

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO EDGEFIELD COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2014-000591

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S.C. Supreme Court

Fredy Deleon, ... Respondent,

v.

State of South Carolina, ... Petitioner.

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF EDGEFIELD)

IN THE COURT
OF GENERAL SESSIONS

3 INDICTMENT NO. 2004-GS-19-137
4 2004-GS-19-138
5 2004-GS-19-139
6 2004-GS-19-140

7 STATE OF SOUTH CAROLINA,)
8 Plaintiff)

9 VS.)

TRANSCRIPT OF RECORD
Volume I

10 FREDY DELEON,)
11 RAPHEL HERNANDEZ,)
12 HONORIO GUERRERO,)
13 ALFREDO AVILA-AROJONO,)
14 Defendants)

15 March 23-25, 2004
16 Edgefield, South Carolina

17 B E F O R E:

18 THE HONORABLE WILLIAM P. KEESLEY, JUDGE AND A JURY.

19 A P P E A R A N C E S:

20 Ervin J. Maye, Assistant Solicitor
21 Joe Mizell, Assistant Solicitor
22 11th Judicial Circuit

23 Martin C. Puetz, Esquire
24 Jacque D. Hawk, Esquire
25 David Miller, Esquire
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PRETRIAL MOTIONS

MR. SUSSMAN: Judge, I have a motion.

THE COURT: Do you need your clients present?

MR. SUSSMAN: No, sir.

THE COURT: Make sure she has the caption.

(WHEREUPON the trial caption was presented to the court reporter.)

THE COURT: I need ya'll to maintain order.

All right. Mr. Sussman, you had a motion?

MR. SUSSMAN: Yes, sir, during the jury qualification and the related cases that you just heard, State vs. Alfredo Guerrero and State vs. Raphael Hernandez, it became apparent to the defense when you were hearing excuses, the jury excuses, that the State had access to the criminal histories of the jurors; and I am moving to have access to those same criminal histories that the State has so that we would have an opportunity to see the same information the State has before we select this jury.

And in discussing with the prosecutor regarding this, we're not even asking for copies of the histories, I just want to be able to look at them, make notes while they're still basically in the presence of the prosecutor so that we'll be on an equal footing and my clients can be afforded a fair trial under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States

1 Constitution, applicable to South Carolina statutes.

2 THE COURT: Mr. Maye -- Mr. Maye, do you have a
3 precedent?

4 MR. MAYE: Yes, sir, Your Honor. We're
5 certainly opposed to turning over the criminal histories we
6 have, Your Honor. They are complete with our notes on the
7 jurors, Your Honor, including notes that would -- basically
8 they're our work product, Your Honor, the copies that we've
9 run. The criminal histories are available. They're even
10 available online through the internet. They're capable of
11 being ordered. The jury list has been published and out
12 for some 2 weeks now. The copies that I have, Your Honor,
13 I certainly object to us being required or compelled to
14 turn over our work product in this case, Your Honor. I
15 will pass them up to the court, but the copies that we
16 have, our notes, highlights, emphasis, and the position
17 that I have is that the copies that we have are our work
18 product.

19 We -- I would cite for the court the case of
20 State vs. Childs, 299 South Carolina 471, where the
21 judgement was upheld where the defendant was not entitled
22 to information supplied by the prosecution regarding
23 arrests and convictions prior to jury service, background,
24 attitude or characteristics of the jury venire or the petit
25 jury.

1 In this case, Your Honor, there's really no law
2 in South Carolina one way or another. I know there's some
3 discussion now about -- in the legislature -- about
4 compelling the State to turn those over. I think that's in
5 conjunction with changing the number of strikes. We're not
6 aware of anything that requires us to turn these over.
7 These are not indigent clients. All of those individuals
8 are retained. They can run these histories themselves if
9 they want to.

10 Our position is that the copies that we have
11 that have our notes and information and emphasis on them
12 are our work product and we would object to being required
13 to or compelled to turn those over in this case. As far as
14 equal access, Your Honor, they could have gotten them prior
15 to this date, Your Honor. We would object to being
16 required to turn over or share these in this case regarding
17 copies of criminal histories that we have in this case.

18 THE COURT: Mr. Dunn, do you know how many
19 jurors are left?

20 THE CLERK: Sir?

21 THE COURT: Do you know how many jurors we have
22 left? Aren't with down to about 39.

23 THE CLERK: I have 43, Your Honor.

24 THE COURT: 43?

25 THE CLERK: Yes, sir.

1 THE COURT: All right. The solicitor has
2 supplied me with cases which I have read. You know, it's
3 one of those situations where I think both sides are right.
4 It's just a call I have to make and in a sense of what I
5 determine to be fair. The notes that the prosecutor
6 related to the potential jurors is not discoverable. The
7 impressions are not discoverable and things of that nature.
8 But the ruling of the court is that the State does have to
9 tell the defense the prior arrest records and criminal
10 history of the jurors. It is extremely extensive for the
11 State to get and it's just -- despite the fact that it may
12 be argumentative on equal footing, I know in the real
13 world, my personal opinion is it's not on equal footing.

14 The State can get it like that. The defense
15 has to go through hoops and jumps and everything to try to
16 get it and pay large sums of money. We are down to 43
17 jurors. A large number don't have criminal histories. Now
18 if that is a problem, ya'll can let me know and I can
19 address it. But the ruling is that you all have to tell
20 them the criminal history of each of the 43 remaining
21 jurors. You don't have to give them a copy of it, don't
22 give them your notes, share your notes with them. But that
23 has to be. It's an order of the court.

24 MR. MAYE: Please the court, Your Honor? I
25 will need to do that in the morning so that I have time to

1 redact.

2 THE COURT: Ya'll do it tonight.

3 MR. MAYE: Yes, sir.

4 THE COURT: I will be around but I'm
5 anticipating you all can look through that and see who's
6 got a criminal record because I know from prior experience,
7 not just from Edgefield County, but in every county in the
8 State, what happens is that I'm going through in criminal
9 court when a juror doesn't stand up and tell me about their
10 prior criminal record, just like three or four of them
11 didn't do today. The prosecutors got another list --
12 Mr. Maye had a different list with just the jurors names on
13 it. He had them circled, the ones that had criminal
14 records.

15 Now, he may have only circled the ones who had
16 records greater than one year. I don't know that. But
17 that's typically what I see and if they tell me, I bring
18 the jurors up like we did a while ago. I'm not envisioning
19 it would be any great inconvenience. The only thing I'm
20 asking ya'll to please do for me is this, and you don't
21 have to and I will do my job and I will try to be nice, but
22 ya'll just remember I'm coming out of a 7 day trial. Just
23 please understand that, and that I have been getting home
24 at 9:30, 10:30, and last night 1 o'clock in the morning and
25 if I'm a little short with ya'll during this trial, I'm

1 sorry, but I guarantee you, I won't chew as big a bite out
2 that I had chewed out of my behind when I stood down there.
3 I will be nice. But let's try to work together.

4 MR. MAYE: All right.

5 THE COURT: Thank you.

6 (WHEREUPON this case was in recess until the
7 following morning.)

8 THE COURT: All right. We can come to order.

9 Mr. Miller, you said you had a motion to make?

10 MR. MILLER: Yes, sir, Your Honor. In
11 discussing this case with the assistant solicitor last
12 week, I was advised for the first time that there might
13 have been a conversation between my client and, I guess it
14 was a customs agent that was present at the time. And our
15 Rule 5 request specifically requested any such occasions,
16 written or recorded or the substance of any such occasion
17 that intended to be introduced.

18 I don't know if they intend to introduce these
19 statements supposedly made by my client. I do know that I
20 don't have anything to indicate that he gave one. But if
21 he did give one, then we would have to have a Jackson vs.
22 Denno hearing on those statements. And because I don't
23 even know the nature of what the statements were or when
24 they were made or who they were made to, that's something
25 that we'll have to take up before the evidence is

1 introduced.

2 MR. MAYE: I don't intend to offer any of their
3 statements. I don't intend to put those in my case in
4 chief.

5 THE COURT: Anything exculpatory in them?

6 MR. MILLER: Again, I don't know if there was
7 anything exculpatory as far as my client goes. What my
8 client has told me from his recollection is that these
9 statements may have been exculpatory to Mr. Sussman's
10 client, in that he says that he told them he brought them
11 down here but they actually have other statements that say
12 the same thing. If there's not any plan to be entered,
13 then I wouldn't have any.

14 THE COURT: If there is -- if you need to
15 instruct the witnesses that if there's ever a situation
16 where that statement is likely to be testified that that
17 witness needs to stop so that we can have a Denno hearing.

18 MR. MAYE: Yes, sir, Your Honor, I don't
19 anticipate that coming up in our case. But I will tell
20 them to stop if it does.

21 THE COURT: Sometimes you get surprised.

22 MR. MAYE: Yes, sir.

23 THE COURT: If whoever the witness is has
24 knowledge about that and I don't have any idea who it is,
25 make absolutely sure that witness knows not to mention that

1 statement without stopping and saying we need to talk about
2 something outside the presence of the jury.

3 MR. MILLER: Thank you, Your Honor.

4 MR. SUSSMAN: I would likewise join in that
5 motion, as well, regarding my two clients. If there was a
6 statement that was given -- I understood the solicitor to
7 say that he wasn't planning on using any of the defendant's
8 statements in his case in chief, then that should put it
9 aside. But if it does come out and it looks like it may
10 involve Mr. Arojona or Mr. Hernandez, I would like the same
11 instruction.

12 THE COURT: Okay. The instruction applies to
13 everybody.

14 MR. MAYE: Yes, sir, Your Honor.

15 THE COURT: I don't have any Bruten issues here
16 do I?

17 MR. MAYE: No, sir. No confessions here.

18 THE COURT: You have no Bruten issues?

19 MR. MAYE: I see none, Your Honor.

20 MR. SUSSMAN: Just one other thing I wanted to
21 mention, I represent two defendants. I've already had this
22 discussion with Mr. Hernandez and Mr. Arojona, but there's
23 no conflict for me to represent both defendants.

24 THE COURT: You want me to cover that on the
25 record?

1 MR. SUSSMAN: Yes.

2 THE COURT: Mr. Hernandez, Mr. Arojona, you are
3 each -- you are each represented by Mr. Sussman, is that
4 correct?

5 (WHEREUPON the entire trial was interpreted
6 to all defendants by Mr. Britt Hunt.)

7 MR. HUNT: Yes.

8 THE COURT: Both are indicating yes. Do you
9 understand that you have to -- you understand you have a
10 right to have different lawyers, one for each of you? Do
11 you understand that Mr. Hernandez?

12 MR. HUNT: Yes.

13 THE COURT: Do you understand that,
14 Mr. Arojona?

15 MR. HUNT: One attorney each?

16 THE COURT: They have a right to have an
17 attorney each.

18 MR. HUNT: I have this Attorney here, Your
19 Honor.

20 THE COURT: Okay. Does he understand that if
21 he wants a lawyer different than the one representing the
22 other co-defendant, he has that right?

23 MR. HUNT: Yes, he's indicated yes, he
24 understands.

25 THE COURT: Does he want -- Mr. Hernandez, do

1 you want Mr. Sussman to represent you or some other lawyer?

2 MR. HUNT: No, him.

3 THE COURT: All right. And what about
4 Mr. Arojona? Do you want Mr. Sussman to represent you or
5 some other lawyer?

6 MR. HUNT: It's okay like it is.

7 THE COURT: It's okay like it is?

8 MR. HUNT: Yes.

9 THE COURT: Ask them if they know of any
10 conflict between one lawyer representing both of them.

11 MR. HUNT: No.

12 THE COURT: Ask if ether one of them is blaming
13 the other one.

14 MR. HUNT: No.

15 THE COURT: Are you retained?

16 MR. SUSSMAN: Yes, sort of, we're still working
17 on that.

18 THE COURT: All right. Ask them if their
19 decision to both be represented by the same attorney is
20 their own decision, made of their own free will as to each
21 of them.

22 MR. HUNT: Yes, it's okay.

23 THE COURT: Tell them that I -- tell them that
24 I am finding that they've waived, given up any conflict of
25 interest that might exist by having the same attorney. Do

1 they understand that finding?

2 MR. HUNT: Yes, sir.

3 THE COURT: Tell them if any problem arises
4 during the trial so that they feel, one feels that the
5 other is not being looked out properly, one feels that he
6 is not being looked out for properly, to the extent of his
7 well being or the well being of the other or any other
8 problem develops between them and their lawyer, tell them
9 they must let me know that immediately. Do they
10 understand?

11 MR. HUNT: Yes.

12 THE COURT: Both understand?

13 MR. HUNT: Yes.

14 THE COURT: All right. Anything else
15 Mr. Sussman?

16 MR. SUSSMAN: That was great.

17 THE COURT: Are we ready for opening
18 statements?

19 MR. MAYE: Your Honor, I have one issue.
20 There's a motion in limine. Several times when we've had
21 preliminary matter on this case and I'm sure it's just in
22 regard to bond issues, there have been several, several
23 times it has been mentioned that federal authorities
24 declined to pursue any charges in this case. These
25 individuals are indicted in trafficking in a South Carolina

1 State charge, Your Honor. Certainly the State would not be
2 allowed to say that the federal government thinks it's a
3 wonderful case, it's been jumping up and down to take and
4 get this case; on the same note, Your Honor, we would ask
5 that there be no argumentative mention of the fact that the
6 federal government either accepted or declined prosecution
7 on this case. This is a matter of fact for this trial,
8 Your Honor, and anything else would be opinion testimony
9 about the absence or presence of any federal charges, Your
10 Honor, or why federal charges weren't made.

11 It's our position that that is not relevant in
12 this case and it would be improper. We certainly wouldn't
13 be allowed to introduce any evidence.

14 THE COURT: Slow down. Are you keeping up with
15 him.

16 MR. HUNT: Yes, sir.

17 THE COURT: You're doing better than I am.

18 MR. MAYE: We certainly would not be allowed to
19 go into statements or testimony regarding -- that the
20 federal government wanted to take this case or did not take
21 this case, Your Honor. And I would ask that there be no
22 mention of that in opening statement and no evidence to
23 that effect be allowed to be entered into this trial.

24 Our position is that their guilt or innocence
25 on the charge of trafficking is a matter for this trier of

1 fact and anything else would be in the form of opinion
2 testimony or a matter that is not entered before this
3 court, Your Honor, and we just ask that that not be allowed

4 THE COURT: Do any of you intend to mention
5 that the federal authorities declined to prosecute this
6 case?

7 MR. HAWK: Your Honor, as this started out as a
8 federal case with the customs agents and all, I think that
9 even though there's -- basically what we're going to do is
10 develop the evidence in the case and whatever the evidence
11 in the case is, I think at the end, in closing arguments I
12 ought to be able to say, "Hey listen, they didn't charge
13 them federally and didn't prosecute them federally based
14 upon the evidence that they had," in closing arguments, not
15 at any other time and only after development of the
16 evidence that was gathered by the federal investigators.

17 MR. SUSSMAN: Your Honor, may I be heard?

18 THE COURT: Sure.

19 MR. SUSSMAN: Many times in criminal cases it
20 involves various law enforcement agencies. Part of the
21 tactics of defense in cross-examinations is to point out
22 inconsistencies between the various officer witnesses, as
23 well as the inconsistencies or differences between various
24 agencies to try to create some sort of reasonable doubt as
25 to the legitimacy of the prosecution or of the guilt or

1 innocence of the accused. And I think the State's motion
2 at this point goes too far in limiting, not only limiting
3 our right under the Sixth Amendment of the United States
4 Constitution and our rights that exist in cross-examination
5 of each officer under each agency as they come up, come in.
6 And if there was some conflict that we could develop
7 through cross-examination between these officers that may
8 bear upon the strength or weakness of the State's case,
9 then we ought to be able to pursue it.

10 And by the same token, following up on
11 Mr. Hawk's statements, that if that does develop under
12 cross-examination that any reasonable inference from the
13 evidence should be -- be able to be argued to the jury.
14 And obviously that's -- many times all the defense has is
15 to test the strength and cohesiveness of the State's case
16 and that becomes part of it in terms of the conflicts
17 between the federal and the state agencies, when certainly
18 I think that under the Sixth Amendment, we should be able
19 to explore that. Thank you.

20 THE COURT: Anyone else?

21 MR. HAWK: We would like to join in the same
22 argument that he's made without restating it.

23 THE COURT: There is to be no mention in
24 opening statements of the fact that the federal authorities
25 elected not to charge. I will just have to hear how the

1 evidence develops as to what is being asked. I don't know
2 that it's proper argument -- I would be some -- I don't
3 know that it's proper argument to argue -- to state to the
4 jury that you should object because the federal courts
5 didn't pursue it and -- or the fact that the federal
6 authorities didn't pursue it and that creates a reasonable
7 doubt.

8 But I will hear from you all as you go along
9 and I will hear from you before your closing arguments and
10 if you've got a federal official on the stand and -- it may
11 be a proper question. I don't know, it depends on the
12 circumstances. It may be a proper question, what was he
13 charged with; what was the defendant charged with,
14 obviously. And I'll just have to determine based on an
15 analysis of what actually comes in, but I don't think it
16 should be brought into opening statements at this point.

17 Anything else from the State before we proceed?

18 MR. MAYE: That's the only issue that I was
19 aware of.

20 THE COURT: Mr. Miller, yes, sir?

21 MR. MILLER: Your Honor, in this case, Mr.
22 DeLeon is a legal immigrant to this country. However, my
23 client and Mr. Sussman's clients are both illegal
24 immigrants. In the interest of keeping things sanitized,
25 we would request that the State be prohibited from bringing

1 out the fact that these are illegal immigrants on the basis
2 of the fact that to the extent that that could go to the
3 credibility issue on the part of the witnesses. Certainly
4 it would be more prejudicial, particularly in a
5 jurisdiction such as this with a large Hispanic population,
6 to bring out the fact that these people were not here
7 legally in this country. And it serves really no probative
8 value other than to inflame the passions and prejudices of
9 the jury.

10 THE COURT: Do you all intend to go into
11 immigration status?

12 MR. MAYE: No, sir, Your Honor. I did some
13 research in that regard, we would be prohibited from going
14 into that. I have seen in civil cases they do not allow --
15 the federal authorities do not allow anyone to go in and
16 talk about the legal status or illegal status. The only
17 thing that has been allowed in federal courts that I can
18 find is whether or not they filed federal tax returns.
19 Failure to file federal tax returns is an impeachable issue
20 if someone chooses to testify, if someone had not filed
21 federal tax returns. You can't mention the fact that
22 they're an illegal alien, but if they've not filed a
23 federal tax return, if they choose to take the stand, that
24 issue has been deemed to be acceptable in federal courts,
25 Your Honor. But I don't intend to mention anything about

1 their illegal status or legal status. The status of
2 citizenships, we do not intend to go into.

