEON DID NOT HAVE ANYTHING TO DO WITH THE RENTAL OF THAT BOX TRUCK OR ANY OF THAT. DID HE?

A I WAS ON A SEPARATE SURVEILLANCE TEAM. SO I WASN'T THERE FOR THAT PARTICULAR INCIDENT THAT YOU'RE TALKING ABOUT.

Q OKAY. ALRIGHT. DID YOU EVER DISCOVER ANY PHONE CALLS FROM

FREDY DELEON TO ANY ONE OF THESE THREE INDIVIDUALS?

A NO.

Q THAT WOULD BE A DOMESTIC PHONE CALL, WOULDN'T IT?

A YES.

Q OKAY. DID YOU EVER SEE ANYTHING THAT WOULD INDICATE THAT HE HAD HAD ANY PRIOR PHONE CALLS OR CONVERSATIONS WITH THEM IN THE PAST BEFORE THIS INCIDENT?

A NO. AND YOU NORMALLY DON'T DO A SUBPOENA UNTIL AFTER THE DELIVERY. AND LIKE I SAID, I PASSED THE CASE TO DIFFERENT AGENTS. SO--AT THAT TIME OF PASSING ON THE CASE, THAT'S WHERE MY INVESTIGATION ENDS.

Q DO YOU KNOW IF ANYBODY'S DONE IT?

A I'M NOT SURE.

Q OKAY. AND WERE YOU EVER ABLE TO DETERMINE OR DID YOU EVER ENCOUNTER ANY CORRESPONDENCE LIKE LETTERS, SOMETHING THAT YOU WOULD MAIL THROUGH THE MAIL BETWEEN HIM AND ANY ONE OF THESE THREE INDIVIDUALS?

A NO, SIR.

THE COURT: LET ME KNOW WHEN YOU GET TO A GOOD STOPPING POINT.

MR. HAWKE: I'LL JUST STOP HERE, JUDGE.

THE COURT: LADIES AND GENTLEMEN, WE'LL TAKE A BREAK AT THIS POINT. DON'T DISCUSS THE CASE AND LEAVE YOUR NOTES IN THE COURTROOM, PLEASE. THANK YOU. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) OKAY. AGENT DOWLING, DURING THE BREAK, YOU CAN STEP DOWN, BUT YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYONE. OKAY? THANK YOU. WE'RE AT EASE FOR ABOUT 15 MINUTES. (THERE WAS A BRIEF RECESS.) (THE

FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) YOU MAY CONTINUE, MR. HAWKE

MR. HAWKE: THANK YOU, YOUR HONOR.

Q NOW, MS. DOWLING, AGENT DOWLING, WERE YOU INVOLVED WITH THE THUNDERBIRD AT ALL WITH THE THUNDERBIRD MET AND DIRECTING EVERYBODY WHERE TO GO?

A NO, SIR.

Q ALRIGHT. DID YOU OBSERVE OR SEE ANY OF THAT?

A DID I OBSERVE WHAT?

Q DID YOU OBSERVE ANY OF THAT OR PARTICIPATE IN ANY OF THAT?

A NO. THERE WERE 2 SURVEILLANCE TEAMS, AND I WAS PART OF THE OTHER SURVEILLANCE TEAM.

Q OKAY. AND WHEN DID YOU FIRST KNOW THAT THOSE 2 GUYS HAD JUST DRIVEN OFF?

A IT WAS CALLED OUT OVER THE RADIO. I'M NOT SURE EXACTLY WHAT – EXACTLY WHAT TIME. I HAVE NO IDEA. I KNOW AT SOME POINT IT WAS CALLED OUT OVER THE RADIO ABOUT THE GREEN VEHICLE TAKIN' OFF.

Q OKAY. AND THERE'S NO DISPUTE, IS IT, AMONG ANY OF THE AGENTS THAT CLEARLY THAT THE MAN Y'ALL HAD IDENTIFIED AS RAMOS KNEW ABOUT THIS BEING MARIJUANA IN THIS SHIPMENT. AM I CORRECT?

A SIR, I CAN'T – I CAN'T ANSWER THAT PART OF IT BECAUSE, LIKE I SAID, I WAS ON A SEPARATE SURVEILLANCE TEAM, AND WHEN I'M THE CASE AGENT OF THE ACTUAL CONTROLLED DELIVERY AT THAT POINT WHEN IT IS FINALLY DECIDED WHO'S GONNA PROSECUTE, STATE OR FEDERAL, I'M OUT OF THE LOOP AT THAT TIME.

Q WELL, AT THAT TIME DID YOU LEARN THAT RAMOS HAD LEFT HIS CAR AND JUST ABANDONED IT?

A I KNOW AN INDIVIDUAL DID, BUT I WASN'T AWARE OF HIS NAME.

Q ALRIGHT. DID YOU KNOW THAT HE HAD LEFT HIS HOME?

A NOW, AGAIN, I'M NOT A PART OF THAT INVESTIGATION.

Q I'LL MOVE ON FROM THAT THEN. YOU WOULD AGREE WITH ME THAT IF YOU DID NOT HAVE X-RAY MACHINES OR DOGS OR SOME EXTRAORDINARY MEANS IN ORDER TO DETERMINE THAT THERE WAS MARIJUANA IN THIS FURNITURE, UNTIL YOU PRIED IT OPEN, YOU WOULDN'T -- THERE WOULD BE NO WAY WITH YOUR NORMAL SENSES THAT YOU WOULD BE ABLE TO TELL THERE WAS MARIJUANA IN IT. AM I CORRECT?

A IT JUST DEPENDS ON HOW IT'S PACKAGED.

Q OKAY. WHEN YOU LOOKED AT THE FURNITURE WITHOUT THE X-RAYS, WITHOUT THE AID OF ANY DOGS, COULD YOU TELL THERE WAS MARIJUANA IN THE FURNITURE IN AND OF ITSELF?

A NO.

Q OKAY. THE MARIJUANA ITSELF WAS VACUUMED SEALED? IS THAT RIGHT?

A YES.

Q AND IN ORDER TO GET TO IT, THE ONLY WAY Y'ALL COULD GET TO IT TO SEE THE MARIJUANA OR -- AND TO LOOK AT IT WAS YOU HAD TO BUST OPEN THESE PARTICULAR CHIMNEYS. AM I CORRECT?

A IN ORDER TO RETRIEVE THE BUNDLES OUT OF THAT PARTICULAR PIECE OF WOODEN FURNITURE, YOU HAD TO OPEN UP THE FURNITURE TO RETRIEVE 'EM, YES.

Q AND IN ORDER JUST TO SEE IT, YOU HAD TO BUST IT OPEN.

A YES.

Q NOW THIS PARTICULAR CHIMNEY THAT WAS DROPPED OFF AT MR. DELEON'S, DID YOU ARRIVE THERE RIGHT AFTER IT WAS DROPPED OFF?

A NO, SOME TIME HAD PASSED. I'M NOT SURE OF THE EXACT TIME.

Q OKAY.

A BUT WHEN THE FURNITURE WAS DROPPED OFF BY THAT BORDER CARRIERS TRUCK DRIVER AND SPECIAL AGENT MIZE, THERE WAS TIME THAT PASSED WHEN WE FINALLY MADE A DECISION TO ENTER THE STORE.

Q DO YOU REMEMBER HOW MUCH TIME THAT WAS?

A NO, I DON'T.

Q DO YOU REMEMBER WHETHER IT WAS MORE OR LESS THAN AN HOUR?

A I DON'T REMEMBER, SIR. IT WAS 2 YEARS AGO.

Q OKAY. DID YOU MAKE ANY NOTES OR NOTATIONS AS TO HOW LONG THAT CHIMNEY SAT IN HIS STORE?

A NO. LIKE I SAID, I WOULDN'T BE THE CASE AGENT AT THAT PARTICULAR POINT TO DO A SECOND REPORT OF INVESTIGATION. SO I DON'T HAVE TO WRITE DOWN THE NOTES. I'M RESPONSIBLE FOR GETTING THE MARIJUANA FROM POINT A TO POINT B, AND THAT'S WHERE MY JOB STOPS.

Q IS IT YOUR -- HAD THE CHIMNEY ALREADY BEEN BUSTED OPEN BY THE TIME YOU GOT THERE OR WAS IT STILL INTACT?

A IT WAS STILL INTACT.

Q OKAY. AND WHEN YOU ARRIVED ON THE SCENE AND WENT INTO THE STORE -- FIRST OF ALL, WHEN YOU ARRIVED ON THE SCENE, WAS MR. DELEON THERE INITIALLY?

A I BEL -- WHEN I ARRIVED ON THE SCENE, HIS WIFE WAS THERE.

Q OKAY. WAS HE THERE?

A NOT RIGHT -- NOT WHEN I ENTERED THE DOOR, NO.

Q SO HE HAD LEFT AND WENT SOMEWHERE.

A YES.

Q AND WHEN YOU WENT TO THE BACK TO SEE -- OR CHECK ON THIS CHIMNEY, NOBODY HAD TRIED TO LOOK IN IT, HAD THEY?

A AT THAT POINT IT WAS STILL INTACT.

Q IT DIDN'T LOOK LIKE ANYBODY HAD PRIED ON IT OR TRIED TO GET INTO IT OR ANYTHING LIKE THAT WHEN Y'ALL RETRIEVED IT FROM HIS ROOM.

A YES.

Q OKAY. AND -- AND WITHOUT PRYING IT OPEN AND LOOKING INTO IT OR WHATEVER, A NORMAL PERSON WOULD HAVE -- WOULD NOT BE ABLE TO TELL THERE WAS MARIJUANA IN IT.

A RIGHT.

Q DO YOU REMEMBER -- WERE YOU PART OF TEAM ONE?

A I'M NOT SURE WHAT TEAM. I KNOW THERE WERE TWO DIFFERENT TEAMS AND I WAS ON ONE OF 'EM.

Q WERE YOU THERE WHEN MR. DELEON ARRIVED BACK AT THE STORE?

A YES.

Q HAD Y'ALL ALREADY OPENED UP THE CHIMNEY AT THAT POINT IN TIME?

A HONEST TO -- I DON'T REMEMBER AT WHAT POINT IN TIME WE OPENED UP THE CHIMNEY.

Q OKAY.

A IF HE WAS THERE OR HE WASN'T THERE, I DON'T -- I DON'T RECALL.

Q DO YOU REMEMBER AGENTS TELLING HIM WHAT WA IN THE CHIMNEY?

A I BELIEVE THE INTERVIEW WAS IN SPANISH, SO I DIDN'T -- I WASN'T PART OF THAT INTERVIEW.

Q SO YOU DON'T KNOW WHAT WAS SAID OR ANYTHING IN THAT REGARD. IS THAT RIGHT?

A NO, I WASN'T PRESENT FOR THE INTERVIEW.

Q NOW DID MR. DELEON AT THAT TIME HAND Y'ALL OR GIVE Y'ALL A VIDEO?

A HE DID NOT GIVE IT TO ME AND I WASN'T PART OF THAT.

Q OKAY, YOU—

A ---PART OF THAT INVESTIGATION.

Q DO YOU KNOW WHO HE GAVE A VIDEO TO?

A NO, I DO NOT.

Q OKAY. NOW DID -- HAVE YOU YOURSELF DONE ANYTHING WITH THE VIDEO THAT HE TURNED OVER?

A NO, SIR. MY JOB STOPPED AT THAT POINT.

Q OKAY. DO YOU KNOW WHOSE JOB IT WAS TO FOLLOW UP WITH THAT VIDEO THAT HE TURNED OVER TO YOU?

A NO, SIR.

Q WERE YOU AWARE OR DID YOU BECOME AWARE THAT THAT VIDEO HAD REMAINED IN A STORAGE AREA AT THE SHERIFF'S DEPARTMENT FOR -- UP UNTIL MARCH OF THIS YEAR?

A NO, SIR.

Q NOW WHEN Y'ALL WENT INTO THE STORE AT MR. DELEON'S, DID ANYBODY CALL AHEAD OF TIME TO LET HIM KNOW THAT YOU WERE COMING?

A I DON'T KNOW IF A PHONE CALL WAS PLACED. I DIDN'T MAKE THE PHONE

CALL. I WASN'T PRESENT IF THE PHONE CALL WAS MADE. SO I CAN'T ANSWER THAT.

Q WEREN'T YOUR ORDERS JUST TO EASE IN THERE?

A EXCUSE ME?

Q WEREN'T YOUR ORDERS TO EASE INTO HIS PLACE?

A WE WERE TOLD TO APPROACH THE BUSINESS.

Q OKAY. AND AS FAR AS YOU KNOW, NOBODY WARNED HIM AND SAID HERE WE COME, WE'RE COMIN', ALL THESE CUSTOMS AGENTS AND DRUG ENFORCEMENT AGENTS AND ALL, WE'RE COMIN' IN NOW.

A YOUR QUESTION IS IF ANYBODY WARNED HIM?

Q YES. DID ANYBODY WARN HIM Y'ALL WERE COMIN'?

A I CAN'T ANSWER THAT.

Q OKAY. WELL, WHEN YOU WENT IN THERE DID YOU FIND ANY LARGE SUMS OF CASH?

A I DID NOT FIND LARGE SUMS OF CASH.

Q OKAY. DID YOU FIND ANY DRUGS OTHER THAN WHAT WAS IN THE CHIMNEY?

A NO.

Q OKAY. DID YOU FIND ANY DRUG PARAPHERNALIA?

A I DID NOT.

Q DO YOU KNOW OF ANY AGENT THAT WAS ON THE SCENE THERE WITH YOU -- YOU WERE ON THE SCENE. RIGHT?

A YES.

Q DO YOU KNOW OF ANY AGENT AS A PART OF BEING ON THE SCENE FOUND ANY DRUG PARAPHERNALIA AT ALL?

A NOT THAT I'M AWARE OF.

Q OKAY. DO YOU KNOW OF ANY DRUG AGENT THAT FOUND ANY SCALES OF ANY SORT?

A NO, SIR.

Q OKAY. DO YOU KNOW OF ANY DRUG AGENTS THAT FOUND ANY PACKAGING OTHER THAN -- I KNOW THERE WAS PACKAGING IN THE CHIMNEY -- BUT ANY MATERIAL THAT COULD BE USED FOR REPACKAGING DRUGS ITSELF?

A NO, SIR, AND TO FIND THOSE ITEMS, THAT WOULD BE MORE FOR SIMPLE POSSESSION. THIS IS WHOLESALE BY THE BUNDLE. AND THIS IS A LARGE AMOUNT OF MARIJUANA. THEREFORE YOU WOULD NOT HAVE A SCALE. YOU WOULD NOT HAVE PACKAGING MATERIALS. YOU WOULDN'T HAVE PARAPHERNALIA. THE BUNDLES WOULD BE PASSED OUT ONE BY ONE. THEY WOULDN'T BE BROKEN DOWN FOR SIMPLE POSSESSION. THIS IS A LARGE AMOUNT OF MARIJUANA. IT'S AT WHOLESALE VALUE.

Q OKAY. SO THE BUNDLES WOULD BE PASSED OUT INTACT EVEN THOUGH THEY ALL WEIGH DIFFERENT AMOUNTS.

A MORE OR LESS IN MY EXPERIENCE WITH LAW ENFORCEMENT, MORE OR LESS A BUNDLE WOULD WEIGH AROUND ABOUT A KILO.

Q OKAY. AND SO YOU DIDN'T EXPECT TO FIND ANY -- YOU WOULD EXPECT TO HAVE SOME MONEY TO PAY FOR THIS, WOULDN'T YOU?

A THAT'S NOT ALWAYS THE CASE.

Q OKAY. SO YOU WOULDN'T EXPECT TO HAVE ANY MONEY; YOU WOULDN'T EXPECT TO HAVE ANY PREPACKAGING MATERIALS. WOULD YOU EXPECT HIM TO BE LIVING A HIGHER LIFESTYLE THAN WHAT HE WAS?

A IT DEPENDS ON THE SITUATION. HE COULD BE -- ANYTHING COULD

HAPPEN. YOU COULD HIDE THESE ASSETS, HIS FINANCIAL MEANS. HE DOESN'T NECESSARILY HAVE TO BE DRIVING A NICE VEHICLE OR HAVE A NICE HOUSE.

Q WOULD YOU TELL THE JURY ALL THE HIDDEN ASSETS YOU FOUND OF FREDY DELEON'S. TELL THEM ABOUT ALL THE HIDDEN ASSETS THAT YOU FOUND OF FREDY DELEON'S.

A AGAIN, SIR, ONCE THE CASE GOT TO TRENTON, SOUTH CAROLINA THE CASE IS NO LONGER MINE. I PASS IT OVER. I WOULDN'T DO THE FINANCIAL INVESTIGATION. MY CASE TERMINATES AT THAT POINT.

Q BUT YOU HAVE FOUND NONE.

A IT WASN'T MY JOB TO FIND IT.

Q I UNDERSTAND. BUT YOU HAVE FOUND NONE.

A NO, SIR.

Q NOW YOU TOOK HIS RECORD -- DIDN'T Y'ALL HAVE HIS RECORD RUN, A NATIONAL SERVICE, ON FREDY DELEON?

A ON HIS CRIMINAL HISTORY?

Q YES.

A YES.

Q WHAT'D YOU FIND?

A IT WAS NEGATIVE.

Q NOTHIN'. NOT EVEN AN ARREST.

A NO.

Q NOW AT THIS POINT IN TIME HAVE YOU -- AS PART OF BEING A CASE AGENT, HAVE YOU EVER USED PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT?

A YES.

Q AND PROBABLE CAUSE WOULD BE THAT YOU HAVE SOME INFORMATION OR EVIDENCE THAT SOMEBODY IS INVOLVED IN DRUG DEALIN', RECENT INFORMATION, YOU PRESENT IT TO A JUDGE AND GET AN AFFIDAVIT AND GET A SEARCH WARRANT. AM I CORRECT?

A YES.

Q AND YOU PUT THAT INFORMATION IN AFFIDAVIT FORM. AM I RIGHT?

A YES.

Q ALRIGHT. AND IN THIS PARTICULAR CASE YOU HAD JUST GOTTEN 40 POUNDS OF MARIJUANA OUT OF THE CHIMNEY AT MR. DELEON'S STORAGE ROOM. AM I CORRECT?

A YES.

Q NOW HOW MANY CASE AGENTS OR HOW MANY AGENTS WERE THERE AT THE SCENE AT THE TIME THAT THAT HAPPENED?

A I'M NOT SURE. WE HAD VARIOUS LAW ENFORCEMENT AGENCIES. WE HAD FEDERAL AND STATE AND THERE WAS QUITE A FEW, AND I CAN'T GIVE YOU AN EXACT NUMBER.

Q OKAY. WOULD IT BE MORE THAN 5?

A YES.

Q MORE THAN 10?

A I DON'T KNOW, SIR.

Q SOMEWHERE BETWEEN. IS THAT RIGHT?

A I CAN'T – I CAN TELL YOU IT WAS MORE THAN 5.

Q DID ANY AGENT, ANY NARCOTICS AGENT, ANY CUSTOMS AGENT, ANY FBI, DEA, WHATEVER WAS THERE, ANY OF THE AGENTS THAT WERE THERE, GO AND MAKE OUT AN AFFIDAVIT TO SHOW PROBABLE CAUSE IN ORDER TO SEARCH MR.

DELEON'S HOME?

A NO, SIR. IN CASES LIKE THIS BASED ON MY TRAINING AND EXPERIENCE, THE DELIVERY LOAD WHICH WAS THE 905 POUNDS OF MARIJUANA CONTAINED IN THE ACTUAL WOODEN FURNITURE, IT HAS TO BE DELIVERED TO A COMMERCIAL BUSINESS TO MAKE IT LOOK LEGIT AND THAT'S WHERE IT WAS DELIVERED TO THAT GROCERY STORE. IT'S NOT GONNA BE DELIVERED TO SOMEONE'S HOME. THAT'S NOT HOW IT WORKS.

Q BUT THE ADDRESS THAT WAS ON THE MANIFEST FOR DELIVERY WAS HIS HOME. WASN'T IT?

A YES, UNTIL THEY GAVE FURTHER DIRECTIONS TO DELIVER IT TO THE ACTUAL STORE.

Q I UNDERSTAND. BUT THE MANIFEST AND THE WAY IT WAS SUPPOSED TO BE DELIVERED WAS TO WHAT ADDRESS?

A 216 BREEZY OAKS.

Q AND THAT WAS HIS HOME, WASN'T IT?

A YES, IT WAS.

Q AND SEEING THAT HE -- THEY EXECUTED A MANIFEST, IF Y'ALL THOUGHT HE EXECUTED THIS MANIFEST AND DELIVERED IT TO HIS HOME, I'M SURE THAT ONE OF YOU WOULD'VE WANTED TO GO SEARCH HIS HOME. WOULDN'T YOU?

A WE NORMALLY DON'T DO THAT. WE WILL FOLLOW THE DELIVERY FROM LAREDO, TEXAS TO ITS FINAL DESTINATION WHICH IS TRENTON, SOUTH CAROLINA. THIS PARTICULAR MERCHANDISE WOULD NOT HAVE BEEN ABLE TO BE DELIVERED TO HIS HOME WHICH IS A SINGLE WIDE TRAILER. THIS WOULD NOT BE ABLE TO FIT – THIS AMOUNT OF FURNITURE WOULD NOT BE ABLE TO FIT IN THAT TRAILER. THEREFORE WHEN THE PHONE CALL WAS PLACED FOR THOSE

PARTICULAR DIRECTIONS TO 216 BREEZY OAKS, THEY WERE REDIRECTED IN THAT NO DELIVERY TO THE ACTUAL STORE WHICH IS LA TIENDA DELEON.

Q ALRIGHT. YOU DIDN'T THINK – IF YOU REALLY THOUGHT HE WAS A DRUG DEALER, HE MIGHT HAVE SOME LARGE SUMS OF CASH HANGIN' AROUND IN HIS HOUSE?

A THAT'S NOT HOW IT WORKS, SIR.

Q SO NO DRUG DEALERS IN YOUR NEIGHBORHOOD OVER IN LAREDO, TEXAS KEEP LARGE SUMS OF CASH IN THEIR HOUSE?

A NO, SIR

Q THEY DON'T? OKAY. AND THEY DON'T KEEP DRUG PARAPHERNALIA IN THEIR HOUSE?

A NOT IF THEY'RE SMART.

Q AND THEY DON'T KEEP SCALES IN THEIR HOUSE?

A NOT IF THEY'RE SMART.

Q AND THEY DON'T KEEP PACKAGING MATERIAL IN THEIR HOUSE?

A NO, SIR. THEY HAVE THEIR MOPES DO THAT.

Q OKAY. ALRIGHT. AND SO THAT'S WHY YOU WOULD NEVER DO THAT. YOU JUST DON'T SEARCH THEIR HOME.

A DEPENDS – IT'S A CASE-BY-CASE BASIS. IF WE HAD THOUGHT THERE WAS NO NEED TO; IT WOULD'VE BEEN A DEAD END; THE MERCHANDISE WAS TO BE DELIVERED TO THE ACTUAL BUSINESS; THIS IS A WHOLESALER; HE'S AT A DIFFERENT LEVEL THAN SIMPLE POSSESSION WHERE YOU WOULD HAVE SCALES, PLASTIC WRAPPINGS, THINGS OF THAT NATURE. THAT'S MORE AT A LOWER LEVEL OF THE ORGANIZATION. IT'S CALLED A MOPE. THIS INDIVIDUAL FREDY DELEON DEALS MORE WHOLESALE.

MR. HAWKE: OBJECTION, YOUR HONOR. THERE'S BEEN NO EVIDENCE OF HIM BEING ARRESTED HIS WHOLE LIFE AND SHE'S GOT HIM AS A DEALER, SAYS HE DEALS IN A CERTAIN WAY. SHE DOESN'T HAVE ANY INFORMATION ABOUT HIM. AND I WOULD OBJECT AND ASK THAT THAT PARTICULAR PART OF THE ANSWER BE STRICKEN.

THE COURT: LADIES AND GENTLEMEN, DISREGARD THE LAST STATEMENT OF THE WITNESS.

Q DID YOU GET AN AFFIDAVIT – I KNOW YOU GOT AN AFFIDAVIT OR A SEARCH WARRANT TO SEARCH THE THUNDERBIRD THOUGH, DIDN'T YOU?

A SIR, I WASN'T PART OF THAT INVESTIGATION.

Q DO YOU KNOW WHETHER OR NOT YOU GOT AN AFFIDAVIT TO SEARCH THAT THUNDERBIRD OR NOT?

A WE DELIVERED THE NARCOTICS. MY TEAM IN LAREDO, TEXAS—

MR. HAWKE: YOUR HONOR,—

A —LEFT TO GO BACK TO TEXAS.

MR. HAWKE: YOUR HONOR, I WOULD ASK THAT SHE ANSWER MY QUESTION. AND MY QUESTION IS THIS: DOES SHE KNOW WHETHER OR NOT THEY GOT AN AFFIDAVIT AND A SEARCH WARRANT TO SEARCH THE THUNDERBIRD. THAT'S MY QUESTION.

THE COURT: YOU MUST ANSWER THE QUESTION. THEN YOU MAY EXPLAIN YOUR ANSWER.

A I DON'T KNOW, SIR. THE INVESTIGATION FROM LAREDO, TEXAS STOPPED AT THAT POINT.

Q YOU DON'T KNOW ANYTHING ABOUT THAT PART OF THE FILE?

A NO, SIR.

Q OKAY. DID YOU EVER GET AN AFFIDAVIT OR A SEARCH WARRANT TO SEARCH ANY OF FREDY DELEON'S VEHICLES?

A I DID NOT.

Q HIS PERSONAL CAR?

A I DID NOT.

Q OR HIS -- ANY OF HIS STEP VANS OR ANY OF HIS VANS THAT HE USED TO DELIVER FOOD OR ANY OF THAT?

A I DID NOT EXECUTE A SEARCH WARRANT.

Q WHEN -- WHEN THOSE 2 GUYS DROVE OFF, WHO WAS THERE LEFT TO ARREST 'EM?

A AGAIN, SIR, I WASN'T PART OF THAT, PART OF THE INVESTIGATION OR SURVEILLANCE. I WAS WITH THE OTHER SURVEILLANCE TEAM THAT WENT INTO THE GROCERY STORE.

Q OKAY. WELL, WHO DID Y'ALL HAVE TO ARREST? HOW ABOUT THAT?

A WHO DID I HAVE TO ARREST?

Q YES.

A AGAIN, AT THAT POINT WHEN WE TRANSFERRED THE NARCOTICS TO THE AGENCY THAT'S GONNA RECEIVE IT, WE'RE THERE TO ASSIST. IT'S NOT MY JOB AT THAT TIME TO ARREST. I SEIZED THE NARCOTICS IN LAREDO, I TRANSFERRED OVER TO THE RECEIVING AGENCY IN SOUTH CAROLINA, AND THAT'S THEIR CALL.

Q OKAY. WERE YOU INVOLVED IN THE ARREST OF ANYBODY IN THIS CASE THEN?

A NO, I WAS NOT.

Q OKAY.

MR. HAWKE: GIVE ME ONE SECOND, JUDGE.

THE COURT: YES, SIR.

MR. HAWKE: JUDGE, THAT'S ALL I HAVE.

THE COURT: MR. SUSSMAN.

CROSS-EXAMINATION

BY MR. SUSSMAN

Q SO YOU PICKED UP THE CASE IN LAREDO?

A YES.

Q YOU WERE IN CHARGE WHEN YOU LEFT LAREDO.

A THE CASE AGENT.

Q WERE YOU IN CHARGE?

A MY SUPERVISOR IS IN CHARGE.

Q WHO IS THAT?

A JO HERNANDEZ.

Q I'M SORRY?

A JOSE HERNANDEZ.

Q DID MR. HERNANDEZ GO WITH YOU TO LOUISIANA?

A YES, HE DID.

Q OKAY. DID HE GO WITH YOU TO GREENVILLE?

A TO TRENTON, SOUTH CAROLINA.

Q TO TRENTON.

A YES.

Q SO HE WAS IN CHARGE?

A YES.

Q OKAY. WHO DIRECTED THE CHIMNEY TO BE OPENED IN MR. DELEON'S STORE?

A FEDERAL CUSTOMS AGENTS. SO THAT WOULD BE MYSELF – AND ANY FEDERAL AGENT CAN DIRECT A STATE AND LOCAL LAW ENFORCEMENT OFFICER TO OPEN THAT CHIMNEY.

Q ANY FEDERAL AGENT CAN DO—

A YES.

Q —A FEDERAL INVESTIGATION ANYWHERE IN THE UNITED STATES. WHAT I WANNA KNOW IS WHAT FEDERAL AGENT DIRECTED THIS CHIMNEY TO BE OPENED IN MR. DELEON'S STORE?

A THAT WOULD BE MYSELF. I WAS THE CASE AGENT.

Q YOU WERE THE CASE AGENT.

A YES.

Q YOU DIRECTED IT TO BE OPENED.

A YES.

Q DID YOU TURN OVER THE INVESTIGATION AT THAT POINT?

A IT'S STILL – IT COULD BE AT THIS POINT WE STILL DIDN'T KNOW WHETHER IT WAS GOING TO BE FEDERAL OR STATE. IT'S STILL IN INVESTIGATION. SO I'M GOING TO CARRY OUT THOSE MEANS UNTIL THE FINAL DESTINATION OF THAT PARTICULAR SHIPMENT WHICH EVERYTHING WAS NOT TAKIN' PLACE AT THAT TIME. SO ANY FEDERAL AGENT CAN GIVE THE DIRECT ORDER TO A STATE AND LOCAL LAW ENFORCEMENT OFFICER. AND THAT WAS DONE AT THAT TIME.

Q DID YOU TURN OVER THE INVESTIGATION AT THE POINT THAT YOU DIRECTED THE CHIMNEY TO BE OPENED IN MR. DELEON'S STORE?

A YES.

Q SO YOU WERE NO LONGER HANDLING THE INVESTIGATION.

A THAT'S CORRECT, BUT I CAN STILL GIVE THAT DIRECT ORDER.

Q BUT YOU WERE NO LONGER HANDLING THAT INVESTIGATION.

A THAT'S RIGHT.

Q WHO DID YOU DIRECT TO OPEN THE CHIMNEY?

A I DON'T REMEMBER HIS NAME, BUT HE IS LAW ENFORCEMENT WITH EDGE - - EDGEFIELD COUNTY SHERIFF'S OFFICE.

Q SO THAT PERSON WAS ACTING UNDER YOUR ORDER.

A YES.

Q EVEN THOUGH YOU WERE NOT IN CHARGE.

A YES. AGAIN, YOU CAN—

Q NOW AS I UNDERSTAND IT, YOU WERE NOT AT THE SITE WHERE THE TRAILER GOT STUCK IN THE MUD.

A THAT'S RIGHT.

Q YOU REALLY DON'T KNOW WHAT HAPPENED.

A NO, I WASN'T THERE.

Q BUT Y'ALL DID HAVE RADIOS.

A YES, WE DID.

Q Y'ALL DID HAVE CELL PHONES.

A YES, WE DID.

Q YOU JUST WEREN'T TALKING TO EACH OTHER—

A THE CELL PHONES WEREN'T WORKING IN THAT AREA. IT WAS RAINING AND THEY WERE OUT IN THE MIDDLE OF NOWHERE.

Q AND THE RADIOS, YOU WEREN'T TALKIN' ON THE RADIOS.

A I WAS OUT OF MY CAR VEHICLE. THEREFORE, THE RADIO STAYS IN THE VEHICLE.

Q SO EVEN THOUGH YOU TURNED OVER THE INVESTIGATION WHILE YOU

WERE AT THE STORE, DELEON'S STORE, YOU STILL HAD A RESPONSIBILITY TO DIRECT THAT THE CHIMNEY BE OPENED.

A YES, SIR, BECAUSE I HAVE NEXUS TO THE BORDER. I FOLLOWED THAT PARTICULAR SHIPMENT OF NARCOTICS FROM LAREDO, TEXAS TO TRENTON, SOUTH CAROLINA. THEREFORE, I CAN GIVE THAT DIRECT ORDER AT ANY TIME TO OPEN UP THAT CHIMNEY.

Q AND TELL US AGAIN WHO YOU TURNED OVER THE INVESTIGATION TO AT THAT POINT, YOU KNOW, WHILE YOU'RE IN THE STORE.

A AT THAT TIME IT WAS U.S. CUSTOMS AGENTS, BUT THEY STILL HADN'T DECIDED IF IT WAS GONNA GO FEDERAL OR STATE.

Q WELL, I THOUGHT YOU JUST TOLD US THAT YOU HAD TURNED OVER THE INVESTIGATION AT THE POINT THAT YOU WERE IN THE STORE.

A I TURNED IT OVER ONCE WE ARRIVED IN TRENTON, SOUTH CAROLINA.

Q OKAY. AND WHO DID YOU TURN IT OVER TO?

A YOU WOULD TURN IT OVER TO THE U.S. CUSTOMS RECEIVING OFFICE.

Q I WOULD?

A I WOULD.

Q AND SO WHO DID YOU TURN THE INVESTIGATION OVER TO?

A DEAN TUCKER.

Q WHO'S DEAN TUCKER?

A HE'S A SPECIAL AGENT WITH U.S. CUSTOMS IN GREENVILLE, SOUTH CAROLINA.

Q FEDERAL AGENT.

A YES, HE IS.

Q SO I THINK YOU HAD SAID BEFORE AS THE FEDERAL AGENT BRINGING THE

DOPE UP INTO TRENTON, AT THAT POINT YOU TURNED THE INVESTIGATION OVER TO THE RECEIVING FEDERAL AGENT IN THIS CASE DEAN TUCKER.

A YES.

Q 'CAUSE DIDN'T YOU SAY EARLIER THAT WHILE YOU WERE IN LAREDO YOU CALLED UP TO GREENVILLE TO MAKE SURE THEY WOULD BE WILLING TO RECEIVE THE INVESTIGATION ONCE YOU GOT THERE?

A YES, SIR.

Q THAT'S KINDA STANDARD PROCEDURE.

A YES.

Q OKAY. YOU DON'T JUST SHOW UP IN SOME OTHER FEDERAL JURISDICTION AND SAY HERE WE ARE WITH SOME DOPE, YOU GUYS WANNA HANDLE IT.

A RIGHT. THEY NEED TO ACCEPT IT AND THEY NEED TO FIND OUT IF THEY HAVE THE MANPOWER TO DO SO.

Q RIGHT. SO DEAN TUCKER WAS HANDLING THE INVESTIGATION AT THE POINT THAT YOU WERE IN THE DELEON STORE, IN THE FREDY STORE.

A YES.

Q NOW WAS DEAN TUCKER AT THE FIELD WHERE THE TRUCKS GOT STUCK?

A I DON'T KNOW, SIR.

Q HE WASN'T TALKIN' ON THE RADIO?

A DIFFERENT PEOPLE WERE TALKING ON THE RADIO.

Q HE WASN'T TALKIN' ON THE RADIO?

A EVERYBODY WAS TALKING ON THE RADIO.

Q WAS HE TALKING ON THE RADIO?

A THERE WERE TIMES THAT HE WAS TALKING ON THE RADIO BUT I DON'T KNOW -- I MEAN I COULD TELL YOU 2 YEARS AGO WHICH TEAM, YOU KNOW, WAS

TALKING ON THE RADIO, BUT 2 YEARS HAVE PASSED, AND I'VE HAD HUNDREDS OF CASES SINCE THEN. SO—

Q BY THE WAY, YOUR HUNDREDS OF CASES, WERE THEY ALL FEDERAL PROSECUTIONS?

A NOT ALL OF 'EM.

Q DID MOST OF THEM END UP IN FEDERAL COURT?

A YES.

Q HOW MANY OF THOSE—

THE COURT: HOLD ON JUST A SECOND.

MR. MAYE: I'M GONNA OBJECT.

MR. SUSSMAN: YOUR HONOR, I THINK THIS MIGHT GO TO SOMEWHAT TO THE CREDIBILITY OF THE WITNESS REGARDING THE RECOLLECTION OF WHAT HAPPENED IN THIS PARTICULAR INVESTIGATION, WHERE THEY WERE, HOW THEY WERE HANDLED.

THE COURT: YOU CAN ASK HER ABOUT THE NUMBERS OF INTERVENING INVESTIGATIONS IN WHICH SHE'S BEEN INVOLVED.

MR. SUSSMAN: WELL, THERE MAY BE DIFFERENT PROTOCOLS DEPENDING ON WHICH LAW ENFORCEMENT AGENCY'S INVOLVED, AND SHE MAY NOT BE THAT FAMILIAR WITH SOME AS OPPOSED TO OTHERS AND I'M JUST TRYING TO EXPLORE HER EXPERIENCE WITH WHAT TYPES OF AGENCIES SHE'S DEALT WITH, AND MAYBE SHE'S MORE FAMILIAR WITH ONE TYPE THAN ANOTHER WHICH MIGHT EXPLAIN WHY SHE DOESN'T HAVE AS GOOD A RECOLLECTION IN THIS CASE AS SHE WOULD ON SOME OTHERS.

THE COURT: YOU MAY ASK YOUR QUESTION AND I'LL MAKE A RULING.

MR. SUSSMAN: OKAY.

THE COURT: I DON'T KNOW WHAT IT IS YOU INTEND TO ASK HER.

MR. SUSSMAN: I TAKE THAT TO MEAN I CAN CONTINUE?

THE COURT: YOU MAY ASK HER YOUR QUESTION. I CAN'T SAY IT ANY CLEARER THAN THAT, MR. SUSSMAN. YOU MAY ASK HER THE QUESTION AND THEN IF THEY OBJECT, I'LL MAKE A RULING.

MR. SUSSMAN: YES, SIR.

Q NOW YOU SAY YOU'VE HAD HUNDREDS OF INVESTIGATIONS SINCE THIS INVESTIGATION IN EDGEFIELD?

A YES.

Q AND WERE MOST OF THOSE FEDERAL INVESTIGATIONS?

A MOST OF 'EM, YES.

Q YOU'RE A FEDERAL AGENT.

A YES, I AM.

Q TRAINED IN FEDERAL PROCEDURE.

A YES, I AM.

Q AND A LOT OF YOUR ANSWERS TO A LOT OF THE QUESTIONS BOTH FROM THE STATE AND THE DEFENSE WOULD BE -- WERE BASED ON YOUR TRAINING AND EXPERIENCE, SOME OF 'EM ANYWAY. YOU RECOLLECT MAKING THOSE RESPONSES? BASED ON YOUR TRAINING AND EXPERIENCE?

A YES, I DO.

Q NOW YOUR TRAINING, LET'S TALK ABOUT YOUR TRAINING JUST FOR A MINUTE. HOW LONG HAVE YOU BEEN A FEDERAL AGENT?

A 4 YEARS.

Q PARDON ME?

A 4 YEARS.

Q SO AT THE TIME OF THIS INVESTIGATION INVOLVING THESE DEFENDANTS TOOK PLACE, YOU HAD BEEN A FEDERAL AGENT FOR HOW LONG?

A 2 YEARS.

Q AND UP TO THAT PERIOD OF TIME, HOW MANY INVESTIGATIONS HAVE YOU BEEN INVOLVED WITH?

A NUMEROUS.

Q CAN YOU GIVE US ANY KIND OF IDEA?

A I REALLY CAN'T. I MAKE SO MANY ARRESTS, IT'S UNBELIEVABLE. WHEN YOU'RE AN AGENT ON THE BORDER, YOU ENCOUNTER ARRESTS. IT COULD BE A DAILY BASIS, A WEEKLY BASIS. WE'RE VERY BUSY WITH THE NARCOTICS TRAFFICKING IN SOUTH TEXAS. SO I CAN'T GIVE YOU AN EXACT NUMBER.

Q WELL, LET ME ASK YOU THIS: IN THAT 2-YEAR SPAN – AND WE'RE TALKIN' ABOUT THE 2-YEAR SPAN FROM THE TIME THAT YOU BECAME AN AGENT TO THE TIME OF THIS CONTROLLED DELIVERY IN EDGEFIELD – HOW MANY CONTROLLED DELIVERIES HAD YOU MADE? OR HAD YOU BEEN INVOLVED WITH.

A SEVERAL.

Q MORE THAN 10?

A LESS THAN 10.

Q OKAY. AND THOSE CONTROLLED DELIVERIES WOULD BE DELIVERIES INTO SOMEWHERE IN THE UNITED STATES.

A YES, SIR.

Q WERE THEY MOSTLY CONTROLLED DELIVERIES IN TEXAS?

A THERE WERE A FEW IN TEXAS AND THERE WERE QUITE A FEW OUT OF STATE.

Q OKAY. AND IN THOSE CONTROLLED DELIVERIES, WOULD YOU OFTEN

TIMES HAVE TO WORK WITH RECEIVING FEDERAL AGENTS IN THOSE JURISDICTIONS THAT THE DELIVERY ENDED UP IN?

A YES.

Q DID YOU ALSO HAVE TO WORK WITH LOCAL, STATE AND LAW ENFORCEMENT?

A YES.

Q WOULD THE PROCEDURES VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION?

A YES.

Q BUT GENERALLY YOU WOULD CONDUCT SURVEILLANCE.

A YES.

Q YOU WOULD TRY TO SECURE THE CONTRABAND AS IT WAS COMING INTO THE RECEIVING JURISDICTION.

A RIGHT.

Q PART OF YOUR SURVEILLANCE WOULD INCLUDE RADIO CONTACT BETWEEN THE OFFICERS.

A RIGHT.

Q CELL OR PHONE CONTACT BETWEEN THE OFFICERS.

A RIGHT.

Q AND WHEN I SAY OFFICERS I MEAN IT DOESN'T MATTER WHETHER THEY'RE FEDERAL OR STATE, LOCAL OR FEDERAL. EVERYONE NEEDS TO BE IN TOUCH WITH EACH OTHER FOR OFFICERS' SAFETY AND TO SECURE THE PERPETRATORS.

A THAT'S RIGHT.

Q OKAY. AND THAT SAME PROCEDURE WAS FOLLOWED HERE IN EDGEFIELD

IN MAY OF 2002.

A YES, WITH THE EXCEPTION THAT WE DIDN'T HAVE CELL PHONE CONTACT BECAUSE OF THE AREA.

Q OF COURSE YOU HAD LOCAL LAW ENFORCEMENT PEOPLE INVOLVED.

A YES.

Q WHO HAD PROBABLY USED CELL PHONES IN THE AREA BEFORE.

A RIGHT. BUT WHERE THE TRUCK WAS STUCK IT WAS THE UNDERCOVER AGENT, SPECIAL AGENT BRIAN MIZE AND THE TRUCK DRIVER FOR BORDER CARRIERS. SO YOU HAVE AN AGENT THAT'S NOT FROM THE AREA WITH HIS CELL PHONE, BUT HE DOESN'T HAVE RECEPTION.

Q BUT YOU HAD THOSE VEHICLES UNDER SURVEILLANCE.

A YES.

Q YOU WERE FOLLOWIN' THAT—

A I WASN'T BUT OTHER AGENTS WERE.

Q OTHER AGENTS THAT YOU'D HAD RADIO CONTACT WITH.

A YES. AND ALSO SURVEILLANCE, THE TWO TEAMS WERE IN TWO DIFFERENT RADIO FREQUENCIES. SO IF TEAM #1 OR TEAM #2 WERE GONNA ENTER THE STORE, THEY WOULD BE IN A DIFFERENT CHANNEL AS OPPOSED TO THE OTHER TEAM BECAUSE YOU CAN'T HAVE -- YOU KNOW, YOU HAVE TWO DIFFERENT THINGS GOING ON. YOU CAN'T HAVE OVERLAPPING OF SURVEILLANCE TEAMS TALKIN' ON THE RADIO.