3 THE COURT: All right. I don't think it's
4 relevant at all. And unless in some fashion the door is
5 open that it has to be explored, it should not come in and
6 if you all anticipate trying to go through that door, I
7 want you to stop your proceedings, tell me you have a
8 matter of law that needs to be addressed outside the jury's
9 hearing and we'll do that. Instruct the witnesses they are
10 not to comment upon the immigration status of these
11 defendants.

12 Anything else?

13 MR. MILLER: No, Your Honor.

14 MR. PUETZ: Judge, I did file a motion to
15 suppress as it relates to the seizure of a piece of
16 furniture at Mr. DeLeon's store on May 18, of 2002, without
17 benefit of a search warrant.

18 THE COURT: So I need to hear that?

19 MR. PUETZ: Yes, sir. I think so.

20 MR. MAYE: May it please the court, I need to
21 retrieve some cases if that's all right.

22 THE COURT: Well, I need to no know what to do
23 with the jury? Do I send them on to lunch?

24 MR. PUETZ: Judge, I would think so. The Team
25 One is the necessary witnesses as it relates to the conduct

1 of the agents when they came to the store on May 18, and
2 that is Mr. Tucker and DEA agents. And I think that they
3 would be necessary witnesses as it relates to the motion to
4 suppress.

5 MR. MAYE: They're not witnesses in my case in
6 chief if they want to put them under subpoena in this case,
7 all it does is make them available.

8 MR. PUETZ: I don't have the burden on a motion
9 to suppress.

10 THE COURT: Well you see you all act like I
11 know what you're talking about. I don't know what Team One
12 is. I don't know any of that stuff. Tell me what the heck
13 that means.

14 MR. PUETZ: It's my understanding, Judge, that
15 at approximately 8 o'clock a.m., there was a prearranged
16 meeting in the Saluda area that involved all of the law
17 enforcement agencies that were going to be participating in
18 this off-loading or the apprehension or following the
19 chimneys, the furniture wherever it was going to go. They
20 arrived. Patrick Mize, who was a federal agent and a
21 Canadian driver were driving the tractor trailer. It had
22 spent the night in the Saluda area and then it arrived at
23 Mr. DeLeon's store at approximately 8:30 a.m. on May 18, of
24 2002. The -- approximately 13 pieces of furniture were
25 off-loaded there by Patrick Mize and three other persons,

1 one of whom Mr. Mize indicates is Mr. DeLeon. The truck,
2 that is the tractor trailer, then leaves there and goes to
3 Billy's at the corner of 25 and, I think it's 121 or 19 and
4 25 and it is met there by a green Thunderbird and a Ryder
5 truck, in which the other three defendants were in.

6 The green Thunderbird leads the tractor trailer
7 off, down a dirt road, as well as the Ryder truck. Both
8 vehicles get stuck and the green Thunderbird drives off.
9 At which point in time, according to Patrick Mize in his
10 notes, he's out there trying to communicate with various
11 members of the team. And then at that point, they make a
12 decision to, quote, shut down the operation.

13 Team One, according to Investigator Roosevelt
14 Young, at his preliminary hearing, testified that that was
15 Dean Tucker and them, that would be customs and DEA, went
16 back and entered Mr. DeLeon's store and went back into a
17 storeroom in the back part of the store and seized the one
18 chimney that was off-loaded there at the store. It was a
19 warrantless search. The evidence -- or at least according
20 to the discovery, indicates that this has been an ongoing
21 investigation, as early as May 13, of 2002, as late as May
22 14, the latest that the federal authorities began their
23 investigation was around May 14.

24 And they had been following this truck. They
25 actually -- when it went into or crossed the border, they

1 removed the driver there and put their own driver on the
2 truck, and I believe Agent Mize. And they followed it up
3 to Saluda, South Carolina. And it's our position that --
4 and the reason why is because one of the things that
5 Roosevelt Young did when he got actively involved in the
6 case and they found this green Thunderbird later on, they
7 actually got a search warrant to go into it; and it is our
8 position that for them to enter this store with guns drawn
9 at approximately 9 o'clock in the morning and to seize this
10 piece of furniture, that had not been touched virtually
11 with the exception it had just been stacked in a storeroom,
12 that there needed to be proximate cause and I think that it
13 should have -- they should have obtained a warrant to enter
14 those premises and make that seizure.

15 It is my understanding in reading the discovery
16 that at no time was anyone of these pieces broken down and
17 it was conclusively presumed that marijuana was secreted in
18 the 23 chimneys. There were 133 pieces of furniture on the
19 truck, but only 23 chimneys, of which there was
20 approximately 40 pounds of marijuana secreted in each one
21 of those. According to discovery that we've obtained, when
22 the truck went through customs at the border, there was an
23 x-ray made of this truck. There are, quote, anomalies,
24 noted on the x-ray. It doesn't say that it's marijuana,
25 but maybe they have an agent who says, "Yes, that was

1 definitely marijuana." But they never broke it down. The
2 most they did was, at one point in time, somewhere, had a
3 dog, a K-9 Unit walk around the tractor trailer and it,
4 quote, alerted, which I would assume would mean some form
5 of drugs were in there according to them. But it doesn't
6 necessarily indicate that it was marijuana.

7 But there was no effort made on the part of the
8 federal authorities who were in control of the
9 investigation and the following of the truck to obtain a
10 search warrant when it was their intent all along to shut
11 down the operation once that truck became stuck. They
12 had -- it's our position that they had agents throughout
13 this particular area and were certainly capable of securing
14 the place where the one chimney and the other 12 pieces
15 were dropped off and could have obtained a search warrant
16 or at least attempted to obtain a search warrant.

17 THE COURT: Bring that jury in, please.

18 (WHEREUPON the jury entered the courtroom at
19 12:14 p.m.)

20 THE COURT: Ladies and gentlemen, after
21 conferring with the attorneys, I think there are some legal
22 matters I will need to address and I'm going to let you go
23 onto lunch. You'll be on your own for lunch until 1:30. I
24 need you back in here, but please -- that's too soon. Be
25 back in the jury room at 1:45. As close to that time as I

1 can, I'll get you back in here. But please be back in the
2 jury room at 1:45.

3 Don't discuss the case in any way, don't let
4 anybody discuss the case with you. Don't talk about it
5 with family members, friends or anybody at all and if
6 there's media coverage of the trial, get away from it.
7 Don't let yourselves be exposed to it and report to me what
8 you saw, heard or read through the media. When you come
9 back, do not come through the courtroom. Go directly back
10 to the jury room. The bailiff will show you how to enter
11 from those areas back there.

12 Okay. Madame Bailiff, take charge of the jury.

13 (WHEREUPON the jury left the courtroom at 12:17
14 p.m.)

15 THE COURT: What's the State's position?

16 MR. MAYE: Your Honor, the State's position in
17 this case, Your Honor, this is a little bit different than
18 our normal -- I think we're all right on two fronts in this
19 case, Your Honor, as far as going in on a warrantless
20 issue. Items come from outside the United States that are
21 intercepted or come across the US border. Your Honor, as
22 long as the United States Customs Service is involved in
23 this and a customs agent is involved, Your Honor, items
24 that come from outside the United States, unless it is a
25 dwelling, a residence, Your Honor, custom's agents can

1 enter without a warrant and anything that's come in from
2 outside the United States, Your Honor -- and I'm retrieving
3 that authority for the court, Your Honor, in this case --
4 they do not need a warrant to go in and enter for items
5 that come from outside the United States.

6 Customs specifically has the authority to go in
7 without a warrant as long as it's not a dwelling; any
8 warehouse, building or structures of any type, they're
9 allowed to enter. Also in this case, Your Honor, we have
10 testimony, there was an Aiken County officer -- Aiken
11 County and Edgefield County has a mutual aid and mutual
12 jurisdiction agreement, Your Honor. An officer from the
13 Aiken County narcotics task force was here, Your Honor. He
14 was set up doing direct surveillance on the store.

15 The marijuana was delivered and off-loaded
16 inside the store. The officer is present here. He and the
17 customs agent were running surveillance on the store. They
18 knew that customers were beginning to come out of the store
19 carrying packages, Your Honor. They were afraid that the
20 marijuana that had been deposited inside the store, had
21 been broken open and they were breaking it up and
22 distributing it because people were walking out with
23 packages from inside the store. Because of that, Your
24 Honor, because of the exigent circumstances, they hit the
25 store and went in and raided it, Your Honor, to keep the

1 marijuana from potentially leaving or being distributed
2 away from the store, Your Honor. There were exigent
3 circumstances because there was a potential for the drugs
4 to be removed from the store, Your Honor, and be gone prior
5 to them obtaining a warrant or prior to them going back in
6 and raiding the store.

7 So our position in this case, the customs
8 service did not need a warrant, there was no warrant
9 necessary and there was a customs agent present with the
10 state officer that went in, Your Honor. And even in the
11 event that's not applicable, in this case there were
12 exigent circumstances, there was a felony in progress,
13 there being a trafficking that was occurring on the
14 premises and because of the exigent circumstances, the
15 possibility of the drugs being taken away from the
16 location, Your Honor, by people observed leaving with
17 packages, they had a right to enter without a warrant at
18 that point without regard to their right to do so under the
19 United States customs services authority.

20 THE COURT: How am I going to make this
21 determination without testimony?

22 MR. MAYE: We're happy to offer testimony, Your
23 Honor, absolutely. I just didn't know whether you wanted
24 us to do that. We'd be happy to offer testimony. I would
25 like to have just a moment to retrieve the authority, the

1 federal stuff. But we'll be happy to call these officers
2 and take that up.

3 THE COURT: They're here?

4 MR. MAYE: Yes, sir. They're all present.

5 THE COURT: Get me the authority.

6 MR. MAYE: Yes, sir.

7 THE COURT: We're at ease.

8 (WHEREUPON a brief recess was observed.)

9 THE COURT: I've reviewed, briefly these two
10 cases which have been handed up by the State, the United
11 States of America vs. Cardeenas and others
12 C-a-r-d-e-e-n-a-s, it's a case from the United States Court
13 of Appeals 5th Circuit in 1994, cited at 9 F 3rd 1139. The
14 other case is a case from the 2nd Circuit Court of Appeals,
15 United States of America vs, Gaeiria, G-a-e-i-r-i-a and
16 others, a 1986 case, 805 F 2nd 1108. These discuss the
17 extended border doctrine as to whether those issues apply.

18 Now, I'm perfectly willing to hear all
19 testimony, certainly will do that. I did not realize that
20 an issue of this magnitude was out there on the horizon and
21 I will entertain any citations that you all may have, but
22 as I understand it, this truck was intercepted at the
23 border between Mexico and the United States?

24 MR. MAYE: Yes, sir.

25 THE COURT: It was then taken over by the

1 United States Customs Service officials and driven to South
2 Carolina. It was then taken to an area where a joint law
3 enforcement task force had it in its control and then it
4 was driven into Edgefield County from that neighboring area
5 to make a delivery at a retail business in Edgefield County
6 and then after that was accomplished by dropping off a
7 portion of the contents and putting that inside of a store
8 or some section of a store, a retail establishment. Then
9 the truck was taken to another area, where it was led down
10 a dirt road -- after a meeting at that second point, it was
11 taken down a dirt road until two of the vehicles got stuck
12 and the third sped away.

13 There was radio contact with the law
14 enforcement officials who called off the attempt to pursue,
15 I suppose, went back to the store and then without a
16 warrant, went in and seized the piece of furniture which
17 ultimately contained marijuana.

18 MR. MAYE: May it please the court, Your Honor,
19 the only thing that we would differ in that is agents
20 independent of that were outside of the store watching
21 individuals leave with packages, Your Honor, and they made
22 the decision to enter at that point in time because the
23 narcotics were in danger of being taken out of the store.
24 There's an agent here from Aiken County that was there and
25 was present. People were leaving the store with packages,

1 Your Honor, and they made a decision -- he and a customs
2 agent were there outside ---

3 MR. PUETZ: I just ---

4 MR. MAYE: May I finish?

5 MR. PUETZ: I just want to invoke a rule, since
6 we're educating these agents as to what they need to say.

7 THE COURT: I want all of them out of the
8 courtroom.

9 MR. MAYE: Yes, sir.

10 THE COURT: The chief investigating officer may
11 stay but all -- everybody else that's going to testify
12 needs to get out of here. I need them out of the
13 courtroom.

14 I'm sorry go ahead.

15 MR. MAYE: I'm sorry, Your Honor. From talking
16 with the Aiken County officer, Eric Owenby, they were there
17 sitting up on surveillance, he and a customs agent,
18 Giovanni Perez were there carrying out surveillance on the
19 store, Your Honor. And individuals began to enter and
20 leave the store with packages, with bags, Your Honor.
21 Based on that ---

22 THE COURT: Wait a minute, just a second.

23 MR. MAYE: Excuse me.

24 THE COURT: I'm going to hear your testimony
25 and I'll make a decision from the testimony. It was a

1 grocery store?

2 MR. MAYE: It was a store, Your Honor.

3 THE COURT: People don't always leave the store
4 with bags?

5 MR. MAYE: Yes, sir, Your Honor. But that gave
6 them an opportunity -- there was no one at the store when
7 they initially delivered. The store was closed when they
8 initially made the delivery. They took the items to the
9 store. Certain items were selected and they were
10 off-loaded into the store and the store was not open at
11 that period of time, at that point in time. In the
12 interim, Your Honor, apparently his wife came to the store,
13 she was present there at the store, Your Honor.

14 After the packages were off-loaded, Mr. DeLeon
15 in this case, Your Honor, left and he was followed by
16 another Aiken County agent. He left the premises, but
17 while they were sitting, watching the store in this case,
18 Your Honor, people began to come in and out carrying
19 packages, Your Honor. Because of that, the officers made
20 the decision that they would hit the store, Your Honor,
21 independently of what was happening at the other end --
22 what was happening with the truck being stuck.

23 THE COURT: So they met this truck fully loaded
24 from Mexico to South Carolina. They had dog alerts on it
25 and they have anomalies showing up on the x-rays, they

1 never got a search warrant, they never opened the
2 containers, they never tried to see if it actually was dope
3 inside these boxes?

4 MR. MAYE: No, sir, Your Honor. Certainly the
5 packages were opened. One of the chimneys was opened, Your
6 Honor. Field tests were performed. They knew it was
7 marijuana. They resealed it, Your Honor. The other ones,
8 they have an x-ray and I will put that in. They have an
9 x-ray of the entire truck, showing all of those multiple
10 packages hidden inside this, basically furniture that was
11 nailed up out of old pallets. There were hidden
12 compartments inside all this furniture. They opened up one
13 of the compartments -- a dog hit on it, they opened it
14 up -- they can open and search anything at the border. But
15 the trailer had been dropped at that point. They field
16 tested it for marijuana, Your Honor. It did test positive
17 to be marijuana. They knew that they had marijuana in
18 there, Your Honor. The agents then sealed the trailer.

19 Agent Mize, after the trailer was seized and
20 the cases I have for example, Garavara, which had cert
21 denied, I will give you the cite, a United States Supreme
22 Court case where cert denied on it, in any event, Your
23 Honor. The rest of the packages, just like in Garavara
24 were not opened. In Garavara, there were 70 cartons. They
25 opened some of them, Your Honor, but the rest of them were

1 left and they remained sealed at that point in time. And
2 the other packages were not open at this time, Your Honor.
3 They remained in exactly the same condition as they were
4 sent across the border.

5 THE COURT: There was a -- I understand.

6 MR. MAYE: Yes, sir.

7 THE COURT: Answer my question.

8 MR. MAYE: No, sir, Your Honor. They did
9 not ---

10 THE COURT: I'm trying to find out if they ever
11 opened any of them to find out if there was dope inside
12 them.

13 MR. MAYE: Yes, sir.

14 THE COURT: And the answer is yes.

15 MR. MAYE: Yes, sir.

16 THE COURT: Okay.

17 MR. MAYE: I'm sorry.

18 THE COURT: Now, but they take it, unlike that
19 occasion ---

20 MR. MAYE: Yes, sir.

21 THE COURT: --- where they stopped a van that
22 had picked this stuff up. They take it there, they unload
23 it and they take it inside a business establishment and
24 they leave it in there.

25 MR. MAYE: Yes, sir, Your Honor.

1 THE COURT: They sit outside and watch and when
2 people start coming out with bags, they make the decision
3 to go in without a warrant, open up what I assume was an
4 unsealed -- I'm sorry was a sealed container.

5 MR. MAYE: Yes, sir.

6 THE COURT: Inside the store.

7 MR. MAYE: Yes, sir.

8 THE COURT: They could tell it was sealed.

9 MR. MAYE: Yes, sir, Your Honor. It was in
10 exactly the same condition, just like in Garavara.

11 THE COURT: How is there suspicion translated
12 from people taking things out of the store based on the
13 marijuana being involved in it, when the container is still
14 sealed.

15 MR. MAYE: Your Honor, in this case, they
16 thought that the containers had potentially been broken
17 open.

18 THE COURT: I mean when they walked in the
19 door.

20 MR. MAYE: Yes, sir.

21 THE COURT: I mean they get in the door,
22 they're inside, they look at it and it's sealed.

23 MR. MAYE: Yes, sir. They have x-rayed it
24 before this time, they know that there are anomalies inside
25 the packages within that chimney because they have already

1 x-rayed them, Your Honor, and they know that each of these
2 chimneys ---

3 THE COURT: We all know it was full of dope.

4 MR. MAYE: Yes, sir.

5 THE COURT: That's not the issue and lord knows
6 I love easy rulings.

7 MR. MAYE: Yes, sir.

8 THE COURT: These police officers go in this
9 store and -- argument with me is that they went in the
10 store, at least in part, because they were concerned that
11 marijuana was being brought out based on this new shipment
12 coming in. But when they get in the store, the container
13 is still sealed, so rather than securing the area and
14 getting a search warrant, they bust it open. Is that what
15 happened?

16 MR. MAYE: They seized the package. They are
17 later all opened. They seized the packages, they are later
18 all opened up there at the store, Your Honor.

19 THE COURT: Well how did they seal a package
20 without busting open the container?

21 MR. MAYE: They did open them. All the
22 chimneys were opened and the marijuana was eventually taken
23 out of it and all of it was tested.