Q SO IF TEAM ONE GOT ATTACKED, THEY COULDN'T CALL TEAM 2 'CAUSE THEY'RE ON A DIFFERENT CHANNEL?

A YOU COULD CALL OUR SECTOR COMMUNICATIONS CENTER AND THEY WOULD BE ABLE TO RELAY THAT INFORMATION OUT TO EVERYBODY.

Q WHERE'S THAT SECTOR COMMUNICATIONS—

A DEPENDS ON WHAT AREA YOU'RE IN.

Q WHERE WAS IT HERE?

A IN ORLANDO, FLORIDA. IT'S A NATIONWIDE—

Q SO IF TEAM ONE GOES IN AND GETS ATTACKED, BEFORE THEY CAN CONTACT TEAM TWO, THEY HAVE TO CALL ORLANDO, FLORIDA?

A ALL THEY HAVE TO DO IS KEY THEIR MIKE, TELL THEM WHAT IS GOIN' ON AND THEN THEY COULD SECTOR CONNECTION DRIVE PATCH IT OVER THE RADIO SO EVERYBODY COULD HEAR IT.

Q WELL, NO ONE WAS ATTACKED SO—

A THAT'S RIGHT.

Q —WE WERE FORTUNATE THERE. NOW IS IT YOUR TESTIMONY THAT – WHO DECIDED THAT – YOU DECIDED TO PUT AGENT MIZE IN THE DELIVERY SEMI WITH THE CANADIAN DRIVER?

A MY SUPERVISOR DID.

Q AND THAT WAS BECAUSE HE WAS KINDA SCRUFFY AND LOOKED LIKE OTHER TRUCK DRIVERS?

A THAT COUPLED WITH OFFICER SAFETY.

Q OFFICER SAFETY. WHICH OFFICER? WHOSE SAFETY?

A IT WAS SAFETY OF THE ACTUAL TRUCK DRIVER.

Q WELL, IS MIZE THE ONLY ONE THAT HAD LAW ENFORCEMENT BACKGROUND THAT WAS IN LAREDO, TEXAS AT THE TIME?

A NO, SIR. BUT THE TRUCK DRIVER FELT VERY COMFORTABLE WITH MIZE.

Q SO YOU KNEW YOU WERE COMIN' TO EDGEFIELD, SEVERAL HUNDRED MILES AWAY. IS THAT RIGHT?

A RIGHT.

Q AND YOU KNEW THAT YOU WERE PROBABLY GOING TO MEET UP WITH PEOPLE WHO SPOKE SPANISH.

A RIGHT.

Q AND SO Y'ALL THOUGHT THAT IT WAS SAFER FOR THE DRIVER TO BE WITH SOMEONE THAT COULD NOT SPEAK SPANISH WHEN THEY MET UP WITH THOSE SPANISH-SPEAKING PEOPLE WHO MIGHT BE THREATS?

A WE WENT OVER THIS ENTIRE SCENARIO WITH THE ACTUAL TRUCK DRIVER, AND WE TOLD HIM, LISTEN YOU WOULD PROBABLY -- YOU MIGHT WANT TO CONSIDER A SPANISH SPEAKER WITH YOU. HE SAID NO. HE FELT COMFORTABLE WITH AGENT MIZE, AND THAT'S WHAT HE WANTED, AND IT WAS ALL ABOUT HIM FEELING COMFORTABLE BECAUSE HE DIDN'T HAVE TO DO THIS.

Q WELL, WHO WAS CONTROLLING THE INVESTIGATION? YOU OR THE CANADIAN TRUCK DRIVER?

A WITHOUT THE CANADIAN TRUCK DRIVER WE WOULDN'T BE ABLE TO DELIVER THE MERCHANDISE.

Q WHO WAS CONTROLLING THE INVESTIGATION? YOU OR THE CANADIAN TRUCK DRIVER?

A AT THIS POINT---

Q OR YOUR SUPERVISOR?

A MY SUPERVISOR WAS AT THIS POINT.

Q OKAY. SO WHEN YOU TOOK THE CHIMNEYS OUT OF LAREDO AND FURNITURE, WAS THERE AN INVENTORY DONE OF THE SEMI? WHEN YOU LEFT LAREDO.

A JUST THE ACTUAL MANIFEST AND WHAT IT CONTAINED.

Q WELL BUT DID – DID THE U.S. CUSTOMS AGENCY AGENTS AND/OR INSPECTORS DO AN INVENTORY, FILL OUT WE GOT THIS TABLE OR WE GOT THIS CHAIR AND WE GOT THIS CHIMNEY? DID YOU FILL OUT AN INVENTORY OF WHAT WAS IN THAT SEMI BEFORE IT LEFT LAREDO?

A NO. THAT'S NOT POLICY OR PROCEDURE.

Q SO THE ANSWER IS NO.

A THE ANSWER IS NO.

Q NOW AS I UNDERSTAND IT, AND Y'ALL WENT OVER THIS FOREVER, BUT THE DRIVER OF THE TRUCK THAT CAME INTO LAREDO WAS NOT ARRESTED.

A CORRECT.

Q RIGHT? BECAUSE IT WAS DETERMINED THAT HE HAD NO KNOWLEDGE THAT WHATEVER THE ANOMALIES WERE INSIDE THE TRUCK, HE DIDN'T KNOW WHAT THEY WERE.

A CORRECT.

Q AS FAR AS YOU KNOW, HE NEVER LOOKED INSIDE THAT TRAILER.

A HE DID NOT. THE SEAL WAS INTACT. IT WAS NOT BROKEN.

Q WELL, YOU WEREN'T THERE WHEN THE SEAL WAS ORIGINALLY PUT ON THERE. WERE YOU?

A NO, BUT THE SEAL IS ALSO LISTED ON THE MANIFEST, AND THAT SAME SEAL WAS PRESENT AND NOT TAMPERED WHEN IT CAME TO THE U.S. CUSTOMS LOADING DOCK.

Q BUT YOU DON'T KNOW WHERE THAT SEAL -- YOU WEREN'T THERE WHEN THE SEAL WAS PLACED ON THE SEMI, DO YOU -- WERE YOU?

A NO, I WAS NOT THERE. IT WAS IN MEXICO.

Q AND YOU DON'T -- YOU WEREN'T PRESENT WHEN THE SEAL WAS PLACED

ON.

A NO.

Q YOU DON'T KNOW IF MR. CONTRARAS WAS THERE WHEN THE SEAL WAS PLACED ON IT.

A NO, THAT'S NOT HOW IT NORMALLY WORKS, BUT, NO, I DO NOT KNOW.

Q WELL, CAN YOU PREDICT THE FUTURE?

A NO.

Q OKAY. NOW LET ME ASK YOU THIS: THIS MR. CONTRARAS, HAD YOU EVER MET HIM BEFORE?

A NO.

Q YOU'RE NOT FAMILIAR WITH HIM AT ALL.

A NO.

Q AND HE WAS NOT A UPS DRIVER.

A NO.

Q HE WAS NOT A FED-EX DRIVER.

A NO. HE WAS A DREDGE DRIVER.

Q OKAY. HE WAS -- WELL, THERE'S NO COMPANY CALLED DREDGE INCORPORATED, IS THERE?

A NO, BUT THAT'S THE TERMINOLOGY USED.

Q A DREDGE DRIVER, THAT'S TERMINOLOGY LIKE SHORT-HAUL DRIVER, LONG-HAUL DRIVER?

A RIGHT.

Q YOU DIDN'T REALLY KNOW ANYTHING ABOUT THIS GUY, DID YOU?

A NO.

Q SO YOU TOOK HIM AT HIS WORD THAT HE DIDN'T KNOW ANYTHING ABOUT

THIS TRAILER, DIDN'T KNOW WHAT WAS IN THIS TRAILER.

A HIS STORY CHECKED OUT WITH THE MANIFEST.

Q DID YOU GO AND FINGERPRINT? DID YOU TAKE HIS FINGERPRINTS?

A NO, WE NORMALLY DON'T DO THAT.

Q YOU DIDN'T TAKE HIS FINGERPRINTS?

A NO, I DID NOT.

Q DID YOU LOOK TO SEE IF THERE WAS ANY OF HIS CLOTHING OR ANY OF HIS BELONGINGS INSIDE THE TRAILER?

A THERE WERE NO CLOTHING OR BELONGINGS IN THE TRAILER. JUST THE MERCHANDISE.

Q DID YOU PUT THAT IN THE REPORT?

A NO.

Q BUT HE PULLS UP -- HE'S A MEXICAN GUY. RIGHT?

A YES.

Q AND HE DRIVES A SEMI LOADED WITH DOPE INTO A U.S. TERRITORY.

A YES.

Q AND THEN HE'S LET GO.

A HE'S LET GO BECAUSE HE HAD NO KNOWLEDGE.

Q HE'S LET GO.

A YES, HE IS.

Q NOW WHEN YOU -- WERE YOU -- IN FACT, WERE YOU EVER PRESENT WHEN ANY OF THESE ACCUSEDS WERE ARRESTED?

A NO.

Q YOU REALLY DON'T KNOW WHO IS ALFREDO ARJONA AND WHICH ONE IS--

A I KNOW WHO FREDY DELEON IS BUT I DON'T KNOW THE OTHERS.

Q YOU DON'T KNOW -- YOU COULDN'T PICK OUT ALFREDO ARJONA FOR THE COURT?

A NO.

Q YOU COULDN'T PICK OUT RAPHAEL HERNANDEZ?

A NO. I WASN'T PART OF THAT SURVEILLANCE.

Q OKAY. PARDON ME?

A I WASN'T PART OF THAT SURVEILLANCE.

Q YOU WEREN'T PART OF THAT SURVEILLANCE, BUT YOU WERE PART OF THAT INVESTIGATION WHICH LED TO THE ARREST, WERE YOU NOT?

A UP TO A CERTAIN POINT, SIR.

Q AND THAT CERTAIN POINT WAS WHEN YOU WERE IN DELEON'S STORE. YOU WERE NO LONGER INVOLVED IN THE INVESTIGATION.

A WE WERE THERE TO ASSIST.

Q BUT -- SO YOU WERE INVOLVED IN THE INVESTIGATION.

A INVOLVED BY ASSISTING. I WAS NO LONGER THE CASE AGENT PER SE.

Q AND YOU DIRECTED THE CHIMNEY TO BE OPENED IN THE STORE.

A YES, I DID.

Q AND YOU DIRECTED THE REST OF THE CHIMNEYS TO BE OPENED AT THE SHERIFF'S DEPARTMENT.

A I DID THAT BECAUSE I HAD NEXUS TO THE BORDER AND HAD CONSTANT VISUAL OF THAT MERCHANDISE IN THAT PARTICULAR TRAILER IN LAREDO, TEXAS TO TRENTON, SOUTH CAROLINA. SO THEREFORE I CAN GIVE THAT ORDER.

Q WHAT ABOUT PAT MIZE? HE COULD'VE TOO. RIGHT?

A THAT'S RIGHT. HE COULD TOO.

Q BUT YOU'RE THE ONE THAT GAVE THE ORDER.

A THAT'S RIGHT.

Q BY THE WAY, DID YOU EVER CHECK TO SEE IF MR. HERNANDEZ'S FINGERPRINTS WERE ANYWHERE ON THAT SEMI TRACTOR-TRAILER?

A NO, WE DON'T DO THAT IN LAREDO, TEXAS.

Q DID YOU CHECK TO SEE IF ANY OF MR. ARJONA'S FINGERPRINTS WERE ON THAT TRACTOR-TRAILER?

A NO. AGAIN, WE DON'T -- WE DON'T DO THAT.

Q DIDN'T DO ANY KIND OF DNA ON IT, ANALYSIS?

A NOT FOR FINGERPRINTS.

Q YOU DIDN'T DO ANY OTHER KIND OF DNA ANALYSIS TO SEE IF ANYTHING OF THEIRS WAS ANY KIND OF TRACE EVIDENCE OF THEIRS IN THE TRACTOR-TRAILER WAS FOUND?

A NO. IN CASES LIKE THEN WHEN YOU'RE DEALING WITH THE MEXICAN BORDER, YOU'RE GONNA HAVE AN INDIVIDUAL IN THE INTERIOR OF MEXICO LOADING THE NARCOTICS. IT'S GONNA BE DIFFERENT FROM THE PERSON THAT'S RECEIVING IT. SO THEREFORE THERE'S NO NEED TO DO FINGERPRINT ANALYSIS.

Q SO AS FAR AS YOU KNOW, NEITHER MR. ARJONA OR MR. HERNANDEZ EVER EVEN LOOKED INSIDE THAT TRAILER.

A I CAN'T ANSWER THAT, SIR.

Q YOU DON'T HAVE ANY EVIDENCE THAT THEY DID, DO YOU?

A NO.

Q YOU DON'T HAVE ANY EVIDENCE THAT THEY EVER TOUCHED ANYTHING INSIDE THAT TRACTOR TRAILER, DO YOU?

A NO. I CAN'T ANSWER THAT.

Q WELL, YOU SAID YOU WERE NOT PART OF THE SURVEILLANCE TEAM THAT HANDLED THE ARREST OF MR. ARJONA AND MR. HERNANDEZ.

A CORRECT.

Q SO YOU WERE NOT INVOLVED IN THEIR INTERVIEWS IF THERE WERE ANY.

A THERE WERE INTERVIEWS. I WAS NOT INVOLVED.

Q YOU WERE NOT INVOLVED IN THAT.

A NO.

Q DID YOU RUN A CRIMINAL HISTORY ON EITHER ONE OF THEM?

A NO. AT THAT POINT THE CASE IS TURNED OVER. AND, NO, I DID NOT.

Q TURNED OVER TO WHO?

A TURNED OVER TO LAW ENFORCEMENT IN THAT PARTICULAR SETTING.

Q OKAY. SO FIRST WE HAVE THE INVESTIGATION THAT WAS TURNED OVER TO DEAN TUCKER.

A RIGHT.

Q BY THE TIME IT GOT TO THE -- FREDY'S STORE.

A RIGHT.

Q AND THEN SOMEWHERE AFTER DEAN -- SOMEWHERE AFTER THAT, DEAN TUCKER TURNED IT OVER TO ENFORCEMENT -- I MEAN LOCAL LAW ENFORCEMENT.

A AFTER FEDERAL PROSECUTION WAS DECLINED FROM THE U.S. ATTORNEY'S OFFICE.

Q WHEN WAS THAT?

A AT SOME POINT. I CAN'T ANSWER THAT BECAUSE I WASN'T PRESENT FOR THAT PARTICULAR PHONE CALL.

Q DO YOU KNOW WHO WAS? DO YOU KNOW WHO MADE THE CALL?

A NO.

MR. MAYE: I'M GONNA OBJECT AT THIS TIME OF ANY MENTION – SUBJECT TO YOUR PRIOR RULING.

THE COURT: YOU WISH TO BE HEARD?

MR. SUSSMAN: I'M NOT ASKIN' -- NO, SIR.

THE COURT: ALRIGHT. MOVE ON THEN.

MR. SUSSMAN: YES, SIR.

Q NOW AFTER THE TAKEDOWN OF FREDY'S STORE, WHAT DID YOU DO NEXT? AND IF YOU NEED TO REFER TO YOUR REPORT, THAT'S FINE.

A TAKEDOWN OF THE STORE MEANING OPENING THE—

Q OPENING THE CHIMNEY AND HAVING THE DOPE THERE AND WHATEVER ELSE YOU DID AT THE STORE. WHAT DID YOU DO AFTER THAT?

A WE WENT TO EDGEFIELD COUNTY SHERIFF'S OFFICE TO OFFLOAD THE REMAINDER OF THE NARCOTICS.

Q SO AT THAT POINT WHEN YOU WENT TO THE EDGEFIELD SHERIFF'S DEPARTMENT WHICH IS RIGHT BACK HERE, RIGHT BEHIND THE COURTHOUSE. IS THAT RIGHT?

A I DON'T KNOW.

Q OKAY. WAS THE TRACTOR-TRAILER ALREADY THERE AT THE EDGEFIELD SHERIFF'S DEPARTMENT?

A I DON'T REMEMBER, SIR. IT WAS 2 YEARS AGO.

Q YOU DIDN'T DO A REPORT ON IT THAT WOULD HELP REFRESH YOUR RECOLLECTION?

A NO, I DO MY REPORT FROM THE INITIATED CONTROLLED DELIVERY TO AS SOON AS I GET TO TRENTON, SOUTH CAROLINA, AND MY REPORT ENDS THERE.

AND THAT'S HOW CONTROLLED DELIVERY INVESTIGATIONS ARE CONDUCTED. AND YOU WILL SEE THERE IN MY REPORT THAT EVERYTHING WAS TURNED OVER TO THAT OFFICE. I'M RESPONSIBLE FOR THE SEIZURE OF THE MARIJUANA. THE RECEIVING OFFICE IS RESPONSIBLE FOR THE ACTUAL ARRESTING OF THE INDIVIDUALS.

Q SO BASICALLY YOU DROPPED BACK TO AN ASSISTING MODE.

A RIGHT.

Q BUT THAT DOESN'T -- WELL, LET ME ASK YOU THIS: DID YOU EVER GO TO THE FIELD WHERE THE TRACTOR-TRAILER WAS STUCK? DID YOU EVER GO THERE AT ALL?

A NO.

Q AND THE DOCUMENTS THAT I THINK YOU REFER TO---

MR. SUSSMAN: YOUR HONOR, MAY I APPROACH THE WITNESS, PLEASE?

THE COURT: CERTAINLY.

Q I THINK YOU WERE ASKED -- WEREN'T YOU ASKED EXTENSIVELY ABOUT THIS DOCUMENT WHICH IS STATE'S 2. DO YOU SEE THE NAME OF ALFREDO AVILA-ARONJA ON THAT DOCUMENT? STATE'S EXHIBIT 2 WHICH I THINK IS THE MANIFEST OR THE BILL OF LADING OR WHATEVER IT IS.

A CAN YOU REPEAT THE NAME.

Q ALFREDO AVILA.

A NO.

Q HOW ABOUT RAPHAEL HERNANDEZ?

A NO.

Q AND I THINK YOU'VE ALREADY SAID YOU DON'T HAVE ANY PHONE CALL EVIDENCE BETWEEN -- LISTING ANYTHING INVOLVING ALFREDO AVILA OR

RAPHAEL HERNANDEZ.

A NO. AND THE NAMES THAT YOU JUST MENTIONED, IF THEY WOULD BE ON THIS MANIFEST, THEY WOULDN'T. IT WOULD BE JUST THE CONSIGNEE AND THE TRUCK DRIVER. THOSE WOULD BE THE ONLY 2 NAMES YOU WOULD SEE ON THIS MANIFEST. AND THAT ARE REQUIRED.

Q THAT'S ALL I HAVE. THANK YOU, MA'AM.

THE COURT: THANK YOU. MR. MILLER?

MR. MILLER: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. MILLER

Q GOOD AFTERNOON, AGENT. YOU HAVE THIS DOCUMENT? THERE WAS A COPY OF IT UP HERE BEFORE. HAVE YOU SEEN THIS?

A YES.

Q OKAY. CAN YOU IDENTIFY THIS DOCUMENT?

A YES.

Q WHAT IS THAT DOCUMENT?

A IT IS A -- IT'S CALLED A CUSTOMS FORM 9B. IT'S JUST A CRIME SHEET. IT GOES ON THE LEFT-HAND SIDE OF YOUR CASE FILE. IT'S JUST NOTES THAT THE AGENT CAN WRITE. IT DOESN'T MATTER -- THERE'S NO PARTICULAR ORDER OR REASON FOR IT. IT'S JUST TO GIVE YOU LITTLE REFRESHER NOTES OF WHAT YOU'VE DONE UP TO A CERTAIN POINT IN THE CASE.

Q DID YOU PREPARE -- STRIKE THAT, PLEASE. IT APPEARS THAT THERE ARE DIFFERENT HANDWRITINGS ON HERE. IS ANY OF THE HANDWRITING ON THIS DOCUMENT YOUR OWN?

A YES.

Q CAN YOU IDENTIFY BY – THERE'S A DATE NEXT TO EACH ENTRY. CAN YOU IDENTIFY BY DATE THOSE ENTRIES THAT ARE YOUR ENTRIES.

A MAY 14TH 2002, MAY 16TH 2002, MAY 23RD 2002 AND OCTOBER 1ST 2002.

Q OKAY. IS THIS DOCUMENT DONE CONTEMPORANEOUSLY OR AS CLOSE TO POSSIBLE WITH THE ACTIVITIES? DO YOU FILL OUT THIS DOCUMENT AS SOON AS YOU CAN SO THAT YOU CAN – YOU KNOW THAT YOU'RE ACCURATE ON IT?

A NO. LIKE I SAID, IT'S NOTHING OFFICIAL. IT'S JUST -- YOU KNOW, IT'S JUST SOMETHIN' THAT HELPS YOU OUT WITH YOUR CASE FILE. ALL YOUR FACTS OF THE CASE, OF COURSE, ARE LOCATED IN THE CASE FILE. BUT WHEN YOU HAVE A SUPERVISOR CASE REVIEW YOU JUST FROM TIME TO TIME HE'LL -- HE'LL GO TO THIS AND JUST LOOK TO SEE WHEN CERTAIN THINGS HAPPEN. IT'S NOT -- YOU KNOW, MORE OR LESS IT DOESN'T – IT'S NOT WRITTEN IN YOUR CASE FILE THE DAY THAT IT HAPPENS. IT COULD BE MONTHS AND MONTHS DOWN THE ROAD.

Q OKAY. THE TWO ENTRIES THAT YOU DID NOT WRITE, ONE OF THOSE ENTRIES DECEMBER THE 30TH OF 2002, HAS A SIGNATURE AFTER IT FOLLOWED BY THE LETTERS A.T.S. DO YOU KNOW WHOSE SIGNATURE THAT IS?

A THAT'S BENNIE VOSCA'S AND HE WAS THE ACTING GROUP SUPERVISOR.

Q OKAY. AND THEN THE FINAL ENTRY ON JANUARY THE 9TH 2004 HAS WHAT APPEARS ON THE LAST LINE THERE THAT HAS AN A.R. INSCRIPTION. IS THAT SUPERVISOR ROCHA?

A ACTING SUPERVISOR ROCHA.

Q OKAY. AND THIS DOCUMENT IS PREPARED IN THE ORDINARY COURSE OF YOUR BUSINESS AS A U.S. CUSTOMS AGENT?

A YES.

MR. MILLER: YOUR HONOR, AT THIS TIME I WOULD MOVE TO HAVE THIS

DOCUMENT ADMITTED INTO EVIDENCE.

MR. MAYE: YOUR HONOR, I NEED TO SEE IT FIRST. I DON'T CARE. THEY CAN PUT IT IN IF THEY WANT TO AS A DEFENSE EXHIBIT.

THE COURT: ANY OBJECTION FROM THE DEFENSE?

MR. HAWKE: NO, YOUR HONOR.

MR. MILLER: WE'D JUST ASK THAT IT BE MARKED FOR I.D. OBVIOUSLY IT CAN'T COME IN AS—

THE COURT: WELL, HE SAID HE DIDN'T OBJECT.

MR. HAWKE: HE DOESN'T OBJECT -- WELL—

MR. MAYE: HE CAN PUT IT IN AS A DEFENSE EXHIBIT IF THEY WANT TO.

THE COURT: YOU WANT IT IN OR NOT? MR. MILLER?

MR. MILLER: NO, YOUR HONOR. JUST MARK IT FOR I.D. THAT'S FINE.

THE COURT: ALRIGHT.

MR. MAYE: I JUST WANT TO MAKE SURE MY OBJECTION -- I'M GONNA OBJECT TO HER BEING CROSS EXAMINED ON IT. IT'S HEARSAY. I'LL LET IT COME INTO EVIDENCE BUT I'M GONNA OBJECT TO HIM GOIN' INTO IT WITHOUT PUTTIN' IT INTO EVIDENCE 'CAUSE IT'S HEARSAY. I'M GONNA OBJECT TO THAT. BUT LET THEM PUT THE WHOLE DOCUMENT IN. I'LL CONSENT TO THAT.

THE COURT: WELL, I'LL RULE ON THE ISSUES AS THEY ARISE.

MR. MILLER: YOUR HONOR, I'D MOVE TO ADMIT IT NOW.

THE COURT: MARK IT IN EVIDENCE, PLEASE, MA'AM.

MR. MILLER: THANK YOU, YOUR HONOR. (DEFENSE EXHIBIT #5 RECEIVED IN EVIDENCE.)

Q OKAY. REFERRING TO THE DOCUMENT THAT WAS JUST ENTERED INTO EVIDENCE, IT SAYS -- ON WHAT DATE IS THE DATE THAT YOU RECEIVED YOUR

DUTY CALL AND RESPONDED TO THE SPECIAL AGENT AT THE BRIDGE?

A MAY 14TH 2002.

Q OKAY. AND WHAT DOES THE NEXT ENTRY INDICATE AS THE DATE OF THE CONTROLLED DELIVERY TO TRENTON, SOUTH CAROLINA?

A MAY 16TH 2002.

Q BUT THAT'S NOT ACTUALLY THE DATE YOU WERE IN TRENTON; THAT'S -- WHAT IS THAT DATE?

A THE DAY THAT WE ACTUALLY LEFT LAREDO, TEXAS AND THE CONTROLLED DELIVERY WAS INITIATED.

Q OKAY. SO FROM MAY 16TH 2002 UNTIL MAY THE 18TH, YOU WERE EN ROUTE TO SOUTH CAROLINA FROM LAREDO? IS THAT CORRECT?

A THAT'S CORRECT, SIR.

Q WHAT'S THE SIGNIFICANCE OF SLIGHDELL, LOUISIANA?

A THERE'S NO SENSE TO DRIVE 2 DAYS STRAIGHT, SO WE SPENT THE NIGHT IN SLIGHDELL, LOUISIANA TO GET OUR REST FOR THE -- TO CONTINUE THE TRIP FROM THERE TO TRENTON, SOUTH CAROLINA.

Q WAS IT APPROXIMATELY A HALFWAY POINT OR DO YOU KNOW?

A I DON'T KNOW. WE USUALLY TRY TO DRIVE A CERTAIN AMOUNT OF HOURS, YOU KNOW, EACH DAY SO WE CAN MAKE DECENT TIMING TO THE FINAL DESTINATION.

Q OKAY. AND MAY 18TH WAS WHEN THE CONTROLLED DELIVERY WAS ACTUALLY ACCOMPLISHED IN TRENTON. IS THAT CORRECT?

A CORRECT.

Q AND YOUR ENTRY ON MAY THE 23RD 2002 SAYS R.O.I. #1. IS THAT YOUR REPORT OF INVESTIGATION?

A YES.

Q AND SO THAT'S THE REPORT THAT YOU PREVIOUSLY DISCUSSED CONSISTING OF 4 PAGES TALKIN' ABOUT YOU HELPIN' BRING THE STUFF TO TRENTON. CORRECT?

A RIGHT. THAT WAS WHEN I WENT BACK TO THE OFFICE IN LAREDO, TEXAS AND STARTED THAT REPORT OF INVESTIGATION.

Q SO APPROXIMATELY 4 MONTHS LATER ON OCTOBER THE 1ST 2002, COULD YOU READ TO THE JURY WHAT THAT ENTRY SAID.

A RECEIVED REPORTS FROM SPECIAL AGENT JAMES TUCKER RAC GREENVILLE, SUBMITTED CLOSING R.O.I.

Q FIRST OF ALL, RAC GREENVILLE, THAT'S RESIDENT AGENT IN CHARGE GREENVILLE?

A YES.

Q AM I CORRECT?

A YES.

Q OKAY. SUBMITTING CLOSING R.O.I. AGAIN, REPORT OF INVESTIGATION. CORRECT?

A YES.

Q DO YOU HAVE A COPY OF THE CLOSING R.O.I. ?

A THAT'S A REPORT FROM THE GREENVILLE OFFICE.

Q SO THERE WAS AN R.O.I. FROM THE GREENVILLE OFFICE. IS THAT R.O.I. – THAT'S A CLOSING R.O.I. THAT ACTUALLY CAME FROM JAMES TUCKER?

A YES, BECAUSE HE WOULD HAVE TO CLOSE THE ACTUAL REPORT BECAUSE IT WAS A COLLABORATIVE REQUEST FROM LAREDO, TEXAS TO GREENVILLE. SO HE'S THE ONE THAT WOULD SUBMIT THAT CLOSING REPORT.

Q OKAY. AND THEN 2 MONTHS LATER, GIVE OR TAKE, THERE'S A CASE REVIEW NOTATION. YOU SAID THAT WAS BENNIE?

A FOSCAS.

Q FOSCAZ (PHONETIC) THE AGENT, THE ACTING GROUP SUPERVISOR. COULD YOU READ THAT ENTRY FOR ME, PLEASE.

A SEIZURE STATS NEED TO BE TRANSFERRED. REFLECT ALSO STATS FROM STATE PROSECUTION.

Q OKAY. AND THAT'S WHAT THAT SAYS.

A YES. WE HAVE STATISTICS IN OUR CUSTOMS COMPUTER DATA BASE THAT NEED TO BE UPDATED IN ORDER TO CLOSE OUT THE CASE. AND THAT'S WHAT HE'S REFERRING TO.

Q OKAY. AT THAT POINT IN TIME, YOU'RE TALKING ABOUT ENTERING STATS OR MR. VASQUEZ (PHONETIC) IS TALKING ABOUT ENTERING STATS INTO Y'ALL'S TRACKING PROGRAM. IS THERE ANY INVESTIGATION GOING ON ANYMORE BY THE LAREDO FIELD OFFICE OF THE UNITED STATES CUSTOMS SERVICE?

A LAREDO FIELD OFFICE? NO.

Q OKAY. ALMOST 13 MONTHS LATER THERE'S ANOTHER ENTRY, ANOTHER CASE WHICH WOULD BE ON JANUARY THE 9TH OF 2004.

A RIGHT.

Q JANUARY OF THIS YEAR.

A RIGHT.

Q AND THAT WAS AGENT GROUP SUPERVISOR ROCHA THAT ENTERED THAT FROM YOUR PRIOR TESTIMONY. WHAT DOES THAT ENTRY SAY?

A DEFENDANTS IN STATE CUSTODY AWAITING TRIAL. CASE AGENT WILL EXHAUST ALL POSSIBLE LEADS.

Q WHO'S THE CASE AGENT THAT ROCHA'S TALKING ABOUT?

A HE'S REFERRING TO THE RECEIVING END OF THE OFFICE. HE'S NOT REFERRING TO ME. AND MY CASE WILL STAY OPEN UNTIL THIS TRIAL IS OVER AND EVERYBODY IS CONVICTED SO I CAN CLOSE OUT MY CASE. SO IT'S KIND OF IN PENDING STATUS.

Q OKAY. I'M NOT -- I'M NOT IMPLYING THAT HE'S TALKING ABOUT YOU. WHAT I'M ASKING YOU IS A VERY SIMPLE QUESTION. HE SAYS THAT CASE AGENT WILL EXHAUST ALL POSSIBLE LEADS. WHO IS HE REFERRING TO WHEN HE SAYS CASE AGENT? WE UNDERSTAND IT'S NOT YOU.

A RIGHT.

Q WHO IS HE TALKING ABOUT?

A AT THIS TIME IF IT SAYS DEFENDANTS ARE IN STATE CUSTODY, AWAITING TRIAL, HE'S TALKING ABOUT THE CASE AGENT THAT HAS THE STATE CASE WHICH WOULD BE COBY PERRY.

Q OKAY. SO HE WAS TALKING ABOUT -- AND THERE'S A PROBLEM BECAUSE OF THE EXCHANGE OF DIFFERENT TITLES BETWEEN FEDERAL AND STATE AGENTS. I UNDERSTAND THAT. BUT YOUR UNDERSTANDING IS HE'S REFERRING TO COBY PERRY.

A YES.

Q WITH SLED. SO IS IT YOUR UNDERSTANDING THAT SLED'S SUPPOSED TO BE DOING ALL THE INVESTIGATION IN THIS CASE AFTER THE DRUGS WERE DROPPED OFF?

A IT'S WHATEVER THEY DEEM IS APPROPRIATE. I'M NOT SURE WHAT INVESTIGATIVE LEADS THEY'VE DONE OR WHAT THEY'RE RESPONSIBLE FOR.

Q YOU LISTED SOME REASONS -- I'M GONNA SWITCH GEARS A LITTLE BIT

HERE. BUT YOU LISTED SOME REASONS WHY AGENT MIZE WAS SELECTED TO BE IN THE TRUCK DESPITE THE FACT THAT HE DIDN'T – WASN'T FLUENT IN SPANISH WITH THE CANADIAN DRIVER. YOUR FIRST ONE WAS THAT HE HAD PRIOR LAW ENFORCEMENT EXPERIENCE AND HE WORKED UNDERCOVER BEFORE. HOW LONG HAD -- DO YOU KNOW HOW LONG AGENT MIZE HAD BEEN IN THE U.S. CUSTOMS SERVICE AT THE TIME OF THIS?

A NO.

Q WERE THERE OTHER OFFICERS AT THE U.S. CUSTOMS OFFICE THAT HAD MORE EXPERIENCE THAN AGENT MIZE?

A WELL, MY SUPERVISOR HAS MORE EXPERIENCE THAN ALL OF US BUT AGENT MIZE AND I CAME ON AROUND THE SAME TIME. SO I CAN'T TELL YOU THE EXACT DATE HE GRADUATED FROM THE ACADEMY, BUT IT WAS MORE OR LESS THE SAME TIME THAT I GRADUATED FROM THE ACADEMY.

Q SO HE HAD ABOUT 2 YEARS.

A ABOUT 2 YEARS.

Q OKAY. YOU SAID THE DRIVER WAS COMFORTABLE WITH AGENT MIZE BECAUSE HE HAD DRIVEN WITH HIM FROM LOUISIANA TO SALUDA COUNTY.

A YES, SIR.

Q WHO DROVE WITH HIM FROM LAREDO, TEXAS TO LOUISIANA?

A I THINK AT THAT POINT THE DRIVER WAS BY HIMSELF AND WE DID A CARAVAN. ONE GOVERNMENT VEHICLE IN FRONT OF THE ACTUAL TRACTOR-TRAILER, AND THE REMAINING VEHICLES WERE FOLLOWING.

Q SO THERE WASN'T AN AGENT ON THE--

A I DON'T REMEMBER TALKING ABOUT IF THERE WAS OR WASN'T BUT I KNOW IN SLIGHDELL, THAT'S WHEN AGENT MIZE JUMPED IN THE VEHICLE OR

JUMPED IN THE TRACTOR-TRAILER WITH THAT PARTICULAR DRIVER.

Q ALRIGHT. NEXT YOU SAID THAT IT WAS IMPORTANT THAT THE DRIVER -- AND CORRECT ME IF I MISCHARACTERIZE YOUR TESTIMONY. BUT I BELIEVE YOU SAID THAT IT WAS IMPORTANT THAT THE DRIVER BE COMFORTABLE WITH AGENT MIZE BECAUSE HIS LIFE WOULD BE IN JEOPARDY. IS THAT CORRECT?

A YES. HE DOESN'T HAVE A WEAPON LIKE THE AGENT WOULD. HE'S VOLUNTEERING TO DO THIS. HE DIDN'T HAVE TO. AND HE WAS HELPIN' US OUT.

Q DID AGENT MIZE'S PRESENCE MEAN THAT DRIVER'S LIFE WASN'T IN JEOPARDY?

A IT – IT – AGENT MIZE BEING THERE, BEING LAW ENFORCEMENT AND ACTUALLY HAVING A FIREARM WOULD COVER THAT BASIS IN THE EVENT ANYTHING WERE TO HAPPEN, THEN AGENT MIZE COULD TAKE CARE OF IT.

Q BUT ANY ONE OF THE FEDERAL AGENTS HAD A GUN AND WAS A FEDERAL AGENT AND WAS INVOLVED IN LAW ENFORCEMENT. SO WOULDN'T ANY ONE OF THE FEDERAL AGENTS, PARTICULARLY ONE WHO SPOKE SPANISH, BE IN A BETTER POSITION OR AT LEAST AS GOOD A POSITION TO HELP AS MIZE WAS?

A IT JUST DEPENDS ON THE SITUATION. LIKE I SAID, THE TRACTOR DRIVER FELT VERY COMFORTABLE WITH AGENT MIZE, AND AGENT MIZE FIT THE PART AS A TRACTOR DRIVER AS OPPOSED TO THE HISPANIC AGENTS.

Q YOU SAID YOU'VE DONE SEVERAL OF THESE CONTROLLED DELIVERIES. WHEN CONDONING A CONTROLLED DELIVERY OF THIS TYPE, WHOSE RESPONSIBILITY IS IT FOR TECHNICAL SUPPORT GENERALLY? IS IT YOU THE AGENT WHO'S BRINGING STUFF OR IS IT THE HOME AGENT, IN THIS CASE THE GREENVILLE AGENT?

A IT JUST DEPENDS ON -- USUALLY YOU WOULD HAVE A TECH AGENT IF

THERE'S ONE AVAILABLE. HE WOULD -- HE OR SHE WOULD COME OUT TO THE SCENE, AND WHATEVER WAS DEEMED APPROPRIATE AT THAT TIME. IT JUST DEPENDS ON THE SITUATION.

Q WELL, THIS – THIS VEHICLE CAME ACROSS THE BORDER ON MAY 14TH 2002 AND THAT'S WHEN YOU REALIZED THAT THEY WERE – OR CUSTOMS REALIZED THAT THERE WERE DRUGS INSIDE THE VEHICLE AND IT WAS DELIVERED ON MAY 18TH 2002 AT LEAST -- LET'S CALL IT 3 DAYS -- ELIMINATE ANY DOUBT. BUT 3 DAYS LATER. SO IN 72 HOURS WOULDN'T CUSTOMS HAVE SUFFICIENT TIME TO GATHER THE RESOURCES THAT THEY NEEDED TECHNOLOGICALLY TO MAKE THIS HAPPEN?

A ARE YOU TALKIN' ABOUT LIKE—

Q ANYTHING THEY NEED TO CONDUCT A SURVEILLANCE AND CONTROLLED DELIVERY OF DRUGS.

A WE DID EVERYTHING WE COULD THAT DAY. IT WAS POURING DOWN RAIN. SO YOU HAVE TO KEEP THAT IN MIND THAT IF WE DID HAVE THINGS SUCH AS A WIRE OR WHATEVER, NONE OF THAT WAS GOING TO WORK BECAUSE OF THE HEAVY RAIN. AND YOU WOULD HAVE TO HAVE A REPEATER NEARBY. AND IN ORDER TO DO THIS UNDERCOVER OPERATION YOU HAD TO MAKE IT, YOU KNOW, AS SAFE AS POSSIBLE AND BELIEVABLE AND THAT, YOU KNOW, WHEN IT WAS DELIVERED, WE FELT LIKE, YOU KNOW, WE DID EVERYTHING THAT WE POSSIBLY COULD TO MAKE IT A SAFE ENVIRONMENT FOR EVERYBODY.

Q SO YOU TESTIFIED EARLIER THAT THESE AGENTS HAVE GOT A RADIO THAT THEY CAN TALK TO ORLANDO.

A RIGHT.

Q BUT THEY DON'T HAVE THE TECHNOLOGY TO PUT A WIRE INSIDE THE TRUCK SO THAT THEY CAN HEAR CONVERSATIONS THAT WENT ON IN OR AROUND

THAT TRUCK?

A WE AT THIS TIME TO PUT AGENT MIZE IN THE ACTUAL TRACTOR-TRAILER, IT WASN'T DECIDED UNTIL THE MORNING OF THE BRIEFING. THAT'S WHEN THE ACTUAL DRIVER OF THE TRACTOR-TRAILER SAID HE WOULD FEEL MORE COMFORTABLE WITH AGENT MIZE IN THE VEHICLE, AND IT WAS AT THE LAST MINUTE.

Q HOW DO YOU KNOW THAT AGENT MIZE UNDERSTANDS SOME SPANISH? HAVE YOU EVER OBSERVED HIM COMMUNICATING IN SPANISH WITH ANYBODY?

A NOT COMMUNICATING, BUT WHEN OTHER SPANISH SPEAKERS ARE AROUND SPEAKING, HE UNDERSTANDS PROBABLY AS MUCH AS I DO.

Q HE CAN GET THE GIST OF WHAT'S GOING ON?

A MORE OR LESS. JUST DEPENDS ON HOW FAST THEY'RE SPEAKING.

Q OKAY. AND I WON'T BELABOR THE POINT BECAUSE I THINK YOU KNOW WHERE ALL OF THIS IS GOING, BUT REFERRING TO STATE'S 2, DOES THAT DOCUMENT WHICH IS THE MANIFEST AGAIN, DOES THAT DOCUMENT IN ANY WAY REFERENCE MY CLIENT HONORIO GUERRERO?

A IS YOUR CLIENT'S NAME ON HERE? IS THAT WHAT YOU'RE—

Q DOES IT REFERENCE IT IN ANY WAY? IS HIS NAME ON THERE?

A NO. AGAIN, THERE ARE ONLY 2 NAMES THAT WOULD BE ON HERE, WOULD BE THE TRACTOR DRIVER AND THE ACTUAL CONSIGNEE, THE PERSON THAT'S RECEIVING THE SHIPMENT.

Q OKAY. AND TRYIN' TO GROUP IT TOGETHER A LITTLE BIT FOR YOU, DO YOU PERSONALLY HAVE ANY EVIDENCE THAT WOULD TIE HONORIO GUERRERO TO ANY OF THE COMPANIES IN MEXICO, THE COMPANY BORDER CROSSER – BORDER CARRIERS, IN LAREDO, OR FREDY DELEON OR TIENDA DELEON OR ANY OF THAT

OTHER STUFF?

A NO, I WASN'T A PART OF THAT INVESTIGATION, SIR.

Q OKAY. YOU WERE AT -- YOU WERE ON THE SURVEILLANCE TEAM THAT WAS WATCHING THE STORE THOUGH. CORRECT?

A YES.

Q DID YOU EVER OBSERVE A YELLOW RYDER TRUCK WITH THESE INDIVIDUALS IN IT COME UP TO THE STORE?

A WE WEREN'T STATIONED IN ONE PLACE. WE WOULD DO DRIVE-BYS BACK AND FORTH AND WE WOULDN'T STAY AT ONE PARTICULAR PLACE AT ANY TIME. WE WOULD DRIVE BACK AND FORTH. SO I PERSONALLY NEVER SAW A RYDER TRUCK.

Q OKAY. YOU NEVER SAW THE RYDER TRUCK.

A NO.

MR. MILLER: THANK YOU, YOUR HONOR. NO FURTHER QUESTIONS.

THE COURT: REDIRECT?

MR. MAYE: NOTHIN' ELSE, YOUR HONOR.

THE COURT: ANY FURTHER QUESTIONS OF THE WITNESS?

MR. HAWKE: NONE ON BEHALF OF DEFENDANT DELEON.

MR. SUSSMAN: I DO HAVE ONE OR 2 FOLLOW UPS TO WHAT SHE ANSWERED.

MR. MAYE: YOUR HONOR, I'M GONNA OBJECT. I DIDN'T ASK ANY OTHER QUESTIONS. I DON'T KNOW THAT THEY CAN GET ANOTHER BITE AT THE APPLE THE FOURTH TIME. HE'S ALREADY HAD FULL CROSS-EXAMINATION.

MR. MAYE: I'VE NOT RE-QUESTIONED THIS WITNESS ANYMORE. ANY FURTHER CROSS-EXAMINATION IN THIS CASE IS IMPROPER. I DIDN'T ASK

ANYTHING IN THAT REGARD.