24 THE COURT: I'm not talking about stuff out on
25 a dirt road in Edgefield County ---

1 MR. MAYE: That was opened as well, Your Honor.

2 THE COURT: That's a completely different
3 situation. That a business building which is subject to a
4 different type of control. It's not a dwelling.

5 MR. MAYE: Your Honor, the package was open,
6 once they took control, once they raided the place. It is
7 customs position that they have the authority to do so,
8 Your Honor, especially under the case that I handed up to
9 you Garavara. The fact that it was still sealed, the case
10 that I handed up to you US vs. Sandi.

11 Mr. DeLeon signed for all those packages,
12 accepting them. When the agents arrived there at the
13 store, Your Honor, he was met by Mr. DeLeon and two other
14 individuals. One of the individuals went over to Mr.
15 DeLeon, all of them off-loaded the stuff into the store.
16 They selected which packages were to be off-loaded. The
17 agent assisted them.

18 THE COURT: Let me interrupt you.

19 MR. MAYE: Yes, sir.

20 THE COURT: I don't want you to get too far in
21 the argument because we're going to break for lunch.

22 MR. MAYE: Yes, sir.

23 THE COURT: You need to be prepared to
24 understand that I see a material difference when you start
25 talking about extending the border.

1 MR. MAYE: Yes, sir.

2 THE COURT: If you're talking about extending
3 to border to JFK Airport or Dulles Airport or to a port in
4 Charleston, even after it's in -- inside the United States
5 and international port authority or air space of the United
6 States and it's in the United States, there is a difference
7 between talking about moving that border and extending
8 border doctrine to that location than to some place in
9 Trenton, South Carolina or Johnston, South Carolina, I
10 don't know where it was. That's a store. If I sign for
11 something at Dulles Airport, that's different and you're
12 going to have to be prepared to show me some law and I
13 haven't had a chance to read this last case you handed me,
14 the Sandi case, that's S-a-n-d-i.

15 MR. MAYE: That just ---

16 THE COURT: This plain and clearly says Dulles
17 Airport in Falls Church, Virginia.

18 MR. MAYE: Your Honor, that case basically
19 stands for the proposition once they signed the documents
20 saying that they were accepting delivery of those items,
21 Your Honor, it didn't matter if they even opened the
22 packages, once they signed, accepting them, those were
23 sealed packages in this case. Once they signed for them
24 and Mr. DeLeon -- once the packages that they selected were
25 off-loaded and placed inside Mr. DeLeon's store, where he

1 directed that they be placed. The agents -- the agent and
2 the driver off-loaded there at the store, at the direction
3 of Mr. DeLeon and put it inside the store at his request,
4 it was actually the delivery address on the bill of lading,
5 Your Honor, I think it was 216 Breezy Oaks which was
6 actually Mr. DeLeon's residence. Mr. DeLeon directed them
7 to place these items inside his store, opened his store
8 which was not open for the agent and the driver. They
9 selected which packages. And one of the chimneys and 12
10 other pieces of furniture, Your Honor, were off-loaded at
11 Mr. DeLeon's direction into his store and placed in a back
12 storage room.

13 They did not, at that point in time, Your
14 Honor, want to arrest him, which, once he signed the
15 documents, indicating that he accepted shipment for them,
16 Your Honor, they could have placed him under arrest for
17 trafficking at that point. They wanted to see where the
18 rest of the dope -- and Mr. DeLeon himself directed them to
19 take the dope down to Billy's Super Store and also got on
20 the phone, got his wife on the phone, to ensure that the
21 agents had a proper direction.

22 So he was directing and controlling where the
23 agents, or where the customs and the driver went next. He
24 told them to go down and pointed them down to Billy's Super
25 Store and directed them to go to Billy's Super Store, where

1 they were met by these three individuals in a Ryder truck
2 and two individuals in a Thunderbird automobile

3 THE COURT: These guys at the store don't know
4 a thing about that unless you've got evidence of that.
5 You're trying to talk to me about stuff down the road and
6 I'm telling you, I am not the least bit concerned on the
7 purpose of this motion about what happened down the road.

8 MR. MAYE: Yes, sir.

9 THE COURT: I am not the least bit concerned
10 about what would have happened had they taken them down
11 right then.

12 MR. MAYE: Yes, sir.

13 THE COURT: What the problem is, is they let
14 them take it into a building and then they left it in the
15 building.

16 MR. MAYE: Yes, sir.

17 THE COURT: And then they decided, Let's go
18 into the building and let's open it up. That's where your
19 problem arises, if there is a problem, in the fact that
20 they weren't taken down right then. They were allowed to
21 take this in somewhere and that's the question about
22 whether that needed a warrant part. Did they have to have
23 a warrant in order to go into that structure, go into that
24 container and seize what was inside of it.

25 MR. MAYE: It's our position they do not. I

1 guess that's ultimately the issue in this case. It's our
2 position that they do not.

3 MR. PUETZ: I don't want to interrupt, Judge.

4 THE COURT: I'm going to break and go to lunch.
5 I sat down there the other day and about got messed up
6 because I didn't eat until too late. So I'm not doing that
7 again.

8 MR. PUETZ: Yes, sir.

9 THE COURT: We're going to break for lunch. If
10 it takes the rest of the day, to deal with this issue, then
11 I'll send the jury home.

12 MR. PUETZ: I'll wait until we come back,
13 Judge. I didn't realize it was 5 after 1:00.

14 THE COURT: Well Mr. DeLeon -- he's still on
15 bond. He's to be back here -- I told the jury 1:45. So
16 tell him to try to be back here by 1:45, and the trial will
17 go on whether he's here or not. Tell him that.

18 All right. The other three are in jail, right
19 sir?

20 MR. SUSSMAN: Right.

21 (WHEREUPON a recess was observed for lunch.)

22 THE COURT: Tell the jury I expect them to be
23 back there at least an hour and not to talk about the case.

24 Call your first witness.

25 MR. MAYE: The State calls Agent Patrick Mize.

1 Come around and be sworn by the clerk, Agent
2 Mize.

3 THEREUPON,

4 PATRICK MIZE,

5 after being duly sworn, testified as follows:

6 THE CLERK: Have a seat here, please.

7 DIRECT EXAMINATION - IN CAMERA

8 By Mr. Maye:

9 Q Agent Mize, if you would, introduce yourself to the
10 court? State your name and tell us where you're
11 employed?

12 A I'm Brian Patrick Mize, I'm a special agent with the
13 United States Immigration and Customs Board.

14 Q Okay. Is immigration, INS and Customs, are they now
15 combined into one agency?

16 A Yes, sir, after they created the Department of Homeland
17 Security, then they merged INS investigations and
18 customs investigations, along with a couple others.

19 Q Okay. Let me direct your attention to May 14, 2002.
20 The tractor trailer truck that's in issue in this case,
21 tell the court about the interception of that tractor
22 trailer, what was done prior to ya'll coming to South
23 Carolina?

24 A On May 14, at approximately 2:00 p.m., that truck came
25 across the border in Laredo, Texas. It was stopped by

1 the inspectors and sent for intensive inspection, due
2 to a DAU. DAU stands for Data Analysis Unit. What it
3 is, is it's a group of inspectors look at pre-filed
4 entries and they basically target certain tractors,
5 depending on what the commodity might be, first time
6 consignee, stuff like that.

7 Q What was the commodity in this case?

8 A Wooden furniture.

9 Q Why is that an item of suspicion for ya'll?

10 A Wooden furniture is frequently used because it has many
11 compartments to smuggle narcotics.

12 Q Okay. Based on that, what was done with that tractor
13 trailer truck?

14 A The tractor trailer was sent for an x-ray.

15 Q Okay.

16 A Once an x-ray was taken, they saw anomalies within
17 that, which pointed to possible contraband in that
18 trailer. It was then taken to a loading dock where it
19 was examined and inspectors found marijuana within the
20 furniture.

21 Q Was the marijuana field tested in this case?

22 A Yes, it was.

23 Q Did it come back positive as marijuana?

24 A Yes, it was.

25 Q Okay. What then was done with the furniture once the

1 test was conducted initially?

2 A The furniture was then placed back into the tractor
3 trailer where it was closed up and it was referred to
4 investigations for possible controlled delivery.

5 Q Were all of the packages or all of the furniture opened
6 up or just some of them?

7 A Just one of them.

8 Q Just one of them. They then resealed it?

9 A Yes.

10 Q Okay. Prior to you leaving Texas, was the furniture in
11 that case, was it in the same condition as it was
12 brought across the border there? Did it stay in the
13 same condition or was it altered in any way by customs?

14 A None, just -- except for the one piece that was opened
15 so they that could field test it.

16 Q How was the truck -- the trailer that was pulled behind
17 the tractor trailer truck, how was that secured or
18 sealed?

19 A It was sealed with a non tamper, a tamper proof seal
20 provided by us.

21 Q Were you present at the time that was placed on there?

22 A Yes, sir, I was.

23 Q Okay. Was the marijuana and the furniture in the
24 trailer at the time that it was sealed?

25 A Yes, it was.

1 Q At the time it was sealed?

2 A Yes, sir it was.

3 Q In your presence?

4 A Yes, it was.

5 Q All right. Where did ya'll then -- what did you then
6 do, where did ya'll go?

7 A On May 16, we left Laredo, Texas early that morning.
8 We drove as far as Slidell, Louisiana.

9 Q Okay.

10 A We stayed there for the night.

11 Q Okay. Where was the package intended to be delivered
12 to? What was the place of delivery and who was it to
13 be delivered to?

14 A The defendant in Edgefield here at Tienda DeLeon.

15 Q Which defendant?

16 A Fredy DeLeon.

17 Q Okay. And did it have an address on it?

18 A The manifest had an address, however that was not
19 the -- I don't believe that was the delivery address.

20 Q Okay. Do you have a copy of that manifest with you
21 here today?

22 A I do.

23 Q In fact, do you have the original?

24 A I do.

25 Q This document that you handed up, this is the original

1 bill of lading?

2 A Yes.

3 MR. MAYE: Your Honor, I'm not going to move to
4 admit it into evidence at this time, I guess we would just
5 identify it for the court at this point in time. If you
6 would like to make it a Court's Exhibit for the purpose of
7 this hearing, I will be happy to do so.

8 THE COURT: Mark it for identification
9 purposes. If you intend to use it in the trial ---

10 MR. MAYE: Yes, sir, I do intend to use it in
11 the trial.

12 THE COURT: Mark it for identification as
13 State's 1.

14 THE COURT REPORTER: That would be State's 2.

15 THE COURT: State's 2.

16 By Mr. Maye:

17 Q Agent Mize, let me show you this item. Tell me if you
18 can identify that?

19 A That is an x-ray of the trailer.

20 Q Does it fairly and accurately identify the trailer and
21 the x-ray of the contents?

22 A Yes, it does.

23 MR. MAYE: Your Honor, I'd ask that we mark
24 this for identification.

25 ///

1 By Mr. Maye:

2 Q Agent Mize, how long have you been working at the port
3 in Laredo?

4 A Approximately 3 years.

5 Q Okay. About how many tractor trailer trucks come
6 across the border every day?

7 A Depending on the day, anywhere from 3,000 to 6,000.

8 Q Okay. About how many of those are x-rayed each day?

9 A Depending on the given day, probably 500 to a thousand.

10 Q Okay. How many of those x-rays have you --
11 photographs, like that one have you looked at in the
12 past?

13 A 100 probably.

14 Q Okay. Based on what you can see from the anomaly and
15 given the fact that the field test came back as
16 marijuana, what was your initial estimation as to the
17 approximate weight it was?

18 A Just based on this, we were guessing 750 to 1,000
19 pounds.

20 Q Okay. All right. I think we stopped testifying to get
21 those papers and documents in. Slidell -- from
22 Slidell, where did you go?

23 A We kept the trailer, we made it all the way through
24 Edgfield and we took the trailer out to the Saluda
25 County Airport.

1 Q All right. Now that you have that document there in
2 front of you, what was the intended address?

3 A 216 Breezy Oaks, Trenton, South Carolina.

4 Q 216 Breezy Oaks. Where did ya'll actually go that next
5 day as you attempted to make a controlled delivery on
6 May 18, 2003?

7 A We thought it was the Tienda DeLeon, but I think it's
8 the Tienda Mexicana DeLeon there at South Carolina 121
9 and 25.

10 Q Who was with you when you went out to that location in
11 the truck?

12 A In the truck was the legitimate cargo driver from
13 Border Carriers by the name of Paul Gordon.

14 Q So he was an actual driver? Was that the driver that
15 was scheduled to pick up the load initially?

16 A Yes, sir, he was.

17 Q Okay. When ya'll got to the Tienda DeLeon, who did you
18 encounter there?

19 A The defendant, Fredy and ---

20 Q Would you please point him out for the court?

21 A He's the gentlemen sitting behind the defense table in
22 the orange shirt.

23 Q Okay.

24 MR. MAYE: Let the record reflect that he's
25 identified the defendant in this case.

1 By Mr. Maye:

2 Q Who else was there when you got there?

3 A Two unidentified Hispanic males.

4 Q Two unidentified Hispanic males. Could you
5 differentiate between the two of them?

6 A Yes.

7 Q Okay. Just give us some identifying characteristics so
8 we'll know what's going on, which of the two you're
9 talking about?

10 A One of the Hispanic males was approximately 25 to 30
11 years old, about 6 foot, 200 pounds, clean complexion,
12 wearing a baseball cap.

13 Q What about the other one?

14 A The second unknown individual was a Hispanic male, 25
15 to 30 years old, approximately 5 foot 8 inches tall,
16 and probably about 175 to 185 pounds, very poor
17 complexion.

18 Q Rough complexion?

19 A Rough complexion.

20 Q For purposes of identification I just asked you to
21 identify them, just identify them as the individual who
22 had the rough complexion ---

23 A Okay.

24 Q --- and the other one, other than Mr. DeLeon. What
25 happened once you got there and you encountered Mr.

1 DeLeon, the defendant in the case and the other two
2 individuals? What happened?

3 A We exited the truck, walked around to the back of it.
4 We opened the rear of the tractor. The gentlemen with
5 the bad complexion climbed into the tractor and started
6 digging out pieces of furniture that we then moved
7 inside.

8 Q What was the defendant doing?

9 A He was standing at the rear of the truck with us,
10 accepting these items, helping us get the items down.

11 Q He was physically helping you carry them?

12 A Yes.

13 Q Okay. Was the store open or closed when you got there?
14 Was it open for general business? Did the doors appear
15 to be locked or unlocked when you arrived?

16 A I couldn't tell whether the doors were locked or
17 unlocked; however, no lights indicating that the store
18 was open were visible.

19 Q Were there any other automobiles or any other
20 individuals there other than those three?

21 A No.

22 Q What kind of vehicles were they in?

23 A I saw a white box truck and a green Thunderbird.

24 Q A green Thunderbird. Okay. Those were the only other
25 two vehicles there other than your truck?

1 A Yes, sir.

2 Q Okay. What happened next?

3 A We took down approximately 13 pieces of furniture. We
4 stacked those -- originally we stacked those items
5 underneath, right next to the front door in the front
6 of the store.

7 Q Okay.

8 A At that time, the driver produced the manifest and Mr.
9 DeLeon signed the manifest.

10 Q Okay. Do you have a copy of that?

11 A I do. It's listed as State's Exhibit 2.

12 Q Mr. DeLeon signed that in your presence?

13 A Yes, he did.

14 Q Accepting delivery of the items which had been
15 off-loaded from the truck that they had selected, is
16 that correct?

17 A That is correct.

18 Q Okay. What happened to the items after he signed for
19 them when they're off-loaded on the ground, what
20 happened to the items?

21 A Myself, Mr. DeLeon and the two unidentified individuals
22 then took those items, carried them into the store and
23 put them in a rear storeroom of that store.

24 Q Did he direct you to do that? Were you doing that at
25 his direction, assisting him? Who opened the door?

- 1 A I believe it was Mr. DeLeon.
- 2 Q Okay.
- 3 A I honestly don't recall who opened the door.
- 4 Q Okay. But did he indicate that he wanted you to put
- 5 those items inside the store?
- 6 A Yes, he was there with us carrying them into the store.
- 7 Q Okay. What happened next?
- 8 A I exited the store after we put all the items in. I
- 9 waited to the rear of the truck for a little bit.
- 10 Three gentlemen came out and indicated that we were
- 11 going to go to another location.
- 12 Q Who specifically directed ya'll to the next location?
- 13 A Mr. DeLeon did.
- 14 Q Directed you to the next location? Where did he
- 15 indicate was the next location?
- 16 A I had climbed back into the truck. Mr. DeLeon hopped
- 17 up on the driver's side of the truck and he started
- 18 pointing to the rear of the truck towards Billy's.
- 19 Q Toward Billy's Super Store?
- 20 A Toward Billy's Super Store and indicating, but I
- 21 couldn't understand him well enough to -- whether or
- 22 not he actually meant Billy's or not.
- 23 Q But he was pointing in that direction?
- 24 A He was pointing in that direction.
- 25 MR. PUETZ: Judge, I'm going to object to the

1 leading.

2 THE COURT: State your questions in a non
3 leading fashion, please.

4 By Mr. Maye:

5 Q What happened next?

6 A Mr. DeLeon made a phone call.

7 Q Okay.

8 A He had ---

9 Q Relate what you heard.

10 A He then handed the phone to the driver and said the
11 words, mi esposa, and handed it to the driver.

12 Q Mi esposa, what does that mean?

13 A My wife.

14 Q My wife. Okay. Not going into what the driver said,
15 but based on that, what did ya'll do next?

16 A We then left the Tienda DeLeon and we turned the
17 vehicle around, the truck around, and we drove to
18 Billy's Truck Store.

19 Q Okay. And you drove to Billy's Super Store at that
20 point?

21 A Yes, at that point we did.

22 THE COURT: Who is we?

23 AGENT MIZE: Myself and the truck driver, sir.

24 THE COURT: Okay.

25 AGENT MIZE: Just us.

1 By Mr. Maye:

2 Q Was there another customs agent that was there running
3 surveillance on the store?

4 A Yes, sir.

5 Q Was he with -- who was he with?

6 A They were with some of the members of the task force.

7 Q Okay.

8 MR. MAYE: Beg the court's indulgence.

9 By Mr. Maye:

10 Q Let me ask you this, what types of furniture were
11 off-loaded at the store?

12 A I believe there were several chairs, a wooden
13 fireplace, a table.

14 Q How many fireplaces?

15 A Just one.

16 Q Just one fireplace. I'm going to show you what's
17 marked as State's Exhibit 1. In fact, just let me show
18 you another photograph here that ya'll have seen in
19 this case. Can you identify that, sir?