THE COURT: OVERRULED.

RECROSS EXAMINATION

BY MR. SUSSMAN

Q YOU INDICATED, I THINK, IN RESPONSE TO ONE OF MR. MILLER'S QUESTIONS THAT YOUR SUPERVISOR WAS ALONG ON THAT TRIP BACK UP HERE TO EDGEFIELD?

A YES.

Q IS HE HERE TODAY?

A NO.

Q THANK YOU.

THE COURT: ANYTHING ELSE, MR. MILLER?

MR. MILLER: NO, YOUR HONOR.

THE COURT: ANYTHING FROM THE STATE?

MR. MAYE: NO, SIR.

THE COURT: NOTHING FROM Y'ALL?

MR. HAWKE: (NODDED NO.)

THE COURT: YOU MAY STEP DOWN. THANK YOU VERY MUCH.

A THANK YOU.

THE COURT: DON'T DISCUSS YOUR TESTIMONY WITH ANY OF THE OTHER WITNESSES. I THINK THEY RESERVE THE RIGHT TO RECALL YOU.

A OKAY.

THE COURT: OKAY? THANK YOU. ALRIGHT. LADIES AND GENTLEMEN, IT'S A LITTLE AFTER 4. YOU'VE BEEN OUT HERE AN HOUR AND 15 MINUTES I GUESS. ALRIGHT. WE'LL TAKE A BREAK AT THIS POINT, AND I'LL FIND OUT WHAT THEY

HAVE LINED UP AND GIVE YOU SOME INFORMATION WHEN YOU COME BACK IN. DON'T DISCUSS THE CASE. LEAVE YOUR NOTES HERE IN THE COURTROOM. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) ALRIGHT. WHAT WITNESS IS NEXT?

MR. MAYE: I HAVE AGENT MIZE WHO I WOULD SUSPECT WOULD BE THE MOST LENGTHY WITNESS IN THE TRIAL. THAT'S MY SPECULATION.

THE COURT: HE'S THE ONE THAT TESTIFIED LAST TIME?

MR. MAYE: YES, SIR. AGENT MIZE. THAT'S THE LENGTHY ONE. YOUR HONOR, I CAN CALL -- HERE'S MY OTHER DILEMMA. THE NEXT WITNESS I COULD CALL WOULD BE ROGER LOWE WHO RECEIVED THE DRUGS, BUT UNLESS WE CAN FIGURE OUT SOME WAY AROUND THIS, I THINK I'M GONNA NEED TO START MARKIN' THE DOPE AND ALL AND RUN THE EVIDENCE FROM THAT. THAT'S A PILE A STUFF. I'LL DO WHATEVER THE COURT DIRECTS ME TO DO.

THE COURT: I DON'T THINK YOU CAN MOVE -- LET ME THINK ABOUT THIS A SECOND. WE'RE AT EASE. (THERE WAS A BRIEF RECESS.) (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) LADIES AND GENTLEMEN, WE'RE GONNA GO ABOUT 30 MORE MINUTES AND THEN STOP FOR THE DAY. I DON'T THINK WE'LL GET THROUGH THIS WITNESS IN 30 MINUTES, BUT THAT'S WHAT WE'RE GONNA DO. CALL YOUR NEXT WITNESS.

MR. MAYE: STATE CALLS AGENT PATRICK MIZE.

PATRICK MIZE, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q AGENT MIZE, WHERE ARE YOU EMPLOYED?

A DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT OUT OF LAREDO, TEXAS.

Q OKAY. BACK IN 2002 THAT WAS KNOWN AS?

A UNITED STATES CUSTOMS SERVICE PRIOR TO 9-11.

Q HOW LONG HAVE YOU BEEN THERE?

A ABOUT 3 AND A HALF YEARS NOW.

Q PRIOR TO WORKING FOR CUSTOMS, WHO DID YOU WORK FOR?

A I WAS A POLICE OFFICER FOR THE ST. LOUIS METROPOLITAN POLICE DEPARTMENT FOR ABOUT 6 YEARS.

Q FOR ABOUT 6 YEARS?

A YES, SIR.

Q LET ME ASK YOU THIS: HOW DID YOU BECOME INVOLVED IN THE CASE THAT WE'RE HERE ABOUT TODAY? WHEN WAS YOUR FIRST INVOLVEMENT?

A THE DAY THAT THE TRAILER CROSS ON MAY 14TH 2002 I WAS CONTACTED BY MS. DOWLING. SHE TOLD ME THAT THEY HAD RECEIVED A SHIPMENT AND TO START PACKIN' MY BAGS 'CAUSE WE WERE MAYBE GONNA DO A CONTROLLED DELIVERY TO SOUTH CAROLINA.

Q OKAY. WHEN IS THE NEXT TIME THAT YOU HAD ANY INVOLVEMENT AND WHAT WAS IT?

A ON MAY 16TH 2002 TWO DAYS LATER, WE PREPARED AND WE DEPARTED LAREDO, TEXAS IN A CONVOY TO SOUTH CAROLINA.

Q WHEN DID YOU FIRST SEE THE TRAILER?

A ON MAY 16TH THAT MORNING.

Q WHAT WERE THE CIRCUMSTANCES OF YOU SEEING THE TRAILER?

A WE WERE PREPARING TO DEPART; I LOOKED BACK JUST TO GET A LOOK AT

WHAT WAS IN THE TRAILER; WE SEALED THAT TRAILER AT THAT TIME.

Q WAS THAT DONE IN YOUR PRESENCE?

A YES, IT WAS.

Q WHAT KINDA SEAL WAS PLACED ON THE TRAILER?

A A TAMPER PROOF SEAL. ONE OF THE TYPES OF SEALS IF YOU PULL IT OFF IT BREAKS. YOU CAN'T JUST SLIP IT ON AND SLIP IT OFF.

Q I SHOW YOU STATE'S 8. IS THAT THE TRACTOR-TRAILER WE'RE TALKIN' ABOUT?

A YES, SIR, IT IS.

Q WHERE DID YOU GO WHEN Y'ALL LEFT LAREDO?

A WE CONVOYED FROM LAREDO, TEXAS TO SLIGHDELL, LOUISIANA THAT DAY.

Q WHAT DID YOU THEN DO?

A WE STAYED THE NIGHT IN SLIGHDELL, REST UP; THEN THE NEXT DAY WE LEFT AGAIN FOR TRENTON, SOUTH CAROLINA.

Q SOUTH CAROLINA. HOW DID YOU ARRIVE FROM SLIGHDELL TO TRENTON, HOW DID YOU TRAVEL?

A FROM SLIGHDELL TO TRENTON I TRAVELED IN THE TRUCK WITH THE DRIVER.

Q WHAT HAPPENED WHEN YOU GOT HERE TO SOUTH CAROLINA?

A WE TOOK THE TRUCK TO THE SALUDA COUNTY AIRPORT LATE THAT NIGHT AND WE WENT AND FOUND A HOTEL TO STAY IN IN AUGUSTA FOR A FEW HOURS AND CAME BACK THE NEXT MORNING AND EFFECTED CONTROLLED DELIVERY.

Q WHAT WAS YOUR INVOLVEMENT IN THE CONTROLLED DELIVERY? WHAT DID YOU DO?

A IN AN UNDERCOVER CAPACITY I RODE IN THE TRACTOR WITH THE DRIVER POSING JUST AS A LABORER FOR THE TRUCKING COMPANY.

Q WHY DID YOU GO?

A I FIT IN WITH THE PROFILE OF THE DRIVER. HE WAS A WHITE MALE, A CANADIAN, SPOKE WITH A FAIRLY NORTHERN ACCENT. I WAS THE ONLY WHITE MALE ALONG. I WAS DEFINITELY NOT LOOKIN' AS CLEAN AS I AM RIGHT NOW. I WAS -- VERY SCRUFFY BEARD; I HAD ABOUT 5 OR 6 DAYS OF GROWTH PROBABLY. AND TO BE HONEST WITH YOU, I WAS JUST THE UGLIEST ONE OUT OF THE GROUP.

Q OKAY. DESCRIBE WHAT YOU DID OR WHAT YOUR INVOLVEMENT WAS THAT DAY OR WHERE DID Y'ALL DEPART FROM THAT DAY, YOU AND THE DRIVER?

A WE DEPARTED FROM THE SALUDA COUNTY AIRPORT. WE THEN DROVE TO THE TIENDA DELEON AND PARKED WHERE WE WERE MET BY THE DEFENDANT DELEON ALONG WITH 2 OTHER GENTLEMEN.

Q OKAY. ALRIGHT, DO YOU SEE MR. DELEON IN THE COURTROOM HERE TODAY?

A YES, SIR, I DO.

Q COULD YOU POINT HIM OUT?

A HE'S SITTING IN THE BOX WITH JUST THE BEARD AND SMALL PATCH A HAIR UNDER HIS LIP AND IT LOOKS LIKE A BLACK AND WHITE CHECKERED SHIRT, BLUE JEANS.

MR. MAYE: YOUR HONOR, I'D LIKE THE RECORD TO REFLECT HE IDENTIFIED THE DEFENDANT IN THIS CASE.

THE COURT: SO NOTED. THE DEFENDANT DELEON.

MR. MAYE: YES, SIR. CORRECT.

Q AGENT MIZE, Y'ALL DEPARTED, WHERE DID Y'ALL ACTUALLY ARRIVE AT?

A WE ARRIVED AT THE TIENDA DELEON THERE ON I THINK IT'S ON 21 AND 25, RIGHT AROUND THAT AREA.

Q OKAY. I'M GOING TO HAND YOU 3 PHOTOGRAPHS. TAKE A LOOK AT 'EM.

A YES, SIR.

Q DO THOSE PHOTOS FAIRLY AND ACCURATELY REFLECT THE TIENDA DELEON WHERE Y'ALL EFFECTED THAT CONTROLLED DELIVERY?

A THE---

Q DON'T SHOW 'EM TO THE JURY.

A OH, I'M SORRY. I APOLOGIZE. 2 OF 'EM DO. ONE OF 'EM IS FROM THE PARKING LOT OF THAT LOOKIN' TOWARD BILLY'S STORE.

Q BILLY'S SUPER STORE.

A YES.

Q THAT IS THE AREA, THE GENERAL VICINITY.

A CORRECT.

MR. MAYE: YOUR HONOR, AT THIS TIME I WOULD -- YOU DON'T OBJECT.

MR. SUSSMAN: WE DON'T OBJECT. JUST TELL ME WHAT THE NUMBERS ARE.

THE COURT: MARK THEM IN EVIDENCE, PLEASE. (STATE'S EXHIBITS 9, 10 AND 11 RECEIVED IN EVIDENCE.)

Q STEP DOWN AND SHOW THE PICTURES.

A THESE 2 ARE OF THE---

THE COURT: HOLD ON A SECOND. YOU'RE GONNA NEED TO SPEAK LOUDER. HE'S GOTTA HEAR YOU ALL THE WAY OVER THERE.

A THESE 2 ARE OF THE STORE ITSELF. IN FRONT A LITTLE STRIP MALL.

THE COURT: STATE THE NUMBERS, PLEASE, AGENT MIZE.

A I'M SORRY. THIS IS EXHIBIT #10 AND 11.

THE COURT: THANK YOU.

A EXHIBIT #9 IS FROM THE PARKING LOT FROM THE STORE LOOKING BACK TOWARD BILLY'S SUPER STORE.

Q OKAY. PLEASE, RETAKE THE STAND, AGENT MIZE.

A THAT'S BILLY'S STORE.

Q WHEN YOU FIRST ARRIVED AT TIENDA DELEON WHAT'S THE FIRST THING YOU SAW? DESCRIBE WHAT YOU SAW WHEN YOU FIRST ARRIVED.

A MR. DELEON ALONG WITH 2 OTHER HISPANIC GENTLEMEN WERE IN FRONT OF THE STORE. I NOTICED WHAT APPEARED TO BE A LOCK BOX TRUCK ALONG WITH A GREEN THUNDERBIRD THERE AT THE STORE.

Q OKAY. AFTER YOU ARRIVED AND SAW THE VEHICLES THERE, WHAT'S THE NEXT THING THAT YOU DID? WHAT HAPPENED?

A MYSELF AND THE DRIVER EXITED THE STORE. I WALKED AROUND TO THE BACK; I REMOVED THE SEAL AND OPENED THE BACK DOORS OF THE TRAILER.

Q DID Y'ALL HAVE ANY INTERACTION WITH THESE INDIVIDUALS PRIOR TO THAT TIME? HOW DID YOU KNOW YOU WERE AT THE RIGHT PLACE? WHAT INTERACTION DID YOU HAVE?

A IT WAS MARKED. THE GENTLEMEN WALKED UP TO US. IT WAS JUST APPARENT TO ME THAT WE WERE AT THE PLACE AND THESE GENTLEMEN WERE WAITIN' FOR US.

Q OKAY. WHAT DID YOU DO? YOU SAID YOU BROKE THE SEAL?

A BROKE THE SEAL.

Q WHAT WAS THE CONDITION OF THE SEAL THEN IN RELATION TO WHEN YOU SAW IT SEALED IN YOUR PRESENCE BACK IN LAREDO?

A INTACT. LIKE NOTHING HAD BEEN DISTURBED.

Q OKAY. SO ONCE YOU BROKE THE SEAL, WHAT WAS THE NEXT THING THAT HAPPENED?

A AFTER I OPENED THE DOORS, I BELIEVE WE EXCHANGED SOME GREETINGS WITH THE GENTLEMEN. ONCE THE 2 UNIDENTIFIED GENTLEMEN ABOUT HISPANIC MALE. APPROXIMATELY 5 EIGHT, PROBABLY 160, 180 POUNDS, VERY ROUGH COMPLEXION, CLIMBED INTO THE BACK OF THE TRAILER AND STARTED HANDING DOWN ITEMS FOR REMOVAL.

Q OKAY. WHAT WERE Y'ALL DOING THEN AS HE WAS HANDING ITEMS DOWN OUT OF THE TRAILER?

A MYSELF, MR. DELEON AND THE OTHER HISPANIC MALE WERE TAKING THOSE ITEMS FROM 'EM AND STACKING THEM ALONG THE WALL IN FRONT OF THE STORE.

Q OKAY. WHAT -- CONTINUE. WHAT HAPPENED NEXT?

A HE REMOVED A TOTAL OF ABOUT 13 ITEMS, ONE OF THEM INCLUDING ONE OF THE CHIMNEYS THAT CONTAINED THE NARCOTICS.

Q OKAY. WHAT HAPPENED NEXT AFTER THAT?

A WE THEN AFTER STACKING ALL THOSE ITEMS, THE GENTLEMAN WITH THE ROUGH COMPLEXION GOT DOWN. IT WAS CLEAR TO ME THAT THAT WAS ALL THE ITEMS THAT THEY WERE REMOVING AT THAT LOCATION. THE DRIVER CAME BACK OUT AND HE SIGNED A BILL OF LADING. I'M SORRY. MR. DELEON SIGNED A BILL OF LADING ACCEPTING THOSE 13 ITEMS.

Q I SHOW YOU STATE'S EXHIBIT 3 FOR IDENTIFICATION AND LET ME ASK YOU TO LOOK AT THAT. IS THAT A FAIR AND ACCURATE -- OR IS THAT, IN FACT, THE ORIGINAL BILL OF LADING THAT MR. DELEON SIGNED IN YOUR PRESENCE ON

THAT DAY?

A THIS IS THE ORIGINAL DOCUMENT THAT MR. DELEON SIGNED.

MR. MAYE: MOVE TO ADMIT IT INTO EVIDENCE, YOUR HONOR.

MR. HAWKE: NO OBJECTION.

MR. SUSSMAN: NO OBJECTION.

MR. MILLER: NONE, YOUR HONOR.

THE COURT: THANK YOU. MARK IT INTO EVIDENCE, PLEASE, MA'AM.

(STATE'S EXHIBIT #3 RECEIVED IN EVIDENCE.)

Q AFTER MR. DELEON SIGNED SAYING THAT HE ACCEPTED THOSE ITEMS, WHAT WAS THE NEXT THING THAT HAPPENED?

A MYSELF, MR. DELEON AND THE OTHER 2 GENTLEMEN THEN CARRIED ALL OF THOSE ITEMS INTO THE STORE AND PLACED THEM IN A STORE ROOM IN THE BACK OF THE STORE.

Q ALL OF YOU WORKED TOGETHER? IS THAT WHAT---

A ALL OF US WORKED TOGETHER. ALL 13 ITEMS.

Q DID MR. DELEON PARTICIPATE IN THAT AS WELL?

A YES, SIR, HE DID.

Q OKAY. WHAT ELSE DID MR. -- WHAT DID MR. DELEON DO NEXT AFTER YOU TOOK THE ITEMS INSIDE THE STORE?

A I EXITED THE STORE AT THAT POINT. MR. DELEON AND THE OTHER 2 GENTLEMEN STAYED INSIDE THE STORE FOR A TIME. I WALKED BACK OUTSIDE.

Q OKAY. WHAT HAPPENED NEXT?

A I WAITED OUTSIDE FOR A FEW MINUTES. THE PURPOSE FOR ME GOIN' OUTSIDE IS I WANTED TO MAKE SURE THAT PEOPLE COULD SEE ME AND MAKE SURE I WAS ALRIGHT. I WALKED BACK OUTSIDE, WAITED OUTSIDE FOR A FEW

MINUTES. ALL 3 GENTLEMEN WALKED OUTSIDE. THEY TRIED TO CONVEY TO ME THAT I WAS GOING TO ANOTHER LOCATION. IT WAS KINDA HARD FOR ME TO UNDERSTAND. THEY WERE SPEAKIN' MOSTLY IN SPANISH. AND AT THAT POINT IN TIME I WALKED AND GOT BACK INSIDE THE TRAILER. I'M SORRY. INSIDE THE TRACTOR.

Q DID ANYBODY EVER TRY TO RETURN ANY ITEMS TO YOU OR MAKE YOU TAKE ANYTHING BACK AWAY FROM THERE?

A ABSOLUTELY NOT.

Q SO WHAT'S THE NEXT THING THAT HAPPENS?

A I WAS SEATED IN THE TRACTOR ALONG WITH THE DRIVER. MR. DELEON CLIMBED ONTO THE DRIVER'S SIDE OF THE TRACTOR AND WAS ATTEMPTING TO GIVE US DIRECTIONS WHERE TO GO TO THE NEXT STORE. WE WERE -- I DON'T -- CAN I REFER TO THAT MAP?

Q ABSOLUTELY.

THE COURT: ANY OBJECTION TO HIM REFERRING TO THAT?

MR. HAWKE: NO, YOUR HONOR.

MR. SUSSMAN: NO, YOUR HONOR.

THE COURT: KEEP YOUR VOICE UP.

A YES, SIR. WE WERE FACING -- WE HAD COME -- THIS IS THE TIENDA DELEON. WE HAD ARRIVED POINTED IN THIS DIRECTION SORTA TOWARD THE NORTHEAST. OUR TRACTOR WAS FACING THAT DIRECTION. WHEN MR. DELEON CLIMBED UP HE WAS POINTING DOWN THE BACK SIDE OF THE TRACTOR IN THE AREA OF WHAT WE REALIZED WAS BILLY'S SUPER STORE.

Q OKAY. WHAT HAPPENED NEXT? PLEASE, RETAKE THE STAND.

A WE REALLY COULDN'T -- I GOT THE IDEA HE WANTED US TO GO TO

ANOTHER LOCATION BUT I WANTED A LITTLE BIT MORE SPECIFIC. WE KINDA JUST BASICALLY LET HIM KNOW WE DIDN'T UNDERSTAND COMPLETELY. MR. DELEON MADE A PHONE CALL AT THAT TIME ON A CORDLESS PHONE, HANDED THAT PHONE TO THE DRIVER AND STATED THAT IT WAS – WELL, HE STATED THE WORD TO ME ESPHOSO (PHONETIC) WHICH MEANS IN SPANISH MY WIFE.

Q DO YOU SPEAK A LITTLE BIT OF SPANISH?

A A LITTLE BIT.

Q OKAY. WHAT HAPPENED NEXT?

A THE DRIVER AND I LEFT THAT LOCATION, TURNED THE TRUCK AROUND AND WENT AND PARKED IN THE PARKING LOT OF BILLY'S SUPER STORE AND WERE TO AWAIT SOME GENTLEMEN WE WERE SUPPOSED TO MEET AT THAT POINT. WE DIDN'T KNOW WHO.

MR. HAWKE: NO OBJECTION ON BEHALF OF DEFENDANT DELEON, YOUR HONOR.

MR. SUSSMAN: NONE ON BEHALF OF MY CLIENTS.

MR. MILLER: NONE, YOUR HONOR.

THE COURT: MARK THOSE IN EVIDENCE, PLEASE. (STATE'S EXHIBITS 12 THROUGH 15 RECEIVED IN EVIDENCE.)

Q AGENT MIZE, IF YOU CAN, USING THESE PHOTOGRAPHS AND ANY TIME YOU REFER TO ONE SHOW THE LADIES AND GENTLEMEN OF THE JURY WHERE Y'ALL SET UP AT THAT SUPER STORE.

A MAY I APPROACH THE JURY?

Q YES. PLEASE, COME DOWN FROM THE STAND. IF YOU'RE GONNA REFER TO A PHOTOGRAPH, PLEASE, JUST STATE THE EXHIBIT NUMBER.

A OKAY. EXHIBIT #12. MAY I ALSO REFER TO THE MAP TOO?

Q I DON'T SEE ANY PROBLEM WITH THAT.

MR. HAWKE: THAT'S FINE.

A WHEN WE LEFT THE TIENDA DELEON WE TRAVELED BACK UP TO THE NORTHEAST A LITTLE BIT TILL WE COULD FIND SOME PLACE TO TURN AROUND AND FIND A PLACE THAT WASN'T TOO SHARP TO TURN THE TRACTOR-TRAILER AROUND. WHEN WE CAME BACK WE PULLED INTO BILLY'S SUPER STORE HERE AND BACKED INTO A STALL WITH THE TRUCK FACING DOWN TOWARD THE SOUTHEAST ALONG THE BACK LINE.

Q OKAY.

A AND EXHIBIT #12 WE PARKED APPROXIMATELY 4 OR SO STALLS UP FROM THE ROAD RIGHT THERE. I THINK IT WAS UP FROM SOUTH CAROLINA 121. I THINK THIS WOULD BE 121. WE WERE PARKED 4 STALLS UP THIS WAY.

Q WHERE Y'ALL WERE SITTIN' WHAT WAS IMMEDIATELY BEHIND Y'ALL?

A THE GRASSY HILL.

Q HILL BEHIND YOU?

A YES.

Q WHAT WAS TO THE RIGHT AND LEFT OF YOU?

A TO THE LEFT OF US WAS THE SOUTH CAROLINA 121 AND TO THE RIGHT WAS TRAILERS THAT DIDN'T HAVE TRACTORS ATTACHED TO 'EM AND DEBRIS.

Q WHAT HAPPENED NEXT WHEN YOU WERE SITTIN' THERE? WHAT'S THE NEXT THING THAT HAPPENED?

A WE PROBABLY WAITED ABOUT 25 OR 30 MINUTES. AT THAT TIME I SAW A GREEN THUNDERBIRD COME AROUND FROM THE BACK SIDE OF BILLY'S. I GUESS IT WOULD'VE BEEN FROM THE NORTHEAST SIDE. AND FIRST I THOUGHT THEY WERE COMIN' TO US, BUT THEY ACTUALLY DISAPPEARED BEHIND OUR LINE OF

SIGHT ALONG WHERE THOSE TRAILERS AND DEBRIS WERE.

Q WHAT HAPPENED NEXT?

A A FEW MINUTES LATER THE GREEN THUNDERBIRD APPEARED BACK FROM THAT AREA WHERE I'D LOST SIGHT OF IT, PULLED AROUND TO THE SIDE OF IT AND IT WAS BEING FOLLOWED BY A YELLOW RYDER BOX TRUCK.

Q THEN WHAT HAPPENED?

A THE GREEN THUNDERBIRD PULLED ALONG THE DRIVER'S SIDE OF OUR TRACTOR AND THE BOX TRUCK PULLED UP PERPENDICULAR RIGHT ACROSS THE FRONT OF OUR TRACTOR. ABOUT 10 OR 15 FEET OR SO.

Q WAS THERE ANY WAY FOR Y'ALL TO GO AT THAT POINT IN TIME?

A ABSOLUTELY NOT. COULDN'T GO TO THE RIGHT BECAUSE OF THE DEBRIS. COULDN'T GO TO THE LEFT BECAUSE OF THE GREEN THUNDERBIRD. COULDN'T GO STRAIGHT ON BECAUSE OF THE RYDER TRUCK. AT THAT POINT THE PASSENGER OF THE GREEN THUNDERBIRD HOPPED OUTTA THE CAR. HE WALKED UP, STARTED CLIMBING UP THE DRIVER'S SIDE AND STARTED TRYIN' TO SAY, YOU KNOW, BASICALLY FROM WHAT I COULD UNDERSTAND, LET ME IN, AND KINDA PULLIN' ON THE HANDLE OF THE DRIVER'S SIDE OF OUR TRACTOR.

Q HE WAS TRYIN'—

A IT WAS VERY EVIDENT TO ME HE WAS TRYIN' TO GET INSIDE THE TRACTOR.

Q OKAY. WHAT DID YOU DO WHEN HE WAS TRYIN' TO GAIN ACCESS TO THE TRACTOR?

A KEPT TELLIN' HIM NO, NO, NO, NO, YOU CAN'T GET IN; YOU CAN'T GET IN, COMPANY POLICY SAYS YOU CAN'T GET IN. HE WAS WANTIN' TO SHOW US — THROUGH PIECEMEAL, I COULD FIGURE OUT HE WAS WANTIN' TO SHOW US, YOU KNOW, WHERE WE WERE GOIN' NEXT AND WE SAID NO NO NO NO, YOU GOTTA —

YOU NOW, WHERE ARE WE GOIN', WE NEED TO KNOW THE ADDRESS.

Q WHY WOULD YOU NOT LET HIM IN THE TRUCK? WHAT WAS GOIN' ON WITH YOU IN THE TRUCK? WHY COULD HE NOT GET IN?

A IF HE GETS IN THE TRUCK -- I'M SUPPOSED TO BE A LEGITIMATE LABORER, MYSELF AND THE DRIVER ARE A LEGITIMATE CARGO COMPANY; WE'RE NOT SUPPOSED TO BE DRUG DEALERS OR ANYTHING LIKE THAT. WE CAN'T VERY WELL LET THIS GUY IN THE TRUCK AND FRISK HIM BEFORE HE COMES IN TO MAKE SURE HE DOESN'T HAVE WEAPONS OR ANYTHING LIKE THAT. THAT WOULD, OF COURSE, ALERT SUSPICION. THE NEXT THING IS I WOULD JUST LOSE CONTROL. I MEAN IF THE GUY WAS GONNA SIT BEHIND ME, I CAN'T SEE WHAT HE'S DOIN'; I CAN'T COMMUNICATE WITH THE PEOPLE BACK OF ME BECAUSE THE PEOPLE THAT WERE FOLLOWIN' ME I CAN'T COMMUNICATE WITH 'EM ON A PORTABLE RADIO, A HAND-HELD ONE THAT YOU SEE POLICE OFFICERS WALKIN' AROUND WITH ALL THE TIME. THAT'S HOW I'M COMMUNICATIN' WITH MY BACKUP. MY WEAPON IS IN THE TRUCK. IT'S JUST -- IT'S A SITUATION WE CAN'T HAVE.

Q SO AFTER HE WAS UNABLE TO GAIN ENTRY TO THE TRUCK, WHAT HAPPENED NEXT?

A THE -- HE BASICALLY TOLD US -- WE TRIED TO FIGURE OUT AN ADDRESS. HE SAID I DON'T KNOW THE ADDRESS. WE SAID WE NEED TO KNOW WHERE WE'RE GOIN'. HE SAID YOU GUYS ARE GONNA NEED TO FOLLOW US.

Q NOW WAS THERE ANY DELAY IN THE BOX TRUCK PULLIN' UP OR DID THE BOX TRUCK PULL UP WITH THE THUNDERBIRD?

A THE BOX TRUCK PULLED UP IMMEDIATELY ALONG WITH THE THUNDERBIRD. WHILE THE PASSENGER OF THE GREEN THUNDERBIRD IS WALKING UP TO OUR SIDE, THE DRIVER OF THE GREEN THUNDERBIRD HAD

GOTTEN OUT AND WHAT APPEARED TO BE TALKING TO THE -- TO THE OCCUPANTS OF THE RYDER TRUCK ON THE DRIVER'S SIDE. IT WAS CLEAR THEY WERE THERE TOGETHER.

Q WAS IT POSSIBLE FOR Y'ALL TO LEAVE WITH THE RYDER TRUCK BLOCKING YOU IN?

A ABSOLUTELY NOT. I DIDN'T KNOW WHERE TO GO UNLESS WE WANTED TO RAM THROUGH THE VEHICLES.

Q OKAY. WHERE DID Y'ALL THEN GO WHEN THEY LEFT? WHERE'D Y'ALL TRAVEL TO?

A THE GREEN THUNDERBIRD LED A CONVOY OUT. IT WAS THE GREEN THUNDERBIRD, THEN THE RYDER BOX TRUCK, THEN OURSELVES. WE MADE A RIGHT OUT OF THAT PARKING LOT RIGHT THERE, CONTINUED SOUTH ON SOUTH CAROLINA 121 TO PADGETT ROAD.

Q COME DOWN AND SHOW THE LADIES AND GENTLEMEN OF THE JURY WHERE YOU TRAVELED ON THE MAP.

A YES, SIR. WE PULLED OUT OF THE PARKING LOT THERE. WE MADE A RIGHT-HAND TURN AND CONTINUED SOUTH TO SOUTH CAROLINA 121 TO PADGETT ROAD WHERE WE MADE A RIGHT-HAND TURN AND TURNED WEST ON PADGETT ROAD.

Q WHERE DID YOU THEN TRAVEL?

A WE TRAVELED DOWN WHERE PADGETT MAKES A -- LOOKS LIKE A DEAD END -- MAKES ALMOST LIKE A T INTERSECTION AND WE STOPPED AT THAT POINT AND MADE A RIGHT-HAND TURN AND CONTINUED DOWN THIS ROAD.

Q OKAY. YOU CAN RETAKE THE STAND. TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT THEN HAPPENED.

THE COURT: ALRIGHT. HOLD ON A SECOND. I THINK IT'S A GOOD PLACE TO STOP.

MR. MAYE: OKAY. THANK YOU.

THE COURT: JUST HAVE A SEAT RIGHT THERE FOR ME, PLEASE, AGENT.

A YES, SIR, YOUR HONOR.

THE COURT: ALRIGHT. LADIES AND GENTLEMEN, WE'RE GOING TO RECESS FOR THE DAY. I NEED YOU HERE TOMORROW, PLEASE, AT 9:30 IN THE MORNING IN THE JURY ROOM LIKE YOU WERE THIS MORNING. I HOPE YOU HAVE A PLEASANT EVENING. DON'T DISCUSS THE CASE. AND I LOOK TO SEE YOU AT 9:30 IN THE MORNING. THANK YOU. EVERYBODY ELSE REMAIN SEATED. Y'ALL JUST GIVE YOUR NOTES TO THE BAILIFF AND SHE'LL GIVE THEM BACK TO YOU IN THE MORNING. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) ALRIGHT. AGENT MIZE, DURING THE RECESS YOU'RE NOT PERMITTED TO DISCUSS YOUR TESTIMONY WITH ANYONE.

A YES, YOUR HONOR.

THE COURT: THANK YOU. YOU CAN STEP DOWN IF YOU'D LIKE.

A THANK YOU, SIR.

THE COURT: MR. HUNT, WILL YOU, PLEASE, MAKE SURE THAT THOSE PEOPLE WHO ARE NOT IN CUSTODY KNOW THAT THEY HAVE TO BE BACK HERE IN THE MORNING NO LATER THAN 9:30. DO THEY ALL UNDERSTAND?

MR. HUNT: YES, SIR.

THE COURT: DO YOU WANT THEM HERE SOONER? TELL THEM THEIR ATTORNEYS WANT THEM HERE AT 9:15. THE TRIAL WILL START AT 9:30 WHETHER THEY'RE HERE OR NOT. THANK YOU. WE'RE IN RECESS.

MR. HAWKE: THANK YOU, JUDGE.

(THE FOLLOWING OCCURRED THE NEXT DAY.)

MR. MILLER: YOUR HONOR, I WANT TO TAKE UP ONE VERY BRIEF ISSUE. YOUR HONOR, DURING THE SUPPRESSION HEARING YESTERDAY, OFFICER WASH TESTIFIED THAT THEY HADN'T DONE ANY TESTING ON THE MARIJUANA SEEDS. IF THAT MATERIAL IS GOING TO COME INTO EVIDENCE WE WOULD ASK THAT THE SEEDS BE EXCLUDED BECAUSE IT'S NEVER BEEN TESTED APPARENTLY TO DETERMINE THAT THEY ARE MARIJUANA SEEDS, AND AT THIS POINT WOULD BE -- WITH THE MARIJUANA THAT'S COMIN' IN -- I DON'T KNOW IF ERVIN HAD ANY INTENTION OF BRINGIN' THE SEEDS IN, BUT THEY DID COME IN LAST TIME. SO WE MOVE TO EXCLUDE THOSE.

AND ADDITIONALLY, YOUR HONOR, WE'VE ALREADY AGREED AND STIPULATED WITH THE PROSECUTION THAT THERE WOULD BE FINALLY MARKED ALL THE MARIJUANA AS ONE EXHIBIT.

HOWEVER, IF THEY INTEND TO INTRODUCE ONLY ONE OF THE CHIMNEYS, THEN WE WOULD LIKE TO LIMIT THE AMOUNT OF MARIJUANA THAT'S BROUGHT IN TO JUST THE 20 REPRESENTATIVE BALES THAT WOULD'VE GONE IN THAT CHIMNEY. IN THE ALTERNATIVE, IF THEY'RE GONNA BRING ALL 400 BALES, THEY NEED TO BRING IN ALL 43 CHIMNEYS SIMPLY BECAUSE ONE OF OUR POSITIONS AS DEFENDANT IS THIS WOULDN'T HAVE ALL FIT INSIDE THE TRUCK THAT THESE GUYS HAD. AND IF THEY BRING IN ONE CHIMNEY AND 400 BALES OF MARIJUANA, IT'S VERY DIFFICULT TO CONCEIVE HOW YOU COULD HIDE ALL THAT MARIJUANA IN A COUPLE OF THESE LITTLE PIECES OF FURNITURE. AND EITHER THE JURY GETS A FULL PICTURE OR THE JURY GETS A REPRESENTATIVE PICTURE. THE PROSECUTION HAS ALREADY ENTERED A PHOTOGRAPH OF ALL 400 BALES OF MARIJUANA. AND IF THEY WANNA BRING IN ONE CHIMNEY, THEN THEY JUST

NEED TO BRING IN THAT AMOUNT OF MARIJUANA THAT WOULD'VE BEEN TAKEN -- AND I'M NOT SAYING THAT THEY HAVE TO BRING IN THE EXACT BALES THAT WERE IN IT, BUT AT LEAST 3 OR 4 HUNDRED BALES OF MARIJUANA WHEN YOU'VE GOT ONE CHIMNEY, AND IT'S VERY CLEAR FROM ALL THE TESTIMONY THAT THE MARIJUANA WAS SECRETED IN THE CHIMNEYS, I FEEL IT WOULD BE MORE PREJUDICIAL THAN PROBATIVE FOR THE JURY TO SEE ALL OF THE MARIJUANA WITH ONLY ONE OF THE -- ONE OF THE ITEMS THAT IT WAS SECRETED IN.

THE COURT: Y'ALL WANNA INTRODUCE THE SEEDS?

MR. MIZZELL: YES, SIR, YOUR HONOR. WE INTEND TO INTRODUCE THE SEEDS. THEY WERE NOT TESTED. WE ARE NOT REPRESENTING THEY WERE MARIJUANA SEEDS BUT THEY WERE PART OF IT. AS I UNDERSTAND IT, THE WAY YOU TEST MARIJUANA SEEDS IS TO ACTUALLY PLANT 'EM AND SEE IF THE GERMINATE AND SEE WHAT THEY DO. WE HAVEN'T DONE THAT. I THINK IT'S ALL PART OF THE GENRE OF WHAT WAS THERE IN THE TRUCK.

THE COURT: AT THIS POINT THERE IS NOT A SUFFICIENT FOUNDATION FOR THE INTRODUCTION OF THE SEEDS. YOU MAY BE ABLE TO ESTABLISH ONE, BUT THERE'S NOT ONE NOW. THE MOTION TO SUPPRESS THE SEEDS AT THIS POINT IS GRANTED. WITH REGARD TO THE CHIMNEYS, THE RULING OF THE COURT IS THAT YOU'RE NOT REQUIRED TO BRING IN ALL THOSE CHIMNEYS. YOU MAY BRING IN ALL THE MARIJUANA. THE MARIJUANA IS NOT GONNA STAY IN THIS COURTROOM. THOSE CHIMNEYS WE'RE GONNA DO LIKE WE DID LAST TIME. WE'RE GONNA PUT 'EM OVER THERE AFTER YOU SHOW 'EM TO THE JURY WHATEVER YOU BRING IN 'CAUSE IT'S JUST TOO CROWDED UP HERE. BUT I'M NOT GONNA HAVE 905 POUNDS OF -- OR WHATEVER YOU ALL SAID IT IS OF MARIJUANA SITTING IN THIS COURTROOM. IT'LL RUN US ALL OUTTA HERE. IT CAN BE BROUGHT IN BUT IT

NEEDS TO BE LOCKED BACK UP. YOU CAN KEEP SOME REPRESENTATIVE SAMPLE IN HERE, ONE BRICK OR SOMETHIN' LIKE THAT IF YOU NEED TO.

MR. MILLER: THANK YOU, YOUR HONOR.

THE COURT: ALRIGHT.

MR. SUSSMAN: YOUR HONOR, I WOULD JOIN IN HIS MOTION AS WELL ON BEHALF OF MY CLIENTS.

THE COURT: ALRIGHT.

MR. HAWKE: THE SAME ON BEHALF OF DELEON, YOUR HONOR.

THE COURT: WELL, THE RULINGS ARE THE SAME. BRING THE JURY, PLEASE. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) ALRIGHT. MR. MAYE, I BELIEVE YOU WERE ON DIRECT.

Q AGENT MIZE, I BELIEVE WHEN WE LEFT OFF, YOU WERE -- Y'ALL WERE TRAVELIN' UP AND HAD STARTED DOWN PADGETT ROAD. SO WHAT WAS THE NEXT THING THAT HAPPENED AFTER Y'ALL TURNED OFF OF 25 AND WENT DOWN PADGETT ROAD? TELL THE LADIES AND GENTLEMEN WHAT THEN HAPPENED.

A THE RYDER TRUCK AND THE GREEN THUNDERBIRD WERE A LITTLE WAYS AHEAD OF US AT THAT POINT. BEING THAT WE WERE IN A TRACTOR-TRAILER AND GOIN' ON SOME WINDING ROADS, AND PADGETT ROAD ISN'T EXACTLY A REAL WIDE ROAD TO TURN ON, WE HAD TO SLOW DOWN QUITE A BIT. WE OBSERVED THEM AT THE END OF PADGETT ROAD IT MAKES A KINDA LIKE A T INTERSECTION OR Y. WE SAW THEM MAKE A RIGHT-HAND TURN, BOTH VEHICLES. WE WENT DOWN TO THE END OF PADGETT ROAD WHERE THAT INTERSECTION IS, AND AT THAT POINT IN TIME, BOTH VEHICLES WERE OUTTA SIGHT. WE LOOKED DOWN IN THE DIRECTION WHERE THEY WERE. IT HAD -- PADGETT ROAD IS KIND OF A GRAVELLY ROAD. ONCE YOU REACH THAT POINT IT'S MORE LIKE A HARD-

PACKED SAND IS, I GUESS, THE BEST WAY I WOULD DESCRIBE IT, AND WHEN YOU LOOK DOWN THAT RIGHT, YOU CAN SEE ONLY ABOUT 50 YARDS OR SO, AND AT THAT POINT THE CANOPY WAS REALLY HEAVY FROM THE TREES AND THERE JUST REALLY WASN'T ALL THAT MUCH THAT WE COULD SEE AT THAT POINT.

Q OKAY. LET ME ASK YOU THIS: DO YOU KNOW HOW MANY PEOPLE WERE IN THE TRUCK UP AT BILLY'S SUPER STORE?

A ALL I COULD SEE UP AT BILLY'S SUPER STORE WAS 2 INDIVIDUALS IN THE TRUCK. I COULD SEE THE DRIVER FAIRLY CLEARLY AND I COULD SEE THAT THERE WAS A SECOND INDIVIDUAL IN THERE AT THAT TIME.

Q COULD YOU TELL IF THERE WAS A THIRD ONE THERE AT THAT POINT IN TIME?

A AT THAT POINT IN TIME I COULDN'T TELL IF THERE WAS A THIRD INDIVIDUAL IN THERE.

Q WAS THERE OPPORTUNITY FOR ANYBODY ELSE TO GET IN OR OUT OF THE TRUCK AT ANY OF THE REST OF THE TIME THOUGH?

A NO, THERE WAS NOT.

Q SO AFTER YOU CAME TO THE INTERSECTION, WHAT DID Y'ALL DO? WHICH DIRECTION DID Y'ALL GO?

A WE ENDED UP TURNIN' RIGHT DOWN THAT SAME DIRECTION WHERE THE OTHER VEHICLES HAD GONE. WE FOLLOWED THAT AROUND THE BEND A LITTLE WAYS, AND AT THAT POINT WE SAW THE RYDER TRUCK WHICH AT THAT POINT IT APPEARED TO BE STUCK IN THE -- ALONG THE SIDE OF THE ROAD IN THE DITCH ON THAT ROAD.

Q COULD YOU SEE THE THUNDERBIRD AT THAT POINT?

A I COULD NOT SEE THE THUNDERBIRD AT THAT POINT.

Q SO WHAT ELSE HAPPENED?

A WE APPROACHED; WE STOPPED BEHIND THE VEHICLE, BEHIND THE RYDER TRUCK. I EXITED THE RYDER TRUCK AND I WALKED UP TO THE DRIVER'S SIDE OF THAT VEHICLE. AT THAT POINT IN TIME I'M -- AT THAT POINT IN TIME WAS WHEN I SAW THE -- THE OTHER 3 DEFENDANTS.

Q ARE THEY HERE IN THE COURTROOM NOW?

A YES, THEY ARE.

Q OKAY.

A THEY'RE THE 3 GENTLEMEN SITTING FACING THE JURY. THE GENTLEMAN IN THE BLUE SHIRT, THE GENTLEMAN IN THE TAN SHIRT, AND THE OTHER GENTLEMAN IN THE LONG SLEEVE BLUE SHIRT.

MR. MAYE: YOUR HONOR, LET THE RECORD REFLECT HE'S IDENTIFIED THE 3 OTHER DEFENDANTS IN THIS CASE.

MR. SUSSMAN: I OBJECT TO THAT, YOUR HONOR. HE HASN'T ACTUALLY IDENTIFIED WHO THEY ARE. HE JUST SAYS 3 DEFENDANTS WHO ARE SITTING OVER THERE. HE HASN'T IDENTIFIED WHO'S WHO.

THE COURT: OVERRULED.

MR. SUSSMAN: THANK YOU, YOUR HONOR.