20 A Yes, sir.

21 Q What are those?

22 A These are the wooden fireplaces that were in the rear
23 of the truck.

24 Q That's a typical example of the wooden fireplaces? Is
25 that consistent with the one that was off-loaded into

1 the store?

2 A Yes, sir.

3 MR. MAYE: I'd like to mark that for ID, Your
4 Honor.

5 THE COURT: Yes, sir.

6 THE COURT REPORTER: That's No. 4.

7 THE COURT: You said 4?

8 THE COURT REPORTER: State's 4.

9 By Mr. Maye:

10 Q The place where you dropped those off at the store,
11 what county is that in?

12 A Edgefield County.

13 Q Edgefield County.

14 MR. MAYE: Your Honor, just as specifically as
15 to his role in the part of the presentation, that's all I
16 have for him at this time as relates to just the
17 suppression of the drugs at the store.

18 THE COURT: Cross?

19 MR. PUETZ: Yes, sir.

20 **CROSS-EXAMINATION - IN CAMERA**

21 By Mr. Puetz:

22 Q Agent Mize, you said you've been stationed at the
23 border for 3 years, is that correct?

24 A Yes, sir.

25 Q How long have you been with the customs service?

1 A A little bit over 3 years, sir.

2 Q So -- and what kind of work did you do before you went
3 to work for the customs service?

4 A I was a police officer for the St. Louis Metropolitan
5 Police Department for approximately 6 years.

6 Q And your education level?

7 A College graduate, a BA, Bachelor of Arts.

8 Q From where?

9 A University of Kansas.

10 Q Now, you indicated on May 14, was when you learned that
11 there was marijuana on this truck, is that correct?

12 A That's correct.

13 Q So there would be no way then that anybody in your
14 department would've been able to call on May 13, and
15 indicate that there was marijuana on this truck, is
16 that correct?

17 A No, sir.

18 Q That is correct?

19 A Yes, sir.

20 Q And you indicated -- when this truck started to come
21 through the border, it had -- who was driving that
22 vehicle?

23 A A -- what we call a drayage driver. I don't have his
24 name in front of me right now.

25 THE COURT: Say that again.

1 AGENT MIZE: They call them a drayage driver.

2 I believe it's d-r-a-y-a-g-e they are just drivers. Their
3 entire job is to take trailers from like a Mexican yard
4 just on the other side of the border over to a yard on our
5 side.

6 By Mr. Puetz:

7 Q And then you said the vehicle was picked up by this
8 individual by the name of Paul Carden? Is that
9 correct?

10 A I believe his last name was Gordon, I'm sorry, I
11 misspoke.

12 Q And you indicated that he was the scheduled person to
13 take it or was that someone that your agency picked to
14 drive the vehicle?

15 A What we do -- what we did was we went to Border
16 Carriers who is the legitimate carrier that was
17 supposed to take this cargo to South Carolina. We
18 approached them, we explained to them that we had a
19 trailer with contraband in it and we asked for their
20 assistance. We were then assigned Paul Gordon to be
21 the driver for that trailer.

22 Q So -- and this vehicle originated, that is the trailer
23 originated down in Mexico with J-Co or Jamco, I believe
24 it is, is that correct?

25 A I believe that they were the -- I believe that they

1 were the importers, yes it's been shipped for Jamco.

2 Q And you testified that a field test was done on one of
3 the chimneys, is that correct?

4 A That is correct.

5 Q Now, I'm sure you made notes about that, didn't you?

6 A I did not.

7 Q So this test was done on a particular chimney and you
8 made no notes at all about it?

9 A No, I did not.

10 Q Why not?

11 A I was not present at that time.

12 Q Okay. So you don't know of your own personal knowledge
13 what happened to this particular unit that was tested,
14 do you?

15 A No, sir.

16 Q And you don't even know which unit it was that was
17 opened and tested, do you?

18 A No, sir.

19 Q And you don't know if any agent put a mark on any of --
20 on a bag that was opened, do you?

21 A No, sir.

22 Q As a matter of fact, in those 200 or 300 bags that were
23 taken into evidence, there isn't any markings on any of
24 those that would indicate that someone opened it and
25 tested it, is there?

1 A I don't know, sir.

2 Q So you haven't even inspected it, correct?

3 A Correct.

4 Q And correct me if I'm wrong, that when or as an agent,
5 you are going to be making field notes and reduce those
6 to writing so that you can later testify about those
7 events, is that not correct?

8 A I am not the case agent, sir.

9 Q Who is the case agent?

10 A Michelle Dowling.

11 Q Michelle who?

12 A Dowling.

13 Q And how is her name spelled?

14 A D-o-w-l-i-n-g.

15 Q And so she was the one that was doing the contacting
16 and getting the driver and that sort of thing?

17 A Correct.

18 Q And when did you get involved in this particular case?

19 A On the 14th, I was contacted and made aware so that I
20 could prepare myself as far as packing bags and such
21 for a possible controlled delivery.

22 Q And this was a custom -- or customs operation, wasn't
23 it?

24 A Yes, sir.

25 Q And it was your hope that ultimately it would lead to a

1 prosecution by the United States, correct?

2 A Not necessarily sir. I'm happy if they're prosecuted.

3 Q Now, tell me, when you off-loaded or took these items
4 out of the trailer on May 14, do you even know if the
5 entire trailer was unloaded?

6 A I don't know.

7 Q Do you -- and as far as these x-rays that have the
8 words anomalies on them, you have no way of telling
9 that that is marijuana just by looking at the x-rays,
10 do you?

11 A That's correct.

12 Q And tell me, you don't even know what kind of a field
13 test was used to determine whether it was marijuana, do
14 you?

15 A I could tell you what kind, it's listed in the report.

16 Q Could I see the report sir?

17 MR. PUETZ: I would like to see the report,
18 Judge.

19 THE COURT: Sure. Do you have the report.

20 AGENT MIZE: I have a report. Can I go get it?

21 THE COURT: Sure.

22 MR. PUETZ: May I approach the witness, Judge.

23 THE COURT: Certainly.

24 By Mr. Puetz:

25 Q Let me ask you this, Agent Mize. You handed me 5

1 pages, is that correct?

2 A Yes, sir.

3 Q How many other pages did you bring with you today?

4 A Report wise?

5 Q Yeah.

6 A Just that, the report of the investigation and then my
7 notes.

8 Q How many -- and you've got your rough notes back there?

9 A It's not rough notes it was a summary of the incident
10 that I wrote relative to the undercover part.

11 Q Well, you turned these over to the solicitor's office,
12 didn't you?

13 A I believe that was one of the items I faxed to them.

14 Q When did you fax that to them?

15 A I don't recall, it was a few weeks ago, probably.

16 MR. PUETZ: Judge, just for the record, I would
17 like -- and I will have these marked or admitted or
18 attached to the record, but we were not provided these five
19 documents at all in the discovery.

20 THE COURT: You have to make them a court's
21 exhibit.

22 MR. PUETZ: Thank you.

23 By Mr. Puetz:

24 Q Now, so ---

25 THE COURT: Wait a minute she has too mark

1 them.

2 MR. PUETZ: I'm sorry.

3 THE COURT REPORTER: That's Court's 1, Your
4 Honor.

5 By Mr. Puetz:

6 Q Show me on here where it indicates that a field test
7 was done.

8 A This would be on the 4th page, the 1st page of the
9 narrative.

10 Q Now, who actually prepared the 4th page?

11 A That would be a customs inspector.

12 Q Who would be the customs inspector that prepared that?

13 A Mr. Gaona.

14 Q Spell that for the court reporter, please?

15 A G-a-o-n-a.

16 Q Now, it doesn't actually say that the package or that
17 one of the chimneys was opened and the items or the
18 bags tested, does it?

19 A It states at the intensive dock, a subsequent
20 inspection revealed packages inside the furniture. One
21 of the packages was probed by S-i-r Gaona, G-a-o-n-a,
22 revealing a green leafy substance, which later field
23 tested positive for marijuana, using the Duquenois,
24 D-u-q-u-e-n-o-i-s, Levine, L-e-v-i-n-e Reagent System.

25 Q What does it mean when it says it was probed?

1 A They do not necessarily break the package, what they'll
2 do is they'll take a very small amount. It can either
3 be gotten out by using a knife or a -- kind of like a
4 screwdriver type of instrument and then what they do is
5 they probe that, take out a small amount and then they
6 test that.

7 Q So in order to make sure that there is a chain of
8 custody on that, I'm sure that there must be some
9 markings but on they're by this inspector, isn't there?

10 A They usually tape it back shut.

11 Q So they don't put their initials on it indicating that
12 they've done anything to it?

13 A No, sir.

14 Q Now -- and this vehicle then was sitting where from the
15 end of May 14 to May 16 when ya'll leave?

16 A At the dock at the Customs World Trade Bridge in
17 Laredo, Texas.

18 Q And when you left and headed to Louisiana, it was your
19 belief at that point in time that the other 22 chimneys
20 had similar packages in it, is that correct?

21 A That's correct.

22 Q And it was based upon that field test of the one
23 chimney, correct? Coupled with the anomalies that were
24 noted on the x-rays?

25 A That is correct.

1 Q And when you left and headed toward Louisiana, were you
2 then the agent in charge or was Dowling still the
3 person that was in charge of this operation?

4 A She was the case agent.

5 Q Where was she at?

6 A She was there with us. We basically formed a convoy
7 behind the truck. There's, probably there was four
8 vehicles along with the tractor trailer, all vehicles
9 staying together.

10 Q And how many customs agents are there in these four
11 vehicles and the tractor trailer? Are there three
12 vehicles and the tractor trailer?

13 A I believe there were six or eight agents on this
14 occasion.

15 Q Give me their names if you could?

16 A If I remember right, Michelle Dowling; Joel -- I'm
17 sorry Jose Hernandez, Giovanni Perez, Arturo Rocha,
18 Carlos Cardnes and myself I believe that was everybody.

19 Q And just so the record is clear, you do not speak
20 Spanish do you?

21 A No, very little.

22 Q And you and Carden or Gordon, Paul Gordon doesn't speak
23 Spanish either, does he?

24 A That's correct.

25 Q Now, you knew -- or did you know what nationality the

1 persons were that you were going to deliver this too?

2 A We guessed that they were Hispanic.

3 Q Tell me why you didn't put a Hispanic speaking person
4 in the truck?

5 A It wasn't my decision, but part of the reason was
6 that -- my purpose for being inside the truck was the
7 for the safety of the driver.

8 Q Because he's not a customs agent, is he?

9 A Exactly.

10 Q And when you arrived here to Saluda, you got here on
11 the 17th in the evening, is that correct?

12 A Yes.

13 Q And then there was going to be a meeting the next
14 morning with the local law enforcement agents, is that
15 correct?

16 A That's correct.

17 Q And was it at that point in time at 8 o'clock on May
18 18, still a customs operation?

19 A Yes.

20 Q Are all six of your agents still in the area?

21 A No, sir.

22 Q Who is left?

23 A I'm sorry. In Laredo or are you asking ---

24 Q No, in Saluda?

25 A I am the only person from my office here.

1 Q So where did the other five go to? In the convoy?

2 A My apologies. I thought you meant at this point in
3 time. That morning all agents relative to the delivery
4 from my office were at the rally point.

5 Q In Saluda, South Carolina?

6 A Correct.

7 Q Now, at this rally point, you met approximately at 7
8 o'clock, according to notes, is that correct?

9 A Yes.

10 Q And you broke down into various teams, is that not
11 correct?

12 A I'm not going to be able -- we did ---

13 Q But you break down into teams?

14 A They did.

15 Q And who was making or composing the various --
16 determining who was going to be in the various teams?

17 A I don't recall.

18 Q Was it Dowling?

19 A No, sir.

20 Q But she's still on site and it's her operation,
21 correct?

22 A No, sir.

23 Q Where is she at?

24 A She is, I believe, in Washington -- I'm sorry, you're
25 talking about this point in time?

1 Q Yes.

2 A She is at the site, however, once it gets to the
3 destination, being South Carolina here, we become
4 support personal. We are no longer in charge of the
5 operation.

6 Q Who was in charge of the operation?

7 A I believe agents from the RAC -- Greenville, along with
8 local law enforcement.

9 Q I'm sorry, agents from where?

10 A The Resident Agent in Charge Office out of Greenville,
11 I believe.

12 Q And who -- you're talking about with customs?

13 A Yes.

14 Q And who would that be?

15 A I believe -- I think the supervisor is Greg Sassy.

16 Q Was he out there that morning on May 18?

17 A Yes.

18 Q What about Agent Tucker?

19 A He was there.

20 Q Is he from Greenville?

21 A I believe either Greenville or Columbia.

22 Q Now, you indicated, what time did you leave that
23 staging area then?

24 A Somewhere around 8:00, 8:15.

25 Q And you indicated that your bill of lading said this

1 was supposed to be delivered to 216 is that correct?

2 A That's correct.

3 Q Give me the exact address for the record of where you
4 were supposed to deliver it?

5 A On the bill of lading, the original bills of lading it
6 states 216 Breezy Oaks in Trenton, South Carolina.

7 Q Did you go to that address?

8 A No.

9 Q Why not?

10 A Because a phone call was made prior to that to the
11 phone number that is listed on this and we were
12 redirected to another location.

13 Q What phone number did ya'll call?

14 A 803-275-2017.

15 Q And who made the phone call?

16 A One of the agents from Greenville.

17 Q How do you know that?

18 A That's what I was told.

19 Q By whom?

20 A At the briefing.

21 Q And do you know when that call was made?

22 A No, I don't.

23 Q And do you know who was spoken to?

24 A No, I don't.

25 Q Was any effort made to capture that conversation?

1 A Not -- I don't know.

2 Q If not, why not?

3 A I don't know.

4 Q Do you know even whose number is list -- who's listing
5 that is?

6 A Only from what I can see on the manifest.

7 Q Tell me what the manifest indicates?

8 A It has the name of Fredy DeLeon and then that phone
9 number right next to it.

10 Q So it's your assumption as we sit here today that that
11 is Fredy DeLeon's number?

12 A As I look at this, yes.

13 Q I mean, you've never checked it, is that correct? To
14 see if that is Fredy DeLeon's listing?

15 A I have never checked it.

16 Q Has anybody come up and told you that they checked it?

17 A No.

18 Q And, correct me if I'm wrong, did anybody in that group
19 of six agents ever check to see if Fredy DeLeon had
20 anything to do with ordering the furniture?

21 A I don't know.

22 Q Do you have any -- has anyone related to you that they
23 have some evidence that he ordered the furniture?

24 A Just through what was on the manifest and information
25 like that, no.

1 Q And, now, so what was the address you were told to go
2 to then by this other agent?

3 A I honestly don't remember the numerics at this point,
4 but it was the Tienda Mexicana DeLeon.

5 Q And did -- do you have any notes at all that reflects
6 this information that you're passing onto us?

7 A No, however, the night before, when we are coming in
8 through Edgefield, when we were on the way to the
9 Saluda County Airport, we did -- we passed the store
10 and it was pointed out to us over the radio.

11 Q By one of the other agents in this convoy?

12 A Yes.

13 Q And it is not true that Mr. DeLeon was selecting
14 furniture to take out of the back of that trailer is
15 it?

16 A That's correct.

17 Q In fact, it was suspect number 3 that was directing who
18 or what items should be removed from that particular
19 trailer, is that correct?

20 A Correct.

21 Q And you have no idea what, if anything, Fredy DeLeon
22 said to either suspect number 3 or to suspect number 2?

23 A Correct.

24 Q You don't -- you can't even tell us if he said anything
25 to him, can you?

1 A I saw them talking infrequently, but as to what was
2 said, I don't know.

3 Q And clearly it was suspect number 3 that was deciding
4 what comes off?

5 A He was the gentlemen in the back of the truck, yes,
6 removing the items.

7 Q Is that correct?

8 A It is.

9 Q And at no place in your summary do you ever indicate
10 that the green Thunderbird was over at the Mexican
11 store, do you?

12 A I don't recall.

13 THE COURT: While he's looking at that, how
14 many witnesses do you anticipate we'll have to hear from?

15 MR. MAYE: Just one as to the issue of
16 suppression, just one, Your Honor.

17 THE COURT: Well, how am I going to know what
18 happened at the store.

19 MR. MAYE: That agent knows what happened at
20 the store.

21 THE COURT: You mean one other than this
22 witness?

23 MR. MAYE: Yes, yes, sir, one other. Yes, sir,
24 he was present at the store and went on and hit it with the
25 raid.

1 By Mr. Puetz:

2 Q It's not -- you never indicated that this green
3 Thunderbird was seen over at the store, did you?

4 A Correct.

5 Q And no one's ever taken any photographs of any vehicles
6 that were at that store, is that correct?

7 A Not that I've seen.

8 Q And the driver, in fact, could not obtain an address of
9 where you were to go to after you left that store,
10 could he?

11 A Correct.

12 Q And there is no evidence that Mr. DeLeon had any
13 connection to the Sebastian Exportaciones at the scene,
14 is that not correct?

15 A I'm sorry?

16 Q On the bill of lading?

17 A Not that I'm aware of. I don't know.

18 Q Well, I mean, has anybody come and told you that
19 they've done and found any connection, prior, past,
20 present to that company?

21 A Nobody has told me anything.

22 Q And or Jamco International?

23 A Just what I've seen on the paperwork, sir.

24 Q And Laredo, Texas, there's no calls or connections
25 between Mr. DeLeon in that, is there?

1 A Not that I've been told, sir.

2 Q Or to the Border Carriers, correct?

3 A Besides that's the contact number that Border Carriers
4 had, was that number with Mr. DeLeon's name next to it.

5 Q But we don't know, do we, whether it was Mr. DeLeon
6 that called and gave them that number, do we?

7 A I didn't make the call, sir, so I don't know.

8 Q I know, but has anybody indicated to you that there is
9 any evidence it was Mr. DeLeon that made that call?

10 A Nobody's told me.

11 Q Now, correct me if I'm wrong, once these items were
12 loaded -- off-loaded and put outside the store, Mr.
13 DeLeon didn't tell you to move them inside, did he?

14 A No, sir, not me personally.

15 Q Well, he didn't tell -- I mean the driver wasn't
16 helping, was he?

17 A No, he was inside the truck.

18 Q And it was pouring down rain, wasn't it?

19 A Not too bad at that point.

20 Q Well, they were sitting out in the rain, sitting there
21 next to the door, weren't they?

22 A Correct.

23 Q And then you took those items, the 13 pieces, that is
24 12 chairs and one chimney and took them inside the
25 store, correct?

- 1 A Yes, sir.
- 2 Q And took them inside a storeroom that was off on the
3 left-hand side of the store as you go into it, isn't
4 that correct?
- 5 A Correct.
- 6 Q And there was not merchandise racks in there indicating
7 to you that you could buy things from inside that
8 storeroom, was there?
- 9 A Correct.
- 10 Q It had a door off didn't it?
- 11 A It did.
- 12 Q And you took -- you helped them put all those items,
13 including that one chimney inside that storeroom and
14 closed the door and left, correct?
- 15 A I don't know if they closed the door or not.
- 16 Q That was clearly -- strike that. Now, during this
17 period of time, Mr. DeLeon -- you have no idea what, if
18 anything, is being said, correct?
- 19 A Correct.
- 20 Q And you would agree with me that but for your x-ray and
21 but for your field test, you could not tell by looking
22 at that chimney that it was anything other than a
23 chimney, correct?
- 24 A Correct.
- 25 Q And you can't sit here today and tell us that Mr.

1 DeLeon had any knowledge about what was inside the
2 chimney, can you?

3 A I don't know.

4 Q And correct me if I'm -- correct me if I'm wrong, there
5 was a telephone conversation that suspect number 2
6 talked to -- I'm sorry, DeLeon and suspect number 2
7 talked to an unidentified person on the phone, is that
8 correct?

9 A They were talking on the phone. I don't know if they
10 were talking to the same individual.

11 Q Who's phone were they using?

12 A Mr. DeLeon was using a landline, cordless phone, what
13 looked like a landline, cordless phone. I'm guessing
14 it was the store's, but, I don't know.

15 Q And what about suspect number 2?

16 A I don't recall which phone he used.

17 Q And you're not able to sit here and swear under oath
18 that those phone calls were in any way related to what
19 was happening with the chimney or the other 12 pieces
20 of furniture, are you?

21 A I don't know.

22 Q Now, tell me, who comprised Team No. One?

23 A I don't know.

24 Q Who does know?

25 A I don't know.

1 Q Does Dowling know?

2 A I don't know.

3 Q Well, I'm sure you must have made some kind of notes
4 and radio frequencies and that sort of thing so that
5 you could communicate with one another, isn't that
6 correct?

7 A From the outset, from that meeting, it was decided that
8 I was going to be in the tractor. As far as the team
9 breakdowns, because I did not know a good portion of
10 the people, I wouldn't know who was on which team.

11 Q So, but tell me this, do you have any disagreement with
12 the fact that Team One was comprised of Customs and DEA
13 agents?

14 A I believe there were members from the local county
15 sheriff's department on the team also.

16 Q Do you know who?

17 A A gentlemen from Aiken County.

18 Q What's his name? Ford?

19 A I think it's Eric. I honestly don't recall.

20 Q Did you learn that from ---

21 A Somebody on the witness list..

22 Q Okay. So I mean, you've been back there talking a bit,
23 correct?

24 A Preparing for this case with the district attorneys.

25 Q With Mr. Maye?

1 A True.

2 Q But, correct me if I'm wrong, you wouldn't talk to
3 Mr. Sussman would you? Or any of us?

4 A I did not.

5 Q And all he wanted to find out was what you knew about
6 the case, correct?

7 MR. MAYE: Objection, Your Honor, how is he
8 supposed to know what he wanted to find out? That's
9 ridiculous. I object to that.

10 THE COURT: Sustained.

11 By Mr. Puetz:

12 Q You told him very candidly that you wouldn't even speak
13 to him, isn't that correct?

14 A I told him I wished to reserve my testimony for the
15 courtroom.

16 Q Did you tell that same thing to Mr. Maye?

17 A No.

18 Q Now, let me ask you this, how were you able to
19 communicate with these other, say Team One?

20 A Portable radio.

21 Q And what was the frequency that you were on?

22 A I believe we were on alpha 1, maybe alpha 2.

23 Q And was it your decision to shut down the operation?

24 A Negative. No, I'm sorry.

25 Q Who's decision was it to shut down the operation?

1 A I don't know who made that decision. It was a
2 supervisor from one of the organizations. I don't know
3 who.

4 Q Well, let me ask you this, I'm sure that it was your
5 desire to see one of the chimneys off-loaded at that
6 store, is that not correct?

7 A I don't understand -- my desire?

8 Q Well the only thing that had any importance as it
9 relates to your investigation, was getting one of those
10 chimneys in the hands of somebody, is that not correct?

11 A The idea in an investigation is to have the suspects
12 take possession of the narcotics.

13 Q And that -- so my point is you wanted to make sure that
14 one of the chimneys got off-loaded at the first stop,
15 and only stop, correct?

16 A That's not my decision to make.

17 Q It was suspect number three's decision, I guess, is
18 that what you're saying?

19 A He's the gentlemen that picked the items from the back
20 of the trailer.

21 Q And that's the gentlemen that you never found, isn't
22 it?

23 A I don't believe he was ever identified.

24 MR. PUETZ: Just a second, Judge.

25 THE COURT: Yes, sir.

1 By Mr. Puetz:

2 Q This whole tractor trailer and the off-loading at the
3 DeLeon store was a controlled delivery, wasn't it?

4 A That's what we term it as, yes, sir.

5 Q And suspect number 2 was never identified either, was
6 he?

7 A Not to my knowledge.

8 Q And you never heard anybody over that radio talking
9 about exigent circumstances, did you?

10 A I would say I wasn't in a position to, sir.

11 Q And what do you mean by that?

12 A The radio frequency that we were on is a car-to-car
13 frequency, so in all honesty the surveillance teams at
14 the store were too far away from my radio to pick it
15 up. It wasn't hitting all the people.

16 Q So you were operating out there without any
17 communication?

18 A My understanding was there was a separate surveillance
19 team that I was in contact with that was with me.

20 Q So you had no communication with -- you couldn't hear
21 anything that Team One was talking about?

22 A I don't -- I don't know what was going on at the store
23 at this time, at that time, no, sir.

24 Q How many people do you recall being on team one?

25 A I don't recall who was assigned to team one, sir.

1 Q Do you recall how many teams there were?

2 A No, sir.

3 Q How is it that you -- strike that. It was pretty
4 clear, was it not, that the storeroom at Mr. DeLeon's
5 store wasn't going to hold 133 pieces of furniture,
6 wasn't it?

7 A That's correct.

8 Q And as you ---

9 MR. PUETZ: I don't have any further questions,
10 Judge.

11 THE COURT: Anything else of this witness?

12 MR. MAYE: Is anybody else going to ask him
13 anything, Your Honor? I don't know, I just didn't want to
14 get out of turn. Any of those lawyers want to ask him
15 anything?

16 MR. SUSSMAN: I have a couple.

17 CROSS-EXAMINATION - IN CAMERA

18 By Mr. Sussman:

19 Q Agent Mize, you never saw either of these three
20 gentlemen that are seated to Mr. DeLeon's right at the
21 store, did you?

22 A I'm sorry, sir, I don't -- I couldn't hear everything
23 you were saying.

24 Q You didn't see Mr. Arojona or Mr. Hernandez or
25 Mr. Guerrero -- these three gentlemen that are seated

1 to Mr. DeLeon's right, did you see them at the store?

2 A No, sir.

3 Q The first time that you saw those three gentlemen was
4 when they pulled up in the box truck at Billy's Super
5 Store?

6 A That's correct.

7 Q And that's the first time you saw them in this whole
8 operation?

9 A That's correct.

10 Q Thank you.

11 THE COURT: Anything else of this witness?

12 MR. MAYE: Yes, just a couple more.

13 **REDIRECT EXAMINATION - IN CAMERA**

14 By Mr. Maye:

15 Q When a package is x-rayed and you find anomalies, is
16 that package eventually going to be searched at some
17 point in time by customs?

18 A Yes, sir.

19 Q It will? Is it always searched right at the border?

20 A No, sir.

21 Q Okay. Is it sometimes searched at some eventual time
22 at the point of delivery?

23 A Yes, it is.

24 Q You previously testified that the trailer was sealed in
25 your presence with the furniture, is that correct?

1 A Correct.

2 Q Okay. Was it still sealed when you got out at the
3 DeLeon, Tienda DeLeon and broke the seal, again?

4 A Correct.

5 Q Okay. Did you break the seal on it at that point?

6 A Yes, I did.

7 Q Had the items been disturbed or changed in any way
8 other than the one that was opened according to your
9 notes in there?

10 A No, sir.

11 Q Okay. So all the rest of them were essentially the
12 same condition as they had been at the time that they
13 were x-rayed?

14 A Yes, sir.

15 Q Is it the practice of customs to carry out searches
16 sometimes at locations other than the border?

17 A Yes, it is.

18 Q How is that done?

19 A It's called an extended border search. And once that
20 truck crosses the border, it has what's called a nexus
21 with the border. Now while that container is in the
22 care and custody of us, it maintains that nexus to the
23 border, no matter where we take it. Once we delivered
24 to the store, that store then touched, in essence, the
25 border, by coming in contact with that truck and,

1 therefore, the store became the nexus to the border.

2 Q Can any customs agent then enter and conduct that
3 search?

4 MR. PUETZ: Judge, I'm going to object. I
5 think that's a legal question for this court to decide
6 where that border exists or how far they can go with this
7 border search.

8 MR. MAYE: Let me rephrase my question.

9 By Mr. Maye:

10 Q Do customs carry those searches out in that fashion?

11 A That is correct.

12 Q Can you do it with a residence or do you do that with a
13 residence?

14 A No type of dwelling, no, sir.

15 Q How about buildings?

16 A Yes, sir.

17 Q Okay. So it is customs' practice to conduct the
18 searches of a building, is that the case?

19 MR. PUETZ: I will object, Judge, here again, I
20 think that goes beyond what he's testified. And what their
21 practice is, I don't think is relevant -- I think it's --
22 as it relates to the Fourth Amendment, whether or not they
23 violated the Fourth Amendment.

24 THE COURT: It's asked and answered.

25 MR. MAYE: Nothing else.

1 THE COURT: Anything else of the witness?

2 MR. MAYE: Nothing else in the matter of
3 suppression of the drugs in the store.

4 THE COURT: Thank you very much, sir.

5 AGENT MIZE: Thank you, Your Honor.

6 THE COURT: I'm going to ask them to take you
7 to another room and don't discuss anything you talked about
8 out here with the other witnesses.

9 AGENT MIZE: Absolutely, Your Honor.

10 THE COURT: Thank you.

11 Mr. Mizell have somebody make sure he's in
12 another room than the other witnesses.

13 MR. MIZELL: I will instruct him not to discuss
14 his testimony with any other witnesses.

15 MR. MAYE: Will you tell Officer Owenby to come
16 around.

17 THE COURT: Wait just a second. Well, you can
18 tell him to come on in. Thank you.

19 Because of the time limitations that I've
20 placed you all under, believe me, I tried to get somebody
21 switched so that it wouldn't cause you all any undue
22 problems. It's not that I would rather work somewhere
23 else, I'm happy to be in Edgefield. But I was afraid -- I
24 wish they had just switched me with another judge. That's
25 not what was done. Because of all of that, I do want to

1 try to start today, if at all possible.

2 However, I think most of you know how strongly
3 I feel about making jurors sit back there and wait for
4 extraordinary long periods of time. I brought them back an
5 hour and 20 minutes ago. Can you give me any idea as to
6 how much longer you think the suppression hearing will
7 take?

8 MR. MAYE: Your Honor, I would imagine there
9 would be extensive argument even after we -- or maybe not.
10 You may not want to hear any argument. We might not need
11 to say anything else.

12 THE COURT: What I want to hear and what I'm
13 willing to hear are two different things.

14 MR. MAYE: That might be very well the case,
15 that might be the limiting factor, so I certainly won't
16 speak for the court. I have one ---

17 THE COURT: I'm willing to hear any argument
18 that you want to make.

19 MR. MAYE: I have one more, possibly two more
20 witnesses in this case, Your Honor to deal with this issue
21 of suppression. I don't know how long it will take, Your
22 Honor. My part -- I can't predict, Your Honor. I
23 certainly will stick around for the duration. If you want
24 to let the jury go and us start tomorrow, we'll just get
25 this case done. I know that we've made some initial plans.

1 of even going into next week for part of it. I know that
2 that doesn't sound very appealing, but I will do whatever
3 the court pleases.

4 THE COURT: Do ya'll have any idea?

5 MR. PUETZ: Judge, I would think realistically,
6 you're looking at a good hour, hour and-a-half. I mean, if
7 he's going to call two more witnesses -- I may be wrong.

8 THE COURT: Do me a favor and bring the jury
9 in.

10 (WHEREUPON the jury entered the courtroom at
11 3:03 p.m.)

12 THE COURT: Ladies and gentlemen, I have to
13 make some decisions in every case as they go along. And I
14 want to explain some things to you before I tell you what
15 I'm going to do. The first thing I want you to understand
16 is that I've always taken great pride in not making juries
17 wait unnecessarily. You may not believe that right now,
18 but I really feel very strongly that if the jury is ever
19 waiting on me, it's something that's constantly gnawing at
20 me to try to get you out here. I also told you that in
21 criminal cases, we do not -- we being judges -- we do not
22 control the dockets. The cases are called by the
23 prosecutor's office and then after the prosecutor's office
24 calls them, there's always some issues that arise that the
25 defense may raise or the prosecution may raise that call

1 upon me to make some legal determinations.

2 Now, in some instances, those are short and we
3 deal with them. In some instances, they're not. If I know
4 in advance that there are lengthy issues, then I can make a
5 judgement. But sometimes the lawyers don't even realize
6 how long they're going to take when they raise them. They
7 just don't realize they take a long time to get through
8 them. That's a lot to say to tell you what I'm about to
9 tell you.

10 I've got to make a call as to whether I leave
11 you back there waiting on us while we continue to work or
12 let you go home. We took about as short a lunch break as
13 we could possibly take without just completely not taking a
14 lunch break. We've been working the entire time very hard.
15 But I do not see us getting to you for another hour and a
16 half or more. I thought initially I could get to you in
17 about an hour so that's why I sent word to you, but I was
18 just way off on my estimate.

19 Now, the problem is that I'm trying very hard
20 to move the case along because we've got somewhat of a late
21 start because of the fact that I had been assigned to the
22 case down in Bamberg County that was a State Grand Jury
23 case and, you know, no case is any more important than
24 another one, I'm not trying to imply that, but the State
25 Grand Jury cases are assigned to a judge by the chief

1 justice, so that's my case, I have to do it and it wound up
2 taking 7 days to do.

3 I had asked the powers that be to switch me
4 with another judge and let me go wherever that judge, that
5 other judge was when I finished so that this week of court
6 in Edgefield would have one judge beginning on Monday and
7 going through the week. What they did is they sent another
8 judge here on Monday and then sent him back home on Monday
9 afternoon. And I think that's because, quite frankly, is
10 budget problems. I don't know, it's not my problem to
11 determine, but the budget is just so tight that they're
12 having to try to save money at every turn. It's a sad
13 state of affairs if that is what it was.

14 I'm going to be straight up with you. What I'm
15 trying to avoid is going into next week with this trial.
16 But it's -- I had really hoped that we could get by -- I
17 would have felt pretty good if we could have gotten opening
18 statements done today. So what I'm going to do is, I'm
19 going to ask you to come back in the morning at 9:00 a.m. I
20 just -- I'm just not going to leave you back there for
21 another hour and-a-half, two hours, waiting on all of us.
22 A lot of times I will let a jury walk around, particularly
23 on a pretty day like this, I would just say ya'll walk
24 around for a while and come back. But it just isn't going
25 to accomplish a whole lot.

1 So rather than bring you in at 9:30, I'm going
2 to bring you in at 9:00. We'll try that, see how it goes.
3 We're going to stay here and work until I can work through
4 these legal issues. If that means we work until 9 o'clock
5 tonight, that's what we'll do our best to do. I can't
6 promise you in the morning, I won't be hit with something
7 else and another problem arises. But I'm telling you right
8 now, if I were in your shoes that's what I would want the
9 judge to do, so that's what I'm going to do.

10 Now, it's really important that you understand
11 some things. I've already told you this to some degree,
12 But I've got to repeat it. You cannot discuss this case
13 with anybody. So to give you an example of what I mean,
14 you can't go home and tell your spouse that you're on a
15 case that alleges trafficking in marijuana. You can't tell
16 him it's alleging drugs. You can tell him you're on a
17 jury, but you can't tell him what type of case it is or
18 whose supposedly involved in it. I don't -- I haven't seen
19 any media, I don't think there will be media coverage of
20 the trial, but sometimes they cover it without ever coming
21 to the courtroom. So if there is any media coverage of the
22 trial, don't let yourselves be exposed to it, get away from
23 it and report to me what you saw, heard or read through the
24 media at the first opportunity.

25 Now, if anybody does attempt to contact you and

1 discuss this case with you, you need to report that to me
2 so that I can deal with it. Just give me the description
3 of who it was and how it occurred. And what I'll do is I
4 will try to keep you abreast as the case goes along how
5 we're proceeding and what it looks like. And if it starts
6 to look like we may go into next week, then I will let you
7 know that and I will hear from you any major problems that
8 may create for you. But I don't have an alternate, so I'm
9 going to tell you I'm going to have to take a pretty tough
10 stand with you.

11 But, again, I'm not heartless, I want to know
12 and see if there's anything we can come up with to work
13 around the problems. But hopefully we won't get to that
14 point.

15 All right. Now, don't discuss the case among
16 yourselves, don't discuss it with anybody else, stay away
17 from media coverage. Follow those admonitions. Tomorrow
18 morning I need you in the jury room at 9:00 a.m. Don't
19 come in the courtroom.

20 All right. I'm very sorry you had to wait so
21 long. I plan to talk to you tomorrow morning at 9 o'clock.
22 Thank you.

23 (WHEREUPON the jury left the courtroom at 3:17
24 p.m.)

25 THE COURT: All right. Before we hear from the

1 next witness, I'd like to take a short break. Before we
2 do, I do need to give some direction to anybody who might
3 be in the audience. You all be very careful as you go
4 outside or you go back in the hallways that you don't have
5 any conversations that might be overheard by the jurors if
6 those conversations in any way relate to this case or
7 anybody in it. And just be very careful that you don't
8 have contact with a juror. A lot of times jurors very
9 innocently may walk up to you and -- I'm not telling
10 anybody to be rude to anybody else, but just keep your
11 distance, because if there's a contact we've got to stop
12 everything and I've got to go through inquiry. If I
13 determine that the contact was inappropriate, I may send
14 somebody to prison and nobody wants to do that.

15 All right. We're going to be at ease for about
16 10 minutes.

17 (WHEREUPON a short recess was observed.)