THE COURT: IF YOU ALL HAVE AN ISSUE, YOU NEEDED TO LET ME KNOW ABOUT THIS. THE RECORD REFLECTS THAT HE IDENTIFIED 3 DEFENDANTS SEATED IN THE JURY BOX TO THE LEFT.

Q WHAT HAPPENED NEXT, AGENT MIZE?

A AS BEST AS I COULD, I COMMUNICATED -- MR. GUERRERO WHICH IS THE GENTLEMAN SEATED TO THE LEFT, HE WAS THE DRIVER OF THE VEHICLE. HE -- I COMMUNICATED AS BEST AS I COULD WITH HIM AT THAT POINT THAT, YOU KNOW,

TO FIGURE OUT THAT YES THEY WERE STUCK AND THAT WE WOULD TRY AND PUSH THEM OUT. THE OTHER 2 GENTLEMEN, I'M NOT SURE OF THEIR NAMES, MR. ORINDO (PHONETIC) AND MR. HERNANDEZ THEN EXITED THE TRUCK, AND THE THREE OF US ALONG WITH MR. GUERRERO DRIVIN' ATTEMPTED TO GET THEM OUT OF THE DITCH.

Q OKAY. WHAT HAPPENED AFTER THAT?

A WE WERE SUCCESSFUL BUT THAT ROAD IS KIND OF A -- IT'S A ROLLING ROAD JUST FROM DITCH TO DITCH. IT'S HIGHEST AT THE CENTER POINT. SO IT SEEMED LIKE PROBABLY ABOUT 3 OR 4 TIMES WHAT WOULD HAPPEN IS WE'D GET 'EM OUT OF THE DITCH, PUSH 'EM IN THE MIDDLE OF THE ROAD; HE'D SLIDE RIGHT BACK OVER AND SLIDE TO THE OTHER SIDE INTO THE DITCH. SO WE DID THIS PROBABLY FOR ABOUT 3 OR 4 DIFFERENT TIMES WHERE WE WOULD GET IT OUT AND IT'D JUST ROLL OVER TO THE OTHER SIDE OF THE ROAD.

Q WHAT WAS THE SURFACE OF THE ROAD LIKE WHAT WE'RE TALKIN' ABOUT THE SOIL THERE?

A THE ONLY WAY I CAN REALLY DESCRIBE IT IS LIKE STEPPING INTO A RED CLAY MALTED MILKSHAKE. I MEAN WHEN I GOT OUTTA THAT TRUCK, I'D NEVER SEEN ANYTHING LIKE IT. I MEAN I STEPPED AND I JUST SANK INTO THE MUD. I'M FROM -- I LIVE IN LAREDO, TEXAS NOW. I'M FROM ST. LOUIS. IT'S LIKE NOTHIN' I'VE EVER EXPERIENCED BEFORE.

Q YOUR FIRST EXPERIENCE WITH EDGEFIELD RED CLAY?

A OH, MAN, I HAD NIGHTMARES THIS MORNIN' WHEN IT WAS RAININ' AGAIN.

Q ALRIGHT. WHAT HAPPENED AFTER THAT, AGENT MIZE?

A WE FINALLY GOT THEM UNSTUCK. ABOUT I GUESS SOME 50 TO 100 YARDS DOWN FROM WHERE WE ARE, THERE'S ABOUT A 90 DEGREE BEND. I SAW THEM GO

UP AND AROUND THAT BEND. I WENT BACK TO OUR TRACTOR-TRAILER, AND I SOON FOUND OUT THAT NOW WE WERE STUCK, AND THAT TRACTOR-TRAILER WASN'T GOING ANYWHERE. I WASN'T GOING TO PUSH THAT THING OUT.

Q OKAY. WHAT HAPPENED AFTER THAT, AGENT MIZE?

A I CONTACTED MY SURVEILLANCE TEAMS WHICH HAD BEEN FOLLOWIN' US; ASKED 'EM FOR ANY GUIDANCE OR ANYTHING LIKE THAT. SOME TIME PASSED. AT ONE POINT IN TIME I DECIDED THAT I'M GONNA GO SEE IF THESE GUYS GOT OUT OF THE ROAD OR WHAT THEY'RE GONNA DO. SO I WALKED UP TO THE END OF THE ROAD WHERE THE BEND WAS. I SAW THEIR VEHICLE PROBABLY ABOUT 50 TO 100 YARDS AROUND THE BEND, AND IT WAS STUCK AGAIN.

Q LET ME ASK YOU THIS: AT ANY TIME UP TO THAT POINT HAD YOU DONE ANYTHING TO INDICATE THAT YOU WERE A LAW ENFORCEMENT OFFICER; DID YOU HAVE ANY OUTWARD SIGNS THAT YOU WERE A LAW ENFORCEMENT OFFICER OR A FEDERAL AGENT?

A NO. NOTHIN'. I WAS STILL WORKIN' AS A LABORER FOR THE TRUCKING COMPANY.

Q OKAY. SO WHAT HAPPENED AFTER THAT, AGENT MIZE?

A I ENTERED – I APPROACHED THE RYDER TRUCK. I SPOKE AGAIN WITH MR. GUERRERO IN A VERY PIECEMEAL KINDA THING. I INDICATED WE WERE STUCK AGAIN. WE WEREN'T GETTIN' IT OUT THIS TIME. YOU HAVE A TELEPHONE. I MADE HAND GESTURES. HE PRODUCED A TELEPHONE BUT HE INDICATED IN PIECEMEAL LANGUAGE THAT IT DIDN'T WORK. HE HANDED ME THE PHONE. I OPENED IT UP; AND I COULD CLEARLY SEE THAT THERE WAS NO SIGNAL FOR THAT TELEPHONE TO WORK.

Q OKAY. WHAT HAPPENED AFTER THAT?

A I LEFT, WENT BACK TO THE TRACTOR-TRAILER, AND I WAS GONNA RADIO BACK. MY CELL PHONE WASN'T WORKING EITHER, TO SEE IF I COULD GET AHOLD OF SOMEBODY THAT DID HAVE A CELL PHONE SO THAT MAYBE I COULD TAKE IT BACK TO MR. GUERRERO AND HE COULD MAKE A PHONE CALL TO THE OTHER GENTLEMAN. I SAT IN THE TRACTOR FOR A LITTLE BIT. WHEN MY ASSISTANTS CAME UP TO BRING ME A CELL PHONE, AT THAT POINT IN TIME THEY ADVISED ME THAT WE WERE GONNA TERMINATE THE OPERATION AND TO JUST STAY PUT.

Q OKAY. OTHER LAW ENFORCEMENT OFFICERS AT THAT POINT DID THEY COME OUT ON THE SCENE?

A YES, THEY DID.

Q OKAY. DO YOU KNOW WHETHER OR NOT THEY TOOK MR. HERNANDEZ, MR. GUERRERO AND MR. AVILA-ARONJA INTO CUSTODY AT THAT TIME?

A YES, THEY DID.

Q THEY DID? LOCAL LAW ENFORCEMENT DID?

A TO MY UNDERSTANDING.

Q ALRIGHT. WHEN WAS THE NEXT TIME THAT YOU SAW THE DEFENDANT MR. FREDY DELEON?

A I WENT BACK AFTER LEAVIN' THERE – I WAS FREEZIN' COLD WET – AND I WENT BACK TO THE TIENDA DELEON, AND AT THAT POINT IN TIME I RAN INTO MR. DELEON AGAIN.

Q HOW WERE YOU DRESSED AT THAT POINT IN TIME?

A SAME DRESS, ONLY THIS TIME I HAD TAKEN OUT MY BADGE AND I WAS WEARIN' IT ON A CHAIN AROUND MY NECK.

Q DID HE SEE YOU, DID MR. DELEON SEE YOU, DID Y'ALL ENCOUNTER EACH OTHER FACE TO FACE?

A YES, WE DID.

Q WHAT DID YOU NOTICE ABOUT MR. DELEON WHEN HE SAW YOU AT THAT POINT IN TIME?

A HE LOOKED LIKE HIS EYES WERE ABOUT TO BUG OUT OF HIS HEAD. DEFINITELY—

Q THAT'S ALRIGHT.

A YEAH, OKAY.

Q WHEN WAS THE NEXT TIME YOU SAW MR. RAPHAEL HERNANDEZ AND MR. HONORIO GUERRERO AND MR. ALFREDO AVILA-ARJONA?

A I WENT BACK TO THE EDGEFIELD COUNTY JAIL, AND I RAN INTO THEM AT THAT POINT.

Q HOW WERE YOU DRESSED AT THAT POINT IN TIME?

A SAME DRESS EXCEPT FOR I WAS WEARIN' MY BADGE AROUND MY NECK.

Q WHAT WERE THE PHYSICAL RESPONSES OF THESE 3 INDIVIDUALS WHEN YOU ENCOUNTERED THEM WEARING YOUR BADGE?

A I---

THE COURT: HOLD ON A MINUTE.

MR. SUSSMAN: YOUR HONOR, I WOULD OBJECT UNLESS HE'S GOING TO BE ABLE TO TELL INDIVIDUALLY HOW THEY RESPONDED.

Q TELL ME HOW—

THE COURT: SUSTAINED.

MR. MAYE: EXCUSE ME, YOUR HONOR.

THE COURT: I SUSTAINED IT. HE'S GOTTA IDENTIFY 'EM.

Q TELL ME HOW MR. HONORIO GUERRERO RESPONDED.

A EYES GOT HUGE.

Q HOW ABOUT MR. ALFREDO AVILA-ARJONA?

A EYES GOT HUGE.

Q WHAT ABOUT MR. RAPHAEL HERNANDEZ?

A EYES GOT HUGE.

Q LET ME ASK YOU THIS: AT WHO'S STORE DID YOU OFFLOAD THAT CHIMNEY WITH THE 20 BALES OF MARIJUANA IN IT? WHOSE STORE WAS THAT?

A MR. DELEON'S.

Q WHO ASSISTED YOU IN OFFLOADING THAT MARIJUANA INTO THE STORE?

A MR. DELEON.

Q WHO SIGNED FOR THE 13 PIECES OF FURNITURE THAT WERE OFFLOADED INTO HIS STORE?

A MR. DELEON.

Q WHO WAS IN THE TRUCK THAT BLOCKED YOU IN AS THEY ATTEMPTED TO GAIN CONTROL OF THE TRACTOR-TRAILER TRUCK?

A MR. GUERRERO, MR. HERNANDEZ AND MR. ARINHO (PHONETIC). I'M SORRY.

Q OKAY. OUT OF THE INDIVIDUALS THAT WERE OUT AT THE SCENE WHERE YOU GOT STUCK, WHO HAD THE ABILITY TO HAUL THE REMAINDER OF THE CHIMNEYS THAT WERE LEFT IN THE BACK OF THE TRUCK?

A THE ONLY THING THAT COULD HAUL THE CHIMNEYS WAS THE RYDER TRUCK AND THAT WAS OCCUPIED BY MR. ARINHO (PHONETIC), MR. GUERRERO AND MR. HERNANDEZ.

Q WOULD THE 22 CHIMNEYS THAT REMAINED ON THE TRACTOR-TRAILER TRUCK, WOULD THEY HAVE FIT IN THE RYDER TRUCK THAT MR. HERNANDEZ AND MR. GUERRERO AND MR. AVILA-ARJONA WERE OPERATING?

A YES, I BELIEVE SO.

Q OKAY. DESCRIBE THE AREA OUT THERE ON PADGETT ROAD. IS THAT A POPULATED AREA? ARE THERE HOUSES, ARE THERE THINGS AROUND AT THAT POINT IN TIME? WHAT IS THAT LIKE?

A EXTREMELY DESOLATE. I THINK THE POINT WHERE WE GOT STUCK THERE WAS – IT'S JUST A LONELY DIRT ROAD. ON THE LEFT WAS ALL WOODS. ON THE RIGHT I THINK IT WAS WOODS AND A LITTLE BIT OF AN OPEN FIELD AREA, BUT NO HOUSING OR SIGNS OF ANY PEOPLE OUT THERE.

Q HOW MUCH OF EDGEFIELD COUNTY DID YOU SEE THE DIFFERENT TIMES THAT YOU WERE HERE?

A I SAW THE TOWN ITSELF; I SAW THE AREA OUT BY TIENDA DELEON AND THE TRAFFIC – OR THE AREAS THAT LED ME OUT TO PADGETT ROAD.

Q HAVE YOU SEEN ANY OTHER AREA OF EDGEFIELD COUNTY THAT WAS MORE DESOLATE AND REMOTE THAN THAT DURIN' THE TIME THAT YOU'VE BEEN TO EDGEFIELD?

MR. PUETZ: JUDGE, I WOULD OBJECT UNLESS HE'S BEEN TO ALL THE OTHER AREAS. HOW IN THE WORLD COULD HE POSSIBLY TESTIFY TO THAT?

THE COURT: THAT IS SUSTAINED.

Q OF THE AREAS THAT YOU HAVE SEEN OF EDGEFIELD COUNTY, WAS THAT THE MOST DESOLATE?

A YES.

Q LET ME SHOW YOU 2 PHOTOGRAPHS HERE. I WANT YOU TO LOOK AT 'EM. WITHOUT SAYIN' WHAT THE PHOTOS ARE, DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

A YES, SIR, I DO.

Q OKAY. LET ME ASK YOU THIS: IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE THUNDERBIRD AUTOMOBILE THAT THE 2 OTHER INDIVIDUALS WERE DRIVING? THE POCK MARKED FACE GUY AND THE OTHER FELLOW I BELIEVE HIS NAME WAS RAMOS. IS THAT CORRECT?

A YES, SIR.

MR. MAYE: YOUR HONOR, I MOVE TO ADMIT THESE INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. HAWKE: NO OBJECTION ON BEHALF OF DEFENDANT DELEON, YOUR HONOR.

MR. SUSSMAN: NO OBJECTION.

MR. MILLER: NO OBJECTION, YOUR HONOR.

THE COURT: MARK THEM IN EVIDENCE, PLEASE. (STATE'S EXHIBITS 16 AND 17 RECEIVED IN EVIDENCE.)

MR. MAYE: I'M GOING TO RESERVE THE RIGHT TO RECALL THIS WITNESS, BUT THAT'S ALL I HAVE FOR HIM AT THIS TIME.

THE COURT: CROSS?

MR. HAWKE: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. HAWKE

Q MR. MIZE, YOU WERE THERE WHEN THE TRACTOR-TRAILER CAME ACROSS THE BORDER. IS THAT RIGHT?

A I WAS NOT, SIR.

Q OKAY. WERE YOU THERE SHORTLY THEREAFTER?

A 2 DAYS LATER, SIR.

Q OKAY. BEFORE IT LEFT THERE DID YOU WITNESS THE PLACING OF A SEAL

ON THE TRAILER?

A I DID, SIR.

Q AND WERE YOU AWARE THAT WHEN THE TRACTOR-TRAILER -- WHEN THE TRAILER CAME ACROSS THE BORDER THAT IT HAD SECURITY SEALS THAT HAD BEEN PLACED ON IT WHEN IT CAME ACROSS?

A THAT WOULD BE NORMAL, SIR. I'VE HEARD IT. I DON'T KNOW IF I WAS ADVISED AT THAT TIME.

Q OKAY. AND -- BUT ANYWAY, THE SEAL THAT WAS PLACED ON IT WAS PLACED ON IT -- WAS NOT THE ORIGINAL SEAL BUT A SEAL PLACED ON IT BY CUSTOMS?

A CORRECT, SIR.

Q AND YOU REMEMBER HOW MANY SEALS WERE ON THE TRAILER BEFORE YOU PLACED YOUR SEAL ON IT?

A NO, SIR.

Q ONCE YOU -- THE REASON FOR PLACING SEALS ON A TRAILER IS BECAUSE -- OR IS TO MAKE SURE THAT NO ONE HAS BEEN IN THE TRUCK. IS THAT CORRECT?

A THAT'S CORRECT, SIR.

Q AND IN THE SHIPPING INDUSTRY THAT'S A COMMON THING THEY UTILIZE.

A. CORRECT, SIR.

Q AND IT'S WELL KNOWN THAT IN THE INDUSTRY THAT IF YOUR SEALS ARE NOT THERE, THEN MOST LIKELY SOMEBODY HAS BEEN IN THE TRAILER.

A THAT'S CORRECT, SIR.

Q AND THAT'S ONE OF THE REASONS Y'ALL PLACED THE SEAL IS FOR THE SAME PURPOSE TO MAKE SURE NOBODY HAD BEEN IN IT. IS THAT RIGHT?

A THAT'S CORRECT, SIR.

Q NOW THIS PARTICULAR LOAD THAT CAME ACROSS CAME ACROSS WITH A MANIFEST, DID IT NOT?

A YES, SIR, IT DID.

Q OKAY. AND I THINK WE'VE ALREADY COVERED THE MAIN PART OF IT. I WON'T GO THROUGH THIS, BUT BASICALLY IT WAS SHIPPED FROM SEBASTIAN EXPORTACIONES IN MEXICO. IS THAT RIGHT?

A I BELIEVE SO, SIR.

Q LET ME SHOW YOU.

A SURE.

Q IS THAT RIGHT?

A YES, SIR.

Q OKAY. AND IT WAS BROKEN BY JAMCO INTERNATIONAL?

A THAT'S CORRECT, SIR.

Q IT WAS ACTUALLY CARRIED BY BORDER CARRIERS?

A CORRECT, SIR.

Q AND THERE WAS A DRIVER JOSE REBAR CONTRARAS. IS THAT RIGHT?

A YES, SIR.

Q OKAY. NOW DID YOU -- YOU JUST SORTA TOOK OVER ONCE THEY HAD DISCOVERED DRUGS IN THE TRAILER. RIGHT? YOUR GROUP.

A YES, SIR.

Q AND BASICALLY WHAT HAPPENS IS THE OTHER GENTLEMAN WHO RUNS THE X-RAY MACHINE, HE FINDS THE DRUGS AND THEN THEY CALL IN A GROUP OF INVESTIGATORS TO DO ANY FURTHER INVESTIGATION THAT Y'ALL WANT.

A THAT'S CORRECT, SIR.

Q ALRIGHT. AND BECAUSE OF THIS YOU WERE PART OF THE ORIGINAL TEAM

THAT WAS ASSIGNED TO THE TRACTOR-TRAILER TO BRING IT UP TO TRENTON FOR THE DELIVERY. IS THAT RIGHT?

A I WAS PART OF THE TEAM THAT BROUGHT IT TO TRENTON. CORRECT.

Q NOW DID YOU DO ANY OTHER INVESTIGATION? PARTICIPATE IN ANY FURTHER INVESTIGATION?

A BESIDES DOING THE UNDERCOVER, NO, SIR.

Q WHEN YOU WERE ASSIGNED TO DO THIS UNDERCOVER WORK, YOU, I THINK, WERE ASSIGNED TO DO SURVEILLANCE IS ONE THING? IS THAT RIGHT?

A I DON'T REMEMBER WHAT THE ORIGINAL ASSIGNMENTS WERE. IF YOU HAVE SOMETHING?

Q OKAY. IS THIS THE PLAN OF OPERATION THAT Y'ALL HAD PUT TOGETHER IN ORDER TO DO THIS DELIVERY?

A THIS IS THE OPERATIONAL PLAN. IT DETAILS FROM LAREDO, TEXAS TO TRENTON, SOUTH CAROLINA.

Q OKAY. AND IT'S APPROVED BY THE SUPERVISOR OVER YOUR GROUP. IS THAT RIGHT?

A THIS IS ACTUALLY -- HE WAS THE RESIDENT AGENT IN CHARGE. HE WAS NOT ONE OF THESE INDIVIDUALS.

Q OKAY. I GOTCHU.

A HE'S THE BIG BOSS.

Q ALRIGHT. HE'S THE ONE THAT HAD TO APPROVE YOUR PARTICULAR PLAN IN REGARDS TO TRANSFERRING THIS LOAD AND DOING ANY WORK THAT NEEDED TO BE DONE. IS THAT RIGHT?

A THAT'S CORRECT, SIR.

Q ALRIGHT. AND YOUR JOB WAS -- YOUR PARTICULAR 2 JOBS WERE

SURVEILLANCE. RIGHT?

A CORRECT, SIR.

Q AND PHOTOGRAPHS. RIGHT?

A CORRECT, SIR.

Q OKAY. NOW I THINK I TALKED TO YOU EARLIER AND I THINK YOU DIDN'T EVEN HAVE A CAMERA, DID YOU?

A I DON'T RECALL, SIR.

Q OKAY.

A I DON'T THINK SO.

Q DID YOU HAVE ANY AUDIO EQUIPMENT, ANYTHING TO RECORD ANYTHING?

A NO, SIR.

Q OKAY. AS A MATTER OF FACT, WOULD YOU READ THE LIST OF EQUIPMENT THAT Y'ALL TOOK WITH YOU? OR REQUESTED.

A SURVEILLANCE AND TACTICAL ENFORCEMENT EQUIPMENT, PORTABLE RADIO WHICH WE DID HAVE RADIOS; WE JUST DIDN'T HAVE -- FULLY CHARGED CELLULAR TELEPHONES, ISSUED FIREARMS AND SPARE MAGAZINES.

Q DID ANYBODY TAKE ANY CAMERAS?

A I CAN'T TELL YOU WHETHER OR NOT ANYBODY ELSE DID. I WOULD THINK SO, BUT I DON'T KNOW.

Q ARE YOU AWARE OF ANYBODY HAVING A CAMERA AS Y'ALL WENT?

A NOT THAT I CAN RECALL.

Q DO YOU REMEMBER ANYBODY HAVING ANY AUDIO EQUIPMENT LIKE A DIGITAL RECORDER?

A I DON'T REMEMBER, SIR.

Q I MEAN Y'ALL HAVE THOSE, DON'T YOU?

A WE DO, SIR.

Q AND DO YOU REMEMBER ANYBODY HAVING JUST A REGULAR HAND-HELD RECORDER, NOT A DIGITAL ONE, BUT JUST A LITTLE STANDARD MINI CASSETTE OR ANYTHING LIKE THAT?

A IT'S POSSIBLE, BUT I DON'T RECALL, SIR.

Q AND AS PART OF SOME CUSTOMS OPERATIONS, DO YOU NOT HAVE EQUIPMENT AVAILABLE TO WIRE UP THE CAB OF A -- A CAR OR A TRUCK? FOR AUDIO.

A WE HAVE -- WE HAVE AUDIO TRANSMITTERS. DO WE HAVE ANYTHING SPECIFIC FOR CARS AND VEHICLES? NO, SIR, WE DON'T.

Q OKAY. IS IT POSSIBLE TO WIRE UP A CAR OR VEHICLE SO THAT AUDIO TRANSMISSION LIKE THAT?

A YOU CAN. THERE ARE DEVICES FOR THAT.

Q AND HAVE Y'ALL DONE THAT FROM TIME TO TIME?

A I NEVER HAVE, SIR.

Q YOU ALSO HAVE THE ABILITY TO PUT IN VIDEO RECORDINGS IN THE CABS OF CARS AND TRUCKS, DON'T YOU?

A WE DON'T HAVE THAT EQUIPMENT, SIR.

Q THAT'S SOMETHING THAT YOU DO NOT HAVE.

A I'M ONE OF THE TECHNICAL AGENTS FOR OUR OFFICE, AND WE DON'T HAVE THAT EQUIPMENT.

Q OKAY. I GOTCHU. BUT NOBODY TO YOUR KNOWLEDGE CARRIED ANY VIDEO EQUIPMENT WITH THEM, DID THEY?

A NOT ON THE RIDE UP THAT I KNOW OF.

Q AS A MATTER OF FACT, WHEN YOU -- YOU, BASICALLY, MADE SOME NOTES ABOUT THIS CASE TO REMIND YOU ABOUT THE CASE. AM I CORRECT?

A NO, SIR. I DON'T HAVE ANY NOTES.

Q YOU DIDN'T MAKE ANY NOTES AT ALL?

A NO, SIR.

Q THE FIRST TIME THAT YOU PREPARED A REPORT ABOUT THIS PARTICULAR INCIDENT WAS 6 MONTHS AFTER IT HAPPENED, WASN'T IT?

A YES, SIR, APPROXIMATELY.

Q AND SO CAN YOU TELL THE JURY WHAT ALL YOU HAD TO DO TO DURING THE 6 MONTHS BETWEEN THE TIME THAT THIS PARTICULAR INCIDENT WENT DOWN AND THE TIME 6 MONTHS LATER WHEN YOU HAD PREPARED YOUR REPORT. WHAT ALL HAD DEVELOPED?

A MY OTHER CASE WORK, IS THAT WHAT YOU'RE ASKING ME?

Q CAN YOU GIVE ME ANY SPECIFICS OF ANY OF 'EM?

A OF ANY OF THOSE CASES THAT FELL IN THAT PARTICULAR TIMEFRAME? NOT WITHOUT REFERRIN' TO—

MR. MAYE: YOUR HONOR, I'M GOING TO THE RELEVANCE OF WHAT HE DID ON OTHER CASES. IN THE INTERIM. I'M NOT SURE HOW THAT'S RELEVANT TO THIS CASE.

MR. HAWKE: JUST CHECKIN' -- JUDGE, HE WAITED 6 MONTHS TO RECORD HIS NOTES. I'M JUST SEEING IF HE HAS ANY CURRENT MEMORY OF WHAT HE DID DURING THAT TIME PERIOD.

THE COURT: OBJECTION IS OVERRULED. ANSWER THE QUESTION.

Q BUT YOU CONTINUED TO WORK, DID YOU NOT?

A YES, SIR.

Q DAY IN AND DAY OUT WORKIN' DIFFERENT CASES.

A CORRECT, SIR.

Q DID YOU MAKE OTHER CONTROLLED DELIVERIES? DO YOU REMEMBER?

A DURING THAT 6-MONTH TIME PERIOD WITHOUT REFERRING BACK TO NOTES, I DON'T KNOW.

Q IS THERE ANY WAY FOR YOU TO REMEMBER RIGHT NOW WITHOUT NOTES?

A NO, SIR.

Q OKAY. NOW AFTER THIS WENT DOWN AND YOU HAD THE INFORMATION ABOUT SEBASTIAN EXPORTACIONES AND THE INFORMATION ABOUT JAMCO, INFORMATION ABOUT THIS JOSE REBAR CONTRARAS, THE FACT THAT IT CAME FROM LAREDO, ALL THE INFORMATION ON THE MANIFEST, DID YOU EVER GO BACK AND CHECK AND SEE IF THERE WERE ANY PHONE CALLS WHATSOEVER FROM MR. DELEON TO ANY OF THESE ENTITIES OR PEOPLE?

A I DID NOT, SIR.

Q OKAY. DO YOU KNOW WHO WAS SUPPOSED -- WHO WOULD'VE BEEN IN CHARGE OF DOIN' THAT?

A I WOULD IMAGINE IF ONE OF THOSE WOULD'VE BEEN DONE UNDER INVESTIGATION IT WOULD'VE BEEN THE INVESTIGATING AGENTS FROM THIS SIDE, MORE TIMES THAN NOT THOUGH YOU -- EVEN IF YOU DID DO THOSE PHONE TOLLS, THEY DON'T BEAR FRUIT WITH CALLIN' CARDS AND THINGS LIKE THAT.

Q LET ME ASK YOU THIS: TO YOUR KNOWLEDGE HAS ANYBODY DONE THAT?

A NOT TO MY KNOWLEDGE.

Q AND -- BUT WHO EXACTLY WOULD BE RESPONSIBLE FOR DOIN' THAT?

A I WOULD SAY THAT IT WOULD BE THE INVESTIGATING AGENTS FOR -- OR OFFICERS FOR THE PARTICULAR INVESTIGATION.

Q CAN YOU GIVE ME A NAME?

A I DON'T KNOW WHO FROM THE LOCAL AUTHORITIES WAS THE PRIMARY INVESTIGATING AGENT.

Q WOULD IT BE FAIR TO SAY THEN THAT IT IS THE PRIMARY INVESTIGATING AGENT OR THE LOCAL AUTHORITIES THAT WOULD BE RESPONSIBLE FOR FOLLOWING THIS UP?

A PEOPLE WHO ARE DOIN' THE PROSECUTION SIDE OF IT, IT WOULD -- IT WOULD FALL TOWARDS THEM.

Q OKAY. NOW WHO WAS YOUR CASE AGENT ON THE CUSTOMS PART OF THIS?

A IT STARTED OUT AS MICHELLE DOWLING.

Q OKAY. AND WHO WAS IT IN THE END?

A A GENTLEMAN BY THE NAME OF DEAN TUCKER.

Q ANY OTHER CASE AGENTS INVOLVED BESIDES MICHELLE DOWLING AND – IS IT DEAN TUCKER?

A I BELIEVE SO, YES.

Q OKAY. AND DEAN TUCKER.

A FROM THE CUSTOMS SIDE OF IT, NOT THAT I KNOW OF.

Q LET ME SHOW YOU DEFENDANT'S EXHIBIT #5.

A SURE.

Q THIS HAS BEEN IDENTIFIED HERE. THIS HAS BEEN IDENTIFIED AT LEAST PREVIOUSLY THAT THIS – FROM YOUR SUPERVISOR ABOUT WHAT IS BEING DONE IN THIS CASE. IS THAT RIGHT?

A THIS IS A CASE CHRONOLOGY. THIS GOES ON THE FRONT PAGE AND IT LISTS A DETAIL OF EVENTS THAT THE CASE AGENT FOLLOWS OR HAS DONE.

Q AND WHAT WAS THE LAST THING THAT WAS SUPPOSED TO BE DONE?

A DEFENDANTS IN STATE CUSTODY AWAITING TRIAL. CASE AGENT WILL EXHAUST ALL POSSIBLE LEADS.

Q OKAY. AND THE CASE AGENT THAT HE REFERRED TO IS WHO?

A MICHELLE DOWLING.

Q MICHELLE DOWLING. OKAY. AND SHE WAS TO FOLLOW UP ALL POSSIBLE LEADS THEN.

A AT THAT POINT IN TIME IT WASN'T OUR INVESTIGATION ANYMORE SO WHEN YOU REFER TO THE EXHAUSTION OF ALL LEADS, THE EXHAUSTION OF ALL LEADS WAS BEING DONE AT THIS END.

Q I'M SORRY?

A WERE BEING DONE AT THIS SIDE. I'M SORRY. IN TRENTON, SOUTH CAROLINA.

Q NOW THIS IS A FEDERAL FORM, ISN'T IT?

A THAT IS A FEDERAL FORM.

Q IT'S KEPT IN THE CUSTOMS OFFICE?

A YES, SIR, IT IS.

Q OKAY. HOW WOULD A -- TO YOUR KNOWLEDGE WOULD ANY STATE AGENT EVER BE GIVEN THIS?

A IT WOULDN'T BE COMMON PRACTICE FOR IT TO BE GIVEN.

Q OKAY. AND WHY WOULD -- WHY WOULD HE BE DIRECTING A STATE AGENT TO DO THIS AND NOT HIS OWN?

A HE WOULDN'T DIRECT A STATE AGENT TO DO IT.

Q OKAY. WELL, WHO IS HE DIRECTING WHEN IT SAYS CASE AGENT WILL EXHAUST ALL POSSIBLE LEADS?

A I WASN'T THERE. I DON'T KNOW WHO HE'S REFERRING TO. I DIDN'T TALK TO HIM.

Q WOULD IT BE FAIR TO SAY THAT IT WOULD EITHER BE AGENT DOWLING OR EITHER AGENT TUCKER?

A HE WOULDN'T BE REFERRING TO AGENT TUCKER EITHER.

Q ANYBODY KNOW WHO THIS CASE AGENT PERSON IS?

A HE MAY HAVE BEEN TALKIN' ABOUT MICHELLE. HE MAY HAVE BEEN TALKIN' ABOUT MAKIN' SURE EVERYTHING WAS DONE ON THIS SIDE. I DON'T KNOW.

Q OKAY. NOW HAVE YOU OBTAINED ANY INFORMATION THAT WOULD INDICATE THAT THE INFORMATION ON THIS MANIFEST WAS PHONED IN OR CONVEYED TO WHOEVER PREPARED THIS BY FREDY DELEON?

A I DON'T KNOW. IT WOULDN'T BE UNCOMMON.

Q OKAY. HAVE YOU FOUND ANY EVIDENCE TO SUPPORT THAT STATEMENT THAT HE IS THE ONE THAT CONTACTED THEM AND PROVIDED THIS INFORMATION?

A I HAVE NOT FOUND ANY EVIDENCE.

Q OKAY. HAVE YOU FOUND ANY CORRESPONDENCE, LETTERS OR ANYTHING LIKE THAT, ANY KIND OF PHONE INFORMATION OR ANY WAY THAT FREDY DELEON HAS CONTACTED SEBASTIAN EXPORTACIONES, JAMCO INTERNATIONAL, BORDER CARRIERS, ANY PERSON IN LAREDO?

A IT IS NOT SOMETHING THAT I DID.

Q DID YOU EVER FIND ANY INFORMATION THAT FREDY DELEON WAS INVOLVED IN ANY WAY IN THE RENTAL OF THE BOX TRUCK THAT WAS FOLLOWING THE FORD THUNDERBIRD?

A IT'S NOT SOMETHING THAT I DID.

Q OKAY. DO YOU HAVE ANY INFORMATION?

A I DO NOT.

Q DID YOU EVER FIND ANY INFORMATION WHATSOEVER THAT BEFORE THIS DAY THAT FREDY DELEON AND THE OTHER 3 CO-DEFENDANTS HAD EVER HAD ANY CONTACT WITH ONE ANOTHER BY WAY OF PHONE, MAIL OR—

A I HAVE NO PREVIOUS KNOWLEDGE.

Q NOW YOU WERE THE ONE THAT WAS PICKED TO GO ON THIS TRIP. AM I CORRECT?

A THAT'S CORRECT.

Q OKAY. YOU DO NOT SPEAK SPANISH.

A I DO NOT.

Q OKAY. AND MUCH OF THE TIME YOU HAD NO IDEA WHAT WAS BEING SAID.

A THAT'S CORRECT.

Q OKAY. AND NOBODY RECORDED OR CAPTURED ANY OF THOSE CONVERSATIONS.

A THAT WOULD BE CORRECT.

Q YOU YOURSELF DID NOT DO ANY FOLLOW UP INVESTIGATION.

A THAT'S CORRECT.

Q NOW DID ANYBODY HAVE ANY -- DID ANYBODY TO YOUR KNOWLEDGE DURIN' ANY OF THIS TRANSACTION GET A PHOTOGRAPH OF THE 2 PEOPLE THAT DROVE AWAY IN THE FORD THUNDERBIRD?

A I HAVE NOT SEEN ONE.

Q NOW YOU HAVE THIS ONE GENTLEMAN, A MR. RAMOS, AND YOU HAVE GATHERED SOME INFORMATION ON HIM. HAVEN'T YOU?

A DO YOU – DO YOU HAVE THAT? I DON'T THINK I HAVE THAT.

Q YES. ANYWAY, IN REFERENCE TO THIS RAMOS Y'ALL WERE ABLE TO GATHER ENOUGH INFORMATION WHERE YOU MADE A SKETCH OF HIM. AM I CORRECT?

A I BELIEVE THE LOCAL AUTHORITIES DID, YES, SIR.

Q ALRIGHT. AND THEY ALSO WERE ABLE TO GET ENOUGH INFORMATION TO GET HIS DATE OF BIRTH? IS THAT HIM? IS THAT THE SKETCH OF HIM? EXCUSE ME.

A THIS LOOKS ALMOST EXACTLY LIKE HIM.

Q OKAY. AND Y'ALL WERE ABLE TO PUT TOGETHER A SKETCH; YOU WERE ALSO ABLE TO DETERMINE HIS DATE OF BIRTH. RIGHT?

A I BELIEVE LOCAL AUTHORITIES DID DO THAT.

Q SOCIAL SECURITY NUMBER.

A I BELIEVE SO.

Q HEIGHT.

A I BELIEVE SO.

Q WEIGHT?

A YES, SIR.

Q ALSO YOU WERE ABLE TO DETERMINE WHERE HE HAD BEEN LIVING.

A YES, I BELIEVE THAT WAS DETERMINED.

Q DO YOU KNOW WHAT, IF ANY, FOLLOW UP INVESTIGATION THAT YOU HAVE PARTICIPATED IN OR THAT YOU'RE AWARE OF THAT ANYBODY IN CUSTOMS PARTICIPATING IN TO LOCATE THIS INDIVIDUAL?

A I HAVE NOT PARTICIPATED. I BELIEVE – IT'S JUST WHAT I BELIEVE. I BELIEVE WARRANTS WERE PLACED OUT FOR HIS ARREST. OTHER THAN THAT I JUST DON'T KNOW.

Q OKAY. ARE YOU AWARE OF ANYTHING THAT HAS BEEN DONE TO TRY AND

LOCATE HIM?

A OTHER THAN THE NORMAL PROCEDURES LIKE THAT, I DON'T KNOW.

Q I UNDERSTAND YOU'VE PUT OUT A WARRANT. ANYTHING ELSE THAT YOU'VE DONE?

A I HAVE NOT.

Q YOU KNOW OF ANYTHING ELSE THAT ANYBODY IN CUSTOMS HAS DONE?

A I DON'T KNOW.

Q NOW MR. DELEON WHEN -- WHEN YOU CAME TO HIS PLACE WERE YOU AWARE THAT HE TURNED OVER A VIDEO?

A I WAS NOT AWARE AT THAT TIME, NO.

Q YOU BECAME AWARE THAT A VIDEO HAD BEEN TURNED OVER THE LAST TIME WE HAD HEARINGS ON THIS MATTER BACK IN MARCH. IS THAT CORRECT?

A THAT'S CORRECT, SIR.

Q AND BEFORE THAT TIME YOU DIDN'T EVEN KNOW THAT HE HAD GIVEN A VIDEO.

A THAT'S CORRECT, SIR.

Q AND ON THE VIDEO WAS SUPPOSED TO BE THE OTHER GENTLEMAN OTHER THAN MR. RAMOS THAT Y'ALL WERE POSSIBLY LOOKING FOR. AM I CORRECT?

A I DON'T KNOW WHAT WAS ON THE VIDEO, SIR.

Q OKAY. HAS ANYBODY DONE ANYTHING -- HAS ANYBODY -- EXCUSE ME. I WITHDRAW THAT. I APOLOGIZE. HAVE YOU DONE ANYTHING WITH A VIDEO TO TRY TO UTILIZE IT IN ANY WAY TO TRY TO FIND THAT INDIVIDUAL?

A I HAVEN'T USED THE VIDEO.

Q HAS ANYBODY IN CUSTOMS, TO YOUR KNOWLEDGE, TRIED TO UTILIZE THAT VIDEO IN ORDER TO TRY TO IDENTIFY THAT MAN OR FIND THAT INDIVIDUAL?

A NOT TO MY KNOWLEDGE. I THINK I WAS THE ONLY ONE UP HERE LAST TIME.

Q OKAY. NOW MR. DELEON SIGNED A BILL OF LADING WHEN YOU DROPPED OFF THESE GOODS. DID HE NOT?

A HE DID, SIR.

Q AND HE -- WHEN HE SIGNED THAT BILL OF LADING---

A IT'S RIGHT THERE ON THE TOP, SIR, TO THE RIGHT.

Q THANK YOU VERY MUCH.

A YOU'RE WELCOME.

Q IT'S STATE'S EXHIBIT #3.

A YES, SIR.

Q WHEN HE SIGNED THAT BILL OF LADING, WHAT DID HE SIGN FOR? WHAT WAS HE -- WHAT DID HE AGREE THAT HE HAD RECEIVED?

A BY THE #13 IT WAS 13 PIECES OF FURNITURE I BELIEVE.

Q OKAY. SO WHAT HE SIGNED FOR WAS 13 PIECES OF FURNITURE.

A THAT'S CORRECT, SIR.

Q OKAY. NOW YOU WERE INVOLVED IN THE DAY-TO-DAY INVESTIGATION OF DRUG TRAFFICKING ACROSS THE BORDER. AM I CORRECT?

A AT THE TIME I WAS, YES, SIR. MY DUTIES HAVE CHANGED A LITTLE BIT.

Q OKAY. BUT AT LEAST AT THIS TIME PERIOD HAD YOU BEEN DOIN' IT FOR A WHILE?

A WITH CUSTOMS AT THAT POINT I'D BEEN ON ABOUT A YEAR, BUT I HAD 6 YEARS OF LAW ENFORCEMENT EXPERIENCE BEFORE THAT.

Q WELL, AS PART OF YOUR JOB, WERE YOU AWARE THAT -- THAT DRUG TRAFFICKERS MANY TIMES WILL TAKE ADVANTAGE OF PEOPLE AND TELL THEM

THAT THEY'RE SHIPPING ONE THING WHEN IN FACT THEY'RE SHIPPING SOMETHING ELSE?

A SOMETIMES. BUT, HOWEVER, WE'RE TALKIN' ABOUT ABOUT 1.5 MILLION DOLLARS WORTH OF DRUGS. SO IN MY EXPERIENCE THAT'S TYPICALLY HANDLED WITHIN AN INNER CIRCLE AND PARTIES KNOW ABOUT IT.

Q IN OTHER WORDS, ALL THE PARTIES INVOLVED IN THAT KIND OF SHIPMENT GENERALLY KNOW WHAT'S GOIN' ON.

A THE PARTIES ON THE RECEIVING END AND MR. DELEON'S. YOU WOULDN'T SEND IT SOMEWHERE WHERE—

Q BUT NOT THE PEOPLE SHIPPIN' IT.

A ACTUALLY THE BEAUTY OF A LOAD LIKE THIS IS THE FACT THAT YOU DON'T HAVE TO HAVE MIDDLE MEN. THAT WHAT YOU CAN DO IS YOU SHIP IT OUT; IT LOOKS LIKE A LEGITIMATE CARGO; THERE'S NOTHING OUTSIDE DETAILING IT WOULD BE ANYTHING. IT LOOKS LIKE IT CAME FROM A MANUFACTURER, AND IT GETS SHIPPED TO ITS ULTIMATE DESTINATION AS A TRUE COMMODITY.

Q WELL, WHAT ARE THE REASONS – AND THAT'S ONE THE REASONS YOU RELEASE ALL THE SHIPPERS. RIGHT?

A THROUGH INVESTIGATIONS ALSO, YES, SIR.

Q ALRIGHT. AND, BASICALLY, YOU RELEASE THEM BECAUSE THEY DON'T HAVE ANY KNOWLEDGE OF WHAT THEY'RE DEALING WITH. THEY DON'T HAVE ANY KNOWLEDGE THAT THEY HAVE DRUGS.

A THE ONLY PERSON THAT I KNOW OF THAT WE EVER – THAT WAS EVER TALKED TO WAS THE ORIGINAL DRIVER. ARE YOU ASKIN' ME ABOUT HIM?

Q THAT'S ONE OF 'EM.

A YES. I MEAN IF YOU DETERMINE THAT HE'S NOT INVOLVED, THEN YOU

DON'T DO IT.

Q AND THEN Y'ALL GOT A PETITION SIGNED BY BORDER CARRIERS SAYING LISTEN WE DIDN'T KNOW ANYTHING ABOUT IT AND Y'ALL LET THEM GO, DIDN'T YOU?

A MR. GARTMAN WAS HELPIN' US OUT, YES. HE WAS NOT INVOLVED IN THE SHIP – BESIDES HELPING US HE WAS NOT INVOLVED IN THE SHIPMENT.

Q YOU GOT HIM TO SIGN SOMETHIN' THAT SAID THAT BORDER CARRIERS DIDN'T HAVE ANY KNOWLEDGE OF WHAT THEY WERE SHIPPING.