18 THE COURT: All right. Thank you. Call your
19 next witness.

20 MR. MAYE: The State calls Eric Owenby.

21 THEREUPON,

22 ERIC OWENBY,

23 after being duly sworn, testified as follows:

24 ///

25 ///

DIRECT EXAMINATION - IN CAMERA

By Mr. Maye:

Q Investigator Owenby, if you would, identify yourself for the court and tell Your Honor where you work?

A At the time of this incident I was with the Aiken County Sheriff's Department.

Q And what areas did you work under in Aiken County?

A I was a narcotics investigator.

Q On May 18, of 2002, did you assist Edgefield County in a cooperative operation.

A Yes, sir.

Q Where did you go, based on your assistance? What did you do?

A We originally went to the Saluda County Airport where we met. From that point, I went to Wise Street, which is just down from Tienda DeLeon.

Q Okay. Is that within site of the Tienda DeLeon?

A It's not within sight, it's just up the road.

Q It's just up the road?

A I would say maybe a quarter to half mile.

Q Okay. All right.

MR. PUETZ: I'm sorry, I didn't here what he said.

By Mr. Maye:

A It was up the street.

1 Q What was your role in this operation, what were you
2 doing?

3 A Surveillance on the store.

4 Q What, if anything, occurred while you were there doing
5 your surveillance on the store?

6 A One of the chimneys containing marijuana was unloaded
7 at the store.

8 Q Okay. Were you there when the truck came up and went
9 to the store initially?

10 A I was there when the truck arrived at the store.

11 Q What vehicles did you see there?

12 A I wasn't at the store. Let me change that. I was up
13 the road. I heard, you know, radio tracking, when the
14 truck arrived at the store.

15 Q Okay. What did you do then? Who were you with at this
16 time?

17 A I was with a customs agent out of Laredo, Texas.

18 Q Who was that customs agent?

19 A I cannot recall his name. He was a Hispanic guy.

20 Q Okay. All right. What did ya'll do?

21 A We monitored the radio traffic.

22 Q Uh-huh.

23 A We watched for vehicles that they called out.

24 Q Okay.

25 A We waited and was basically waiting on the decision as

1 far as the time to hit the store.

2 Q Okay.

3 A To approach the store.

4 Q Did there come a time when ya'll just went ahead and
5 hit the store?

6 A There come a time when myself and the customs agent
7 decided that the store needed to be hit.

8 Q Why was that?

9 A Because the package of marijuana had been delivered and
10 there was customers, according to radio traffic, coming
11 in and out of the store. And the chance that the
12 marijuana would leave or could leave or had left was
13 high.

14 Q Okay. Based on that, what did ya'll do?

15 A We approached the store, entered the store.

16 Q Was the store opened or closed at that time?

17 A It was open.

18 Q Okay. What did ya'll do when you got in?

19 A We went in the store, the customs agent made contact
20 with Mr. DeLeon's wife, who, I believe was working
21 behind the counter.

22 Q Okay. Did you go in with the customs agent?

23 A I did.

24 Q Okay. Did ya'll go -- where in the store did ya'll go?

25 A In the front door.

1 Q In the front door?

2 A Yes, sir.

3 Q Okay. Who was there at the store when you got there?

4 A As far as customs personnel or as far as ---

5 Q Just tell me if any other law enforcement were at the
6 store?

7 A The only other person I recall being at the store other
8 than law enforcement was Ms. DeLeon. A few moments
9 after we arrived ---

10 Q What was her name?

11 A I assume it was Mrs. DeLeon. It's Fredy DeLeon's wife.

12 Q Okay. Are you sure what her name is?

13 A It would have been Hernandez. I mean, I don't recall a
14 name. I think I heard Hernandez, but I know her to be
15 his wife.

16 Q Okay.

17 A That's what I was told.

18 Q Did anybody else come up?

19 A Yes, sir.

20 Q Who else came up?

21 A It's my understanding that Salvador Torez's wife came
22 up as well.

23 Q Okay. Another individual -- what was she driving?

24 A She was driving a black sport utility vehicle.

25 Q Okay. Did there come a time when somebody else came

1 back to the store?

2 A They did.

3 Q Who was that?

4 A Fredy DeLeon.

5 Q Okay. Were the vehicles -- did ya'll hit this in
6 marked vehicles, with lights going or how was that
7 handled?

8 A No, sir, we approached the store quitely. There were
9 no marked vehicles.

10 Q Okay.

11 A We eased into the store. We didn't storm the store or
12 anything, just walked in -- now, we did have ---

13 Q What you saw, would it have been ---

14 MR. PUETZ: Judge, I would ask that he be
15 allowed to finish his answer.

16 MR. MAYE: Go ahead. I'm sorry for the
17 interruption.

18 By Mr. Maye:

19 A We had sheriff's office personnel identification on us,
20 but there were no marked vehicles.

21 Q Okay. Were you inside or outside the store when Mr.
22 DeLeon came up?

23 A Inside.

24 Q Inside the store?

25 A Yes, sir.

1 Q From your observation or vantage point, was there
2 anything that someone from the outside would have seen
3 to indicate law enforcement was at the store?

4 A Not to my knowledge.

5 Q Okay. Did ya'll go in -- where in the store did ya'll
6 go once you got in there?

7 A We originally went in the store, several of the customs
8 agents immediately made contact with the female that
9 was working behind the counter.

10 Q Okay.

11 A They spoke -- you know, I basically was security. They
12 went in a back storage room where they were directed
13 that the package was, the fireplace containing the
14 marijuana.

15 Q Did you go with the customs agent back to the back?

16 A I did walk back in there.

17 Q Okay. Was the package opened?

18 A It was opened later on with the customs.

19 Q But it wasn't initially opened?

20 A Right, that's correct.

21 Q Describe what the package was?

22 A It was a wooden fireplace. There were also a few
23 chairs there.

24 Q Okay. Who was present when the package was opened?

25 A There was a female customs agent, a couple more male

1 customs agents.

2 Q Do you remember the female customs agent's name?

3 A Michelle, I think was her first name.

4 Q Okay. A customs agent named Michelle was there?

5 A Yes, sir.

6 Q Who directed that ya'll open the package, or that the
7 package be opened?

8 A Customs agents directed that the package be opened.

9 Q Okay. The chimney?

10 A Yes.

11 Q Okay. Was the store open for business or was it closed
12 for business?

13 A It was opened ---

14 Q When ya'll went in?

15 A --- for business.

16 Q Okay. So ya'll didn't have to -- did ya'll have to
17 force entry in any way?

18 A No, sir, there were customers coming in and out of the
19 store as we were in there.

20 Q Okay. Whether or not -- what would you have done once
21 you learned or what would you have done or what did you
22 do once you learned that people were coming and going
23 from the store?

24 A I think that ---

25 MR. PUETZ: Judge, I will object to the

Exigent Circumstances

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1 thinking. He asked him what he did do -- what -- and I
2 think that might be relevant but the other portion of his
3 question calls for testimony that's not relevant.

4 THE COURT: Overruled. You may ---

5 By Mr. Maye:

6 A I think we done appropriately by entering the store. I
7 think there were exigent circumstances.

8 THE COURT: Hold on, that's sustained.

9 MR. MAYE: Okay.

10 THE COURT: I thought he was going to tell me
11 what his thinking process was.

12 MR. MAYE: No.

13 THE COURT: I didn't want him to characterize a
14 decision that I have to make.

15 MR. MAYE: Let me see if I can rephrase that.

16 By Mr. Maye:

17 Q Once you learned that packages, people were leaving the
18 store, what decision -- what would you have done at
19 that point in time?

20 A Entered the store.

21 Q Why?

22 A For the fear that the packages were being distributed
23 and moved from that location.

24 Q Okay. But you testified that it was opened at the
25 direction of the customs?

1 A Yes, sir.

2 Q Did you make the decision to open the package at that
3 time?

4 A No, sir.

5 Q At any time -- did ya'll bring in narcotics animals or
6 anything else there? Did ya'll have a dog there or
7 anything?

8 A I think there was a dog later that come up.

9 Q Was that before or after the package was opened?

10 A I don't recall.

11 Q Okay. Hold on just one second. I show you State's 1.
12 Can you identify that?

13 A Yes, sir. That is the wooden fireplace inside the
14 store. The marijuana on top of it. That is the
15 fireplace that was in the store and it was opened in
16 the store at the direction of customs agents.

17 Q Okay. That was opened at the direction of customs
18 agents? You were present at that time?

19 A I was.

20 Q What is the situation regarding your jurisdiction to
21 act in Edgefield County?

22 A We have a mutual aid agreement.

23 Q So you have full authority to conduct and carry out
24 investigation that is relevant in Edgefield?

25 MR. PUETZ: Objection, leading.

1 THE COURT: Ask the question in a non leading
2 way.

3 By Mr. Maye:

4 Q What authority do you have in Edgefield County?

5 A We have authority to investigate, to arrest, so forth
6 and so on in Edgefield County.

7 Q Based on what?

8 A The mutual aid agreement.

9 Q Okay. Answer any questions that the defense in this
10 case has for you.

11 CROSS-EXAMINATION - IN CAMERA

12 By Mr. Hawk:

13 Q Sergeant Owensby, Owenby, the first time you were
14 involved, knew anything about this particular marijuana
15 load was when you got involved in Saluda, am I correct?

16 A No, sir, I was notified the night before.

17 Q Okay. And the night before this particular load of
18 marijuana was in the complete control of customs agents
19 and other agents, am I correct?

20 A That's my understanding.

21 Q And it remained in the complete control of customs
22 agents and other agents right up until the time it got
23 stuck, am I correct?

24 A I'm sorry?

25 Q It remained in your exclusive control right up until

1 the time it got stuck and the operation was shut down?

2 A It remained in customs control, yes, sir.

3 Q All right. And when ya'll went -- I think you said you
4 maintained surveillance over on Wise Street?

5 A I think it's Wise Street. It was just down from it on
6 the right.

7 Q But you physically couldn't see anything about what was
8 going on out there?

9 A No, sir.

10 Q Could you hear anything over the radio about what was
11 going on inside?

12 A Yes, sir.

13 Q Tell me what you heard?

14 A I heard the truck had just arrived. I heard that they
15 were unloading the package.

16 Q Unloading the package, what do you mean?

17 A The package, the fireplace with the marijuana in it.

18 Q Okay. And who was telling you they were unloading the
19 package?

20 A It was a customs agent.

21 Q Okay. All right. And do you know who was determine --
22 were ya'll trying to unload the package there so you
23 would have something there?

24 A Were we trying to unload the package there?

25 Q Yeah.

1 A It's my understanding that that was the unloading
2 point.

3 Q Okay.

4 A That is where the mantel pieces were going to be
5 unloaded.

6 Q And did you ever determine or did you ever hear over
7 the radio who was selecting -- which packages were
8 being unloaded?

9 A No, sir.

10 Q Did you ever receive any information about Fredy DeLeon
11 being involved in either ordering this furniture or
12 helping deliver it?

13 A The only thing I knew that the shipping point was
14 Tienda DeLeon.

15 Q Okay. And you don't know how the shipping company got
16 that shipping point?

17 A No, sir.

18 Q Okay. And you don't have any information about that?

19 A No, sir.

20 Q Okay. And so basically you're down the road, you
21 understand that the package has been delivered?

22 A Yes, sir.

23 Q All right. Is there anybody else around and in
24 proximity to the Tienda DeLeon?

25 A Yes, sir.

1 Q Who else?

2 A Other Aiken County -- another Aiken County deputy was
3 close by.

4 Q Who was that?

5 A Investigator Mike Jones.

6 Q And where was he located?

7 A I don't know the exact location. I believe that he was
8 at the store just down the road. Not Billy's but the
9 store that was further up the road, just a small piece
10 up the road from me, towards Johnston.

11 Q Okay. Do you know which store we're talking about?

12 A I can't recall the name. I can take you there.

13 Q Okay. Do you know whether he had visual surveillance
14 from there? Whether he could see?

15 A No, sir, I do know that they were more mobile than we
16 were. They were moving, riding by and had ridden by
17 the store.

18 Q Okay.

19 A At least once.

20 Q All right. And was anybody else maintaining
21 surveillance besides you and this other officer?

22 A Yes, sir, there were agents, I believe customs agents
23 that had their eye on the store.

24 Q They had actual visual surveillance?

25 A Yes, sir, that's my understanding.

1 Q And they could see everything that was going on out
2 there?

3 A That's my understanding.

4 Q Okay. And were ya'll armed?

5 A Was I armed? Yes, sir.

6 Q Okay. And there's -- there wasn't any chance of that
7 package getting up and getting out of there without
8 ya'll taking it down, am I correct? Was there a chance
9 of it?

10 A Yeah.

11 Q Yes?

12 A I would say there would be.

13 Q All right. Well as soon as ya'll saw customers coming
14 and going, ya'll decided to go in, am I correct?

15 A At the direction of the customs agents, yes, sir.

16 Q Okay. And they're the ones that made that decision?

17 A They did.

18 Q Do you know who did that?

19 A No, sir.

20 Q Okay. And once ya'll saw some people coming and going,
21 how long did you wait?

22 A I'd say minutes. I mean, I don't recall time, I wasn't
23 keeping up with that.

24 Q Do you remember how many customers came?

25 A No, sir, I just remember radio traffic saying that

1 there were customers, plural, coming in and out.

2 Q Okay. And was there any discussion over the radio
3 about what to do?

4 A Other than just enter the store.

5 Q Okay. They said just go take it down?

6 A I think it was actually radio communication as to --
7 not to storm the store, just ease in there.

8 Q Okay.

9 A Matter of fact, it was directed from customs agents
10 just to ease in there, not to storm the store.

11 Q Okay. So you got in there. When you got inside, how
12 many agents would you say were there? Agents and
13 officers total?

14 A Four, maybe five.

15 Q Okay. And do you remember who they were?

16 A Customs agents and myself.

17 Q Okay. Were you the only local law enforcement there
18 other than customs agents?

19 A At the initial -- when we initially went in the store,
20 I believe so.

21 Q Okay. Did you come in with your guns drawn?

22 A I did not, no, sir.

23 Q Okay. Did the others?

24 A I believe they were.

25 Q Okay. Well when they came in with the guns drawn,

1 would it be fair to say that ya'll quickly had control
2 of the whole area?

3 A Yes, sir.

4 Q The inside of the store?

5 A Yes, sir.

6 Q Okay. And also the area where the package was?

7 A Well when we initially entered, I don't think we knew
8 where the package was because it wasn't in the
9 immediate viewing area of the store.

10 Q Okay. All right. But then ya'll went around and I
11 guess somebody found the package. Do you remember who
12 that was?

13 A I believe that customs agents was directed to the
14 package, was told where it was at.

15 Q How were they directed?

16 A I believe by the female that was working behind the
17 counter.

18 Q Right.

19 A They were speaking Spanish with her.

20 Q Okay. And she told them where -- I guess ya'll asked
21 where the fireplace, where the chimney ---

22 A I assume. Like I said, I'm not fluent in Spanish. I
23 just remember that the package was discovered back
24 there.

25 Q Okay.

1 A And that there was conversation between Hispanic
2 speaking customs agents and the Hispanic female working
3 behind the counter.

4 Q Okay. So as soon as ya'll asked, she said, "Hey, it's
5 over here," right?

6 A I guess.

7 Q All right. So you went back there and at the time
8 could you see the chimney?

9 A Yes, sir.

10 Q All right. Was it intact and sealed?

11 A It was.

12 Q Was there any chance at this point in time of anybody
13 getting any drugs out of that chimney and getting out
14 of there without ya'll seeing them?

15 A Once we secured the area, no, sir.

16 Q Okay. And ya'll had complete control of it?

17 A I would say that.

18 Q All right. And there's nothing at this particular
19 point in time keeping ya'll from going and getting a
20 search warrant?

21 A I'm sorry?

22 Q There was nothing at this point to prevent you at this
23 particular point in time from going and getting a
24 search warrant?

25 A According to the customs agents, we didn't need it.

1 Q Okay. So customs has just told ya'll, ya'll don't need
2 a search warrant?

3 A Basically.

4 Q Okay. And did you ask them about a search warrant?

5 A No, sir.

6 Q Were you concerned about not having a search warrant?

7 A No, sir.

8 Q All right. Why not?

9 A Why? Because customs was in control of the operation.

10 Q Okay. And you were just following orders?

11 A Following orders?

12 Q Yes, sir.

13 A I was -- I wouldn't say I was following orders, I was
14 participating.

15 Q Okay. Was it clear though and without any doubt that
16 this chimney was still completely sealed, that no dope
17 had been taken out of it?

18 A I'd say that there was no way that any had been taken
19 out of it.

20 Q Okay. And you feel comfortable that based upon what
21 you saw in that store, that was still a sealed chimney
22 and nothing had been altered or tampered with and
23 nothing was taken out of it, is that correct?

24 A Yes, sir.

25 Q Okay. And you said -- do you know whether the door was

1 closed or open on the area?

2 A On what area?

3 Q On the storage area.

4 A I don't recall.

5 Q Do you know how ---

6 A I believe it was closed, but I don't recall it.

7 Q Do you remember who went in there first? Who was the
8 first one in the storage area?

9 A I believe some of the customs agents were.

10 Q Okay. All right. And ---

11 A I do recall it being a very tight area.

12 Q Okay.

13 A And I eventually walked back there.

14 Q You said that one of the females -- you said there was
15 a Hispanic female behind the counter?

16 A Yes, sir.

17 Q All right. Did you ever determine who she was?

18 A Like I said, determined through other communications
19 through the other customs agents and learned that it
20 was, Fredy DeLeon who later arrived, his wife.

21 Q Okay. And I thought you said she arrived late?

22 A No, sir, she was there.

23 Q She was there.

24 A Salvador Torez's wife arrived late.

25 Q Okay. Did you find either one of them engaged in any

1 illegal activity?

2 A Did I?

3 Q Yes, sir.

4 A Other than the fact that they were in possession of
5 large quantities of marijuana.

6 Q Okay. Because Ms. Salvator had come into the store
7 later on, you think she was in possession of marijuana?

8 A No.

9 Q Okay. You think Ms. DeLeon was?

10 A Yes, she was in possession, yes, sir.

11 Q Okay. And do you ---

12 A She was in the store.

13 Q Do you have any -- I'm sorry?

14 A She was running the store. The package was in the
15 store.

16 Q All right. And do you have any information whatsoever
17 to show that Ms. DeLeon knew that there was marijuana
18 in this package?

19 A No, sir.

20 Q And either Fredy DeLeon would know that there was
21 marijuana -- would know that there was marijuana in
22 this package?