A I BELIEVE HE FILLED OUT AN AFFIDAVIT, YES, SIR. I HAVEN'T—

Q WELL, IF UNKNOWN TO YOU THE DRUG DEALER MADE A DEAL WITH BORDER CARRIERS – THEY HAD REQUESTED THIS PARTICULAR CARRIER, HADN'T THEY?

A I DON'T KNOW WHO THEY REQUESTED.

Q DO YOU THINK THEY RANDOMLY DECIDE PEOPLE TO TAKE MERCHANDISE OR DO THEY HIRE SOMEBODY?

A THEY HIRE THE COMPANY, YES, SIR.

Q OKAY. THEY HIRED A COMPANY CALLED BORDER CARRIERS. RIGHT?

A IN THIS CASE I BELIEVE THEY DID, SIR.

Q AND IF THEY HAD SOME DEAL WITH BORDER CARRIERS AND GIVE THEM A KICKBACK, ALL BORDER CARRIERS HAD TO DO IS GO TO Y'ALL AND SAY Y'ALL LISTEN WE DON'T KNOW ANYTHING ABOUT IT. RIGHT?

A SIR, TYPICALLY IN CASES LIKE THIS AND WE'VE HANDLED MANY OF THESE, IT'S A LEGITIMATE TRUCKING COMPANY. IT WOULD BE LIKE – IT WOULD BE LIKE GOIN' AFTER THE POSTAL SERVICE OR GOIN' AFTER UPS OR FEDEX OR SOMEBODY LIKE THAT.

Q I UNDERSTAND THAT, BUT THE REASON THAT YOU ULTIMATELY RELEASE THEM IS THAT THEY WERE DECEIVED BY THE DEALERS IN THINKING THAT THEY'RE CARRYING FURNITURE WHEN, IN FACT, THEY'RE CARRYING DRUGS. ISN'T THAT RIGHT?

A YES, SIR.

Q AND WHEN -- WHEN THE -- AND YOU SAID ONE OF THE REASONS -- I THINK ONE OF THE REASONS Y'ALL RELEASED 'EM IS YOU SAID THAT THE SEALS WERE INTACT SO THE DRIVER WOULD HAVE NO KNOWLEDGE. RIGHT?

A I BELIEVE THAT THE SEALS WERE INTACT AND THE DETERMINATION WAS THAT THE DRIVER WAS NOT INVOLVED.

Q WHEN YOU CAME TO MR. DELEON'S STORE THE SEALS WERE INTACT, WEREN'T THEY?

A MY SEAL WAS INTACT.

Q RIGHT. OKAY. YOUR SEAL WAS INTACT.

A YES, SIR.

Q ALRIGHT. AND THEN WHEN YOU PULL IT OFF IT LOOKS LIKE WHAT?

A LOOKS LIKE WOODEN FURNITURE.

Q THE SEALS WERE STILL INTACT WHEN YOU STARTED UNLOADIN' THE FURNITURE.

A THAT'S CORRECT, SIR.

Q OKAY. LOOKED LIKE FURNITURE?

A YES, SIR.

Q Y'ALL HAULED IT OUT LIKE FURNITURE.

A YES, SIR.

Q AND WHEN YOU GOT THERE, WERE YOU SURPRISED THAT NUMBER ONE

THERE WAS NO ROOM TO STORE THIS STUFF?

A WHEN WE HAD DRIVEN PAST THE NIGHT BEFORE WHEN WE PARKED THE TRAILER, WE HAD DRIVEN BY THE STORE AND SAW IT ON THE LEFT, AND LOOKIN' AT IT UNLESS IT WAS EMPTY I WAS THINKIN' WE WERE GONNA GET DIRECTED TO ANOTHER LOCATION, YES.

Q OKAY. AND WHEN YOU – WHEN IT WAS TIME TO DECIDE WHAT WAS TO BE UNLOADED WHO WAS PICKING AND DECIDING WHAT CAME OFF AND WHAT STAYED ON?

A IF DISCUSSIONS WERE MADE BEFOREHAND, I DON'T KNOW WHAT I WITNESSED WAS THE POCK MARK GENTLEMAN JUMPED INTO THE BACK AND HE WAS HANDING DOWN PIECES OF FURNITURE.

Q THE GUY WITH THE POCK MARKS.

A YES, SIR.

Q HE'S ONE OF THE GUYS IN THE FORD THUNDERBIRD THAT'S NOW GONE AND THEY DON'T KNOW ANY INFORMATION ABOUT EXCEPT FOR THE VIDEO THAT FREDY DELEON GAVE THEM. RIGHT?

A I DON'T KNOW IF THERE'S ANY INFORMATION ON THE VIDEO. I DON'T KNOW. I CAN TELL YOU THAT I HAVEN'T HEARD ANYBODY IDENTIFY HIM YET.

Q BUT HE'S THE ONE THAT GETS ON AND STARTS SELECTING PIECES TO COME OFF.

A HE GETS ON AND STARTS HANDIN' PIECES DOWN TO US, YES, SIR.

Q NOW BEFORE Y'ALL STARTED SELECTIN' PIECES, DID Y'ALL WALK INTO THE STORE ROOM AND LOOK AT IT?

A NO, WE DID NOT.

Q OKAY. THE PIECES THAT WERE SELECTED, CAN YOU TELL ME WHICH

PIECES WERE SELECTED?

A IT WAS ASSORTED PIECES OF FURNITURE. I THINK THERE WERE A FEW CHAIRS AND MAYBE A TABLE, A – I CAN'T EVEN THINK RIGHT NOW. I'M DRAWIN' A BLANK. BUT ONE OF THOSE – SOMETHING YOU WOULD PUT DISHES IN IN LIKE A DININ' ROOM AND THEN ONE OF THE CHIMNEYS.

Q SO IT WAS ONLY ONE CHIMNEY.

A ONE CHIMNEY.

Q OKAY. AND DID MR. DELEON IN ANY WAY DIRECT WHAT CAME OFF?

A IN FRONT OF ME, NO.

Q AND THEN WHEN YOU TOOK IT OFF, WOULD IT BE FAIR TO SAY – WAS IT POSSIBLE TO TELL IT WAS MARIJUANA IN IT UNLESS YOU BROKE IT OPEN OR CRACKED IT OPEN IN SOME WAY?

A IT LOOKED LIKE A REGULAR PIECE OF CHEAP FURNITURE.

Q AND – AND THE PIECES THAT WERE BEING UNLOADED THE GREAT MAJORITY OF THEM, 12 OUT OF 13, DIDN'T HAVE ANY MARIJUANA IN 'EM. ISN'T THAT RIGHT?

A THAT'S CORRECT.

Q OKAY. AND THERE'S –. THERE'S NO INDICATION THAT FREDY DELEON WAS PREPARED IN ANY WAY TO ACCEPT THE SHIPMENT OF THE SIZE THAT CAME IN. AM I CORRECT?

A OF THE FULL SIZE?

Q YES.

A I DON'T KNOW WHAT MR. DELEON'S PLANS WERE.

Q NOW DID HE HAVE ROOM FOR IT?

A FOR THE ENTIRE SHIPMENT IN THAT STORE? NO, SIR.

Q OKAY. AND AFTER -- AFTER Y'ALL -- ONCE Y'ALL GOT THE PIECES OUT, WASN'T IT RAININ' OUTSIDE?

A YES, SIR, ABOUT LIKE I GUESS IT WAS WHEN THE JURY WALKED IN THIS MORNIN'. KINDA LIGHT RAIN.

Q OKAY. AND THEN THE FURNITURE -- THAT FURNITURE SAT OUT IN THE RAIN FOR A WHILE?

A ORIGINALLY WE--

Q WHILE YOU WERE TRYIN' TO FIGURE OUT WHAT TO DO.

A ORIGINALLY WE STACKED IT ALONG AS WE WERE PULLIN' THE PIECES OUT, EACH PIECE AT A TIME, WE JUST WENT AND STACKED IT ALONG THE WALL. IF YOU LOOKED AT THE PICTURE AGAIN, YOU CAN SEE THAT THERE'S AN OVERHANG, AND IT WAS COVERIN' IT FROM THE RAIN.

Q OKAY. AND THEN WHY DID YOU STACK IT OUTSIDE RATHER THAN JUST TAKE IT IN?

A I DON'T KNOW. I WAS FOLLOWIN' THE LEAD OF MR. DELEON AND MR. RAMOS.

Q AND MR. DELEON IS UNLOADING THIS FURNITURE THAT I GUESS Y'ALL THINK HE KNEW MARIJUANA WAS IN AND HE'S PUTTING IT OUT IN FRONT OF HIS BUILDING IN THE PUBLIC EYE?

A YES, SIR.

Q JUST SETTIN' IT OUT THERE. HOW LONG DID IT SET OUT THERE IN FRONT OF THE STORE?

A AS LONG AS IT TOOK US TO TAKE OFF THE 13 PIECES OF FURNITURE AND MAYBE GUESSIN' 30 SECONDS BEYOND THAT.

Q OKAY. AND THEN WHERE DID Y'ALL MOVE TO?

A THE POCK MARK GENTLEMAN JUMPED OUT OF THE TRUCK AND THEN THE 4 OF US BEGAN MOVIN' THAT – ALL THOSE 13 ITEMS BACK INTO MR. DELEON'S STORE ROOM.

Q OKAY. AND THEN WHAT HAPPENED?

A I EXITED THE STORE.

Q OKAY. SO YOU JUST WENT OUTSIDE.

A THAT'S CORRECT.

Q ALRIGHT. AND THEN EVERYTHING FROM THAT POINT FORWARD WAS DIRECTED BY WHO?

A ORIGINALLY BY MR. DELEON.

Q OKAY.

A BECAUSE HE IS THE ONE THAT TOLD US TO GO DOWN TO BILLY'S SUPER STORE.

Q OKAY. THE ONLY THING HE DID WAS PROVIDE YOU DIRECTIONS TO BILLY'S SUPER STORE. RIGHT? HE DID NOT MAKE THE DECISION. AM I CORRECT?

A WELL, I WOULDN'T KNOW THAT.

Q OKAY. YOU DON'T HAVE ANY INFORMATION THAT MR. DELEON MADE THE DECISION TO GO TO BILLY'S SUPER STORE. DO YOU?

A MR. DELEON IS THE ONE THAT TOLD ME TO GO TO BILLY'S SUPER STORE.

Q ALRIGHT. LET ME ASK YOU THIS THOUGH: REMEMBER YOUR PREVIOUS TESTIMONY IN MARCH? GO TO PAGE 265 AND 266 FOR ME, PLEASE, SIR.

MR. HAWKE: HAVE YOU GOT AN EXTRA COPY THAT I CAN LOOK AT?

Q YOU GO DOWN TO THE QUESTION AT THE BOTTOM OF 265.

A CORRECT.

Q HOW IS IT INDICATED YOU WERE GOING TO THE SECOND LOCATION AND

WHO INDICATED TO YOU TO GO TO THE SECOND LOCATION. WHAT WAS YOUR ANSWER THEN, SIR?

A WHEN WE ORIGINALLY WALKED OUT---

Q NO, NO, NO. WHAT WAS YOUR ANSWER?

A WHEN I WALKED OUTSIDE AND WAS STANDIN' OUT BACK---

Q NO. WHAT WAS YOUR ANSWER?

A I BELIEVE IT WAS EITHER MR. RAMOS OR AT THE TIME---

Q WHAT WAS YOUR ANSWER THEN, SIR?

A I'M READING IT, SIR. YOU'RE TALKIN' ABOUT THAT ONE. RIGHT?

Q PAGE 265. THE LAST QUESTION.

A OKAY. I BELIEVE IT WAS EITHER MR. RAMOS---

Q THAT'S WHAT I WANT YOU TO READ INSTEAD OF WHAT YOU'RE SAYING.

A OKAY. I BELIEVE IT WAS EITHER MR. RAMOS OR AT THAT TIME THE OTHER GENTLEMAN WITH THE BAD COMPLEXION. I THEN---

Q OKAY. DID THEY SPEAK ANY ENGLISH.

A I RESPONDED I.

Q AND I SAID IF YOU DON'T KNOW DID THEY SPEAK ANY TO YOU.

A MY SPANISH IS VERY POOR. THEIR ENGLISH IF THEY SAID ANYTHING IT WAS PIECEMEAL WORDS THAT WERE VERY -- IT WAS VERY DIFFICULT FOR ME TO UNDERSTAND.

Q BUT BACK THEN YOU TOLD ME MR. RAMOS AND THE MAN WITH THE POCK MARK FACE WERE THE ONES THAT TOLD YOU WHERE TO GO. AM I CORRECT?

A IN THE NEXT QUESTION I EXPLAINED TO YOU THAT MR. DELEON WHEN HE CLIMBED UP ON THE TRACTOR TOLD US WHERE TO GO.

Q RIGHT. THAT'S WHAT I JUST SAID. HE CAME UP TO YOU AND GAVE YOU

DIRECTIONS. IS THAT CORRECT?

A THAT'S WHAT I SAID.

Q AND THE ONES THAT MADE THE DECISION ABOUT WHERE TO GO WAS MR. RAMOS AND THE MAN WITH THE POCK MARK FACE.

A I DON'T KNOW WHO MADE THE DECISION WHERE TO GO.

Q BACK THEN YOU SAID IT WAS THEM.

A NO. I SAID THEY CAME UP AND WERE TELLIN' ME ABOUT I WAS GONNA GO TO ANOTHER LOCATION, AND THEN MR. DELEON EXPLAINED TO ME WHERE.

Q OKAY. TURN TO PAGE 317, SIR. OKAY. WE HAVE TO START ON THE PREVIOUS PAGE. PAGE 316.

A YES, SIR.

Q AND THE QUESTION WAS OKAY AND THAT WAS AFTER Y'ALL GOT DIRECTIONS. YOU TRIED TO GET DIRECTIONS FROM THE OTHER GUY. HE WAS TRYING TO TELL YOU. MR. DELEON TRIED TO TELL YOU. RIGHT? AND YOUR ANSWER WAS WHAT?

A CAN YOU SHOW ME WHERE YOU ARE?

Q 316 AT THE VERY BOTTOM. OKAY?

A OKAY.

Q OKAY? OKAY AND THAT WAS AFTER Y'ALL GOT DIRECTIONS AND YOU TRIED TO GET DIRECTIONS FROM THE OTHER GUY. HE WAS TRYING TO TELL YOU MR. DELEON TRIED TO TELL YOU. RIGHT. AND YOUR ANSWER WAS WHAT? THIS IS JUST TO PUT IT IN CONTEXT.

A NO SIR ALL HE DID WAS INDICATED THAT THE FIRST GENTLEMAN BEHIND THE TRAILER JUST INDICATED WE ARE GOING TO ANOTHER LOCATION.

Q ALRIGHT. AND WHO WAS THAT?

A IT WAS ONE OF THE 2. IT WASN'T MR. DELEON. IT WAS ONE OF THE 2 GENTLEMEN KNEW. IT WAS BACK UP IN THE – TRACTOR HOPPED UP ON THE DRIVER'S SIDE AND WAS INDICATING TO US WHERE TO GO.

Q SO IT WASN'T MR. DELEON.

A MR. DELEON IS THE ONE THAT TOLD ME WHERE TO GO.

Q DIDN'T YOU JUST SAY RIGHT HERE YOU SAID IT WAS ONE OF THE 2; IT WASN'T MR. DELEON. IS THAT WHAT YOU SAID THEN?

A THE ORIGINAL PEOPLE BEHIND WEREN'T.

Q THAT'S ALL. I THINK WE HAVE MADE OUR POINT. MR. RAMOS KNEW THERE WAS MARIJUANA IN THIS LOAD. DID HE NOT?

A I THINK SO.

Q OKAY. AND HE FLED?

A YES, SIR.

Q HE LEFT HIS CAR.

A YES, SIR.

Q QUIT HIS JOB.

A YES, SIR.

Q LEFT HIS HOME.

A I WOULD ASSUME SO.

Q THE OTHER GUY WITH THE POCK MARK FACE HE KNEW THERE WAS MARIJUANA IN THIS LOAD, DID HE NOT?

A I THINK SO.

Q HE'S GONE.

A YES, SIR.

Q NOBODY'S SEEN HIDE NOR HAIR OF HIM EITHER.

A CORRECT, SIR.

Q THAT'S MR. RAMOS' CAR, ISN'T IT?

A THAT'S THE CAR MR. RAMOS WAS IN, YES, SIR. WHETHER IT WAS HIS OR NOT I DON'T KNOW.

Q OKAY. ALRIGHT. IT'S THE ONE HE LEFT.

A I WOULD ASSUME IT WAS HIM THAT LEFT IT.

Q NOW HAVE YOU PARTICIPATED IN DRUG RAIDS?

A YES, SIR.

Q AND FROM TIME TO TIME HAVE YOU EVER EXECUTED AFFIDAVITS FOR SEARCH WARRANTS?

A I HAVE.

Q AND AS PART OF THAT IN YOUR AFFIDAVIT FOR A SEARCH WARRANT WHEN YOU HAVE SOMEBODY THAT YOU SUSPECT IS A DRUG DEALER IT'S NOT UNUSUAL FOR YOU TO PUT IN THE AFFIDAVIT THAT YOU EXPECT TO FIND DRUGS AT THE LOCATION.

A THAT'S THE PURPOSE OF DOING A DRUG RAID, YES, SIR.

Q OKAY. AND IT'S NOT UNUSUAL FOR YOU TO EXPECT TO FIND CASH, LARGE SUMS OF CASH, IS IT?

A SOMETIMES YOU DO; SOMETIMES YOU DON'T.

Q OKAY. BUT MANY TIMES WHEN YOU'RE PUTTIN' IN AN AFFIDAVIT FOR A SEARCH WARRANT, YOU'RE SAYIN' ONE OF THE THINGS WE'RE LOOKIN' FOR IS DRUGS, LARGE SUMS OF CASH, THINGS LIKE THAT. RIGHT?

A CORRECT.

Q OKAY. YOU WOULD ALSO EXPECT TO FIND -- AND MANY TIMES YOU WOULD PUT IN AN AFFIDAVIT FOR A SEARCH WARRANT THAT YOU WOULD

EXPECT TO FIND PACKAGING MATERIAL IN ORDER TO REPACKAGE DRUGS IN ORDER TO SELL THEM. ISN'T THAT CORRECT?

A IF YOUR ASSUMPTION WAS THAT IT WAS GONNA BE REPACKAGED, YES, SIR.

Q OKAY. AND IT'S ALSO NOT UNUSUAL FOR YOU TO PUT IN YOUR AFFIDAVIT FOR A SEARCH WARRANT TO EXPECT TO FIND SCALES OR ITEMS USED IN ORDER TO WEIGH DRUGS AND REPACKAGE THEM AND SELL THEM.

A I WOULD PUT THAT IN AN AFFIDAVIT.

Q OKAY. AND IT WOULD ALSO NOT BE UNUSUAL FOR YOU TO PUT IN AN AFFIDAVIT TO EXPECT TO FIND DRUG PARAPHERNALIA.

A IF THE PERSON WAS A USER, DEFINITELY. IN THIS CASE I -- IT JUST DEPENDS ON THE TYPE OF PARAPHERNALIA YOU'RE TALKIN' ABOUT.

Q NOW MR. DELEON WHEN Y'ALL CAME INTO HIS SHOP THAT DAY HE DIDN'T KNOW Y'ALL WERE COMIN', DID HE?

A NOT TO MY KNOWLEDGE.

Q OKAY. AND WHEN YOU WENT IN THERE DID YOU FIND ANY DRUGS? OTHER THAN -- I KNOW WHAT YOU FOUND WHEN YOU BUSTED UP HIS FURNITURE, BUT ANY OTHER DRUGS?

A NOT TO MY KNOWLEDGE.

Q DID YOU FIND ANY PARAPHERNALIA?

A NOT TO -- NOT TO MY KNOWLEDGE.

Q DID YOU FIND ANY LARGE SUMS OF CASH?

A NOT TO MY KNOWLEDGE.

Q DID YOU FIND ANY REPACKAGING MATERIAL?

A NO, I DID NOT.

Q DID YOU FIND ANY SCALES?

A NOT TO MY KNOWLEDGE.

Q NOW AT THIS POINT IN TIME BEING THAT FREDY -- THAT Y'ALL APPARENTLY AT THIS TIME HAD DETERMINED OR THOUGHT THAT FREDY WAS A DRUG DEALER. I'M SURE THAT YOU USED THE INFORMATION THAT Y'ALL HAD JUST FOUND 40 POUNDS OF MARIJUANA IN A PIECE OF FURNITURE AND BUSINESS TO DO AN AFFIDAVIT FOR HIS HOME, DIDN'T YOU?

A I DID NOT.

Q I'M SURE YOU USED IT TO GET AN AFFIDAVIT FOR A SEARCH WARRANT FOR HIS CAR, DIDN'T YOU?

A I DID NOT.

Q ANYBODY EVER SEARCH HIS HOME OR HIS CAR?

A I HONESTLY DON'T KNOW, SIR.

Q THIS FORD THUNDERBIRD BELONGED TO MR. RAMOS, DIDN'T IT?

A YES, SIR.

Q YOU REMEMBER ANYBODY INVOLVED IN THE INVESTIGATION DOIN' AN AFFIDAVIT FOR A SEARCH WARRANT TO SEARCH IT?

A I WAS TOLD THERE WAS.

Q THERE WAS. SO MR. RAMOS' CAR Y'ALL USED THE INFORMATION ABOUT THE DRUGS THAT WERE SEIZED TO GET AN AFFIDAVIT FOR A SEARCH WARRANT TO SEARCH HIS CAR.

A I DID NOT BUT I WAS TOLD THAT IT WAS DONE.

Q NOW AT THE END OF ALL THIS -- LET'S GO BACK A LITTLE BIT. FROM THE TIME YOU LEFT FREDY DELEON'S PLACE UNTIL THE TIME YOU GOT STUCK AND COULDN'T GO ANY FURTHER, Y'ALL CALLED THIS WHOLE DEAL OFF. WHO WAS

DIRECTING Y'ALL WHERE TO GO?

A AFTER WE LEFT THE STORE, THE POCK MARK GENTLEMAN WAS THE ONLY ONE THAT WE HAD SPOKEN TO AND THEN WE FOLLOWED OUT THE GREEN THUNDERBIRD AND THE RYDER TRUCK.

Q HOW MUCH MARIJUANA WERE YOU HAULIN' WHEN THESE PEOPLE WERE DIRECTIN' YOU WHERE TO GO AND WHAT TO DO?

A AN ADDITIONAL 22 MANTLES AVERAGING -- I GUESS IT'S ABOUT 20 BUNDLES PER MANTLE. SO ALL BUT ONE.

Q ABOUT 440 PACKAGES?

A I DON'T KNOW THE NUMBER OF PACKAGES. I CAN JUST TELL YOU THAT – YEAH.

Q IF IT WAS THE AVERAGE AMOUNT.

A YEAH. YEAH. AVERAGE SOMEWHERE AROUND THERE. SOMEWHERE AROUND 400 PACKAGES.

Q OKAY. WELL, IF IT'S 22 MANTLES AND YOU SAID THEY AVERAGE 20, THAT WOULD—

A SOMEWHERE AROUND THAT NUMBER. I DON'T KNOW THE EXACT NUMBERS BY ANY MEANS.

Q A LITTLE OVER A KILO EACH. 2.2 POUNDS IT WAS A LITTLE BIT MORE. THEY AVERAGE RIGHT AROUND THERE. RIGHT?

A ABOUT A KILO. HONESTLY, I WASN'T INVOLVED IN THE WEIGHING.

Q SO ABOUT—

A THAT WAS ABOUT THAT SIZE IN BUNDLES.

Q ABOUT 880 OR SO POUNDS? HE'S DIRECTING?

A I'M ASSUMING, YES, SIR.

Q AND DID ANYBODY FROM CUSTOMS BRING A MAP OF EDGEFIELD COUNTY WITH 'EM? Y'ALL HAVE ONE IN THE CAR?

A NO, WE DIDN'T.

Q ANYBODY -- WHO WAS IN CHARGE OF BLOCKING OFF THE OTHER END OF THE ROAD TO MAKE SURE THESE GUYS DIDN'T GET AWAY?

A I DON'T KNOW, SIR.

Q YOU KNOW WHOSE JOB THAT WAS?

A IT WAS OUT OF MY PRIVY. I DON'T KNOW WHO WAS ASSIGNED THAT.

Q OKAY. I THINK THAT'S ALL.

THE COURT: ALRIGHT, MR. SUSSMAN.

MR. HAWKE: LET ME—

THE COURT: YES, SIR?

Q WOULD YOU AGREE, AGENT, THAT IF YOU REALLY THOUGHT THAT FREDY DELEON WAS A DRUG DEALER AND YOU REALLY THOUGHT THAT HE WAS INVOLVED IN DRUG TRAFFICKING THAT IT WOULD BE A REALLY BIG THING -- THAT THE RIGHT THING TO DO AND THE GOOD THING TO DO WOULD HAVE BEEN TO EXECUTED A SEARCH WARRANT?

A IT DEPENDS ON THE INVESTIGATION. THAT'S WHAT IT DEPENDS ON. I DON'T -- I WOULD HAVE TO BE FLUIDLY INVOLVED IN IT TO KNOW WHETHER OR NOT THAT WAS THE RIGHT THING.

Q GO TO YOUR TRANSCRIPT PAGE 333 AND 334, FOR ME, PLEASE.

A I'M SORRY. WHICH PAGE?

Q PAGE 333. LAST QUESTION AT THE BOTTOM. MY QUESTION AT THAT TIME WAS WOULD YOU AGREE THAT IF THEY JUST -- I SAID IF YOU REALLY THOUGHT HE WAS A DEALER, YOU REALLY THOUGHT HE WAS INVOLVED IN DRUG TRAFFICKING

THAT THAT WOULD BE A GOOD THING TO DO AND I WAS REFERENCING A SEARCH WARRANT. AND WHAT WAS YOUR ANSWER THEN?

A. THAT'S PROBABLY WHAT I WOULD DO, BUT I JUST DON'T KNOW.

Q THANK YOU, SIR.

THE COURT: ALRIGHT, MR. SUSSMAN.

MR. SUSSMAN: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. SUSSMAN

Q AGENT MIZE, I'M WILLIAM SUSSMAN AND WE HAVE MET BEFORE.

A WE HAVE, SIR.

Q OKAY. AND THE FIRST TIME THAT YOU EVER RAN INTO OR MET ALFREDO AVILA AND RAPHAEL HERNANDEZ WAS WHEN YOU WERE BASICALLY AT THE BILLY'S PARK -- THAT'S THE FIRST TIME YOU SAW THEM AT THE BILLY'S PARKING LOT.

A CORRECT, SIR.

Q IT WASN'T FREDY'S STORE.

A NO, SIR.

Q IT WASN'T LAREDO, TEXAS.

A NO, SIR.

Q AND YOU NEVER HAD A CONVERSATION WITH 'EM AT BILLY'S.

A CORRECT, SIR.

Q AND I THINK YOU SAID THAT YOU PULLED THE SEMI INTO BILLY'S AND BACKED IT UP IN A PARKING LOT WHERE THERE WAS A FIELD BEHIND YOU.

A CORRECT, SIR.

Q AND THERE WAS SOME DEBRIS AND TRAILERS ON THE RIGHT SIDE OF THE

SEMI.

A CORRECT, SIR.

Q AND THAT WHEN YOU SAW THE THUNDERBIRD COME UP WITH THE RYDER TRUCK FOLLOWING IT, THE RYDER TRUCK WAS FOLLOWING THE GREEN THUNDERBIRD RIGHT BEHIND IT?

A CORRECT, SIR.

Q AND SO IF I'M THE SEMI – IF I'M THE SEMI AND THIS IS THE FIELD AND YOU'RE BACKED UP HERE FACING OUT.

A CORRECT, SIR.

Q BILLY'S IS OVER HERE AND THE STORE ITSELF IS OVER HERE TO THE RIGHT.

A CORRECT, SIR.

Q AND YOU'RE THE PASSENGER.

A I'M THE PASSENGER.

Q THE CANADIAN WAS THE DRIVER.

A THAT'S CORRECT, SIR.

Q WHAT WAS HIS NAME?

A PAUL – I WAS GETTIN' IT WRONG BEFORE. I THINK IT'S ACTUALLY PAUL GARTEN.

Q OKAY. SO PAUL'S ON THE LEFT DRIVING.

A CORRECT.

Q YOU GOT DEBRIS AND TRAILERS OR SOMETHING OVER HERE TO THE RIGHT.

A A STALL OR 2 OVER, YES.

Q IF I RECALL YOUR LAST TESTIMONY YOU SAID—

A IT WAS DEBRIS ON THE RIGHT SIDE. CORRECT, SIR.

Q AND THEN THE T-BIRD COMES ACROSS YOUR FRONT AND PULLS UP TO THE DRIVER'S SIDE.

A YEAH, KINDA ANGLED OVER LIKE THAT.

Q OKAY. AND THEN THE RYDER TRUCK'S RIGHT BEHIND IT?

A CORRECT, SIR.

Q AND THEY STOP RIGHT IN FRONT OF YOU.

A CORRECT, SIR.

Q IF THEY DIDN'T THEY WOULD'VE RUN INTO THE BACK OF THE T-BIRD.

A NOT EXACTLY.

Q OKAY. AND THEY WERE 10 OR 15 FEET IN FRONT OF YOU WHEN THEY STOPPED.

A CORRECT, SIR.

Q SO THEY STOPPED OUT IN FRONT OF THE CAB OF THE TRACTOR, STOP ME WHERE THE RYDER TRUCK IS.

A RIGHT ABOUT THERE, SIR. RIGHT ABOUT THE END OF THAT TABLE RIGHT THERE.

Q SO THAT THE CAB OF THE TRUCK IS OVER THERE BY THE WALL.

A FROM THE FRONT OF THE TRAILER TO ABOUT I WOULD SAY ABOUT THE MIDDLE OF THAT TABLE IS THE DISTANCE IN BETWEEN.

Q AND THEY STOP IN THE FRONT.

A THAT'S CORRECT, SIR.

Q NOW DO YOU – COULD YOU TELL ME WHICH ONE'S ALFREDO?

A NOT AT THIS TIME, SIR.

Q CAN YOU TELL ME WHICH ONE IS RAPHAEL?

A NO, SIR.

Q NOW YOU TOLD THIS JURY THAT THEY PULLED IN FRONT OF YOU BLOCKING YOU IN.

A CORRECT, SIR.

Q BUT – BUT ALFREDO WAS THE DRIVER, WASN'T HE?

A NO, SIR, HE WAS NOT.

Q RAPHAEL WAS NOT THE DRIVER.

A THEY WERE JUST OCCUPANTS OF THE VEHICLE.

Q JUST LIKE YOU WERE AN OCCUPANT IN YOUR VEHICLE.

A YES, SIR.

Q AND WHEN YOU PREPARED THIS REPORT 6 MONTHS AFTER THE EVENT, YOU NEVER INDICATED ANYWHERE IN HERE THAT THEY WERE BLOCKING YOU IN.

A THE SYNOPSIS?

Q YES.

A I DON'T RECALL IF I DID OR NOT. I INDICATED THAT THEY PULLED UP.

Q .AND STOPPED IN FRONT OF YOU.

A CORRECT, SIR.

Q YOU NEVER SAID THEY BLOCKED YOU IN IN YOUR REPORT.

A THEY DID BLOCK US IN.

Q YOU NEVER SAID IN THE REPORT THAT THEY BLOCKED YOU IN.

A THIS IS A SYNOPSIS OF EVENTS.

Q THAT'S SOMETHING THAT YOU WROTE OUT.

A CORRECT, SIR.

Q TYPED OUT.

A CORRECT, SIR.

Q IT'S A 2-PAGE SUMMARY OF WHAT YOU DID IN THIS INVESTIGATION.

A CORRECT, SIR.

Q YES?

A YES, SIR.

Q AND YOU SIGNED IT.

A CORRECT, SIR.

Q JUST KEEP THAT.

A OKAY.

Q YOU HAVEN'T LOOKED AT THAT SINCE A YEAR AND HALF AGO?

A NO, I THINK I LOOKED AT IT ABOUT 3 OR 4 MONTHS AGO.

Q YOU HAVEN'T LOOKED AT IT SINCE YOU'VE BEEN UP HERE?

A NOT THIS TIME, NO, SIR.

Q OKAY. BUT YOU USED IT TO REFRESH YOUR RECOLLECTION.

A SOMEWHAT, SIR. MY RECOLLECTION ISN'T SO BAD SINCE WE TALKED ABOUT IT A FEW MONTHS AGO.

Q BUT THE THING IS THAT YOU WRITE THESE REPORTS OR SUMMARIES TO REFRESH YOUR RECOLLECTION SO THAT YOU CAN REMEMBER WHAT YOU DID 2 YEARS AGO.

A THAT PLUS I BELIEVE I WAS CONTACTED BY MR. PERRY. HE ASKED ME TO PREPARE A WRITING -- REPORT.

Q BUT WOULDN'T YOU AGREE THAT IT'S HELPFUL TO HAVE SOME SORT OF NOTE OR SUMMARY OF WHAT YOU DID TO REFRESH YOUR RECOLLECTION OF WHAT HAPPENED 2 YEARS AGO?

A I'M GLAD I HAVE IT, YES, SIR.

Q NOW IN YOUR TESTIMONY YOU INDICATE ALSO THAT THE DRIVER OF THE

VEHICLE, OF THE T-BIRD, GOT OUT — I'M SORRY. I'M SORRY. THE PASSENGER OF THE T-BIRD WHICH PULLED UP NEXT TO YOU GOT OUT AND CAME OVER TO THE DRIVER'S SIDE?

A OF OUR VEHICLE, YES.

Q TRYIN' TO GET IN.

A CORRECT, SIR.

Q YOU'RE INVOLVED IN A DISCUSSION PIECEMEAL NO YOU CAN'T COME IN IT'S COMPANY POLICY.

A ABSOLUTELY, SIR.

Q ALRIGHT. NOW HOW LONG WERE YOU OUT THERE WITH THIS T-BIRD AND THIS RYDER TRUCK BEFORE Y'ALL PULL OFF TO GO TO THIS DESOLATE AREA?

A A FEW MINUTES.

Q SO DURING THAT FEW MINUTES THE DRIVER OF THE T-BIRD PULLS UP.

A CORRECT, SIR.

Q RYDER TRUCK BEHIND HIM.

A I WAS AT THE PARKING LOT FOR ABOUT 25 OR 30 MINUTES UNTIL THEY PULLED UP AND THEN WE WERE TOGETHER FOR ABOUT A FEW MINUTES BEFORE WE LEFT.

Q AS I SAID—

A OKAY.

Q —YOU'RE OUT THERE ON THE PARKING – IN THE BILLY'S PARKING LOT WITH THE T-BIRD AND THE RYDER TRUCK FOR A FEW MINUTES.

A CORRECT, SIR.

Q DURING THAT TIME THE T-BIRD DRIVES UP AND PULLS TO THE SIDE OF YOU.

A CORRECT, SIR.

Q THE RYDER TRUCK'S BEHIND HIM IN FRONT OF YOU.

A CORRECT, SIR.

Q AND THEN THE PASSENGER OF THE T-BIRD GETS OUT AND COMES TO THE DRIVER'S SIDE OF YOUR VEHICLE TRYIN' TO GET IN.

A CORRECT, SIR.

Q AT NO TIME DID MR. AVILA OR MR. HERNANDEZ GET OUT OF THEIR VEHICLE.

A NOT THAT I SAW, SIR.

Q WELL, DID YOU HAVE THEM IN YOUR VIEW?

A YES. I WAS – I WAS PAYING ATTENTION TO THIS GUY BUT OF COURSE I WAS LOOKIN' OVER HERE BECAUSE I WAS WORRIED THAT THEY WERE GONNA GET OUT, YES, SIR.

Q THEY NEVER MADE ANY THREATENING MOVES TO YOU.

A BESIDES THE BLOCKIN' IN, NO.

Q WELL, THEY WEREN'T DRIVING THE VEHICLE.

A I'M SORRY. THOSE INDIVIDUALS, NO, SIR.

Q ALFREDO AVILA AND RAPHAEL HERNANDEZ, THEY WERE JUST SITTING THERE. RIGHT?

A I'M GUESSING.

Q I'M ASKING YOU WHAT YOU SAW. NOT WHAT YOU GUESS AT, BUT WHAT YOU SAW WHEN YOU WERE SITTING THERE.

A I BELIEVE I CAN ONLY – I CAN ONLY TELL THAT THERE WAS ONE OF THE GENTLEMEN IN THE VEHICLE AT THAT POINT ANYWAY.

Q AS FAR AS YOU KNOW, THE ONE YOU SAW WAS JUST SITTING THERE.

A AS FAR AS I KNOW.

Q OKAY. AND YOUR ATTENTION WAS DIVIDED?

A CORRECT.

Q OKAY. AND YOU DIDN'T SEE ANY CONTACT BETWEEN ANY OCCUPANT OF THE T-BIRD AND THE INDIVIDUALS IN THE RYDER TRUCK.

A INCORRECT. I SAW THE DRIVER OF THE T-BIRD WALK UP TO THE DRIVER'S SIDE, AND IT APPEARED THAT THEY WERE TALKING.

Q COULDN'T HEAR WHAT THEY SAID.

A COULDN'T HEAR WHAT THEY SAID.

Q EVEN IF YOU COULD, YOUR SPANISH IS POOR.

A THAT WOULD BE CORRECT.

Q THERE WAS NO PARABOLIC MICROPHONES THAT WERE KEYED IN TO THESE PEOPLE WHERE YOU COULD HEAR CONVERSATIONS FOR 50 OR 100 YARDS AWAY.

A NOT TO MY KNOWLEDGE.

Q YOU'RE FAMILIAR WITH THOSE THOUGH, AREN'T YOU?

A WE DON'T USE THOSE THINGS.

Q YOU'RE FAMILIAR WITH THOSE THINGS.

A I'VE SEEN 'EM IN MAGAZINES.

Q YOU'RE—

A AND THE MOVIES.

Q YOU'RE THE TECH – I THOUGHT YOU SAID YOU WERE ONE OF THE TECH AGENTS.

A PARABOLIC MICROPHONES DON'T WORK VERY WELL. THE ONES THAT DO ARE ABOUT YEA BIG. THE ONES YOU SEE AT LIKE FOOTBALL GAMES AND STUFF LIKE THAT, THOSE ARE THE ONLY ONES THAT'LL WORK (UNINTELLIGIBLE).

Q SO YOU ARE FAMILIAR WITH THEM.

A I'VE SEEN 'EM AND I'VE HEARD ABOUT 'EM, YES, SIR.

Q NO VIDEO TAPE OF WHAT HAPPENED OUT THERE.

A NOT TO MY KNOWLEDGE.

Q YOU THINK IF THERE WAS YOU'D KNOW ABOUT IT?

A I WOULD ASSUME SO, BUT—

Q *YOU WOULD HOPE SO. IF IT WAS PART OF YOUR TEAM YOU WOULD LIKE* TO KNOW IF THEY'RE VIDEO TAPING THIS, WOULDN'T YOU?

A I WOULD ASSUME THEY WOULDA TOLD ME.

Q NOW YOU SAID THAT THE DRIVER OF THE T-BIRD GOT OUT AND WENT OVER TO THE DRIVER'S SIDE OF THE RYDER TRUCK?

A THAT'S CORRECT.

Q AND THEY HAD A CONVERSATION DURING THAT 1 OR 2 MINUTES WHILE YOU WERE OUT THERE ALL TOGETHER?

A YES.

Q OKAY. YOU THINK THAT'S SIGNIFICANT?

A I THINK IT SHOWS A COLLABORATION BETWEEN THE TWO, YES.

Q YOU SAID A COLLABORATION?

A THEY WERE TALKIN'. THEY WERE—

Q THEY WERE TALKING?

A SURE.

Q YOU DON'T KNOW WHAT THEY WERE TALKING ABOUT.

A OH, I DON'T KNOW.

Q YOU DON'T KNOW WHAT THEY WERE COLLABORATING ABOUT.

A ONE CAN ONLY ASSUME THE CIRCUMSTANCES WE WERE IN.

Q WELL, YOU MAKE A LOT OF ASSUMPTIONS BUT WE WANT TO HEAR WHAT THE EVIDENCE IS. YOU DON'T KNOW WHETHER THEY WERE TALKIN' ABOUT WHERE THEY'RE GOING FOR LUNCH.

A NO, I DON'T KNOW.

Q OKAY. BUT YOU THOUGHT THAT MEANT SOMETHING, THAT THAT WAS SIGNIFICANT. THAT THIS DRIVER GOT OUT AND WENT AND SPOKE TO THE DRIVER OF THE RYDER TRUCK.

A YEAH, IT WAS—

Q IS THAT IN YOUR REPORT?

A IT'S NOT IN MY SUMMARY, NO.

Q I DIDN'T HEAR YOU.

A IT'S NOT IN MY SUMMARY, NO.

Q SO THAT'S SIGNIFICANT AND YOU THINK IT'S SIGNIFICANT. THAT, IN FACT, IS NOT IN YOUR SUMMARY.

A MY TESTIMONY IS MY SIGNIFICANCE, SIR.

Q THAT SIGNIFICANT FACT YOU JUST TESTIFIED TO IS NOT IN YOUR SUMMARY.

A IT'S NOT IN THE SUMMARY.

Q NOW YOU PREPARED THAT SUMMARY 6 MONTHS AFTER THIS INCIDENT.

A YES, SIR.

Q AND YOU'RE TESTIFYING 2 YEARS AFTER THIS INCIDENT.

A THAT'S CORRECT, SIR.

Q DO YOU THINK YOUR MEMORY OF THE INCIDENT IS BETTER NOW 2 YEARS LATER OR DO YOU THINK IT WAS BETTER 6 MONTHS AFTER THE INCIDENT?

A I WOULD SAY IT WOULD BE BETTER 6 MONTHS AFTER.

Q BECAUSE YOU TEND TO LOSE A LITTLE AS TIME GOES ON.

A SURE, BUT YOU GUYS HAVE BEEN NICE ENOUGH TO REFRESH MY MEMORY A LOT.

Q WELL, WE'RE JUST TRYIN' TO ACCOMMODATE. DID YOU MEASURE THE CHIMNEYS?

A I DID NOT.

Q DID YOU MEASURE THE INSIDE OF THE TRUCK? OF THE RYDER TRUCK.

A I DID NOT.

THE COURT: HOLD ON. WE NEED TO STOP. I THINK THE WEATHER IS DISTRACTING. SO LET'S JUST STOP TILL THEY FIND OUT WHAT'S GOIN' ON OR IT JUST PASSES THROUGH. AND THEN WE'LL FIND OUT WHAT TO TELL THE JURY. LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO STEP BACK IN THE JURY ROOM AND I'LL TRY TO FIND OUT IF THERE'S ANY TYPE OF SEVERE WEATHER REPORTS ON. IF THERE'S NOT, I'LL LEAVE YOU THERE; IF THERE IS, I'LL MOVE YOU DOWN INTO THE BASEMENT. DON'T DISCUSS THE CASE. LEAVE YOUR NOTES THERE. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.)

MR. HAWKE: I THINK YOU DID RIGHT. IT WAS DISTRACTIN' ME AND I WAS TRYIN' TO PAY ATTENTION.

THE COURT: ALRIGHT. THERE'S A PRETTY SEVERE THUNDERSTORM GOIN' ON RIGHT NOW AND THE WIND IS BLOWIN' THE RAIN SIDEWAYS AND THE LIGHT FIXTURES OUTSIDE ARE SWINGIN' BACK AND FORTH. THIS COURTHOUSE HAS A TIN ROOF. I DON'T KNOW ABOUT ANYBODY ELSE. I'M UNDER THE COLD AIR VENT. SO I CAN'T HEAR MUCH OF ANYTHING. AND, MR. SUSSMAN, I WAS JUST AFRAID THAT THE JURY WAS BEIN' DISTRACTED FROM WHAT WAS GOING ON AND THE LIGHTS WERE BLINKING ON AND OFF FROM TIME TO TIME. SO LET'S JUST LET THIS

PASS OVER. MR. MIZE, I THINK YOU KNOW THE DRILL. YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYBODY DURIN' THE BREAK. AND WE'RE AT EASE. (THERE WAS A BRIEF RECESS.) THERE WAS A BUNCHA HAIL OUT AT THE JETT MIDDLE SCHOOL AREA. I DON'T KNOW WHAT IT'S DOIN' TO THE PEACHES. ANYWAY, WE'LL TRY IT AND SEE HOW IT GOES. BRING THE JURY IN. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) OKAY. LADIES AND GENTLEMEN, I'M SORRY. IT HAD JUST GOTTEN SO LOUD IN HERE AND THE WIND WAS BLOWIN' SO HARD AND THE RAIN. WE PUT NEW WINDOWS IN THE COURTHOUSE I GUESS – WHEN DID WE REMODEL, MR. DUNN? HOW LONG HAS IT BEEN SINCE WE REMODELED? WELL, THEY'RE NOT REAL OLD, BUT ACTUALLY THE WIND WAS BLOWIN' SO HARD IT BLEW AWAY 3 OF THE SEALS IN THE WINDOWS. BUT WE CHECKED AROUND AND APPARENTLY THERE IS ANOTHER WAVE THAT MAY BE COMIN'. THERE'S HAIL OUT AT THE JETT MIDDLE SCHOOL AREA. BUT I DON'T KNOW OF ANY TORNADOES, TORNADIC ACTIVITY OR ANYTHING LIKE THAT. IF WE GET WORD OF ANYTHING WE'LL CERTAINLY PASS IT ALONG TO YOU. I DON'T WANT YOU SITTIN' OVER THERE WORRYIN' ABOUT YOUR PROPERTY AND YOUR FAMILY OR ANYTHING LIKE THAT. WE CHECKED AND DOUBLE CHECKED AND WE HAVEN'T HEARD OF ANYTHING EXCEPT HIGH WINDS. MR. SUSSMAN, YOU CAN DOUBLE BACK SOME IF YOU WANT TO.

MR. SUSSMAN: OH, I WOULDN'T DO THAT.

THE COURT: WELL, I DON'T KNOW HOW HARD IT IS TO HEAR IN DIFFERENT PARTS OF THE COURTHOUSE. I GOT A BUNCHA SHEET METAL RIGHT ABOVE MY HEAD. SO I GOT TO THE POINT WHERE I COULD BARELY HEAR ANYTHING Y'ALL WERE SAYING. ALRIGHT.

MR. SUSSMAN: READY?

THE COURT: I'M READY.

Q SO AS I UNDERSTAND IT, AGENT MIZE, THERE'S NO MENTION IN YOUR SUMMARY THAT YOU DID 6 MONTHS AFTER THE INCIDENT ABOUT ANYONE GETTING OUT OF THE T-BIRD AND GOING TO THE RYDER TRUCK.

A I DON'T SEE IT IN THERE, SIR.

Q OKAY. YOU HAVE ANY DOUBTS ABOUT THE COPY OF THE SUMMARY YOU DID?

A I HAVE NO DOUBT, SIR.

Q NOW WAS - YOU AS FAR AS YOU KNOW, YOU HAD MR. AVILA AND MR. HERNANDEZ AND MR. GUERRERO FOR THAT MATTER IN YOUR COMPANY, SO TO SPEAK, FROM BILLY'S SUPER STORE UNTIL THE TIME THAT EVERYONE GOT STUCK DOWN AT THE FIELD.

A FOR THE MOST PART, YES, SIR.

Q AND YOU AS AN ACTING, COOPERATING, PARTICIPATING AGENT IN THIS FEDERAL INVESTIGATION AND SOME STATE INVESTIGATION HAD NO KNOWLEDGE OF MR. AVILA'S OR MR. HERNANDEZ'S PARTICIPATION IN THIS CASE PRIOR TO THE TIME YOU FIRST SAW THEM AT BILLY'S SUPER STORE.

A OTHER THAN THEIR ACTIONS WITH ME, NO, SIR.

Q WELL, YOU DON'T REALLY EVEN KNOW WHAT THEIR ACTIONS WERE BEFORE THEY GOT TO BILLY'S SUPER STORE, DO YOU?

A JUST THOSE THAT I WITNESSES PERSONALLY, SIR.

Q THAT'S WHAT I WAS SAYING.

A YES.

Q AND AT THE TIME YOU'RE AT BILLY'S SUPER STORE, WOULD IT BE FAIR TO SAY THERE IS STILL AN ONGOING FEDERAL INVESTIGATION?

A FROM WHERE I WAS, I THOUGHT SO, YES, SIR.

Q AND THE AGENT IN CHARGE OF THE INVESTIGATION FROM LAREDO, TEXAS TO TRENTON WAS WHO?

A LAREDO, TEXAS TO TRENTON WAS MICHELLE DOWLING.

Q OKAY. AND SHE'S HERE TODAY.

A YES, SIR, SHE IS.

Q AND AS FAR AS YOU KNOW SHE WAS TESTIFYING YESTERDAY.

A THAT'S CORRECT, SIR.

Q AND THE SURVEILLANCE THAT WAS SET UP PART OF THIS OPERATION IN TRENTON, SOUTH CAROLINA WAS COMPRISED OF 2 TEAMS.

A I HONESTLY DON'T RECALL, SIR. I DON'T KNOW.

Q YOU HAVEN'T TALKED TO ANY AGENT THAT'S INVOLVED IN THE INVESTIGATION SINCE IT HAPPENED 2 YEARS AGO?

A I THINK LAST TIME WHEN WE TALKED, WE TALKED ABOUT THERE BEING MULTIPLE TEAMS. BUT I WOULD GUESS IT'S CORRECT. I HONESTLY JUST DON'T KNOW EXACTLY HOW MANY.

Q YOU DIDN'T HAVE ANY MEETINGS BEFOREHAND AND TRY TO HAVE A GAME PLAN?

A THERE WAS A MEETING BEFOREHAND THAT MORNING BEFORE WE LEFT THE SALUDA COUNTY AIRPORT. RIGHT AT THAT POINT IT WAS DECIDED THAT'S WHEN I WAS TOLD THAT I WAS GONNA BE DOIN' THE UNDERCOVER PORTION OF THIS. AT THAT POINT I STEPPED AWAY AND STARTED TALKIN' TO THE DRIVER AND STARTED TALKIN' TO HIM ABOUT SECURITY ISSUES. WHAT WAS REALLY SAID AROUND ME WAS THE REST OF THE PEOPLE ORGANIZING INTO THEIR TEAMS AND STUFF. I REALLY DON'T KNOW.

Q YOU DIDN'T REALLY HAVE ANY CONCERN OR CARE ABOUT WHO WAS GOING TO BE COVERING YOUR BACK. IS THAT WHAT YOU'RE SAYING?

A WELL, I KNOW PEOPLE WERE GONNA BE COVERIN' MY BACK, BUT MY IMMEDIATE CONCERN WAS MYSELF AND THE DRIVER.

Q NOW WHEN YOU TOOK – WHEN THERE WAS THAT CONVERSATION AT FREDY'S STORE, THAT WAS DONE ON CELL PHONE AT SOME POINT, THERE WAS SOME CONVERSATION BETWEEN FREDY'S WIFE WHEN YOU WERE THE DRIVER ON THE CELL PHONE?

A I BELIEVE IT WAS ON A CORDLESS TELEPHONE.

Q IT WAS NOT A CELL PHONE.

A I DON'T THINK SO, NO. AS I RECALL IT WAS A CORDLESS TELEPHONE.

Q OKAY. DID YOU EVER LIFT ANY OR SEE ANYBODY LIFT ANY FINGERPRINTS FROM THE SEMI THAT MATCHED EITHER OF MY CLIENTS' FINGERPRINTS?

A I DID NOT, NO, SIR.

Q DO YOU KNOW WHETHER OR NOT THERE ARE ANY FINGERPRINTS THAT WOULD INDICATE MY CLIENTS TOUCHED THAT SEMI?

A NOT TO MY KNOWLEDGE. I NEVER SAW THEM TOUCH THE SEMI.

Q DID YOU EVER SEE MY CLIENTS MR. HERNANDEZ AND MR. AVILA EVER GO INTO THE SEMI?

A I DID NOT, SIR.

Q DID YOU EVER SEE ANY OF THEM LOOK INSIDE THE SEMI?

A I DID NOT, SIR.

Q WAS THE SEMI OPENED IN THEIR PRESENCE?

A WE DID NOT GET TO THAT POINT, SIR.

Q SO THE SEMI WAS NEVER OPENED IN THEIR PRESENCE.

A NO, SIR.

Q YOU WOULD HAVE NO UNDERSTANDING OR YOU WOULD HAVE NO KNOWLEDGE OF HOW LONG THEY WERE EVEN IN EDGEFIELD.

A I DON'T KNOW, SIR.

Q YOU DON'T KNOW HOW LONG -- YOU DON'T KNOW IF THEY'VE EVER EVEN BEEN TO EDGEFIELD.

A I DON'T KNOW WHERE THEY'RE FROM, SIR. I DON'T KNOW WHERE THEY'VE BEEN.

Q YOU DON'T REALLY HAVE ANY KNOWLEDGE OF ANY EVIDENCE THAT WOULD INDICATE THAT THEY HAD ANY PRIOR CONTACT WITH EDGEFIELD COUNTY.

A I DON'T KNOW, SIR.

Q YOU WERE A PARTICIPATING AGENT IN THE INVESTIGATION.

A SOMEWHAT, YES, SIR.

Q YOU DID HAVE CONVERSATION WITH THE OTHER PARTICIPATING AGENTS IN THE INVESTIGATION.

A CORRECT, SIR.

Q AGENTS SHARE INFORMATION.

A YES, SIR.

Q OKAY. NOW LET'S TALK ABOUT THE TRIP DOWN RED CLAY ROAD FOR JUST A SECOND. OKAY? THAT'S A TRIP YOU'LL ALWAYS REMEMBER, ISN'T IT?

A RELIVE THE NIGHTMARE, YES, SIR.

Q THESE ARE EDGEFIELD COUNTY RESIDENTS.

A I'M SORRY.

Q NOW THE T-BIRD WAS IN THE LEAD.

A YES, SIR, IT WAS.

Q THE RYDER TRUCK WAS FOLLOWING.

A CORRECT, SIR.

Q THE TRACTOR-TRAILER WAS FOLLOWING.

A CORRECT, SIR.

Q THE CONVOY GOIN' DOWN THE ROAD.

A CORRECT, SIR.

Q AGENTS ALL AROUND MONITORING.

A YES, SIR.

Q FOR YOUR SAFETY.

A I SURELY HOPE SO, SIR.

Q OKAY. YOU HAD NEVER BEEN TO EDGEFIELD BEFORE.

A JUST SINCE THAT NIGHT BEFORE. THAT'S IT.

Q DIDN'T KNOW WHERE YOU WERE HEADED.

A NO CLUE.

Q DIDN'T KNOW WHO YOU WERE DEALIN' WITH.

A NOT AT THAT POINT.

Q THESE FELLOWS THAT SHOWED UP IN THE RYDER TRUCK YOU DIDN'T KNOW WHO THEY WERE.

A MADE ME NERVOUS.

Q I CAN'T HEAR YOU.

A MADE ME NERVOUS.

Q THEY NEVER THREATENED YOU.

A 3 NEW PEOPLE IN THE MIDDLE OF A DRUG DEAL, SIR.

Q THEY NEVER THREATENED YOU.

A NO, THEY NEVER COME UP TO THE VEHICLE AT ALL.

Q YOU DIDN'T HEAR ANY CONVERSATION, DIDN'T UNDERSTAND ANY CONVERSATION THEY HAD.

A NO, SIR. I WAS INSIDE THE TRUCK.

Q DID YOU LOOK ON A MAP -- THE BRIEFING YOU HAD BEFORE YOU WENT OUT ON THIS OPERATION?

A I DON'T RECALL. I THINK THAT WE WERE -- THE WAY IT WAS WORKING WAS WE WERE BEING LED TO A CERTAIN POINT, AND THEN FROM THAT POINT WE KNEW WHERE THE TIENDA DELEON WAS FROM THERE.

Q BUT I MEAN YOU DIDN'T LOOK; YOU DIDN'T ACTUALLY STUDY A MAP REGARDING WHERE YOU WERE GOING TO BE GOING OR WHERE YOU WERE GOING TO BE?

A NOT THAT I RECALL, SIR.

Q SO YOU WERE DOWN THIS ROAD; DON'T KNOW WHERE YOU ARE.

A YES, SIR.

Q IT'S RAINING PRETTY HARD AT THAT POINT.

A THAT'S CORRECT, SIR.

Q AND HOW LONG DID IT TAKE FOR YOU TO GET TO THE POINT ON THE RED CLAY ROAD WHEN YOU TURNED OFF THE MAIN ROAD?

A FROM 25 TURNING ONTO PADGETT, I WOULD SAY TO WHERE PADGETT HITS THE Y. IF I HAD TO GUESS A QUARTER TO A HALF A MILE TO THE Y.

Q OKAY. WELL, THE WHOLE OPERATION FROM BILLY'S TO THE POINT WHERE YOU GOT STUCK WAS ABOUT -- TOOK YOU ABOUT 20 MINUTES TO GET TO THAT POINT?

A I WOULD SAY SO.

Q YOU WEREN'T GOING PARTICULARLY FAST.

A NO, SIR.

Q THE 18-WHEELER IS NOT EXACTLY LIKE A PORSCHE.

A NO, SIR.

Q THE GREEN CAR WAS LEADING YOU, THE GREEN T-BIRD WAS LEADING YOU.

A THAT'S CORRECT, SIR.

Q LEADING YOU AND THE RYDER TRUCK.

A THAT'S CORRECT, SIR.

Q THEY WEREN'T TRYIN' TO LEAD YOU.

A IT DIDN'T APPEAR TO BE, NO, SIR.

Q IT WAS APPROXIMATELY 10 A.M. IN THE MORNING WHEN THIS OCCURRED.

A APPROXIMATELY, YES, SIR.

Q SO IT'S LIGHT OUT BUT YOUR VISION WAS OBSCURED BY THE RAIN.

A SOMEWHAT, SIR.

Q YOU COULD SEE,

A SURE.

Q DID YOU HAVE EYE CONTACT ON THE T-BIRD IN FRONT OF YOU AROUND THE BACK OF THE RYDER TRUCK?

A WE WERE SITTING HIGH ENOUGH PLUS WHEN YOU GO AROUND BENDS YOU CAN, OF COURSE, SEE WHAT'S IN FRONT OF A VEHICLE BECAUSE IT'S NOT IN YOUR DIRECT LINE OF SIGHT SO WE'D CATCH GLIMPSES OF IT HERE AND THERE.

Q BUT THE T-BIRD AND THE RYDER TRUCK, WHILE IT DIDN'T LOOK LIKE THEY WERE TRYIN' TO GET AWAY THEY WERE PULLIN' AWAY FROM YOU SOMEWHAT?

A YES, SIR.

Q BUT YOU HAD TO SLOW DOWN FOR THE CURVES AS YOU'RE GOIN' BACK IN THERE.

A CORRECT, SIR.

Q THEN YOU COME TO THE Y IN THE ROAD.

A CORRECT, SIR.

Q THEY BOTH TURN TO THE RIGHT.

A CORRECT, SIR.

Q YOU FOLLOW THEM.

A CORRECT, SIR.

Q AND IT WAS AT THAT POINT THAT YOU LAST SAW THE GREEN T-BIRD.

A WHEN I SAW THEM MAKE THE RIGHT TURN ONTO THE Y, THAT WAS THE LAST TIME I SAW THE GREEN T-BIRD.

Q AND THEN SOMEWHERE SHORTLY AFTER THAT, THE GUYS IN THE RYDER TRUCK GOT STUCK.

A YES, SIR.

Q DIDN'T SEE THE T-BIRD ANYMORE AFTER THAT.

A DID NOT SEE THE T-BIRD ANYMORE AFTER THAT.

Q AND THEN I THINK YOU'VE ALREADY TESTIFIED IT WAS ABOUT 3 OR 4 TIMES WHERE IT GOT STUCK; YOU GOT IT OUT; IT GOT STUCK; YOU GOT IT OUT, THAT KINDA THING.

A CORRECT, SIR.

Q SO YOU GUYS WERE OUT THERE, BASICALLY, FOR ABOUT AN HOUR TO AN HOUR AND A HALF?

A I THINK -- IT SEEMED LIKE FOREVER. I'M GUESSIN' LIKE AN HOUR AND A HALF TO 2 HOURS.

Q WHAT ABOUT PAUL, THE CANADIAN GUY? WHAT WAS HE DOIN' ALL THIS TIME YOU WERE DOIN' THIS TEAM WORK OF GETTING STUCK AND THAT STUFF?

A I HAD THE DRIVER STAY IN THE VEHICLE FOR HIS SAFETY. THAT'S WHERE MY RADIO WAS AND THAT IF SOMETHING WERE TO HAPPEN TO ME HE COULD RADIO FOR OUR ASSISTANCE.

Q BUT WHILE YOU WERE OUT THERE NOTHIN' HAPPENED.

A WE ARE TRYIN' TO PUSH THE TRUCK OUT.

Q THESE GUYS WEREN'T -- I MEAN THE 3 SPANISH FELLOWS IN THE RYDER TRUCK WEREN'T THREATENING YOU.

A THEY SEEMED HAPPY TO HAVE MY BACK.

Q HAVE YOUR MUSCLE?

A I'M NOT SAYIN' I GOT THAT MUCH BUT—

Q ALRIGHT. OF COURSE YOU DIDN'T REVEAL TO THEM THAT YOU WERE A POLICE OFFICER.

A IT WOULD'VE GOTTEN A LITTLE MORE HAIRY AT THAT POINT.

Q WELL, YOU'RE ASSUMING THAT. AREN'T YOU?

A YES, I AM. I AM DEFINITELY ASSUMING THAT.

Q WE KNOW ABOUT ASSUMPTIONS. LET ME ASK YOU THIS: YOU SAID YOU WERE SCRUFFIER THAN YOU ARE NOW?

A YEAH, I WASN'T LOOKIN' THIS PRETTY.

Q YOU CERTAINLY DIDN'T LOOK LIKE MAYBE WHAT A NORMAL POLICE OFFICER WOULD LOOK LIKE.

A I WOULDN'T THINK I DID, NO, SIR.

Q THAT WAS THE POINT. RIGHT?

A THAT WAS THE POINT.

Q BECAUSE YOU WERE UNDERCOVER.

A THAT'S CORRECT, SIR.

Q YOU'RE SUPPOSED TO BE A LEGITIMATE TRUCK DRIVER OR HELPER.

A CORRECT, SIR.

Q AND DURING ALL THIS TIME YOU WERE GETTING STUCK AND UNSTUCK, THESE 3 FELLOWS IN THE RYDER TRUCK THEY NEVER CAME BACK TO CHECK ON THE 18-WHEELER, DID THEY?

A NO, SIR.

Q THEY DIDN'T GO BACK AND LOOK INSIDE TO SEE IF EVERYTHING WAS ALRIGHT WITH THE CARGO, DID THEY?

A NO, THEY DID NOT.

Q AND THE T-BIRD NEVER CAME BACK, DID IT?

A IT DID NOT.

Q AND YOUR CONVERSATION WITH THE 3 MEXICAN GUYS WAS KIND OF SORT OF A PIGEON KINDA ENGLISH-SPANISH, HAND SIGNALS PROBABLY.

A A LOT OF THAT IT BASICALLY PREMISED ON THE FACT OF FIGURING OUT HOW WE'RE GONNA GET THE TRUCK UNSTUCK AND LATER ON TRYIN' TO MAKE A PHONE CALL.

Q IN FACT, MR. GUERRERO ACTUALLY GAVE YOU HIS CELL PHONE.

A HE TRIED TO INDICATE TO ME THAT I GUESS THAT IT WAS NOT WORKING. HANDED IT TO ME. I LOOKED AT IT AND I COULD SEE THERE WAS NO SIGNAL.

Q BUT HE HANDED YOU THE CELL PHONE.

A HE DID.

Q SO FINALLY YOU REALIZED THAT NOW AFTER ALL THIS PUSHIN' AND THROWIN' AND STICKIN' AND UNSTICKIN', THE 18-WHEELER WAS STUCK.

A OH, YEAH.

Q COULDN'T PUSH THAT OUT.

A I COULD NOT.

Q SO THAT'S – NOW WHEN YOU WENT BACK TO CHECK ON THE 18-WHEELER, WHERE WERE OUR 3 HAPPY MEXICAN GUYS?

A THEY WERE GOIN' STRAIGHT AND THEY WERE GOIN' AROUND THE CORNER OUTTA MY SIGHT.

Q SO DIDN'T YOU ALLEGEDLY LEARN OR FIND OUT THAT THEY GOT STUCK AGAIN?

A ACTUALLY WE WERE STUCK FOR A LITTLE WHILE. WE WAITED, AND THEN I ENDED UP WALKIN' UP TO WHERE THAT – WHERE THAT CORNER WHERE I LOST SIGHT OF 'EM WAS AND I SAW THEIR TRUCK STUCK AGAIN ABOUT 50 OR 100 YARDS UP AHEAD, SOMETHIN' LIKE THAT, AND THAT'S WHEN I WALKED UP AND WE HAD THE PHONE CONVERSATION – OR THE – THE PHONE CONVERSATION.

Q THAT WAS AFTER YOU REALIZED THE 18-WHEELER WAS STUCK?

A YEAH, I KNEW THE 18-WHEELER WAS STUCK AT THAT POINT.

Q DID YOU TELL 'EM THAT IN YOUR – AS BEST YOU COULD THAT THE 18-WHEELER WAS STUCK?

A I DON'T RECALL IF THAT WAS PART OF OUR CONVERSATION OR NOT.

Q THEY WERE STILL IN THE TRUCK, IN THE RYDER TRUCK.

A MR. GUERRERO STEPPED OUT, BUT THAT WAS IT.

Q THE OTHER GUYS AVILA AND HERNANDEZ WERE SITTIN' IN THERE.

A YES.

Q THE RYDER TRUCK. STUCK.

A CORRECT, SIR.

Q AND SO YOU WENT BACK TO THE 18-WHEELER AND CALLED IT IN AND SAID LOOK FELLOWS THE OPERATION IS FINISHED, WE CAN'T GET ANYWHERE.

A I DIDN'T MAKE THAT DECISION, BUT I TOLD 'EM WHAT THE SITUATION WAS, THAT THESE GUYS WERE STUCK. I REQUESTED THE TELEPHONE, AND MY PLAN WAS TO WALK BACK UP AND SEE IF MR. GUERRERO COULD MAKE A PHONE CALL AND – BUT WHEN THEY BROUGHT ME THE TELEPHONE UP TO ME, THAT WAS WHEN I WAS TOLD THAT THE OPERATION WAS OVER.

Q OKAY. NOW WHEN GUERRERO BROUGHT THE PHONE UP TO YOU?

A NO. MR. GUERRERO WHEN WE HAD MET ORIGINALLY—

Q RIGHT.

A AND HE HAD – WHEN WE HAD MET WHEN THEY GOT STUCK THE LAST TIME HE SHOWED ME THE PHONE.

Q RIGHT.

A IT WASN'T WORKING. I WALKED BACK TO THE TRACTOR.

Q WAS THAT OUT OF SIGHT OF THE RYDER TRUCK?

A YES, IT WAS.

Q OKAY.

A IT WAS DOWN AND AROUND THE BEND.

Q RIGHT.

A SO I GOT BACK IN. I RADIOED – MY CELL PHONE WASN'T WORKING. I RADIOED FOR MY ASSIST CARS TO SEE IF ANYBODY HAD A CELL PHONE THAT WAS WORKING. MY IDEA WAS THAT I WOULD THEN TAKE THAT PHONE UP TO MR. GUERRERO AND HAVE HIM MAKE A PHONE CALL. HOWEVER, WHEN THEY BROUGHT – WHEN THEY ARRIVED UP THEY SAID – MY BACKUP SAID NOW IT'S OVER, WE'RE CUTTIN' IT HERE.

Q SO WHAT HAPPENED THEN?

A I BELIEVE – WHAT I WAS -- I STAYED WITH THE TRACTOR AT THAT POINT.

Q YOU NEVER SAW THOSE GUYS AGAIN UNTIL YOU WENT TO EDGEFIELD DURING—

A THAT'S CORRECT.

Q AS FAR AS YOU KNOW THEY WERE STILL IN THE TRUCK?

A YEAH, I DIDN'T KNOW – I'D HEARD THAT THEY WERE COMIN' IN; THEY WERE GONNA ROUND 'EM UP. I DON'T KNOW WHERE THEY WERE AT THAT POINT.

Q YOU DIDN'T HEAR ABOUT ANY CHASE, DID YOU, WHERE THEY HAD TO CHASE THESE GUYS DOWN TO ARREST 'EM?

A I DIDN'T HEAR ABOUT ONE, NO, SIR.

Q AND YOU TESTIFIED THAT WHEN YOU WENT TO THE EDGEFIELD COUNTY JAIL, YOU HAD YOUR BADGE OUT.

A I DID.

Q STILL SCRUFFY THOUGH.

A VERY.

Q AND WHEN—

A MUDDY AT THIS POINT TOO.

Q AND WHEN THE GUYS SAW YOU WITH THAT BADGE, THEIR EYES WENT LIKE THAT—

A YES, SIR.

Q —THEY BULGED. I HADN'T CHECKED THAT REPORT, BUT IS THERE ANYTHING IN THERE ABOUT THEIR EYES BULGING?

A NO. I THINK IT ENDS WITH TERMINATING THE OPERATION.

Q WHERE'S PAUL AT THE CANADIAN DRIVER THAT WAS AN EYE WITNESS TO

ALL THESE EVENTS?

A I HAVE NO IDEA.

Q I SEE WHERE THE TRUCK DRIVER THAT ORIGINALLY DROVE THIS TRUCK WITH A SEMI FROM MEXICO ACROSS THE UNITED STATES BURDER INTO THE TERMINAL WHERE IT WAS EVENTUALLY FOUND AND STOPPED?

A I HAVE NO IDEA.

Q THANK YOU. THAT'S ALL I HAVE.

THE COURT: MR. MILLER?

MR. MILLER: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MR. MILLER

Q GOOD MORNING, AGENT MIZE.

A GOOD MORNING, SIR.

Q HOW ARE YOU DOIN' TODAY?

A ALRIGHT.

Q AGENT MIZE, WHEN YOU ARE CONDUCTING THESE TYPES OF OPERATIONS – YOU TESTIFIED YOU'D BEEN ON SEVERAL OF THESE CONTROLLED DELIVERIES BEFORE. CORRECT?

A THAT'S CORRECT.

Q IS IT FAIR TO SAY WHEN YOU ARE CONDUCTING ONE OF THESE OPERATIONS THAT ONE OF THE REASONS YOU WOULD INVOLVE LOCAL LAW ENFORCEMENT IS BECAUSE OF THEIR FAMILIARITY WITH THE AREA WHERE THE OPERATION WILL BE TAKING PLACE?

A YES, SIR.

Q OKAY. AND DO YOU EVER WORKING WITH CUSTOMS COUNT ON LOCAL

LAW ENFORCEMENT TO ADVISE YOU AS TO WHAT THEY THINK WOULD BE A GOOD PLACE FOR A TRANSACTION IF YOU HAVE THAT OPTION AND WHAT WOULD -- WHAT ARE THE PLACES YOU WANT TO AVOID?

A THAT WOULD BE THE SMART THING TO DO, YES, SIR.

Q OKAY. DO YOU -- ARE YOU AWARE OF THE COMPOSITION OF YOUR BACKUP ON THAT DAY? I.E., DO YOU KNOW WHO WAS CUSTOMS THAT WAS YOUR BACKUP VERSUS WHO WAS LOCAL LAW ENFORCEMENT VERSUS WHO WAS STATE LAW?

A I ONLY KNEW -- PERSONALLY, THE ONLY PEOPLE THAT I KNEW WERE THE PEOPLE THAT I HAD DRIVEN UP WITH FROM LAREDO. I KNOW THERE WERE A FEW CUSTOMS AGENTS THERE FROM LOCAL OFFICES, AND THEN A NUMBER OF -- OF STATE AND LOCAL OFFICERS LIKE PERRY AND A FEW OF THE OTHERS.

Q OKAY. WHEN THE RYDER TRUCK PULLED IN FRONT OF YOUR -- OF THE 19-WHEELER -- I CALLED IT YOUR 18-WHEELER, BUT WHEN IT PULLED IN FRONT OF THE 18-WHEELER, THE GREEN CAR THAT PULLED UP NEXT TO THE DRIVER'S SIDE DOOR AND THE PASSENGER GETS OUT OF THE CAR AND STARTS ATTEMPTING TO GET INTO THE TRUCK.

A CORRECT, SIR.

Q YOU CONSIDER THAT TO BE A DANGEROUS SITUATION.

A YES, SIR.

Q AND YOU HAD NO INTENTION OF LETTIN' THAT GUY INTO THIS TRUCK NO MATTER WHAT YOU HAD TO DO; YOU WEREN'T GONNA LET HIM IN THE TRUCK. RIGHT?

A ABSOLUTELY NOT.

Q THE SOLICITOR IN HIS OPENING STATEMENT TO THE JURY REFERRED TO

THAT AS AN ATTEMPTED HIJACKING. HOW DID YOU MANAGE TO AVERT OR DIFFUSE THAT ATTEMPTED HIJACKING? WHAT DID YOU DO?

A DID NOT ALLOW HIM INTO THE TRUCK. I MEAN THAT WAS MY ENTIRE INTENTION: DO NOT LET THAT GUY INTO THE VEHICLE. NOBODY GETS INTO THAT VEHICLE.

Q BUT HOW DID YOU DO IT? DID YOU SHOW HIM YOUR BADGE?

A NO.

Q DID YOU PULL A GUN ON HIM?

A NOT AT THAT POINT, NO, SIR.

Q DID YOU USE ANY FORCE AT ALL?

A NO, SIR. WELL, JUST PHYSICAL MOTIONS AND THE DRIVER I DON'T KNOW IF HE WAS BUT I'M ASSUMIN' HOLDIN' THE DOOR. BUT I BELIEVE IT WAS LOCKED ACTUALLY.

Q OKAY. SO YOU AVERTED THIS ATTEMPTED HIJACKING BY TALKING WITH SOMEONE IN A LANGUAGE THAT YOU DIDN'T UNDERSTAND, BUT YOU WERE ABLE TO CONVEY YOUR POINT TO HIM. IS THAT CORRECT?

A PHYSICAL MOTIONS AND SAYING NO NO NO.

Q OKAY. SO THEY DROVE OFF AND IT WAS CLEAR TO YOU THAT YOU WERE SUPPOSED TO FOLLOW THEM AT THAT POINT. CORRECT?

A CORRECT, SIR.

Q OKAY. DID YOU PASS ON HIGHWAY 25, YOU RECALL PASSING THE EDGEFIELD INDUSTRIAL PARK?

A I DON'T KNOW, SIR.

Q OKAY.

A WE DROVE STRAIGHT DOWN 25.

Q OKAY.

A SO I COULDN'T TELL YOU WHAT WE PASSED.

Q AND HE TOOK YOU RIGHT ONTO PADGETT ROAD. WAS THERE A STREET SIGN THAT SAID PADGETT ROAD?

A YES, SIR.

Q OKAY. AND WAS THERE ALSO ON THAT SAME SIGN DID IT SHOW THAT YOU WERE TURNING OFF OF EDGEFIELD HIGHWAY ONTO PADGETT ROAD?

A I THINK THAT WAS MORE JUST COMMON SENSE THAT I WAS DOING THAT.

Q OKAY. AND YOU HAD -- OBVIOUSLY YOU'RE -- YOU'RE -- CORRECT ME IF I'M WRONG BUT YOUR SURVEILLANCE AREA DIDN'T ALREADY ENCOMPASS PADGETT ROAD, DID IT?

A NO, SIR.

Q OKAY. SO YOU HAD CHASE TEAMS OR BACKUP THAT IS FOLLOWING YOU TOWARD THAT AREA. CORRECT?

A YES, SIR.

Q OKAY. DID YOU HAVE RADIO COMMUNICATION WITH ANY OF THE STATE OR LOCAL PEOPLE OR WERE YOU STRICTLY CONFINED TO COMMUNICATING WITH YOUR CUSTOMS AGENTS THAT WERE THERE?

A I WAS – I WAS CONFINED TO COMMUNICATING BY OUR RADIO SYSTEM. WHETHER OR NOT THEY HAD OUR RADIOS, I DON'T KNOW.

Q OKAY. COULD YOU STEP DOWN FOR JUST A MOMENT.

A SURE.

Q REFERRING TO THE MAP JUST AS YOU'RE COMING IN THIS DIRECTION ON HIGHWAY 25, YOU TURN RIGHT ON PADGETT ROAD. IS THAT CORRECT?

A THAT'S CORRECT.

Q OKAY. HOW FAR IS THIS DISTANCE FROM HIGHWAY 25 TO THE Y THAT YOU REFERRED TO EARLIER?

A I'M GUESSING HERE. I'D SAY QUARTER TO HALF A MILE.

Q DO YOU RECALL SEEING HOUSES ON THAT QUARTER TO HALF A MILE THERE?

A I THINK THERE WERE SOME HOUSES ALONG THE SOUTH SIDE OF THE ROAD I BELIEVE.

Q OKAY. AND YOU SAID YOU WENT TO THE RIGHT.

A RIGHT.

Q CAN YOU SHOW ME APPROXIMATELY WHERE ON PADGETT ROAD IT WAS THAT YOU GOT STUCK IF YOU RECALL.

A I BELIEVE IT WAS SOMEWHERE IN THIS AREA RIGHT HERE, BUT ONCE AGAIN, I'M GUESSING. I'M GUESSING BY THE BENDS IN THE ROAD, HOW THIS THING WORKS.

Q OKAY. AT SOME POINT IN TIME THE OPERATION WAS OVER WITH.

A THAT'S CORRECT.

Q AND YOU KNEW THAT BECAUSE THEY BROUGHT YOU THE CELL PHONE AND SAID LOOK WE'RE TAKING IT ALL DOWN. WHEN YOU GOT INTO – DID YOU GET INTO A VEHICLE AT THAT TIME OR DID YOU RIDE IN THE TRACTOR TRAILER WHILE IT WAS BEING TOWED BACK TO EDGEFIELD?

A NO, I'D GOTTEN INTO A VEHICLE AND LEFT THE AREA.

Q OKAY. HOW DID YOU GET OUT OF THE AREA?

A I THINK WE WENT BACK THE WAY WE CAME IF I RECALL CORRECTLY.

Q OKAY. SO DID YOU EVER GO DOWN TO THE OTHER END OF PADGETT ROAD WHERE IT INTERSECTS WITH VAN ROAD?

A NOT THAT I RECALL.

Q OKAY. AS YOU WERE COMING THIS WAY AND YOU TOOK A RIGHT ON PADGETT ROAD, DID YOU NOTIFY THE SURVEILLANCE TEAM YOU TOOK A RIGHT ON SURVEILLANCE – EXCUSE ME – SURVEILLANCE – WE TOOK A RIGHT ON PADGETT ROAD?

A I DID.

Q OKAY. AND WHEN YOU WENT ON THE RIGHT HAND PORTION OF THE Y DID YOU NOTIFY THE SURVEILLANCE TEAM WE TOOK A RIGHT AT THE Y?

A I DID.

Q OKAY. AND DID YOU NOTIFY YOUR SURVEILLANCE TEAM WHENEVER YOU LOST SIGHT OF THE GREEN CAR?

A I THINK I TOLD THEM THAT I SAW IT AND THAT WAS IT. I DON'T RECALL WHEN I PULLED UP. I THINK I PROBABLY TOLD THEM I SEE THE RYDER TRUCK AND – I CAN'T REMEMBER EXACTLY WHAT I TOLD THEM.

Q OKAY. DO YOU RECALL ANY DISCUSSION AMONG THE UNITS – I'M REFERRING TO THEM AS YOUR CHASE UNITS, YOUR BACKUP UNITS, THAT MAYBE SOMEBODY OUGHT TO GO TO THE OTHER END OF THE ROAD IN CASE THAT GREEN CAR CAME OUT THERE?

A I NEVER HEARD IT BUT I WAS OUTSIDE OF THE VEHICLE FOR A GOOD PORTION OF THE TIME.

Q IS THIS – DOES THIS MAP FAIRLY AND ACCURATELY DEPICT THIS AREA OF EDGEFIELD COUNTY TO THE BEST OF YOUR KNOWLEDGE?

A TO THE BEST OF MY KNOWLEDGE, YES.

Q THERE ARE NO ROADS TO TURN OFF OF PADGETT ROAD TILL YOU GET TO VAN ROAD?

A NOT TO MY KNOWLEDGE.

Q THANK YOU, SIR.

A YES, SIR.

Q VERY QUICKLY, WE'VE GONE OVER THIS AS TO MR. SUSSMAN'S TWO CLIENTS, BUT I WANT TO ASK YOU THE SAME THING AS TO MR. GUERRERO FOR CLARITY. THE 18-WHEELER WAS NEVER OPENED IN FRONT OF HIM, WAS IT?

A NO, SIR.

Q DID HE EVER SEE THE INSIDE OF THAT TRAILER?

A WE NEVER REACHED THAT POINT, SIR.

Q SO HE NEVER SAW THE FURNITURE.

A NO, SIR.

Q AND HE NEVER EVEN SAW THE FURNITURE OVER AT TIENDA DELEON BECAUSE THESE 3 GENTLEMEN WEREN'T EVEN THERE, THEY WEREN'T IN THE VICINITY OF THE TRUCK UNTIL THE TRUCK WAS AT BILLY'S. CORRECT?

A I DON'T KNOW WHAT VICINITY THEY WERE IN. FOR ALL I KNOW, THEY COULD'VE DRIVEN BY. I JUST DON'T KNOW. THEY WEREN'T IN FRONT OF THE STORE WITH ME. THAT'S ALL I CAN TELL YOU.

Q YOU'RE AT TIENDA DELEON.

A CORRECT.

Q YOU HAVE DROPPED OFF SOME PIECES OF FURNITURE AND HOWEVER IT HAPPENED, YOU WERE INFORMED THAT YOU NEEDED TO GET UP AND GO TO BILLY'S SUPER STORE.

A CORRECT.

Q YOU TESTIFIED PREVIOUSLY THAT YOU GOT TO BILLY'S SUPER STORE AND FOR 20 OR 45 MINUTES YOU WAITED THERE. CORRECT?

A CORRECT.

Q NO GREEN THUNDERBIRD.

A CORRECT.

Q NO YELLOW RYDER TRUCK.

A CORRECT.

Q DO YO UHAVE ANY KNOWLEDGE FROM SEEING IT YOURSELF OR FROM ANY OF THE OTHER AGENTS HEARING IT ON THE RADIO AS IT'S HAPPENING WHERE THAT GREEN CAR WAS FOR THAT 25 MINUTES?

A I DON'T KNOW, SIR.

Q SO BASICALLY IT WAS OFF THE RADAR FOR ABOUT 45 MINUTES AS FAR AS YOU KNOW.

A YEAH, I DON'T KNOW WHERE IT WAS, SIR, PERSONALLY.

Q OKAY. I'VE HEARD FROM YOUR TESTIMONY AND FROM THE AGENT YESTERDAY THAT IT'S NOT UNCOMMON FOR CUSTOMS NOT TO EXECUTE SUBPOENAS FOR PHONE RECORDS. IS THAT AN ACCURATE CHARACTERIZATION OF YOUR TESTIMONY?

A DEPENDS ON THE INVESTIGATION GIVE OR TAKE, YES, SIR.

Q OKAY. SO YOU DIDN'T – THERE WERE NO SUBPOENAS FOR PHONE RECORDS IN THIS CASE.

A NOT TO MY KNOWLEDGE, SIR.

Q WHEN HONORIO GUERRERO WAS PLACED UNDER ARREST AND YOU SAW HIM LATER AT THE JAIL, DID YOU TELL ANY OF THE STATE, LOCAL OR OTHER CUSTOMS AGENTS HE'S GOT A CELL PHONE, IT MIGHT BE A GOOD IDEA TO SEE WHO'S TALKING THIS MORNING ON THAT CELL PHONE?

A I DON'T RECALL, SIR. I DON'T RECALL IF I DID OR NOT.

Q DO YOU KNOW IF THEY RECOVERED HIS CELL PHONE WHEN THEY ARRESTED HIM?

A I DON'T KNOW, SIR.

Q OKAY. MR. HAWKE ASKED PREVIOUSLY IF YOU HAD TAKEN – IF YOU HAD TRIED TO IDENTIFY PEOPLE ON THE VIDEO FROM THE TIENDA DELEON TO SEE IF IT WAS MAYBE THE OTHER GUY WHO WAS IN THE CAR BESIDES THE FELLOW THAT WE'VE IDENTIFIED ALREADY BY THE SKETCH, AND YOU SAID THAT YOU HAD NOT. IS THAT CORRECT?

A THAT'S CORRECT, SIR.

Q SO YOU NEVER EVEN – AND YOU NEVER EVEN SAW THE VIDEO?

A I NEVER SAW THE VIDEO.

Q BUT YOU FOUND OUT IN MARCH THAT THE VIDEO EXISTED AT OUR PRIOR HEARING. HAVE YOU LOOKED AT IT SINCE THEN?

A NO, SIR.

Q HAS ANYONE ASKED YOU TO?

A NO.

Q YOU INDICATED TO MR. SUSSMAN THAT PAUL GARTEN YOU DIDN'T HAVE ANY IDEA WHERE HE WAS.

A I DON'T KNOW WHERE HE IS, SIR.

Q HAVE YOU OR ANYONE FROM CUSTOMS THAT YOU'RE AWARE EVEN INQUIRED AS TO WHERE HE WAS AT, SEEING IF HE WOULD BE AVAILABLE?

A NOT TO MY KNOWLEDGE HAVE I OR – I HAVEN'T TALKED TO HIM.

Q OKAY.

A IS ALL I CAN REALLY SAY.

Q AND HOW ABOUT THE MEXICAN DRIVER THAT BROUGHT THE – THE

DREDGE DRIVER THAT BROUGHT THE STUFF OVER, HAVE YOU -- HAVE YOU EVEN ASKED, CALLED HIS COMPANY TO SAY HEY IS THIS GUY STILL AROUND, COULD WE GET HIM IF WE NEED TO?

A I HAVE NOT, SIR.

MR. MILLER: JUDGE, I BELIEVE THAT'S IT. THANK YOU.

THE COURT: THANK YOU. REDIRECT?

REDIRECT EXAMINATION

BY MR. MAYE

Q YOU WERE ASKED ON CROSS-EXAMINATION ABOUT INNOCENT PARTIES NOT GETTIN' CHARGED. AND Y'ALL HAVE NOT CHARGED INNOCENT PARTIES. IS THAT CORRECT?

A IF WE DON'T THINK SOMEBODY'S DONE IT, WE DON'T ARREST 'EM.