23 A No.

24 Q Any that Ms. Torez would know that there's marijuana in
25 this package?

1 A I have none.

2 Q Okay. Who was in charge of the surveillance of -- the
3 direct surveillance?

4 A Customs.

5 Q Okay. You yourself didn't -- you yourself did not see
6 anybody come in and out of the store?

7 A No, sir. I was down the road, but I mean I was.

8 Q So the only information you have is what's been related
9 to you by somebody else?

10 A Yes, sir.

11 Q And you don't ---

12 A As far as the package being unloaded? Right, yes.

13 Q Right. And what we have here is, we have how many
14 packages of marijuana in this chimney?

15 A In that one particular chimney?

16 Q Yes, sir?

17 A 20.

18 Q 20? And -- and those are large bulky packages, vacuum
19 sealed?

20 A I believe they are approximately 2 pounds a piece.

21 Q Okay.

22 A Roughly.

23 Q All right. And did you ---

24 A I think roughly they were 2.2 pounds apiece, each
25 package, give or take a few ounces.

1 Q Okay. You never saw anybody -- it was never reported
2 to you by anybody that somebody was coming out with a
3 package that looked like one of these bundles?

4 A No, sir.

5 Q All right. And you never heard anything like that over
6 the radio, did you?

7 A No, sir, we didn't ---

8 Q Okay. Did ---

9 A I didn't have any idea how they were packaged in the
10 chimney, so therefore, I wouldn't know whether someone
11 was transporting it out. I mean they could have broken
12 it up into smaller quantities or anything.

13 Q All right. And did anybody ever relate to you, anybody
14 coming out with any particular size of an item from the
15 grocery store?

16 A I don't recall.

17 Q Did they say whether the bags that they were coming out
18 with were small or large or big or little?

19 A I don't remember.

20 Q Do you have any idea at all how many people came in
21 there?

22 A I don't recall.

23 Q Do you have any idea as to anything about those people?
24 The type of people? Was it children, was it old
25 people, young people, anything?

1 A No, sir.

2 Q Any description of the people whatsoever?

3 A No, sir.

4 Q Any description of any packages that they carried in
5 and out whatsoever?

6 A No, sir.

7 Q And when -- did you have any of these people stopped
8 that had left the store?

9 A No, sir, I didn't.

10 Q Okay. Did the customs agents that thought that these
11 people were possibly carrying drugs, I'm sure they
12 pulled them over down the road to check and see if they
13 had taken any of the drugs, didn't they?

14 A Not to my knowledge.

15 Q Did anybody stop any of those people or do anything to
16 try and determine whether or not they had any drugs on
17 them?

18 A No, sir, and I think where you're going with your
19 question is, you know, this is a spread out operation.
20 By this time, I mean, we had a tractor trailer that was
21 getting stuck, there was widespread panic on the radio.
22 As far as the traffic -- as far as the tractor trailer
23 being stuck, the safety and security of the undercover
24 officer, you know, it wasn't -- I'm trying to think of
25 the word I'm looking for. It wasn't a very fluid, it

1 didn't go as it should have went, based on -- you know
2 it just wasn't smooth. And it was not -- it just
3 didn't go as planned. Didn't go as planned.

4 Q I understand. Did anybody, to your knowledge ever stop
5 any patron of this store, leaving the store to see if,
6 in fact, they were taking any marijuana from the store?

7 A Not to my knowledge.

8 Q Did -- and did any agent ever relate to you that they
9 saw a specific package that looked like the marijuana
10 that could be secreted in the chimney coming out of the
11 store?

12 A No, sir.

13 Q What is the significance of Salvator's wife?

14 A I don't know that there is any significance other than
15 the fact that Salvator's wife, who I knew to be, or at
16 the time was employed by Wardlaw Academy as a Spanish
17 teacher. She showed up at the place and the reason
18 that it's ---

19 Q All right. Is she some known drug dealer or drug user
20 or anything like that?

21 A No, sir. Most of the customers that came made a
22 purchase, if they made one, and left the store. I do
23 recall that she hung around.

24 Q Okay. All right. And have any -- was there any person
25 that came in or out of the store, a known criminal or

1 somebody involved in drugs to your knowledge or
2 identified them in that way?

3 A Not to any knowledge.

4 Q Okay. That's all I have.

5 THE COURT: Any other questions of the witness?

6 By Mr. Sussman:

7 Q I didn't quite hear what he said about Ms. Torez. What
8 did you say? That she was employed by the Wardlaw
9 Academy as a Spanish teacher?

10 A That's my understanding at that time she was employed
11 by Wardlaw Academy as a Spanish teacher.

12 Q How long have you been with the Aiken County Sheriff's
13 Office?

14 A I'm not now.

15 Q How long were you there?

16 A Roughly 2 years.

17 Q Where did you work before Aiken County?

18 A I was a road deputy and then I used to catch
19 shoplifters.

20 Q In Aiken?

21 A Yes, sir.

22 Q Have you ever applied for a search warrant before?

23 A Many of them.

24 Q If the customs agents had not had control of this
25 operation, would you have made the effort to go get a

1 search warrant after you had gone in and secured the
2 store?

3 A I think one could have been obtained.

4 Q After the store was secured?

5 A But at the same time, the other side of that coin, and
6 I think I can put it on a supervisor's back, but at the
7 same time, you know, there was marijuana, known that
8 there was marijuana in those chimneys so, therefore I,
9 you know, it was property that contained marijuana.

10 Q The store was secure?

11 A Sure.

12 Q The chimney with marijuana was secure?

13 A Sure, sure.

14 Q All the people in the store area were secure?

15 A Sure.

16 Q No one was going anywhere with any marijuana, correct?

17 A Sure.

18 Q And when the chimney with marijuana was unloaded at the
19 store, is that -- at that time when the tractor trailer
20 was at the DeLeon's store, is that when you were half a
21 mile away monitoring on the radio.

22 A Yes, sir, yes, sir.

23 Q And you had a customs agent with you?

24 A Yes, sir.

25 Q And you were aware of your previous meeting that Agent

1 Mize was in the tractor trailer?

2 A (Witness nodded head.)

3 Q Is that a yes?

4 A Yes, sir.

5 Q She's got to take down what you say.

6 A I'm sorry.

7 Q And you knew that Agent Mize had a radio?

8 A I did not know whether he had a radio or not.

9 Q Did you have a meeting before this delivery to the

10 store?

11 A We did, but I do not recall whether or not he was

12 issued a radio.

13 Q He's a customs agent?

14 A Sure.

15 Q Working undercover?

16 A Sure we don't always have radios.

17 Q Is it a customs agent who was working undercover,

18 correct?

19 A Sure.

20 Q You had a meeting beforehand as to how the operation

21 was going to go?

22 A Yes, sir.

23 Q And you did not, at that time, discuss who would have

24 radios and who didn't?

25 A I did not discuss it, no, sir.

1 Q You weren't present when it was discussed?

2 A I was.

3 Q Are you telling this court that Agent Mize didn't radio
4 and say we've unloaded the chimney in the store?

5 A I do not recall whether Agent Mize radioed and said
6 that they had unloaded the chimney. I just remember
7 radio traffic saying that there was a chimney, one of
8 them had been unloaded, a chimney had been unloaded at
9 the store.

10 Q Well you'd just met Agent Mize anyway the night before,
11 right?

12 A I didn't meet him the night before, I met him that
13 morning?

14 Q Okay. So you weren't all that familiar with his voice
15 anyway?

16 A No, sir.

17 Q And I think you -- you'd already said the decision to
18 actually go into the store and secure it was made by
19 the customs agents?

20 A Yes, sir.

21 Q Okay. And this was a custom -- US Customs operation up
22 until the point that the truck was actually stuck in
23 the mud?

24 A Somewhere in that line is when the operation in my
25 opinion -- I wouldn't say when the truck was stuck

1 necessarily, you know, because they were still -- we
2 controlled it. It was still their operation.

3 Q That's what I understood you to say was it -- was
4 basically their operation up until the point that they
5 had gone into the field. I thought that's what you had
6 said?

7 A Gone into the field?

8 Q Yeah, where the tractor trailer had gone into the
9 field.

10 A I didn't mention, to my knowledge, a field. I had
11 mentioned that the tractor trailer had gotten stuck.
12 And I don't recall ever saying that customs
13 relinquished control of the operation at this point.

14 Q That they had not relinquished their control?

15 A I do not recall saying that, no, sir.

16 Q Okay.

17 MR. SUSSMAN: Judge, I think I'm through, if I
18 could just have a second.

19 By Mr. Sussman:

20 Q You've conducted investigations yourself?

21 A Yes, sir.

22 Q In the past?

23 A Yes, sir.

24 Q And in your training and your experience during or when
25 you conduct an investigation, do you make notes of that

1 investigation?

2 A I do.

3 Q So that later on you can maybe put in a record?

4 A Yes, sir.

5 Q And other times have you participated in investigations
6 where you made notes?

7 A Yes, sir.

8 Q And so you made notes of what you did in this case?

9 A No, sir.

10 Q You made absolutely no notes whatsoever?

11 A None.

12 Q You never reduced any of your thoughts, impressions or
13 observations into writing?

14 A No.

15 Q So that you could remember them later?

16 A None.

17 Q Did you make any audio report as to what happened?

18 A None.

19 Q In your surveillance of the store, which by the way
20 that surveillance, how long were you under
21 surveillance?

22 A I don't recall.

23 Q More than an hour?

24 A I would say anywhere from, you know, maybe 30 minutes
25 to an hour.

1 Q And you couldn't see the store itself?

2 A No, sir.

3 Q But you could hear radio traffic of agents that could
4 see the store?

5 A Yes, sir.

6 Q And did you ever see any green Thunderbirds go by you?

7 A I didn't.

8 Q Did you ever see any other box trucks go by you?

9 A I didn't, that I recall. I mean, they could have, but
10 I didn't recall seeing them.

11 Q Well, you didn't take any notes?

12 A That's right, noting it mentally.

13 Q Right. Would you agree with me it would have been
14 easier for you to remember now what you did 2 years ago
15 if you had actually had some written notes?

16 A Sure.

17 Q Were you directed not to take notes?

18 A No, sir.

19 Q What cars did you see?

20 A I don't recall. I mean, plenty of them.

21 Q Okay. Well how about this. Do you have any specific
22 recollection of seeing a car that was later identified
23 as having been at the store?

24 A I do not.

25 Q That's not to say that you may have, you just don't

1 remember?

2 A That's correct.

3 MR. SUSSMAN: That's all I have, Your Honor.

4 THE COURT: Mr. Miller, do you have any?

5 MR. MILLER: Your Honor, I think the larger
6 part has been covered.

7 THE COURT: All right. Back over on this side
8 of the room, any other questions of the witness?

9 MR. MAYE: Nothing else, Your Honor.

10 THE COURT: Anything else?

11 MR. HAWK: No, Your Honor.

12 THE COURT: If you would take him back to the
13 same room with Mize.

14 Don't discuss your testimony with him.

15 MR. OWENBY: Yes, sir.

16 THE COURT: Call your next witness.

17 MR. MAYE: That's all I have, Your Honor.
18 That's all the State has in regards to the suppression
19 issue.

20 THE COURT: You don't have the agent that went
21 in the place.

22 MR. MAYE: No, sir, Your Honor. I have this
23 agent that went in with them, but that's it, no, sir. I
24 don't have any of the agents that entered.

25 THE COURT: Let me make sure I understand. The

No exigent cir.

1 customs agent who went into the store is not here?

2 MR. MAYE: No, sir.

3 THE COURT: Is there a reason why.

4 MR. MAYE: Unavailable.

5 THE COURT: All right. Go ahead and state your
6 motion. If you already stated it, you don't necessarily
7 have to repeat everything.

8 MR. PUETZ: Well, Judge, it's our position
9 that -- and number one, I would point out to the court that
10 we did not get those 5 pages dealing with the field
11 testing, which was the reason why I had indicated that all
12 they had -- it was my understanding up until the time that
13 they got into that storeroom, was a dog alert going around
14 the truck. But one of the things that I want to address is
15 Mr. Maye's statement to the court that it was Fredy DeLeon
16 that was directing these people what items of furniture to
17 take off of there.

18 We now have heard the testimony from Agent Mize
19 that Fredy DeLeon didn't have anything to do with it.

20 Secondly, as it relates to exigent circumstances, the ---

21 THE COURT: There are no exigent circumstances.

22 MR. PUETZ: I mean just because the
23 officers ---

24 THE COURT: Go ahead and make your argument,
25 but there are no exigent circumstances.

1 MR. PUETZ: Well, Judge, I think it's clear and
2 there are a number of cases that have dealt with.

3 THE COURT: There's no exigent circumstances
4 related to an item which is inside a storage room which is
5 sealed off by police. But go ahead.

6 MR. PUETZ: Judge, that's fine. No, I was just
7 going to say, I mean, case after case have dealt with,
8 specifically State vs. Humphreys, a controlled delivery to
9 a business, 40 pound box of marijuana or a box of marijuana
10 that contains 40 pounds, or a box that contains 40 pounds
11 of marijuana, they went ahead and got a search warrant.
12 The State vs. Lane, 271 South Carolina 68, a controlled
13 delivery, the officers there in that case went ahead and
14 obtained a search warrant prior to going in and seizing and
15 opening the package.

16 State vs. Adams, 291 South Carolina 132, police
17 officers deliver a package to -- or an envelope to a
18 residence. Admittedly it's a residence as opposed to a
19 business, but clearly got a search warrant.

20 It's our position they had every opportunity
21 and should have obtained a search warrant in this
22 particular case.

23 THE COURT: Your problem with regard to this
24 doctrine related to the extended border -- you know, I
25 certainly want to hear from Mr. Maye and if I'm ruling

1 prematurely, I guess I'm trying to shorten what I feel. If
2 an officer felt he had exigent circumstances by virtue of
3 the material being taken out of the store, there was no
4 evidence of this. I mean, he might have said those words,
5 but I think Tienda is a Spanish word for store, is that
6 right?

7 MR. PUETZ: Yes.

8 THE COURT: It's a grocery store?

9 MR. PUETZ: Yes, sir.

10 THE COURT: And the argument was made that
11 people were coming out of the store with bags. Well, if
12 people aren't coming out of the grocery store with bags,
13 you might as well shut the grocery store down. That
14 doesn't create a reasonable suspicion or proximate cause or
15 any other standard. But moreover, once the officers were
16 in the place as this officer just testified, he said there
17 was no way anybody could have taken any drugs out of that
18 chimney. There are not exigent circumstances in that
19 context.

20 Now, I have read a good deal of federal law and
21 to be quite honest, I've been somewhat surprised by it,
22 about extending the border. And there are different issues
23 related to the concept of extending the border. That's
24 where your difficulty lies. And the problem I'm going to
25 have now is that I had fully expected that whatever agent

1 that came from Texas with this material was going to get up
2 here and testify to say, I followed the stuff from Texas,
3 that's the same stuff that's in the same condition; and if
4 that's established, I think under this precedence, they can
5 go in without a warrant and take it, open it up. I saw one
6 case that seemed to indicate that they could not, but
7 unfortunately it was a very brief case that didn't tell me
8 a whole lot of law. It just said they couldn't do it.

9 But it's been recognized, even in the 4th
10 Circuit, which startled me because the case I started with
11 was from the 9th Circuit and I'm not maligning the 9th
12 Circuit, I don't know enough about it to malign the 9th
13 Circuit, but it is certainly the butt of a lot of jokes.
14 Perhaps completely unjustified, but -- the law is uniform
15 across.

16 So what I need to hear from you about is this
17 9th Circuit -- I mean, excuse me this extended border
18 concept and the ability of the border agent to track
19 something thousands of miles, which they can do according
20 to some of these cases, set up a deal, even though they got
21 control of where it's delivered and they can know where
22 it's being taken and they can obtain a search warrant or
23 control the surroundings until a search warrant is
24 obtained.

25 These cases seem to say that the border is

1 moved from -- I forget the name of the town in Texas, but
2 San Diego to South Carolina.

3 MR. PUETZ: Judge, I will be perfectly candid
4 with the court, I did not come today prepared -- I didn't
5 realize that this border exception was so expansive that
6 it's just -- I guess just swallowed up the 4th Amendment.
7 And to be perfectly ---

8 THE COURT: This isn't the first argument I've
9 ever had that I felt like swallowed up the Fourth
10 Amendment. There was one about automobiles that -- I
11 called a professor at the University of South Carolina
12 School of Law and he said that's the rule. It pretty much
13 destroyed the Fourth, the Fifth Amendment.

14 MR. PUETZ: Well, I will say this, Judge, on
15 this record, that agent, what is necessary to establish
16 that, it sounds to me like we haven't heard that testimony.

17 THE COURT: Well, why don't we to do this ---

18 MR. PUETZ: And could you read off the cases
19 that your referring to? I haven't gotten ---

20 THE COURT: I will read the cases that I have
21 printed out.

22 MR. MAYE: Your Honor, I have some additional
23 ones I will pass up to the court as well.

24 THE COURT: What I was going to suggest is
25 this, we can either give ya'll some period of time this

1 afternoon and meet back later or we can just meet like at
2 8:30 and try to talk about this and give you a fair chance
3 to digest some of this overnight on both sides. I don't
4 intend this to be inclusive and actually, I've only been
5 using Westlaw now for a few weeks. I've always had my law
6 clerks use this stuff.

7 One case that I have printed out is from New
8 York. It's from the Eastern District of New York and the
9 plaintiffs name is spelled M-a-n-i-s-c-a-l-c-o,
10 M-a-n-i-s-c-a-l-c-o vs. Marten. That case deals with the
11 importation of some contact lenses, I believe from Canada.
12 And there was an operation with the Royal Canadian Mounted
13 Police, where they basically delivered these things to this
14 lady, if I recall correctly, in New York.

15 MR. PUETZ: The cite on that, Judge?

16 THE COURT: I apologize, it's 198 -- lets see
17 they've got a Westlaw cite. Do you have access to Westlaw?

18 MR. HAWK: I don't.

19 MR. PUETZ: I don't.

20 THE COURT: If I go back online, it may give me
21 a straight cite. It gives me the Westlaw cite.

22 MR. MILLER: Your Honor, some of the Westlaw
23 cites, it may not have made it to the other yet.

24 THE COURT: It's an old case.

25 MR. SUSSMAN: They usually give it ---

1 THE COURT: When I say old, I mean they're
2 not -- hold on a second. Let me tell you the names and
3 then I will see if I can go back and find some cites. All
4 right. One is from United States District Court in Puerto
5 Rico, it's United States vs. Caraballo, C-a-r-a-b-a-l-l-o,
6 it's a 1996 case. It is a case, I think where they granted
7 the motion to suppress. Well, it does have the other cite,
8 917 Federal Supplement, 138.