Q OKAY. DO THOSE INNOCENT PARTIES USUALLY END UP WITH DRUGS AT THEIR BUSINESS AND NOT GET CHARGED?

A NO, SIR.

Q DO PEOPLE ALWAYS GET PAID FOR THEIR COOPERATION IN ANY KIND OF CONSPIRACY IN CASH?

A IT'S VERY COMMON FOR THEM TO GET PAID IN NARCOTICS.

Q IN NARCOTICS.

A IN DRUGS. WITH DRUGS.

Q YOU WERE ALSO ASKED ABOUT PADGETT ROAD. LET ME SHOW YOU A PHOTOGRAPH HERE. DOES THAT FAIRLY AND ACCURATELY REFLECT PADGETT ROAD MINUS THE MOISTURE AND MUD?

A TO THE BEST OF MY KNOWLEDGE, YES, SIR. IT LOOKS LIKE PADGETT. IT LOOKS LIKE THE PART OF PADGETT ROAD THAT I SAW.

MR. MAYE: I'M GONNA MOVE TO ADMIT THIS INTO EVIDENCE.

THE COURT: SHOW IT TO OPPOSING COUNSEL, PLEASE.

MR. HAWKE: NO OBJECTION, YOUR HONOR.

MR. MILLER: NO OBJECTION.

MR. SUSSMAN: NO OBJECTION.

THE COURT: MARK IT IN EVIDENCE, PLEASE. (STATE'S EXHIBIT #18 RECEIVED IN EVIDENCE.)

Q STATE'S 18, OBVIOUSLY, IT'S NOT WET IN THAT PICTURE, IS IT?

A NO, IT'S NOT.

Q LOOK A LITTLE DIFFERENT WHEN IT'S WET?

A ACTUALLY IT LOOKS LIKE A NICE ROAD.

Q OKAY. WHEN IT'S DRY?

A WHEN IT'S DRY.

Q OKAY. NOTHIN' ELSE.

THE COURT: RECROSS?

MR. HAWKE: NO, YOUR HONOR.

THE COURT: MR. SUSSMAN?

MR. SUSSMAN: NO, YOUR HONOR.

THE COURT: MR. MILLER?

MR. MILLER: NOTHING, YOUR HONOR.

THE COURT: THANK YOU, AGENT MIZE. YOU MAY STEP DOWN.

A THANK YOU, YOUR HONOR.

THE COURT: YOU MAY RETURN TO WHERE YOU WERE BUT YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYONE. LEAVE THAT WITH THE COURT REPORTER, PLEASE.

A YES, SIR, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS.

MR. MAYE: IF IT PLEASE THE COURT, YOUR HONOR, I NEED A VERY BRIEF MOMENT.

THE COURT: LADIES AND GENTLEMEN OF THE JURY, IF YOU WOULD STEP BACK IN THE JURY ROOM. DON'T DISCUSS THE CASE. I'LL GET YOU BACK OUT HERE AS QUICKLY AS I CAN. LEAVE YOUR NOTES IN THE COURTROOM. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) WE'RE AT EASE. (THERE WAS A BRIEF RECESS.)

MR. SUSSMAN: WE WERE JUST DISCUSSING AMONGST OURSELVES THE PROPER PROCEDURE. MY UNDERSTANDING IS THAT MR. MAYE IS FINALLY BRINGING THE MARIJUANA OUT TO EXHIBIT TO THE JURY IN FRONT OF THIS WITNESS.

MR. MAYE: I'VE GOT TO TO START WITH THE CHAIN AND DO IT FOR I.D. AND FOLLOW – I DO INTEND ON BRINGING IT ALL OUT.

MR. SUSSMAN: AND OUR CONCERN WAS THAT STILL THE SEQUENCE OF EVENTS, THIS IS – THIS IS MORE OR LESS JUST A PART OF THE CHAIN INSTEAD OF THE ENTIRE CHAIN, AND WE WOULD BE CONCERNED ABOUT LETTING ALL THIS COME IN BEFORE HE GOES THROUGH THE VARIOUS WITNESSES IN THE CHAIN BEFORE THE JURY.

THE COURT: WELL, HERE'S THE THING: IF THE DOPE DOESN'T COME IN, THE CASE IS GONNA GET DISMISSED.

MR. MAYE: YES, SIR. YES, SIR.

THE COURT: THEY GOT TO BRING IT IN THE COURTROOM TO GET IT IDENTIFIED.

MR. SUSSMAN: YES, SIR.

THE COURT: NOW YOU ALL CAN RESERVE YOUR OBJECTIONS AND OBJECT AND ALL THAT; PUT ANYTHING ON THE RECORD YOU WANT, BUT THEY'VE GOT TO BRING IT IN THE COURTROOM. AND IF THEY'RE UNSUCCESSFUL IN GETTING THE MARIJUANA ADMITTED INTO EVIDENCE, THEN I DON'T SEE HOW THE CASE SURVIVES. I MAY BE WRONG, BUT—

MR. SUSSMAN: THAT'S WHY WE DON'T WANT TO BE DEEMED TO HAVE WAIVED ANYTHING IN LETTING THEM JUST BRING ALL THIS MARIJUANA IN—

THE COURT: YEAH, BUT IF I -- IF I DON'T LET IT IN, YOU WIN.

MR. SUSSMAN: EVENTUALLY.

THE COURT: IT DOESN'T MATTER WHAT THE JURY THINKS. THE JURY CAN THINK THEY'RE GUILTY AS HOMEMADE SIN. I'M THROWIN' THE CASE OUT. DOESN'T GO TO THE JURY.

MR. SUSSMAN: ALRIGHT. YES, SIR.

THE COURT: I DON'T -- I—

MR. MAYE: ONCE WE'VE ALREADY BEEN THROUGH THIS ONCE, I THOUGHT THEY MIGHT BE WILLING TO STIPULATE.

THE COURT: THEY'RE NOT GONNA STIPULATE TO ANYTHING AND I WOULDN'T EXPECT 'EM TO STIPULATE TO ANYTHING. THEY WANT TO RESERVE ALL THEIR OBJECTIONS. CHAIN OF CUSTODY AND THE SEARCH AND SEIZURE AND ALL THAT.

MR. MAYE: OKAY. THAT'S FINE. WE NEED TO DO IT THEN.

THE COURT: YOU GOT TO PUT WITNESSES ON THAT STAND WHO CAN LINK TOGETHER ALL THE CHAIN.

MR. MAYE: I UNDERSTAND THAT, YOUR HONOR. WE INTEND TO DO THAT.

THE COURT: THAT'S FINE.

MR. MAYE: I DIDN'T KNOW IF THEY WANTED TO GO THROUGH AND DO IT AGAIN OR IF THEY WERE GONNA STIPULATE. THEY SAY THEY'RE NOT. WE'RE PREPARED.

THE COURT: WHAT I'M SAYIN' IS UNLESS THE THING'S IN THE COURTROOM, HE CAN'T SAY WHAT'S SITTIN' BACK THERE IN THAT ROOM, JUST WHAT I SAW 'CAUSE HE CAN'T SEE BACK IN THAT ROOM.

MR. MAYE: WE COMPLETELY AGREE WITH THAT. I WAS JUST GONNA CHECK AND SEE IF THEY WANTED TO STIPULATE. OTHER THAN THAT, WE'RE PREPARED TO PROVE IT AND WE'RE GONNA DO SO IN FRONT OF THE JURY. AND ARE REQUIRED TO DO SO AND WE'RE READY.

THE COURT: OKAY. MR. SUSSMAN, ANYTHING ELSE?

MR. SUSSMAN: NO, SIR. I JUST WANTED A CLARIFICATION. THANK YOU.

THE COURT: OKAY. NOW IF I'M MISSIN' SOMETHIN' I APOLOGIZE. I MEAN I KNOW IT'S BEEN TESTIFIED THAT THE DRUGS WERE TESTED AND THEY TESTED POSITIVE FOR MARIJUANA. IF THE DRUGS DON'T COME IN, I STILL DON'T SEE HOW IT EVEN GETS TO THE JURY.

MR. MAYE: WE DON'T THINK SO EITHER. BUT LIKE I SAY, WE'RE PREPARED TO GO FORWARD. I JUST DIDN'T KNOW IF THEY WANTED TO STIPULATE. I ALWAYS ASK. IF THEY DON'T, WE'RE READY TO GO.

THE COURT: YOU WANT MR. LOWE TO BE THE NEXT WITNESS?

MR. MAYE: LOWE'S GONNA BE THE NEXT WITNESS.

THE COURT: HAVE A SEAT OVER THERE BY MR. PERRY FOR ME, PLEASE. BRING THE JURY IN. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY:) CALL YOUR NEXT WITNESS.

MR. MAYE: THE STATE CALLS ROGER LOWE.

ROGER LOWE, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MAYE

Q MR. LOWE, IF YOU WOULD, INTRODUCE YOURSELF TO THE LADIES AND GENTLEMEN OF THE JURY. TELL THEM WHERE YOU WORK NOW AND WHERE YOU WERE FORMERLY EMPLOYED.

A MY NAME IS ROGER LOWE. I'M CURRENTLY SENIOR BUILDING CODES INSPECTOR FOR CHARLESTON COUNTY. FROM JUNE -- I'M SORRY -- JANUARY OF 2001 UNTIL JULY OF 2002 I WAS CHIEF DEPUTY FOR THE EDGEFIELD COUNTY SHERIFF'S OFFICE.

Q INVESTIGATOR LOWE, IN YOUR CAPACITY AS THE CHIEF DEPUTY OF THE SHERIFF'S OFFICE, DID YOU HAVE OCCASION TO GO ON THE 18TH OF MAY OF 2002 OUT TO THE TIENDA DELEON HERE IN EDGEFIELD COUNTY?

A YES, SIR, I DID.

Q LET ME ASK YOU THIS: IS THE TIENDA DELEON IN EDGEFIELD COUNTY?

A YES, IT IS.

Q OKAY. HOW ABOUT THE AREA ON PADGETT -- DOWN PADGETT ROAD WHERE THE TRAILER-TRAILER AND ALL WAS? IS THAT IN EDGEFIELD COUNTY?

A YES, SIR, IT IS.

Q WHEN YOU WENT TO THE TIENDA DELEON, DID YOU HAVE AN OPPORTUNITY TO OPEN UP A CHIMNEY OR MANTLE INSIDE THE STORE?

A YES, I DID.

Q WHO DIRECTED YOU TO OPEN THAT CHIMNEY OR MANTLE?

A THERE WAS A FEDERAL CUSTOMS AGENT THERE MS. DOWLING AND SHE REQUESTED THAT WE OPEN THE PIECE OF FURNITURE.

Q DID YOU DO SO AT HER DIRECTION?

A YES, SIR, I DID.

Q LET ME SHOW YOU STATE'S 4 AND 5 AND ASK YOU IF YOU CAN IDENTIFY THOSE.

A YES, SIR, THESE ARE PHOTOGRAPHS THAT WERE TAKEN INSIDE THE STORE THAT DAY.

Q DO THOSE FAIRLY AND ACCURATELY REFLECT, DO 4 AND 5 FAIRLY AND ACCURATELY REFLECT THE CHIMNEY AFTER YOU HAD BROKEN IT OPEN?

A YES, SIR.

Q WAS IT POSSIBLE TO GET THE ITEMS THAT TURNED OUT TO BE MARIJUANA OUT WITHOUT DESTROYING THE CHIMNEYS?

A ABSOLUTELY NOT. THEY WERE TOO LARGE.

Q HOW DID YOU ACTUALLY GAIN ACCESS TO THE PLACE WHERE THE DOPE WAS INSIDE THE CHIMNEYS?

A I HAD A CROWBAR IN MY VEHICLE AND AT MS. DOWLING'S REQUEST, I GOT THAT CROWBAR AND WE PRIED THE TOP OFF OF THE CHIMNEY.

Q LET ME ASK YOU THIS: LATER AT THE SHERIFF'S DEPARTMENT, DID YOU HAVE OCCASION TO OPEN UP ADDITIONAL CHIMNEYS?

A YES, SIR, THERE WERE 22 MORE CHIMNEYS THAT WERE IN THE BACK OF A SEMI TRUCK AND I OPENED ALL OF THOSE AND EACH AND EVERY ONE CONTAINED THE PACKAGES THAT ARE LIKE THE ONES DEPICTED IN THE PHOTOGRAPHS.

Q AT WHOSE DIRECTION DID YOU OPEN THOSE OTHER CHIMNEYS AT THE

SHERIFF'S DEPARTMENT HERE IN EDGEFIELD?

A AGAIN, THAT WAS THE SAME AGENT: MS. DOWLING.

Q WHEN YOU OPENED UP THE CHIMNEY OUT AT TIENDA DELEON, HOW MANY BAGS OF COMPRESSED MARIJUANA WERE IN THAT CHIMNEY?

A AT THE STORE THERE WERE 20 BAGS.

Q HOW ABOUT IN THE -- DID THE NUMBER VARY IN THE CHIMNEYS THAT YOU OPENED AT THE SHERIFF'S DEPARTMENT?

A YES. SOME HAD AS MANY AS 22 AND SOME WERE 15 OR 16 BAGS. THEY WERE VARIED IN SIZE. SO THEY ALL WOULDN'T HOLD THE SAME AMOUNT.

Q I'M GOING TO SHOW YOU AN ITEM AND ASK IF YOU CAN IDENTIFY IT.

MR. MAYE: BEG THE COURT'S INDULGENCE.

MR. SUSSMAN: JUDGE?

THE COURT: YES, SIR.

MR. SUSSMAN: PLEASE, NOTE OUR PREVIOUS OBJECTION TO THE INTRODUCTION OF THIS EVIDENCE REGARDING THE CHAIN ARGUMENT.

THE COURT: ALRIGHT.

MR. SUSSMAN: WE JUST RENEW OUR OBJECTION.

THE COURT: IT'S SUBJECT TO ALL PREVIOUS OBJECTIONS MADE YESTERDAY, MONDAY AND TODAY.

MR. SUSSMAN: THANK YOU, YOUR HONOR.

MR. HAWKE: SAME FOR DELEON, YOUR HONOR.

MR. MILLER: WE MOVE ALSO.

THE COURT: THAT'S ALL DEFENDANTS REASSERT THEIR OBJECTIONS THAT HAVE BEEN RAISED ON MONDAY, TUESDAY AND TODAY.

Q INVESTIGATOR LOWE, IS THIS ONE OF THE CHIMNEYS THAT YOU OPENED

AT THE STORE OR DOWN AT THE SHERIFF'S DEPARTMENT?

A YES, IT IS.

Q OKAY.

MR. MAYE: YOUR HONOR, I MOVE TO ADMIT THIS INTO EVIDENCE UNDERSTANDING OUR PREVIOUS -- UNDERSTANDING OUR PREVIOUS AGREEMENT THAT WE SUBSTITUTE A PHOTOGRAPH OR DO SOMETHING ELSE INVOLVED IN KEEPING---

THE COURT: YES, SIR.

MR. SUSSMAN: AND THEN AGAIN IN ORDER TO PERFECT THE RECORD WE WOULD RENEW OUR MOTIONS AND OBJECTIONS TO THE MOTIONS THAT WERE RULED UPON IN THIS CASE EITHER YESTERDAY OR THE DAY BEFORE.

THE COURT: AND TODAY.

MR. SUSSMAN: AND TODAY.

MR. HAWKE: SAME IN REFERENCE TO DELEON.

MR. MILLER: ALSO MR. GUERRERO, YOUR HONOR.

MR. SUSSMAN: THANK YOU, YOUR HONOR.

THE COURT: I NEED A LITTLE BIT MORE.

Q INVESTIGATOR LOWE, WERE THESE CHIMNEYS TAKEN INTO CUSTODY BY THE SHERIFF'S OFFICE?

A YES, SIR.

Q AT THAT TIME?

A YES, SIR.

Q *HOW CAN YOU SPECIFICALLY IDENTIFY THIS CHIMNEY? WOULD YOU* COME DOWN AND LOOK AT IT AND TELL ME EXACTLY WHAT BRINGS YOUR ATTENTION TO IT, WOULD YOU COME DOWN OFF THE STAND AND EXAMINE IT.

(THE WITNESS COMPLIED.) RETAKE THE STAND. WHAT DISTINCTIONS DOES THIS PARTICULAR ITEM OF WOODEN FURNITURE HAVE?

A THE INSIDE IF YOU REACH UP INSIDE LIKE WHERE THERE WOULD BE A FIRE, IF THIS WERE A REAL CHIMNEY, THERE WAS ABOUT 6 OR 8 INCHES OF SPACE MISSING IF YOU MEASURED IT FROM THE INSIDE TO THE OUTSIDE WHICH INDICATED THERE WAS A CAVITY INSIDE THE CHIMNEY, AND AT THAT TIME WE USED THE CROWBAR TO PRY THE BOARDS OFF AND THE ENTIRE CAVITY WAS LINED WITH CARBON PAPER, AND THEN INSIDE THAT CARBON PAPER UNDERNEATH THAT WAS THE GREEN LEAFY SUBSTANCE LATER PROVED TO BE MARIJUANA.

Q THIS ITEM THAT I SHOWED YOU FOR IDENTIFICATION, DOES IT CONTAIN THAT CARBON PAPER?

A YES, SIR, IT DOES.

Q OKAY. CAN YOU SEE EVIDENCE ON THE SIDE AS I'VE ASKED YOU TO IDENTIFY IT FOR I.D. PURPOSES THAT SHOWS MARKS OF BEING WRENCHED AND TORN APART, OPENED?

A YES.

Q DID YOU, IN FACT, DO THAT—

A YES—

Q —TO THESE CHIMNEYS?

A YES, SIR.

Q IS THERE ANY DOUBT IN YOUR MIND THAT THIS ITEM BEFORE YOU IS ONE OF THE CHIMNEYS WHICH YOU SEIZED THAT DAY?

A NO DOUBT AT ALL.

MR. MAYE: YOUR HONOR, WE WOULD MOVE THIS INTO EVIDENCE.

MR. SUSSMAN: AND, OF COURSE, WE WOULD, AGAIN, RENEW OUR SAME OBJECTION TO THE MOTIONS MADE MONDAY, TUESDAY AND TODAY, YOUR HONOR.

MR. HAWKE: SAME FOR MR. DELEON.

MR. MILLER: AND MR. GUERRERO.

MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR, THERE'S NO CHAIN ISSUE IN THIS BECAUSE IT'S NON-FUNGIBLE EVIDENCE. THE WITNESS HAS SPECIFICALLY STATED THAT HE CAN IDENTIFY IT.

THE COURT: HE SAID HE CAN IDENTIFY THAT ONE.

MR. MAYE: I'M ONLY GONNA MOVE TO ADMIT ONE CHIMNEY IN EVIDENCE, YOUR HONOR.

THE COURT: OKAY. WHY?

MR. MAYE: MAY WE APPROACH THE BENCH?

THE COURT: YEAH, BUT I CAN'T TELL ME WHAT MY PROBLEM IS. Y'ALL ARE LEAVING OUT SOMETHING.

Q INVESTIGATOR. LOWE, IS THIS ONE OF THE 23 CHIMNEYS TOTAL THAT YOU SEIZED THAT DAY?

A YES, IT IS.

MR. MAYE: YOUR HONOR, I STILL MOVE TO ADMIT THIS ONE INTO EVIDENCE.

MR. SUSSMAN: AGAIN, WE WOULD RENEW OUR SAME MOTIONS AND OBJECTIONS AS MADE BEFORE, JUDGE.

MR. HAWKE: WE WOULD JOIN HIM.

MR. MILLER: AS TO MR. GUERRERO AS WELL.

THE COURT: ALRIGHT.

MR. MAYE: YOUR HONOR, WE'RE GOING TO MOVE TO ADMIT THIS ONE IN LIEU OF REPRESENTING – INTRODUCING ALL OF THEM.

THE COURT: BINGO. NOW TELL ME – YOU GOT ONE CHIMNEY.

MR. MAYE: YES, SIR.

THE COURT: I THINK THAT ONE CHIMNEY MAY BE ADMISSIBLE, BUT I'M CONCERNED ABOUT RULE 403 IN THAT IT MAY – NOBODY SAID WHERE IT CAME FROM AS FAR AS WHETHER IT WAS EITHER AT THE STO – OTHER THAN SAYING IT CAME OFF THE TRAILER ORIGINALLY – IT WAS AT THE STORE OR ON THE TRAILER WHEN THE TRAILER GOT STUCK ALLEGEDLY. WHAT YOU JUST SAID GOES TO MY 403 CONCERN. IF YOU RECALL WHAT YOU JUST SAID, IT MAY BE MISLEADING OR CONFUSING. I GOT 4 DEFENDANTS. I GOT 1 CHIMNEY. Y'ALL KNOW ALL THIS STUFF, BUT WE DON'T KNOW WHAT WAS ON THAT TRUCK.

Q INVESTIGATOR LOWE, HOW MANY CHIMNEYS WERE SEIZED ON THAT DAY?

A 23.

Q HOW MANY WERE SEIZED AT FREDY DELEON'S STORE?

A ONE.

Q HOW MANY WERE SEIZED DOWN HERE AT THE SHERIFF'S DEPARTMENT?

A 22.

Q ARE EACH OF THE SIMILAR IN CONSTRUCTION AND OF THE SAME GENERAL TYPE OF CONSTRUCTION?

A EXACTLY.

Q WERE ALL OF 'EM LINED WITH CARBON PAPER IN THIS CASE?

THE COURT: THAT'S IT. YOU GOT IT.

A YES, SIR.

THE COURT: Y'ALL RENEW YOUR OBJECTIONS—

MR. HAWKE: YES, YOUR HONOR.

THE COURT: — PREVIOUSLY DONE?

MR. SUSSMAN: YES, SIR.

MR. MILLER: YES, SIR.

THE COURT: MARK IT IN EVIDENCE. I HAD TO KNOW THAT IT WAS REPRESENTATIVE OF THE OTHER ONES. I'M SORRY. OR THAT YOU HAD EVIDENCE THAT IT WAS IT WAS REPRESENTATIVE. LADIES AND GENTLEMEN, I'M NOT MAKING A FINDING OF FACT. LIKE I TOLD YOU AT THE VERY BEGINNING, I JUST HAVE TO MAKE SURE THAT THE RULES OF EVIDENCE ARE COMPLIED WITH. (STATE'S EXHIBIT #19 RECEIVED IN EVIDENCE.)

Q INVESTIGATOR LOWE, LET ME SHOW YOU ONE OTHER ITEM. INVESTIGATOR LOWE, IF YOU WOULD COME OFF THE STAND. TAKE A LOOK AT THIS ITEM UP HERE. CAN YOU IDENTIFY THIS?

A YES.

Q COULD YOU RETAKE THE STAND. (WITNESS COMPLIED.) IS THIS ONE OF THE ITEMS OF FURNITURE WHICH YOU SEIZED OFF THE TRUCK?

A YES, SIR, AND NUMEROUS PIECES SIMILAR TO THAT.

Q THERE WERE ALSO ITEMS OF FURNITURE THAT WERE SEIZED INSIDE OF MR. DELEON'S STORE AT THAT TIME OF FURNITURE?

A I BELIEVE THERE WERE A COUPLE OF PIECES BUT I HONESTLY CAN'T RECALL WHAT THEY WERE.

Q ALRIGHT, SIR. BUT YOU ARE SURE THAT THIS ITEM OF FURNITURE IS ONE OF THE ONES THAT WAS SEIZED.

A YES.

Q IN ONE OF THE TWO LOCATIONS.

A YES.

MR. MAYE: YOUR HONOR, WE'D MOVE TO ADMIT THIS INTO EVIDENCE.

THE COURT: Y'ALL WISH TO BE HEARD?

MR. SUSSMAN: WELL, WE WOULD ONLY HAVE AN OBJECTION PROBABLY AS TO THE RELEVANCE AS TO THIS PARTICULAR PIECE OF EVIDENCE. HOW IT'S RELEVANT TO THE CASE.

MR. HAWKE: WE WOULD JOIN THAT OBJECTION.

THE COURT: MR. MILLER?

MR. MILLER: YES, SIR.

THE COURT: THE OBJECTION IS OVERRULED. MARK IT IN EVIDENCE. AGAIN, WITH THE UNDERSTANDING THAT WE'RE NOT GONNA STORE THOSE THINGS WHEN THIS TRIAL IS OVER. (STATE'S EXHIBIT #20 IN EVIDENCE.)

Q INVESTIGATOR LOWE, DID YOU FIND NARCOTICS OR MARIJUANA IN ANY OF THE OTHER PIECES OF FURNITURE OTHER THAN THE MANTLES OR THESE CHIMNEYS? THINGS OVER HERE.

A NONE AT ALL.

Q OKAY. WHERE WERE THE MANTLES THAT CONTAINED MARIJUANA LOADED ONTO THE TRUCK WHEN YOU OFFLOADED THEM AT THE SHERIFF'S OFFICE?

A THEY WERE AT THE VERY BACK OF THE TRUCK TO BE THE FIRST ITEMS OFFLOADED.

MR. PUETZ: OBJECTION. CALLS FOR SPECULATION.

THE COURT: HE HAS TO LAY A FOUNDATION AS TO HOW HE KNOWS IT.

Q INVESTIGATOR LOWE, WOULD IT HAVE BEEN POSSIBLE TO OFFLOAD THE ITEMS AT THE BACK OF THE TRAILER WITH THESE CHIMNEYS IN PLACE?

A NO.

Q OKAY. SHORT OF TEARING THE FRONT OUT OF THE TRAILER, WOULD IT HAVE BEEN POSSIBLE TO UNLOAD THESE ITEMS THAT WERE IN THE REAR BEFORE YOU UNLOADED THE CHIMNEYS?

A NO, IT WAS NOT.

Q OKAY. INVESTIGATOR, I SHOW YOU STATE'S 8. DOES THAT FAIRLY AND ACCURATELY REPRESENT Y'ALL UNLOADING THE CHIMNEYS OFF THE TRAILER?

A YES, SIR, IT DOES.

THE COURT: ANY OBJECTION?

MR. MAYE: THAT ONE'S ALREADY IN EVIDENCE.

MR. MAYE: THAT WAS STATE'S 8.

THE COURT: I'M SORRY.

Q LET ME SHOW YOU A PHOTOGRAPH AND ASK IF YOU CAN VIEW THAT. DOES THAT FAIRLY AND ACCURATELY RFFLECT Y'ALL OFFLOADING OR THE SCENE THERE WHERE YOU WERE OFFLOADING THE TRACTOR-TRAILER TRUCK AT THE SHERIFF'S DEPARTMENT ON THE 18TH OF MAY 2002?

A YES, THAT'S WHERE WE WERE STANDING.

MR. MAYE: I MOVE THIS INTO EVIDENCE.

MR. HAWKE: NO OBJECTION.

MR. SUSSMAN: NO OBJECTION.

MR. MILLER: NO OBJECTION, YOUR HONOR.

THE COURT: MARK IT IN EVIDENCE. (STATE'S EXHIBIT #21 RECEIVED IN EVIDENCE.) DON'T PICK THAT UP. THE SOLICITOR'S NOTES FELL INTO THE JURY BOX; THEY'RE FACE DOWN, AND ONE OF THE JURORS WAS GONNA BE NICE AND PICK 'EM UP. I INSTRUCTED THE JUROR NOT TO PICK 'EM UP.

MR. MAYE: I UNDERSTAND THAT.

THE COURT: BECAUSE I DIDN'T WANT THE JUROR TO BE EXPOSED TO WHATEVER THE SOLICITOR—

MR. MAYE: I UNDERSTAND.

THE COURT: I WANT THE RECORD TO SAY WHAT JUST HAPPENED.

MR. MAYE: ABSOLUTELY.

THE COURT: THANK YOU.

Q INVESTIGATOR LOWE, SOME OTHER ITEMS FOR YOU TO TAKE A LOOK AT. COULD YOU COME DOWN FROM THE STAND AND TAKE A LOOK AT THESE ITEMS HERE AND HERE. HAVE YOU HAD AN AMPLE OPPORTUNITY TO VIEW THESE ITEMS HERE AND TAKE A CLOSE LOOK AT THE METHOD OF PACKAGING AND THE CONSISTENCY OF THE MATERIAL THAT YOU HAVE THERE?

A YES, SIR.

Q ARE THESE ALL OF THE BALES – ARE THE BALES OF MARIJUANA THAT WERE SEIZED OUT THERE ON MAY 18TH OF 2002 BOTH AT MR. DELEON'S STORE AND AT THE SHERIFF'S DEPARTMENT. ARE ALL OF THESE THOSE ITEMS?

A THERE SHOULD BE 400 OF 'EM HERE. IT APPEARS TO BE ALL OF IT WITHOUT COUNTIN' EACH AND EVERY PACKAGE.

MR. MAYE: YOUR HONOR, I'D MOVE TO MARK THESE ALL FOR IDENTIFICATION FOR THE TIME AS ONE GROUP. AS ONE GROUP AT THIS POINT IN TIME BECAUSE IF THERE IS AN INSISTENCE ON A COUNT, IN ORDER TO DO THAT, I'LL HAVE HIM DO SO. ASK YOU TO TAKE A BREAK SO WE CAN COUNT 'EM ALL. BUT I'D ASK TO MARK ALL THESE FOR I.D. AT THIS POINT IN TIME.

THE COURT: THEY CAN BE MARKED FOR IDENTIFICATION PURPOSES REGARDLESS OF WHETHER THERE'S AN OBJECTION OR NOT. AS I UNDERSTAND IT,

THERE ARE ALREADY SOME NUMBERS ON THOSE BALES?

MR. MAYE: THEY'RE ALL NUMBERED.

THE COURT: THOSE BRICKS. DO YOU KNOW WHERE THE FIRST NUMBERED BRICK IS?

MR. MAYE: THEY'RE MIXED UP. THIS APPEARS TO BE THE FIRST BATCH. I'M UP IN THE 300'S HERE. BUT I CANNOT. I CAN HAVE HIM SELECT -- WE NEED TO TAKE A BREAK IN ORDER TO ALLOW HIM TO COUNT THEM. I'LL DO THAT BECAUSE I'M GONNA ASK HIM IF THESE ARE ALL THE ITEMS THAT HE SEIZED.

THE COURT: ALRIGHT. Y'ALL WISH TO BE HEARD ON THIS PART OF IT?

MR. HAWKE: JUDGE, WE DON'T OBJECT TO HIM IDENTIFYING ONE JOINT EXHIBIT CONSISTENT -- ONE JOINT EXHIBIT OF WHATEVER THEY SEIZED THAT DAY, WE DON'T INSIST ON HIM COUNTING EVERY ONE.

THE COURT: WHEN YOU SAY JOINT EXHIBIT YOU'RE NOT TALKIN' ABOUT PLAINTIFF AND DEFENSE.

MR. HAWKE: NO--

THE COURT: YOU'RE TALKIN' ABOUT ONE—

MR. HAWKE: NO. I MEANT ONE EXHIBIT--

THE COURT: THEY DON'T HAVE TO BE INDIVIDUALLY NUMBERED BY THE COURT REPORTER.

MR. HAWKE: THAT'S A MUCH BETTER WAY OF PUTTING IT.

THE COURT: OKAY.

MR. SUSSMAN: WE WOULD JOIN IN THAT STATEMENT.

MR. MILLER: YES, YOUR HONOR, WE WOULD JOIN AS WELL.

THE COURT: WELL, MADAM COURT REPORTER, YOU MARK SOMETHING FOR IDENTIFICATION. (STATE'S EXHIBIT #22 MARKED FOR IDENTIFICATION.)

Q INVESTIGATOR LOWE, ALL THESE ITEMS HERE THAT ARE MARKED FOR IDENTIFICATION, IS THIS ALL THE NARCOTICS SEIZED THAT DAY BOTH AT MR. DELEON'S STORE AND BACK HERE AT THE SHERIFF'S OFFICE.

A YES, IT IS.

Q AND HOW MANY OF THESE BUNDLES WERE ACTUALLY SEIZED AT MR. DELEON'S?

A AT THE STORE THERE WERE 20 OF THE BUNDLES.

Q OKAY. INVESTIGATOR LOWE, DID YOU TAKE THESE ITEMS ON THAT DAY INTO YOUR EXCLUSIVE CUSTODY AND CONTROL?

A YES, I DID.

Q OKAY. UNTIL WHEN?

A UNTIL JULY 2ND 2002.

Q WHAT HAPPENED JULY 2ND 2002? DID YOU LEAVE THE SHERIFF'S OFFICE?

A YES, I RESIGNED MY POSITION AT THE SHERIFF'S OFFICE AND TURNED THE KEY OVER TO SHERIFF DOBEY.

Q OKAY. SO YOU GAVE CUSTODY AND CONTROL OF THIS OVER TO SHERIFF DOBEY AT THE TIME YOU LEFT?

A YES, SIR.

Q SHERIFF ADELL DOBEY SHERIFF OF EDGEFIELD COUNTY. IS THAT CORRECT?

A YES, THAT'S CORRECT.

Q OKAY. DURING THE TIME THAT YOU HAD CUSTODY AND CONTROL OF THESE, WERE THESE CHANGED OR ALTERED IN ANY WAY?

A THE ONLY THING ON JUNE THE 21ST WE HAD A DEPUTY OR A TECHNICIAN FROM THE AIKEN COUNTY LAB COME OVER AND TAKE SAMPLES AND WEIGH THE

PACKAGES, BUT THEY WERE STILL UNDER MY CONTROL. SHE CAME IN AND DID IT AT THE EVIDENCE ROOM.

Q DID THESE ITEMS EVER LEAVE YOUR CUSTODY AND CONTROL FROM THE SHERIFF'S OFFICE WHILE SHE PULLED THOSE TEST SAMPLES?

A NO, SIR.

Q LET ME ASK YOU THIS, INVESTIGATOR LOWE: WERE THE INDIVIDUALS IN THIS CASE CHARGED BY THE SHERIFF'S OFFICE MR. FREDY DELEON WAS HE, IN FACT, CHARGED IN THIS CASE?

A YES, HE WAS. HE WAS CHARGED WITH TRAFFICKING.

Q OKAY. HE WAS ACTUALLY ARRESTED ON THAT SATURDAY? IS THAT CORRECT?

A YES, HE WAS.

Q WHEN WERE WARRANTS OBTAINED BY THE SHERIFF'S DEPARTMENT FOR HIM?

A THE DOCUMENTS WERE PREPARED AND WARRANTS WERE OBTAINED ON MONDAY THE 20TH.

Q HE WAS CHARGED WITH TRAFFICKING IN MARIJUANA. IS THAT CORRECT?

A YES, THAT'S CORRECT.

Q HOW ABOUT MR. RAPHAEL HERNANDEZ? WERE CHARGES INSTITUTED BY THE SHERIFF'S DEPARTMENT AGAINST HIM? WERE WARRANTS DRAWN?

A YES, SIR, THE SAME DATE.

Q ON THAT MONDAY?

A RIGHT.

Q WAS HE DETAINED ON THAT SATURDAY AND TAKEN INTO CUSTODY BY THE SHERIFF'S OFFICE ON THAT DAY?

A YES, HE WAS.

Q HOW ABOUT MR. HONORIO GUERRERO?

A YES. SAME DATE ALSO.

Q WHAT WAS HE CHARGED WITH?

A TRAFFICKING.

Q WHAT ABOUT MR. ALFREDO AVILA-AROJONA?

A ALSO THE SAME DATE FOR TRAFFICKING.

Q WERE ALL OF THEM ARRESTED THE SAME DAY?

A YES.

Q THAT SATURDAY?

A YES, THEY WERE—

Q AND ALL OF THEM HAD WARRANTS DRAWN AGAINST THEM SOMETIME THE NEXT WEEK?

A RIGHT.

Q AND ALL WERE CHARGED WITH TRAFFICKING IN MARIJUANA.

A YES.

Q LET ME ASK YOU THIS: IN YOUR CAPACITY AS CHIEF DEPUTY, WHAT DID YOU DO WITH THE RYDER BOX TRUCK THAT THESE THREE INDIVIDUALS OVER HERE WERE DRIVING? MR. GUERRERO, MR. HERNANDEZ AND MR. AVILA-AROJONA, AT LEAST 2 OF 'EM WERE PASSENGERS AND ONE WAS THE DRIVER, WHAT DID YOU DO WITH THAT RYDER TRUCK?

A AFTER WE HAD CHECKED IT FOR CONTRABAND OR ILLEGAL SUBSTANCES, IT WAS DETERMINED TO RELEASE IT BACK TO THE COMPANY WHERE IT CAME FROM IN CHARLOTTE, NORTH CAROLINA. AND THEY CAME DOWN AND WE RELEASED THE TRUCK TO THEIR REPRESENTATIVES.

Q WAS THERE ANYTHING AT IN THE -- OTHER THAN THE CONTENTS IN THE CAB, WAS THE BACK OF THE TRUCK EMPTY?

A YES, IT WAS COMPLETELY EMPTY.

Q DIDN'T HAVE ANY CARGO IN IT AT ALL.

A NONE AT ALL. I SHOW YOU THIS ITEM. TAKE A LOOK AT THAT. CAN YOU IDENTIFY THAT?

A YES. THIS IS WHAT APPEARS TO BE A RENTAL AGREEMENT THAT WAS IN THE CAB OF THE RYDER TRUCK UP OVER THE VISOR.

Q IS THAT THE RENTAL AGREEMENT YOU SEIZED OUT OF THE CAB OF THE TRUCK?

A YES, IT IS.

MR. MAYE: I MOVE THIS INTO EVIDENCE AT THIS TIME, YOUR HONOR.

THE COURT: ANY OBJECTION?

MR. HAWKE: NO OBJECTION ON BEHALF OF DELEON, YOUR HONOR.

MR. SUSSMAN: NO OBJECTION ON BEHALF OF MR. AVILA AND HERNANDEZ.

MR. MILLER: NO OBJECTION AS TO MR. GUERRERO, YOUR HONOR.

THE COURT: ALRIGHT. MARK IT IN EVIDENCE. (STATE'S EXHIBIT #23 RECEIVED IN EVIDENCE.)

MR. HAWKE: NO OBJECTION, YOUR HONOR.

MR. SUSSMAN: NO OBJECTION, YOUR HONOR.

MR. MILLER: NO OBJECTION.

MR. HAWKE: I THOUGHT HE INTENDED---

MR. MAYE: I'M GONNA PUT IT IN -- I HAVEN'T ASKED HIM---

Q CAN YOU IDENTIFY THIS ITEM?

A YES. THIS IS A RECEIPT FOR THE CROSSROADS MOTEL THAT IS LOCATED BEHIND BILLY'S SUPER STORE.

Q OKAY.

A IN TRENTON.

Q WAS THAT IN THE CAB OF THE TRUCK AS WELL?

A YES.

MR. MAYE: I MOVE THIS INTO EVIDENCE.

MR. HAWKE: NO OBJECTION ON BEHALF OF DELEON, YOUR HONOR.

MR. SUSSMAN: NO OBJECTION, YOUR HONOR.

MR. MILLER: NO OBJECTION, YOUR HONOR.

THE COURT: OKAY. MARK IT IN EVIDENCE. (STATE'S EXHIBIT #24 RECEIVED IN EVIDENCE.)

Q INVESTIGATOR LOWE, FROM THE RENTAL AGREEMENT, WHO RENTED THAT TRUCK?

A I'M NOT REAL GOOD AT PRONOUNCIN' NAMES, BUT IT SAYS HONORIO GUERRERO.

Q WHERE WAS IT RENTED FROM?

A THE PLACE OF RENTAL WAS IN ROCK HILL, SOUTH CAROLINA.

Q WHAT WAS THE DAY IT WAS ACTUALLY RENTED?

A IT WAS RENTED THE 17TH OF MAY 2002 AT 5 P.M.

Q 17TH OF MAY. FROM ROCK HILL?

A ROCK HILL, SOUTH CAROLINA. CORRECT.

Q DID IT APPEAR TO HAVE A SIGNATURE ON IT OF HONORIO HERNANDEZ GUERRERO?

A YES, IT DOES. DOWN HERE AT THE BOTOOM.

Q LET ME SHOW YOU STATE'S 24. WHAT IS THAT ITEM?

A THIS IS A RECEIPT FROM THE CROSSROADS MOTEL IN TRENTON, SOUTH CAROLINA.

Q OKAY. WHEN DOES IT REFLECT THE RENTAL? I KNOW THAT THERE'S A DATE ON THERE, BUT WHAT DAY OF THE WEEK DOES IT SHOW THAT FOR?

A AS FRIDAY.

Q IT SHOWS FRIDAY AS THE DAY?

A YES.

Q IS THE DATE -- IT MAY NOT BE CORRECT, BUT WHAT DOES IT SAY ON THE DATE?

A IT SAYS 4-17.

Q 4-17 BUT IT'S ACTUALLY MARKED ON FRIDAY?

A RIGHT.

Q OKAY. DID YOU FIND THOSE ITEMS OF PAPERWORK BOTH WERE IN THE CAB OF THE RYDER TRUCK?

A YES, SIR.

Q OKAY.

MR. MAYE: BEG THE COURT'S INDULGENCE.

Q INVESTIGATOR LOWE, IN THE EVIDENCE ROOM OF THE SHERIFF'S DEPARTMENT, WHERE ARE NARCOTICS KEPT?

A NARCOTICS ARE KEPT IN A VAULT ARE THAT'S IN THE CORNER OF THE EVIDENCE ROOM.

Q OKAY. DURING THAT TIME PERIOD THAT YOU HAD ACCESS, WHERE WERE THESE ITEMS STORED?

A THEY WERE PLACED—

Q NARCOTICS IN THIS CASE.

A THEY WERE PLACED DIRECTLY INTO THE VAULT. TOOK UP THE WHOLE THING.

Q WHO HAD ACCESS TO THE VAULT?

A JUST MYSELF.

Q OKAY. HOW MANY KEYS WERE THERE TO THE VAULT?

A JUST ONE.

Q OKAY. HOW ABOUT TO THE EVIDENCE ROOM ITSELF, THE ROOM WHERE NON-FUNGIBLE EVIDENCE WAS KEPT?

A I HAD ONE KEY AND THE SHERIFF HAD ONE KEY TO THE EVIDENCE ROOM.

Q THESE ITEMS WERE ACTUALLY SECURED IN THE VAULT. IS THAT CORRECT?

A YES, THAT'S CORRECT.

Q AND ONLY ONE KEY TO THE VAULT.

A YES.

Q WHEN YOU LEFT – WHAT DAY DID YOU LEAVE THE SHERIFF'S DEPARTMENT?

A JULY THE 2ND 2002.

Q WHEN DID YOU TURN OVER YOUR KEY TO THE VAULT AND YOUR KEY TO THE EVIDENCE ROOM TO THE SHERIFF?

A AT THAT SAME DATE AND TIME.

Q SAME DAY.

MR. MAYE: I'M GONNA RESERVE THE RIGHT TO RECALL HIM FOR AN ADDITIONAL MATTER, BUT THAT'S ALL I HAVE FOR HIM AT THIS TIME.

THE COURT: CROSS.

CROSS-EXAMINATION

BY MR. HAWKE

Q I THINK YOU SAID THAT THE CHIMNEYS WERE LOADED IN SUCH A WAY THAT THEY HAD TO BE UNLOADED BEFORE ANYTHING ELSE COULD BE UNLOADED. IS THAT RIGHT?

A YES, SIR, THAT'S CORRECT.

Q OKAY. NOW ONE CHIMNEY WAS UNLOADED AT MR. DELEON'S. IS THAT RIGHT?

A YES, SIR.

Q AND THEN 12 OTHER PIECES OF FURNITURE WERE UNLOADED THAT WEREN'T CHIMNEYS. AM I CORRECT?

A AS I STATED, I'M NOT SURE HOW MANY OTHER ITEMS WERE AT THE STORE.

Q DID YOU GO TO MR. DELEON'S?

A THAT DAY, YES, I DID.

Q OKAY. AND YOU WERE ACTUALLY THE ONE THAT POPPED OFF OR TOOK OFF THE TOP AT MR. DELEON'S. AM I CORRECT?

A OF THE CHIMNEY, YES.

Q OKAY. AND YOU DON'T REMEMBER SEEING THE OTHER 12 PIECES OF FURNITURE THAT WERE UNLOADED?

A NO, I DON'T RECALL SEEING THOSE.

Q YOU DON'T REMEMBER SEVERAL CHAIRS AND A TABLE AND THINGS LIKE THAT?

A THERE WERE A LOT OF ITEMS IN THE STORE.

Q OKAY. LET ME JUST – IT LOOKS LIKE TO ME THE PIECE OF WOOD THAT YOU HAVE TO POP OFF TO GET INTO THIS IS A THICK PIECE OF WOOD. AM I

CORRECT?

A IT'S ABOUT AN INCH THICK.

Q OKAY. AND LOOKS LIKE IT WAS FAIRLY DIFFICULT TO GET OFF THE WAY THE NAILS ARE BENT AND THE FACT THAT IT WAS SNAPPED IN TWO BEFORE THE NAILS AND STUFF WOULD OPEN UP AND LET IT LOOSE. IS THAT RIGHT?

A THAT'S CORRECT.

Q IT WASN'T EASY.

A OH, IT WASN'T TOO HARD.

Q NOW YOU SAID YOU HAD TO USE A CROWBAR TO GET IN IT. IS THAT RIGHT?

A YES.

Q OKAY. DID YOU SEE A CROWBAR AT MR. DELEON'S?

A NO.

Q OR CONFISCATE ANY KIND OF MATERIAL THAT COULD BE USED TO BUST OPEN ONE OF THESE?

A NO.

Q AND THE ONE THAT YOU FOUND AT MR. DELEON'S, WHEN YOU WENT TO BREAK IT OPEN IT WAS INTACT AND HAD NOT BEEN ALTERED OR TOUCHED IN ANY WAY THAT YOU COULD TELL. RIGHT?

A THE ONE AT THE STORE?

Q RIGHT.

A IT HADN'T BEEN BUSTED, NO.

Q OKAY. AND WHEN YOU LOOKED AT ALL THIS STUFF BEFORE YOU POPPED OPEN THE TOP OF ONE OF 'EM AND FOUND THE MARIJUANA STORED IN IT, IT LOOKED LIKE FURNITURE, DIDN'T IT?

A IT LOOKED LIKE A CHEAP IMITATION OF FURNITURE.

Q NOT GOOD FURNITURE. I'LL GRANT YOU THAT. THIS IS NOT WHAT YOU'RE GONNA FIND AT ANDREW'S GALLERY, IS IT?

A NO, SIR.

Q OKAY. I UNDERSTAND. BUT -- BUT OTHER THAN THAT IT IS -- IT LOOKS LIKE SOME SORT OF MEXICAN TYPE FURNITURE YOU MIGHT SEE FROM TIME TO TIME. RIGHT?

A I'M NOT AN EXPERT IN FURNITURE BUT--

Q. ALRIGHT. NOW DID YOU DO ANYTHING IN REGARDS TO THIS CASE OTHER THAN GO OUT, POP THIS TOP AND THE THINGS THAT YOU'VE TOLD US ABOUT SO FAR?

A NO, I WAS -- AS HAS BEEN STATED, I WAS CHIEF DEPUTY AT THE TIME AND I WAS JUST AVAILABLE TO OFFER LOCAL ASSISTANCE TO THE FEDERAL AUTHORITIES IF NEEDED.

Q WHOSE INVESTIGATION WAS IT?

A AT THAT POINT IT WAS THE FEDERAL AUTHORITIES.

Q NOW WOULD THAT BE MICHELLE DOWLING?

A YES, SIR.

Q AND SHE WAS THE ONE IN CHARGE AND THAT'S WHY SHE WAS DIRECTING Y'ALL ABOUT WHAT TO DO. RIGHT?

A YES.

Q OKAY. AND WHO WAS TO FOLLOW UP ON ANY LEADS THAT WERE GENERATED IN THE CASE?

A I DON'T UNDERSTAND YOUR QUESTION.

Q WHO WAS TO FOLLOW UP ON ANY LEADS OR INFORMATION THAT YOU DISCOVERED IN REFERENCE TO THESE INDIVIDUALS, THEIR ROLE IN THIS, THAT

SORTA THING?

A IF IT'D BEEN A LEAD OF A LOCAL NATURE, THAT WOULD'VE FELL TO OUR AGENCY OR FEDERAL IT WOULD'VE I ASSUME IT—

Q DO YOU KNOW ANY LEADS -- CAN YOU NAME ANY PARTICULAR PERSON THAT YOU KNOW OF WHO WAS GIVEN THE JOB OR FOLLOWING UP ON LEADS EITHER FOR A LOCAL AGENCY OR FEDERAL AGENCY, FOR ANYBODY THAT WAS THERE?

A DO I KNOW OF ANY LEADS THAT WERE OBTAINED?

Q YEAH. ANY LEADS TO ANYBODY THAT WAS ASSIGNED TO FOLLOW UP ON LEADS OR ANY OF THE AGENCIES THAT WERE OUT THERE. YOU KNOW OF ANYBODY THAT WAS ASSIGNED TO FOLLOW UP ON ANY LEADS?

A NOT -- NOT PERSONALLY ON THE FEDERAL LEVEL. ON OUR LOCAL LEVEL WE HAVE OFFICERS THAT ARE ASSIGNED TO NARCOTICS INVESTIGATIONS.

Q OKAY. DO YOU KNOW WHO WAS ASSIGNED ON YOUR LOCAL LEVEL TO FOLLOW UP LEADS?

A THAT WOULD'VE BEEN DEPUTY ROOSEVELT YOUNG.

Q DEPUTY ROOSEVELT YOUNG. DO YOU KNOW WHO WOULD'VE BEEN ASSIGNED TO FOLLOW UP LEADS FOR THE CUSTOMS AGENTS?

A NO, SIR. I DON'T HAVE ANY IDEA.

Q DID YOU YOURSELF OR DO YOU KNOW OF ANYBODY WHO FOUND ANY -- ANY PRIOR CONNECTION BY WAY OF TELEPHONE, LETTERS THAT ARE MAILED, SOME SORT OF CORRESPONDENCE OR WHATEVER BETWEEN MR. DELEON AND SEBASTIAN EXPORTACIONES, JAMCO INTERNATIONAL, ANYBODY FROM LAREDO, TEXAS, BORDER CARRIERS, OR ANYBODY NAMED JOSE ROBAR CONTRARAS?

A NO, SIR. THAT WAS NOT IN MY SCOPE OF PARTICIPATION IN THIS CASE.

Q DID YOU EVER FIND ANY INFORMATION ABOUT ANY PHONE CALLS THAT MAY HAVE BEEN MADE BETWEEN MR. FREDY DELEON AND ANY OF THOSE PLACES OR ENTITIES OR PERSONS THAT I JUST NAMED?

A NO, SIR.

Q OKAY. DO YOU KNOW OF ANYBODY THAT WENT AND OBTAINED ANY INFORMATION ABOUT PHONE RECORDS IN THAT REGARD?

A NO, SIR.

Q DID YOU – WERE YOU EVER ABLE TO OBTAIN ANY INFORMATION TO INDICATE THAT MR. FREDY DELEON WAS INVOLVED IN ANY WAY WITH THE RYDER BOX TRUCK THAT CAME DOWN?

A NO, SIR.

Q OKAY. WERE YOU EVER ABLE TO OBTAIN ANY INFORMATION WHICH INDICATED THAT PRIOR TO BEING ARRESTED THIS DAY, MR. FREDY DELEON KNEW ANY OF THE OTHER 3 DEFENDANTS OR HAD HAD ANY PRIOR CONTACT WITH THEM?

A NO, SIR.

Q NOW YOU'VE – YOU WENT TO THE RESTAURANT OF FREDY DELEON AND YOU WERE THERE WHEN – WHEN Y'ALL HAD PULLED THE ITEMS OUT. AM I CORRECT?

A IT'S A GROCERY STORE. I DON'T BELIEVE IT'S A RESTAURANT.

Q AND WHAT SORTA THINGS ARE BEING SOLD IN THAT GROCERY STORE?

A FOOD ITEMS, NOVELTIES.

Q OKAY. IS IT TRULY A LITTLE MEXICAN SHOP SO TO SPEAK, GROCERY STORE/SHOP?

A EVERYTHING I SAW THERE WAS -- HAD SPANISH OR MEXICAN WRITING ON

IT.

Q OKAY. DID YOU SEE THE LAYOUT OF THE STORE AND THE STORAGE ROOM THAT WAS INVOLVED?

A YES, SIR.

Q OKAY. THAT STORAGE ROOM IS NOT VERY BIG, IS IT?

A I DON'T RECALL BUT IT WASN'T LARGE, NO.

Q COULD YOU GIVE ME A ROUGH ESTIMATE – GIVE ME YOUR BEST ESTIMATE OF THE DIMENSIONS OF THAT STORAGE ROOM.

A THE STORAGE ROOM?

Q RIGHT.

A IT'S PROBABLY MAYBE 30 FEET LONG 12 FEET WIDE.

Q OKAY. WOULD IT BE FAIR TO SAY A LITTLE BIT WIDER THAN THE JURY BOX FROM ABOUT WHERE THE RAIL IS? SOMEWHERE LIKE THAT?

A UH-HUH.

Q OKAY. AND IT HAD FOOD ITEMS AND MEXICAN TYPE ITEMS THAT WOULD BE UTILIZED IN HIS STORE ALREADY IN IT, DIDN'T IT?

A THERE WERE BOXES IN THERE, YES.

Q AND – AND ABOUT 3 FOURTHS OF IT WERE ALREADY FULL. ISN'T THAT CORRECT?

A HALF TO 3 FOURTHS I WOULD SAY.

Q AND IT WAS OBVIOUS THAT IF MR. DELEON WAS EXPECTING A LARGE SHIPMENT OF FURNITURE HE WAS NOT PREPARED IN ANY WAY TO STORE IT AT THAT STORE.

A AGAIN, I WOULDN'T HAVE ANY IDEA BECAUSE I ONLY SAW ONE PART OF THAT STORE.

Q OKAY.

A THERE WERE SEVERAL PARTS OF THAT BUILDING ALONG THERE.

Q OKAY. WHEN YOU WENT TO THE STORE ROOM WAS THERE ANY OTHER ROOM IN THERE OR WAS IT PRETTY MUCH PACKED ONCE THE FURNITURE WAS PUT IN THERE?

A IT WAS PRETTY TIGHT QUARTERS.

Q OKAY. AND IT HAD PRETTY MUCH ALL IT COULD HOLD WITH THE 13 PIECES OF FURNITURE INCLUDING THE CHIMNEYS.

A AGAIN, I DON'T RECALL IF THE OTHER PIECES OF FURNITURE WERE IN THE STORE ROOM. I WASN'T IN THERE LONG ENOUGH TO -- TO NOTICE ALL OF THAT.

Q NOW WAS MR. DELEON THERE WHEN YOU POPPED THE TOP OFF?

A NO, HE WASN'T.

Q HE WASN'T. AND DID -- DID YOU UNDERSTAND -- DID YOU KNOW WHERE HE WENT WHEN THIS FORD WAS TOOK OFF AND DIRECTED THIS TRACTOR-TRAILER TO FOLLOW IT? DO YOU KNOW WHERE HE WENT?

A NO, SIR. I'M NOT FAMILIAR AT ALL WITH THAT PART OF THE CASE.

Q DO YOU – WHEN MR. DELEON CAME BACK, DO YOU KNOW WHO TOLD HIM WHAT WAS IN THE CHIMNEY?

A NO, I DON'T.

Q DO YOU KNOW – DO YOU REMEMBER BEING THERE WHEN HE TURNED OVER A VIDEO TAPE?

A NO, SIR, I DON'T RECALL SEEING A VIDEO TAPE.

Q DID YOU SEE A SECURITY SYSTEM IN HIS STORE?

A I BELIEVE THERE MIGHT'VE BEEN AN ALARM ON THE DOOR. WHEN YOU COME IN IT SOUNDS A BEEPER.

Q DO YOU REMEMBER ANYTHING ABOUT ANY VIDEO CAMERAS IN THE STORE?

A I DIDN'T SEE ANY CAMERAS, NO, SIR.

Q HAVE YOU EVER SEEN OR EVER LOOKED AT A VIDEO TAPE THAT CAME FROM THE STORE OF FREDY DELEON?

A NO, SIR.

Q AND YOU YOURSELF HAVE NOT DONE ANY FOLLOW UP INVESTIGATION AT ALL. AM I CORRECT?

A NO, SIR. CORRECT.

Q NOW WHEN YOU WERE IN THE STORE ITSELF DID YOU SEE ANY LARGE AMOUNTS OF DRUGS? DID YOU SEE ANY DRUGS OTHER THAN THE DRUGS THAT WERE REMOVED FROM THE CHIMNEY?

A NO, SIR.

Q DID YOU SEE ANY LARGE SUMS OF CASH?

A NO, SIR.

Q OKAY. DID YOU SEE ANY SORT OF DRUG PARAPHERNALIA?

A NO, NOT REALLY.

Q OKAY. DID YOU SEE ANY SCALES TO WEIGH DRUGS?

A NO, SIR.

Q OKAY. DID YOU SEE ANY SORT OF PACKAGING THAT COULD BE USED TO REPACKAGE DRUGS AND DISTRIBUTE THEM?

A AGAIN, I DIDN'T DO A SEARCH OF THE STORE. I JUST GIVE IT A CURSORY GLANCE AS I CAME IN.

Q OKAY. NOW YOU – YOU WERE THE CHIEF DEPUTY. IS THAT CORRECT?

A THAT'S CORRECT.

Q IS THAT NEXT IN LINE TO THE SHERIFF?

A YES, SIR.

Q AND AT THE TIME THIS PARTICULAR ARREST WENT DOWN Y'ALL HAD PLENTY OF PROBABLE CAUSE, PARTICULARLY WHEN 40 POUNDS OF MARIJUANA HAD BEEN MOVED FROM A CHIMNEY INSIDE HIS BUSINESS TO EXECUTE SEARCH WARRANTS, DIDN'T YOU?

A I'M SORRY. YOUR QUESTION WAS?

Q YOU WOULD HAVE HAD PLENTY OF PROBABLE CAUSE TO TAKE TO A MAGISTRATE TO OBTAIN A SEARCH WARRANT TO SEARCH THE PERSONAL PROPERTY AND REAL PROPERTY OF FREDY DELEON, WOULDN'T YOU?

A FROM WHAT TIMEFRAME?

Q ONCE YOU POPPED THE TOP OFF THAT CHIMNEY AND FOUND 40 PACKAGES OF MARIJUANA.

A UH-HUH.

Q OKAY. DID YOU EVER DIRECT ANY OF YOUR DEPUTIES TO DO THAT? OR INVESTIGATORS.

A NO, SIR.

Q OKAY. DO YOU KNOW OF ANY INVESTIGATORS OR DEPUTIES THAT DID?

A NO, SIR. AT THAT TIME WE WERE WORKING PROVIDING ASSISTANCE TO THE FEDERAL AUTHORITIES.

Q OKAY. DID YOU THINK THAT WAS PRIMARILY THEIR JOB?

A AT THAT POINT IT WAS THEIR CASE, YES, SIR.

Q NOW YOU EVENTUALLY WERE ABLE TO OBTAIN POSSESSION OF THIS PARTICULAR CAR, WEREN'T YOU?

A THE CAR WAS LOCATED AND BROUGHT TO THE SHERIFF'S OFFICE, YES.

Q OKAY. AND THAT WAS A CAR DRIVEN BY ONE OF THE TWO MEN THAT WAS NEVER ARRESTED. AM I CORRECT?

A I HAVE NO KNOWLEDGE OF WHO WAS DRIVING THE CAR.

Q OKAY. ALRIGHT. BUT -- BUT DID YOU DIRECT SOMEBODY FROM YOUR DEPARTMENT OR REQUEST SOMEBODY FROM THE DEPARTMENT TO GET A SEARCH WARRANT? ON THAT CAR.

A I BELIEVE THAT WHEN THE CAR WAS PULLED IN.

Q OKAY. AND, IN FACT, YOUR LEAD NARCOTICS INVESTIGATOR ROOSEVELT YOUNG OBTAINED A -- FILED AN AFFIDAVIT FOR A SEARCH WARRANT AND OBTAINED A SEARCH WARRANT IN ORDER TO SEARCH THAT CAR. AM I CORRECT?

A YES, SIR.

Q OKAY. DID ANYBODY -- HAS ANYBODY TO YOUR KNOWLEDGE DONE ANY FOLLOW UP INVESTIGATION TO TRY TO LOCATE EITHER ONE OF THE TWO INDIVIDUALS THAT DROVE OFF THAT DAY IN THE GREEN FORD THUNDERBIRD?

A THAT CASE WAS STILL UNDER INVESTIGATION WHEN I LEFT THE SHERIFF'S OFFICE ON JULY 2ND.

Q OKAY. ARE YOU AWARE OF ANY LEADS THAT HAVE BEEN FOLLOWED UP BY YOUR DEPARTMENT? OR THE DEPARTMENT YOU USED TO WORK FOR.

A NOT SINCE THAT TIME I'M NOT FAMILIAR WITH, NO.

Q ALRIGHT. ARE YOU AWARE OF ANY LEADS THAT HAVE BEEN FOLLOWED UP BY ANYBODY IN CUSTOMS?

A NO, SIR.

MR. HAWKE: GIVE ME JUST ONE SECOND. JUDGE, WE NEED ONE SECOND TO LOOK AT AN EXHIBIT.

Q ALRIGHT. I WANNA ADDRESS YOU PROPERLY. IS IT CAPTAIN LOWE,

INVESTIGATOR LOWE?

A CAPTAIN LOWE.

Q CAPTAIN? ALRIGHT. CAPTAIN, BEING AT THE TIME I THINK YOU WERE CHIEF DEPUTY, AT THAT PARTICULAR TIME WERE YOU FAMILIAR WITH TAKING CUSTODY OF EVIDENCE?

A YES, SIR.

Q OKAY. AND YOU WERE – YOU WERE VERY FAMILIAR WITH THE PROCEDURE THAT WAS FOLLOWED THERE ANY TIME YOU TAKE CUSTODY OF EVIDENCE?

A YES, SIR.

Q ALRIGHT. CAN YOU TELL THE JURY GENERALLY WHAT HAPPENS WHEN YOU TAKE CUSTODY OF EVIDENCE AND WHAT YOU'RE SUPPOSED TO DO AS PART OF TAKING CUSTODY OF EVIDENCE AND HOLDING EVIDENCE.

A THE DEPUTIES WOULD BRING EVIDENCE INTO THE EVIDENCE AREA, AND I WOULD PLACE IT IN THE EVIDENCE ROOM ALONG WITH THE CASE NUMBER.

Q OKAY. WAS THAT TO MAKE SURE THAT THE EVIDENCE WAS UNTAMPERED WITH?

A YES, SIR.

Q NOBODY ELSE HAS ACCESS TO IT.

A YES, SIR.

Q AND ONE PERSON HAS IT TO PRESERVE THE SANCTITY OF THE EVIDENCE?

A CORRECT.

Q OKAY. IS THERE ANY PAPERWORK THAT YOU EXECUTED IN RELATION TO THAT?

A JUST AT THAT TIME WE WERE JUST PUTTIN' THE CASE NUMBER ON

WHATEVER CONTAINER THE EVIDENCE WOULD BE IN.

Q OKAY. AND DO YOU EXECUTE ANY PAPERWORK IN REGARDS TO SHOWING THE CHAIN OF CUSTODY?

A THE CHAIN OF CUSTODY IS IN MY POSSESSION UNTIL IT'S CHECKED OUT TO GO TO COURT OR COURT ORDERED TO BE DESTROYED.

Q OKAY. I UNDERSTAND IT BUT IN ORDER TO – TO – THAT ONE PERSON IS IN CHARGE OF A PIECE OF EVIDENCE THAT'S RECEIVED, AND IN ORDER TO SEE WHO THAT PERSON IS SO THAT ANYBODY WHO IS DEALIN' WITH THE FILE KNOWS WHO THEY NEED TO DEAL WITH IN ORDER TO RETRIEVE THE EVIDENCE, DO YOU EXECUTE A DOCUMENT CALLED A CUSTODY RECEIPT FOR WHEN SEIZED PROPERLY?

A AT THAT TIME, NO, WE WEREN'T DOIN' ANY—

Q OKAY. SO AT THAT TIME Y'ALL DIDN'T EXECUTE ANY OF THAT?

A NO, SIR.

Q OKAY. WHEN Y'ALL WERE – ORIGINALLY WHO HAD CUSTODY OF THE – OF THE MARIJUANA? WHO FIRST TOOK CUSTODY?

A I DID.

Q OKAY. ANYBODY ELSE EVER GIVEN CUSTODY?

A GIVEN CUSTODY AWAY FROM MY PRESENCE?

Q YES.

A NO, SIR. UNTIL I TURNED THE KEY OVER JULY THE 2ND.

Q OKAY. LET ME SHOW YOU WHAT WE'VE MARKED AS DEFENDANT'S EXHIBITS 1, 2 AND 3. DEFENDANT'S EXHIBIT #1 REFERS TO CHAIN OF CUSTODY—

MR. MAYE: YOUR HONOR, I'M GONNA OBJECT IF THESE ITEMS ARE NOT IN EVIDENCE. IF THEY'VE JUST BEEN MARKED FOR IDENTIFICATION I'M GONNA

OBJECT TO 'EM AT THIS TIME IF THEY'RE NOT IN EVIDENCE.

MR. HAWKE: I'LL LAY SOME FOUNDATION, JUDGE.

Q IS THIS A -- COULD YOU IDENTIFY IT FIRST OF ALL? TELL ME WHAT DEFENDANT'S EXHIBIT #1 IS.

A NO, I'VE NEVER SEEN A PIECE OF PAPER LIKE THIS BEFORE. IT APPEARS TO BE A FEDERAL CUSTODY RECEIPT. FEDERAL AGENCY. DEPARTMENT OF TREASURY IT SAYS AT THE TIME.

Q OKAY. AND DOES IT HAVE ALL THE FEDERAL AGENTS LISTED IN -- WHO HAS RETAINED CUSTODY OF THIS PARTICULAR ITEM THAT'S ON THIS EXHIBIT #1?

A THREE OF 'EM LOOK LIKE CUSTOMS AGENTS AND ONE IS ONE OF MY OFFICERS. I DON'T KNOW WHO THIS OTHER ONE IS.

Q OKAY. AND THE ITEM THAT'S REFERRED TO IS WHAT?

A IT SAYS MARIJUANA.

Q OKAY.

MR. HAWKE: AND, YOUR HONOR, AT THIS TIME I WOULD TENDER DEFENDANT'S EXHIBIT #1.

MR. MAYE: WITHOUT OBJECTION, YOUR HONOR. HE CAN PUT IT IN. THAT'S FINE.

THE COURT: MARK IT.

MR. PUETZ: DEFENDANT DELEON 1.

MR. HAWKE: OH, YEAH. I'M SORRY. I NEED TO TENDER IT--

THE COURT: WELL, WAIT A MINUTE NOW. Y'ALL TOLD HER A COUPLE DAYS AGO THAT YOU WERE JUST GONNA MARK 'EM ALL TOGETHER. IF Y'ALL WANNA CHANGE HORSES IN MIDSTREAM WE GOTTA SEE IF WE CAN GO BACK AND -- I MEAN IT WOULD'VE BEEN BETTER TO SEPARATE 'EM BUT YOU ALL SAID THAT

IT WASN'T NECESSARY TO SEPARATE THE NUMBERING SYSTEM. SO WE HAVEN'T DONE IT. DO WE NEED TO -- IS THIS THE FIRST ONE THAT'S IN?

MR. HAWKE: I THINK THIS IS THE FIRST ONE WE'VE TENDERED, ISN'T IT? IN THE TRIAL.

MR. MIZZELL: YOUR HONOR, THERE IS A DEFENSE EXHIBIT ALREADY IN EVIDENCE. #5 I BELIEVE. BUT I DON'T THINK THESE HAVE BEEN IN EVIDENCE HE'S TALKIN' ABOUT RIGHT NOW.

THE COURT: I MEAN WE CAN GO BACK IF THERE'S ONLY ONE OTHER ONE IN, WE CAN GO BACK AND SEPARATE 'EM OUT, BUT I NEED TO KNOW NOW WHAT TO TELL THE COURT REPORTER. ALRIGHT. SO THAT ONE'S ONLY FROM DELEON?

MR. HAWKE: THIS IS ONLY FROM DELEON.

THE COURT: IS THAT RIGHT?

MR. SUSSMAN: THAT'S CORRECT, YOUR HONOR.

MR. MILLER: YES, YOUR HONOR. DEFENSE EXHIBIT 5 WOULD ONLY BE FOR HONORIO GUERRERO.

MR. HAWKE: AND -- AND DELEON. THAT ONE WOULD BE FOR -- BUT LET -- JUST KEEP IT IS. THAT'S FROM HONORIO GUERRERO.

MR. MILLER: RIGHT.

MR. HAWKE: THIS IS FROM DELEON. JUST LEAVE IT LIKE THAT.

THE COURT: MADAM COURT REPORTER, CAN YOU MAKE THAT ADJUSTMENT?

MR. HAWKE: YOU WANT ME TO RETRIEVE 5 FOR YOU?

THE COURT: SHE'LL DO THAT OVER LUNCH.

MR. HAWKE: OKAY. I'M SORRY FOR THE INCONVENIENCE, YOUR HONOR.

(DEFENDANT DELEON'S EXHIBIT #1 RECEIVED IN EVIDENCE.)

Q NOW THE CHAIN OF CUSTODY, IF YOU WOULD, COULD YOU TELL ME WHERE IT WENT TO FEDERAL AGENTS, WHICH FEDERAL AGENT INITIALLY HAD IT ON DOWN THROUGH THE LAST SIGNATURE. WHO WAS HE?

A THE FIRST SIGNATURE IS M. WILLIAMS.

Q AND WHAT DATE?

A THAT WAS MAY 16TH.

Q AND THAT'S THE MARIJUANA. RIGHT?

A THAT'S WHAT IT SAYS HERE. MARIJUANA.

Q AND WHO NEXT HAD CUSTODY?

A CRAIG MAGEHEE.

Q AND WHAT DATE?

A THE 16TH.

Q ALRIGHT. AND THEN WHEN'S THE NEXT ONE?

A IT'S M. WILLIAMS AGAIN, THE SAME NAME AGAIN.

Q ON WHAT DATE?

A THE 17TH.

Q ALRIGHT. AND THEN WHO GETS IT ON THE 18TH.

A IT'S INITIAL J. TUCKER.

Q OKAY. AND THEN WHO GETS IT AFTER THAT?

A AND THEN ON THE 18TH IT'S ALSO R. YOUNG, EDGEFIELD COUNTY SHERIFF'S OFFICE WHICH OVER HERE SAYS ROOSEVELT YOUNG. IT'S THE NARCOTICS INVESTIGATOR.

Q OKAY. AND THAT WOULD BE INVESTIGATOR ROOSEVELT YOUNG.

A YES, SIR.

Q OKAY. WITH YOUR DEPARTMENT.

A YES, SIR.

Q YOUR NAME DOES NOT APPEAR ON THE CHAIN OF CUSTODY ACCORDING TO THE FEDERAL AGENTS AS TO WHO THEY TRANSFERRED CUSTODY OF THE MARIJUANA TO. AM I CORRECT?

A IT DOESN'T APPEAR, NO, SIR.

Q LET ME SHOW YOU DEFENDANT'S EXHIBIT #2 AND ASK IF YOU CAN IDENTIFY THAT.

A IT'S PRACTICALLY THE SAME THING EXCEPT IT SAYS WOOD FURNITURE THIS TIME INSTEAD OF MARIJUANA.

Q OKAY. AND IT'S THE EXACT SAME KINDA FORM WHERE YOU SHOW A CHAIN OF CUSTODY IN REGARDS TO AN ITEM OF EVIDENCE. AM I CORRECT?

A YES, SIR.

Q AND THE ITEM OF EVIDENCE IS WHAT?

A IT SAYS WOOD FURNITURE.

Q THE WOOD FURNITURE. AND COULD YOU TELL US WHO HAD RETAINED CUSTODY.

THE COURT: THAT'S NOT IN EVIDENCE.

MR. HAWKE: OH, I'M SORRY. YOUR HONOR, AT THIS TIME I WOULD TENDER DEFENDANT'S EXHIBIT #3.

MR. MAYE: I DON'T HAVE ANY OBJECTION TO IT COMIN' IN. WHAT ELSE YOU GOT THERE?

MR. HAWKE: 3 AND 2.

MR. MAYE: GOT SOMETHIN' ELSE YOU WANT TO STICK IN THERE?

MR. HAWKE: YOUR HONOR—

THE COURT: THESE ARE JUST FOR DELEON?

MR. HAWKE: YES, YOUR HONOR.

THE COURT: 2 AND 3 ARE JUST FOR DELEON.

MR. HAWKE: THAT'S CORRECT, YOUR HONOR. (DEFENDANT DELEON'S EXHIBITS 2 AND 3 RECEIVED IN EVIDENCE.)

Q LET'S START WITH DEFENDANT'S EXHIBIT #3. OKAY?

A OKAY.

Q IF YOU WOULD, WOULD YOU TELL ME, FIRST OF ALL, IS THIS THE SAME CUSTODY RECEIPTS WE JUST TALKED ABOUT?

A YES, IT IS.

Q OKAY. AND WHAT'S THE ITEM OF EVIDENCE?

A WOOD FURNITURE.

Q CAN YOU TELL ME ABOUT THE FEDERAL CHAIN -- OR CUSTODY THAT APPEARS ON THAT.

A GOES THROUGH M. WILLIAMS.

Q WHAT DAY?

A THE 16TH OF MAY. 16TH OF MAY TO CRAIG MAGEHEE.

Q OKAY.

A 17TH OF MAY TO M. WILLIAMS AGAIN.

Q OKAY.

A THE 18TH OF MAY TO J. TUCKER. AND THE 18TH OF MAY TO ROOSEVELT YOUNG.

Q OKAY. AND THAT'S INVESTIGATOR ROOSEVELT YOUNG WITH THE EDGEFIELD COUNTY--

A YES.

Q ---SHERIFF'S DEPARTMENT. AND NOWHERE ON THAT FEDERAL CHAIN OF

CUSTODY DOES IT EVER INDICATE THAT THE FEDERAL AUTHORITIES TURNED OVER THE CUSTODY OF THE FURNITURE TO YOU.

A NO, SIR, IT DOESN'T.

Q LET ME SHOW YOU DEFENDANT'S EXHIBIT #2. IS THAT ANOTHER CUSTODY RECEIPT FOR RETAINED OR SEIZED PROPERTY?

A YES, SIR. SAME FORM.

Q OKAY. AND WHAT IS IT – WHAT PROPERTY IS IT IN REFERENCE TO?

A IT SAYS A 1988 STOFTON (PHONETIC) TRAILER. MCCOY RINN (PHONETIC) AND THEN IT HAS THE VIN NUMBER.

Q OKAY. AND THIS IS ALL IN REFERENCE TO THE TRAILER. RIGHT?

A YES.

Q OKAY.

A I WOULD ASSUME. I'VE NEVER SEEN THAT FORM.

Q OKAY. NO QUESTIONS IN REFERENCE TO THAT ONE. GIVE ME ONE SECOND.

MR. HAWKE: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: ALRIGHT. IT'S TIME TO BREAK FOR LUNCH. FOLKS, I NEED YOU BACK IN THE JURY ROOM AT 2:30, PLEASE. LEAVE YOUR NOTEPADS IN YOUR CHAIRS. MAKE SURE THERE'S A CLEAR PATH FOR THE JURY TO GET THROUGH. I THINK YOU CAN JUST MOVE THAT, MR. MIZZELL, AND THEY CAN GET THROUGH FINE. ALRIGHT, LADIES AND GENTLEMEN, I NEED YOU BACK AT 2:30. DON'T DISCUSS THE CASE. THANK YOU. (THE FOLLOWING OCCURRED OUTSIDE THE JURY.) MR. LOWE, DURING THE BREAK, YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYONE. MADAM COURT REPORTER, YOU'RE IN CHARGE OF ALL THAT. WE'RE AT EASE.

MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? WE'RE GONNA HAVE A DEPUTY STAY WITH THESE ITEMS.

THE COURT: THAT'S FINE, BUT THEY'RE IN SMOKEY'S CONTROL.

MR. MAYE: OKAY. (THERE WAS A LUNCH RECESS.) BRING THE JURY IN. (DEFENDANT'S EXHIBIT #5 WAS REMARKED DEFENDANT GUERRERO'S EXHIBIT #1 IN EVIDENCE DURING THE LUNCH RECESS.) (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) MR. SUSSMAN?

MR. SUSSMAN: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MR. SUSSMAN

Q LET'S SEE, MR. LOWE, YOUR JOB NOW IS WHAT?

A SENIOR BUILDING INSPECTOR. BUILDING CODES INSPECTOR.

Q IS THAT A LAW ENFORCEMENT JOB?

A NOT REALLY. IT'S A CODES ENFORCEMENT, COUNTY CODES ENFORCEMENT.

Q FOR THE CITY OF CHARLESTON?

A COUNTY OF CHARLESTON.

Q AND BEFORE THAT YOU WERE CHIEF DEPUTY HERE IN EDGEFIELD.

A YES, SIR.

Q HOW LONG WERE YOU A CHIEF DEPUTY?

A FROM JANUARY 2001 TILL JULY 2ND 2002.

Q AND WHAT'D YOU DO BEFORE THAT?

A I CAME FROM INDIANA WHERE I WAS A POLICEMAN IN INDIANA.

Q DID YOU DO NARCOTICS INVESTIGATION IN INDIANA?

A NO, SIR.

Q WHAT KIND OF POLICEMAN WERE YOU THERE?

A ADMINISTRATIVE.

Q WHAT KIND OF DUTIES DID YOU HAVE?

A I WAS PATROL SUPERVISOR.

Q FOR ROAD PATROL?

A YES, SIR.

Q SO NOT REALLY ANY WORK ON THE STREET?

A VERY LITTLE.

Q VERY LITTLE?

A UH-HUH.

Q SO BASICALLY FOR ABOUT A YEAR YOU WERE THE CHIEF DEPUTY HERE?

A YES, SIR.

Q AND HOW MANY NARCOTICS INVESTIGATIONS WERE YOU INVOLVED WITH FOR THAT YEAR THAT YOU WERE HERE?

A I WASN'T INVOLVED DIRECTLY IN ANY—

Q IN ANY OF 'EM?

A —NARCOTICS INVESTIGATIONS.

Q THIS IS ABOUT THE ONLY ONE YOU WERE INVOLVED IN?

A I WAS THERE MERELY FOR ADMINISTRATIVE SUPPORT.

Q OKAY. SINCE YOU LEFT IN JULY OF 2002 YOU HAVE NOT BEEN BACK HERE TO CHECK THIS INVENTORY, HAVE YOU?

A NO, SIR.

Q CHECK ANY OF THIS.

A NO, SIR.

Q YOU HAVE ANY PERSONAL KNOWLEDGE OF WHERE IT'S BEEN SINCE JULY

2ND OF 2002?

A NONE AT ALL.

Q OKAY. AND WHEN I SAY THIS, I MEAN THESE MANTLE PIECES YOU DON'T KNOW WHERE THEY'VE BEEN.

A WE HAD 'EM SECURED AT A STORAGE FACILITY OUT IN TRENTON. I WAS TOLD THEY WERE STILL THERE.

Q WELL, THAT'S WHAT YOU WERE TOLD. THAT WOULD BE HEARSAY, WOULDN'T IT?

A YES, SIR.

Q YOU HAVEN'T BEEN OUT TO CHECK ON THEM, HAVE YOU?

A NO, SIR.

Q NOW WHAT ABOUT ALL THIS MARIJUANA? HAS THIS BEEN LOCKED UP IN THE VAULT?

A YES, SIR.

Q BUT YOU HAVEN'T BEEN BACK TO CHECK ON IT.

A NO, SIR.

Q ALRIGHT. NOW AS I UNDERSTAND THE TESTIMONY, ONE OF THESE MANTLES – THEY'RE KINDA HEAVY, AREN'T THEY?

A THEY'RE FAIRLY HEAVY.

Q CAN YOU LIFT ALL THESE UP BY YOURSELF?

A IF I HAD TO.

Q HUH?

A IF I HAD TO.

Q THINK IT WOULD HURT YOU?

A NO, NOT REALLY.

Q OKAY. BUT NORMALLY 2 PEOPLE WERE TOTIN' THE MANTLES AROUND?

A THAT WOULD BE PROCEDURE.

Q WHAT ABOUT THAT OAK SHELF OVER THERE? TAKE USUALLY ONE OR TWO PEOPLE TO TOTE THIS?

A DUE TO THE SIZE OF IT 2 PEOPLE.

Q DID ANYBODY DO AN ACTUAL INVENTORY OUT OF THE SEMI THAT WAS TAKEN OVER TO THE SHERIFF'S DEPARTMENT TO UNLOAD?

A OF THE CHIMNEYS, YES.

Q HOW ABOUT THE REST OF THE MERCHANDISE; HOW ABOUT THE REST OF THE FURNITURE?

A I BELIEVE IT WAS COUNTED BY PIECES, NOT BY – NOT CATEGORIZED.

Q WHERE'S THE INVENTORY LIST OF THAT?

A I DON'T HAVE ANY IDEA OF IT.

Q WERE YOU THE INVENTORY CUSTODIAN AT THAT TIME?

A EVIDENCE CUSTODIAN.

Q WELL, THAT BOOKSHELF IS EVIDENCE, ISN'T IT?

A IT IS – WHAT'S THE LEGAL TERM? NON-FUNGIBLE.

Q I UNDERSTAND THAT, BUT I MEAN WHETHER IT'S FUNGIBLE, NON-FUNGIBLE OR WHATEVER, I MEAN THAT'S – THAT BOOKSHELF IS MARKED AS EVIDENCE—

A THAT'S RIGHT BUT IT WAS NEVER STORED IN MY EVIDENCE ROOM.

Q OKAY. BUT WHAT ABOUT ALL THE OTHER NON-FUNGIBLE EVIDENCE AS YOU CALL IT. WHAT HAPPENED? IS THERE AN INVENTORY OF THAT? A LIST OF WHAT PIECES CAME OUTTA THERE?

A I DON'T HAVE IT, NO, I DON'T.

Q SO WE DON'T KNOW HOW MANY BOOKSHELVES THERE WERE?

A I DON'T KNOW.

Q YOU KNOW HOW MANY TABLES THERE WERE?

A NO.

Q CHAIRS?

A I DON'T KNOW PERSONALLY.

Q YOU WERE THERE WHEN THE -- WERE YOU THERE WHEN ALL THE FURNITURE WAS OFFLOADED FROM THE TRAILER?

A NOT ALL OF IT, NO.

Q OKAY. MOST OF IT? SOME OF IT?

A JUST THE CHIMNEYS.

Q NOT ANY OF THE OTHER FURNITURE?

A NO, IT WAS – MOST OF IT WAS LEFT ON THE TRUCK AND MOVED AROUND SO WE COULD GET ACCESS TO MAKE SURE THERE WAS NO MORE CONTRABAND.

Q DID YOU DO THAT? DID YOU PARTICIPATE IN THAT SEARCH OF THE TRUCK?

A NO, SIR.

Q WHO DID?

A IT WOULD'VE BEEN OUR CANINE OFFICER PHIL IRELAND WAS INVOLVED IN THAT.

Q WAS THAT AT THE DIRECTION OF MS. DOWLING ALSO?

A I ASSUME IT WAS.

Q SO DO YOU KNOW WHICH MANTLE PIECE WAS OPENED AT FREDY'S STORE?

A NO, SIR, I COULDN'T TELL YOU WHICH ONE.

Q IT WASN'T SPECIALLY MARKED?

A NO, IT WASN'T.

Q AND THE BAGS OF DOPE THAT CAME OUT OF THAT AT FREDY'S STORE THOSE WEREN'T SPECIALLY MARKED?

A NO, SIR.

Q SO BASICALLY THE MANTLE AND THE DOPE WAS THEN CO-MINGLED BACK WITH THE STUFF OUT OF THE TRAILER.

A WITH THE REST OF IT.

Q OKAY. ANY FINGERPRINTS LIFTED OFF OF THIS?

A NO, SIR. NONE WERE ATTEMPTED TO BE LIFTED.

Q HOW ABOUT THE BAGS OF POT?

A NO, SIR.

Q NOW IS IT YOUR TESTIMONY THAT THE BAGS OF DOPE THAT WERE TAKEN OUT OF FREDY'S STORE YOU TOOK THAT IN YOUR POSSESSION?

A YES, SIR.

Q OKAY. WERE THERE ANY OTHER OFFICERS THAT TOOK POSSESSION OF THOSE BAGS OF POT FROM THE TIME THAT THEY CAME OUT OF THE MANTLE UNTIL THE TIME THEY CAME INTO YOUR POSSESSION?

A NO, SIR. THEY WERE PLACED DIRECTLY INTO MY VEHICLE.

Q SO THE MANTLE COME OUT OF THE SEMI AT FREDY'S STORE. THE MANTLE COMES OUT OF THE SEMI—

A I DIDN'T SEE THAT HAPPEN.

Q WELL, THERE WAS A MANTLE LOCATED IN FREDY'S STORE.

A YES, SIR.

Q IT'S YOUR UNDERSTANDING THAT IT CAME OUT OF THE SEMI.

A YES, SIR.

Q IT WAS OPENED IN YOUR PRESENCE.

A I OPENED IT MYSELF.

Q YOU OPENED IT. AND YOU TOOK POSSESSION OF THE BAGS OF POT THAT WERE LOCATED IN THAT MANTLE THAT YOU OPENED AT FREDY'S STORE.

A YES, SIR.

Q AND NO ONE ELSE HAS HAD THEM -- HAD POSSESSION OF THAT BAG OF POT – THOSE BAGS OF POT TILL – UP UNTIL THE POINT YOU LEFT ON JULY 2ND.

A YES, SIR, THAT'S CORRECT.

Q AND I THINK YOU SAID – YOU TOOK – YOU OPENED THIS AT THE DIRECTION OF MS. DOWLING.

A YES, SIR.

Q SHE WAS THE FEDERAL AGENT IN CHARGE.

A YES, SIR.

Q IT WAS HER RESPONSIBILITY.

A SHE WAS IN CHARGE OF THE SCENE, YES.

Q SO IT WAS HER RESPONSIBILITY. THE SCENE WAS HER RESPONSIBILITY.

A YES, SIR.

Q AND THAT YOU OPENED THE OTHER CHIMNEYS OR MANTLE PIECES AT THE SHERIFF'S DEPARTMENT WHEN THEY WERE TAKEN OUT OF THE SEMI.

A YES, SIR.

Q AND, AGAIN, THAT WAS AT AGENT DOWLING'S DIRECTION.

A CORRECT.

Q SHE -- IT WAS HER RESPONSIBILITY TO DO THAT -- TO HAVE THAT DONE AT THE SHERIFF'S DEPARTMENT.

A SHE WAS STILL THE AGENT IN CHARGE OF THAT.

Q SO SHE WAS STILL THE AGENT IN CHARGE.