9 Mr. Maxwell look in that printer and see if
10 there's one in there.

11 I have another one I printed out that's 247 F
12 2nd 108, it's another case from Puerto Rico, United States
13 vs. Rivera, R-i-v-e-r-a and others. And it deals with the
14 extended border search doctrine. I have a case from the
15 7th Circuit, Illinois -- US vs. Yang, Y-a-n-g, 2002 case,
16 cited at 286 F 3rd 940.

17 MR. SUSSMAN: What circuit was that, Judge.

18 THE COURT: 7th Circuit, it's from the 4th
19 Circuit of Illinois. And then I have one from the 4th
20 Circuit that I printed out that mainly is just -- I printed
21 them out mainly just because it's from our own circuit and
22 it -- even though I know now how much at some point -- it's
23 United States vs. Bilir, B-i-l-i-r. And then there are
24 other defendants, it is a 1979 case, 592 F 2nd 735. It
25 deals a great deal with customs. But they basically trail

1 somebody from the Houston area up through Louisiana, into
2 our area and it's a drug case.

3 MR. PUETZ: How is that name spelled again,
4 Judge? I'm sorry.

5 THE COURT: B-i-l-l-r, is the first fellows'
6 name.

7 MR. PUETZ: Thank you.

8 THE COURT: There's two other ones. But all I
9 did on that was I did -- I will tell you what search I did.
10 I did Westlaw search and I did that extended border search
11 in quotations and searched all South Carolina cases and all
12 federal cases. And there were others that came up, but a
13 lot of it was repetitious.

14 Now the solicitor has handed me US vs. Zandi,
15 Z-a-n-d-i, which is in the 4th Circuit, 769 F. Second, 229.
16 And that -- there's a note on here that deals with the fact
17 that they had not opened the package.

18 Mr. Puetz, you handed me a case dealing with
19 exigent circumstances, which I've already made my statement
20 about that but it's from the 10th circuit, US vs. Anderson,
21 James Anderson, which is at 154 F 3rd 1225. It's a 1998
22 case out of Colorado.

23 I have another case, US v Cardenas,
24 C-a-r-d-e-n-a-s, and others. That was one that was handed
25 up to me originally. It's at 9 F 3rd 1139. And US vs.

1 Gaviria, G-a-v-i-r-i-a 805 F. Second 1108.

2 MR. PUETZ: 1108?

3 THE COURT: Yes, sir. And I think this is the
4 last one that I've read so far. I told you Carabello?

5 MR. PUETZ: Yes.

6 MR. SUSSMAN: What was the first -- the first
7 part of Gaviria?

8 THE COURT: Gaviria is ---

9 MR. PUETZ: 805.

10 THE COURT: 805 F 2nd. And then it's a 1977
11 case, it's at 557 F Second 1041.

12 Do ya'll know of any other pretrial issues I'm
13 going to need to address?

14 MR. PUETZ: Well, the 5 page document that
15 apparently has been produced from the field test from
16 Laredo. We haven't gotten that.

17 MR. HAWK: And just -- really, Judge, we've
18 been given a list of officers or agents that are going to
19 be testifying in the case and I think we had one report
20 from Agent Mize and we have one from Roosevelt Young and
21 that's it. And if these other officers have reports or
22 have documents that they prepared, we'd like to see them if
23 we could.

24 Also, Judge, I know my client turned over a
25 video tape from his store that should have shown a

1 photograph of one of the people that got away and we would
2 like to have access to that video tape that was
3 confiscated.

4 THE COURT: Do ya'll know where the video tape
5 is that has been confiscated.

6 MR. MAYE: Your Honor, they have everything
7 that I have. I was sent from customs service an email and
8 ultimately printed out, of the people that initially did it
9 and that's all that I got. If anything else was seized, it
10 was not known to me. I turned over anything I have, any
11 report that I have or -- I printed everything that I have.
12 And I don't know anything about a video tape or seizure of
13 anything. I'm not aware of that.

14 MR. HAWK: So none of these other agents or
15 officers that are on the list prepared any kind of written
16 report?

17 THE COURT: Hold on just a second.

18 MR. MAYE: Yes, sir.

19 THE COURT: I want -- I'm not casting
20 dispersion, I and I haven't reached any conclusions
21 whatsoever. I know that one of those agents has traveled a
22 long distance to be here, but now, the United States
23 customs service can't just walk into the courtroom in
24 Edgefield, South Carolina and say we're the United States
25 customs service, we do everything right, bow down to us.

Video of other suspect

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1 Now, if they took a video tape that was from that store and
2 they've got it somewhere in Texas, I want to know where it
3 is.

4 MR. MAYE: Your Honor, I'm just saying I'm
5 unaware of it.

6 THE COURT: I'm not implying that you may --
7 that you have anything to do with that. But if, this is an
8 allegation which I would suspect makes people on both sides
9 sit up straight and take notice, I mean you're talking
10 about a huge amount of drugs that are alleged to have been
11 imported into Edgefield County. The people in Edgefield
12 County are really interested in that. If you're on the
13 other side of that and the finger of blame is being pointed
14 at you and you think some other guy had more to do with it
15 or everything to do with it, then you're going to be real
16 interested in it too. And if it's interested parties who
17 are here, we have in court and we can get a full resolution
18 of our case with what we've got, then that's fine.

19 I know that the government has big fish to fry
20 everywhere, but this is a pretty big fish right here in
21 Edgefield County and they don't -- maybe Osama is not here
22 and they're not having to hunt for him -- I hope he's not
23 here, but I don't know, I might wish he was here.

24 MR. MAYE: May it please the court, Your Honor,
25 the only thing I can tell you is that I can contact the

1 special agent, the agent in charge in Greenville. I asked
2 him if they had anything in their custody and control. He
3 informed me that they did not. That's all -- I talked with
4 him, that's what he told me and that's all I have to go by.
5 He's told me they did not have anything, they did not have
6 any documents which to turn over to me.

7 MR. SUSSMAN: Well the concern that I have is
8 that Agent Mize testified that he had that 5 page field
9 test result and there's actually a report of what they did
10 down in Laredo and when we asked him he said that he had
11 sent it to Mr. Maye and couldn't tell us when.

12 MR. PUETZ: 2 weeks before -- a few weeks
13 before.

14 MR. SUSSMAN: And Mr. Maye has given me
15 everything he's got. In fact, I went and looked at his
16 file in McCormick at his invitation and there was nothing
17 in his file regarding this 5 page report. And I would
18 expect under rules 5(A)1(C), documents and tangible objects
19 concerning what they have in custody or control of the
20 prosecution or which may be material to the preparation of
21 your defense or intended to be used by the prosecution in
22 its evidence in chief is a pretty broad area of
23 documentation that needs to be produced and I would imagine
24 that at some point in the agents testimony that they field
25 tested the marijuana in Laredo and as a result of that and

1 the guards alerting, they followed it up through Louisiana
2 and et cetera.

3 Well, this 5 page report is essential for us to
4 review to prepare our cross-examination. There's
5 apparently some kind of field test device that they used,
6 that the agent had to spell for the court reporter. What
7 I'd like to know is what that device is. I might want to
8 consult with an expert to see if there are any
9 fallibilities in that field test they ran. I mean, our
10 only remedy and I base this on my legal scholar,
11 Mr. Miller, would be that we could perhaps request a
12 continuance if we don't have this document at least 10 days
13 in advance of the trial.

14 Now I'm not saying that I'm asking for a
15 continuance at this point, but I would like to get a copy
16 of this document to review and perhaps protect the record
17 further in the morning. I think you made it a court's
18 exhibit if I'm not mistaken, the 5 page document. The
19 court reporter is nodding her head.

20 THE COURT: Whatever they mentioned, I told
21 them to mark it as a court 's exhibit, yes, sir.

22 MR. SUSSMAN: Mr. Maye would probably like to
23 have a copy of it as well.

24 MR. MAYE: All I can say is the agent that I
25 have been working with, Agent Mize has been most

1 cooperative with me. He indicated to me that he had sent
2 to me everything in an email. I forwarded it on. I was
3 unaware of that. I was unaware of that. I think that was
4 an over sight. I will check with him. I certainly will
5 make sure that everything he's got here, they've got copies
6 of. But I was unaware of the fact they did not have copies
7 of it, I was unaware that it existed.

8 THE COURT: All right. First of all, I don't
9 know the significance of any of those items, I haven't seen
10 that document. I don't know if it's significant, I don't
11 know if it's insignificant. Drugs that were in Edgefield
12 County, I am assuming have been tested by SLED and
13 determined to be positive for marijuana.

14 MR. MAYE: It was tested by Aiken County.
15 Since it was marijuana, it could be tested by a local
16 agency.

17 THE COURT: Tested by some reputable lab and
18 determined to be marijuana. So, I don't know the
19 significance of what was done as far as the identification
20 of the drugs in the State of Texas. But for me to be able
21 to evaluate what is going on with regard to this issue
22 about extending the border, then some of those things may
23 be extremely important because from what I can recall of
24 the cases, the critical elements, and I think there are
25 three or four essential elements in each one of those

1 instances, one of those critical elements is that the thing
2 in question has to be in the same condition that it was
3 when it came across the border. That was the significance
4 I assume of Agent Mize testifying about it being sealed.
5 And that's significant in my mind right now, the fact that
6 it was not opened, not changed, from what I heard in the
7 testimony, when it was taken off of that truck and put into
8 the storage area of that store.

9 So there may be things in those reports that
10 deal with issues that I have to make a determination about
11 because I'm telling you quite honestly, about this doctrine
12 of this thing coming across the border into the United
13 States from a foreign country, there would have to be a
14 warrant. I don't see any other ruling possible. And I
15 don't think any local law enforcement agent would think
16 otherwise.

17 I think every local law enforcement agent, you
18 take away that element of where this thing allegedly came
19 from, they would say, we're going to rope this area off and
20 we're going to go get a search warrant and we're going to
21 open it up. But here's what I want ya'll to do. I really
22 appreciate the concern everybody has expressed to me about
23 how long the case was last week and hope I haven't made too
24 much of it. It was very intense, very emotional charge,
25 big crowds there all day, every day, into the night, people

1 really interested in it. But all I was doing was doing my
2 job.

3 Now, I've got a job to do with those 12 people
4 sitting over there so what I did yesterday and the past
5 week down in Bamberg county is behind me now. I've got to
6 worry about them 12 people. Here's what I want ya'll to
7 do. I want ya'll to go back there in one of these nice
8 rooms we designed for ya'll to talk and find out just what
9 in the world is there that you need to talk to me about
10 getting or not getting. Does it fall within Rule 5? And,
11 you know, the solicitor may just be continuing the common
12 practice, opening the file and saying, "Okay. Here it is,
13 take a look at it."

14 Quite frankly, I think that ought to be the
15 rule everywhere. I mean, you've either got a case or you
16 don't have a case. You go to the file and let them see it,
17 my experience is, if you've got to solve a case, that leads
18 to clues and you get cases moved. You got a weak case,
19 then that's the way the system ought to be. I just don't
20 want to come in here in the morning at 8:30 and have to
21 deal with anything other than this issue right here for
22 about 30 minutes and when we get to 9 o'clock and all 12 of
23 those folks are in here, I want them to be paraded in here
24 to hear opening statements with the suppression motion
25 being granted or with the suppression motion being denied.

1 So I'm not leaving until ya'll go back there
2 and talk and find out what's going on. Get that agent, get
3 whoever is there, find out what's there. Find out where
4 that video tape is for me, please.

5 MR. MAYE: Your Honor, I'm not aware of a video
6 tape. I will check.

7 THE COURT: That's what I said, find out where
8 it is.

9 MR. MIZELL: Your Honor, I would like to
10 mention one other thing.

11 THE COURT: All right.

12 MR. MIZELL: We've had a suppression hearing as
13 to the one chimney that was off-loaded as to Mr. DeLeon.

14 THE COURT: That's right.

15 MR. MIZELL: There are 22 others, I believe
16 that were in the truck that got stuck. I haven't heard
17 anything about that.

18 THE COURT: Mr. Mizell, I'm assuming there is
19 none.

20 MR. MIZELL: I'm assuming that there are no
21 issues about that.

22 MR. PUETZ: I think if the border patrol, if
23 the extended border doctrine lets them go running into a
24 store and taking something out of somebody's storeroom, I'm
25 sure they can probably do anything they want with that

1 tractor trailer.

2 THE COURT: Well, there we have a whole
3 different set of circumstances. Like I told you, my other
4 experience where I said and I'm not saying that in this
5 instance, the constitution being destroyed, but there was
6 another case I had in another county, in another circuit
7 where it was about as freely as anything could possibly be
8 to go in and search and it fell in that automobile
9 exception and it got into all of that and quite frankly, it
10 just astounded me that the constitution had been whittled
11 down to nothing more than what it was.

12 So I called, with the lawyers' permission, I
13 called a professor and that was his exact words, yes,
14 that's the rule, yes they can search it, and agreed it
15 aggregates protection against search and seizure.

16 MR. MAYE: Your Honor ---

17 THE COURT: But it's the law and the law
18 extending there.

19 Yes, sir?

20 MR. MAYE: Your Honor, the only thing I want to
21 add is to put them in another light, from my reading on all
22 these cases on extended search, customs, you know, to --
23 and the reason we were going forward with this, customs has
24 always maintained to us that they had the absolute
25 authority to enter and do this under the extended search

1 doctrine. I apologize I have not done more research. I
2 was basically a little bit caught off guard about the
3 suppression motion. I apologize we had not met about that
4 ahead of time.

5 THE COURT: You don't owe me any apology,
6 Mr. Maye. You're the only one that has some law on it as
7 far as I know and, quite frankly, you've educated me. And
8 I took what you gave me and I've read Westlaw. And thank
9 goodness for the chief justice's initiative to get us
10 access to this kind of material sitting on the bench,
11 because at first look, that's a bunch of hooey.

12 MR. MAYE: Yes, sir, Your Honor. The only
13 thing that I would add on this issue is I certainly, from
14 reading the cases and looking at this, it makes a
15 tremendous difference in this case, these are items that
16 originated from outside of the United States.

17 THE COURT: Exactly.

18 MR. MAYE: And I know that we're not talking
19 about -- there's certainly no -- there's no differentiation
20 in this case because these are illegal aliens, some of them
21 in this case.

22 THE COURT: No, it's where it came from. It
23 came from across the border. That's why I'm ruling
24 different because it came across the border.

25 MR. MAYE: Yes, sir.

1 THE COURT: And all they -- but what they have
2 to do is they've got to freeze that thing like it is when
3 it came across the border so that it doesn't change and
4 then they have to control where it goes inside the United
5 States and it can go a mile, it may go thousands of miles.
6 It arrives somewhere in the same condition, it's got the
7 seal on it. Quite frankly, my concern right now is, is
8 that the only person who I have in this courtroom, I may be
9 wrong, ya'll correct me -- the only person I've got in this
10 courtroom who went in there with that -- to get that
11 chimney is a guy from Aiken, South Carolina.

12 MR. MAYE: Yes, sir, Your Honor.

13 THE COURT: He went in with a customs agent.
14 And the customs agent went in there and established that
15 thing's exactly like it was when it left and it stayed the
16 same and it got here and I went in and there it is, then
17 I'd say that extended border doctrine is going to apply,
18 it's going to mean that they have the right to go in and
19 seize it because it came into this country, it just got
20 moved through the country, frozen in its state. The
21 problem I'm concerned about and it may not be a concern
22 after I read overnight, is whose going to establish to me
23 that that piece of furniture inside that store, at that
24 particular point in time was sitting by the border.

25 MR. MAYE: Your Honor, I understand, I just

1 want to make sure, Agent Mize testified during this
2 suppression hearing that the items had never been tampered
3 with or altered in any way. They were sealed in Texas. He
4 unsealed it in Tienda DeLeon and they put it inside the
5 store, it was in the same condition when it was left in the
6 store, Your Honor. Then, there was testimony from the
7 Aiken officer that he went in and that the chimney had not
8 been opened, it was in the same condition, Your Honor, or
9 it was unopened.

10 Agent Mize testified that he placed it inside
11 of Mr. Fredy DeLeon's store, in the same condition that it
12 was in when it was at the border, Your Honor, when it was
13 there at the border. Our position is, we've established
14 that, I would like to leave the possibility open if I'm
15 mistaken about that, for the purposes of the suppression
16 hearing, there's a possibility that I could get another
17 customs agent to come here from the local customs
18 department and put him up. But it's our position we've
19 established that, taking this in the light most favorable
20 to the State, that's not the standard here, I know, but in
21 this case Agent Mize has testified he placed it inside Mr.
22 DeLeon's store. That was all of the -- the point of all of
23 the testimony and it was sealed, it was exactly the same,
24 never opened, it was never tampered with, he placed it in
25 the same condition that it was in there at the border and

1 that was what customs was doing in sealing that trailer and
2 putting that testimony foolproof seal on it down there at
3 the border, was they were moving the border.

4 I know as ridiculous as that sounds. They were
5 moving the United States, Mexican border here to Tienda
6 DeLeon here in Edgefield County. And the cases that I can
7 read, they've moved it all over the place. It looks like
8 Norfolk, Virginia and address downtown in New York City. I
9 think just for ---

10 THE COURT: You convinced me of that.

11 MR. MAYE: Yes, sir.

12 THE COURT: You convinced me that the border
13 can be moved to Trenton.

14 MR. MAYE: Yes, sir.

15 THE COURT: All right. Impressed that point.

16 MR. MAYE: Yes, sir.

17 THE COURT: My question relates to what this
18 agent knows about the condition of that thing when it came
19 across the border. Because he testified and with my
20 ignorance and also with me trying to concentrate on two
21 things at the same time, but with my ignorance, maybe I
22 didn't know enough to pick up when I was listening to his
23 testimony, but, number one, I heard him testify, he was not
24 the case agent. He said Michelle Dowling was the case
25 agent, that he was contacted on the 14th.

1 MR. MAYE: Yes, sir, that's the same day it
2 came across the border.

3 THE COURT: I'm not sure from what I heard that
4 he was there when that thing came across the border. He
5 testified that he was not -- he was not present when the
6 field test was done. I do believe he testified that he
7 sealed that truck and I do believe that he testified that
8 he was there when they recruited the trucking company and
9 the, I thought he was saying the Gordon. The truck drivers
10 name was Paul Gordon or something like that; that he was
11 there when they asked for assistance from the trucking
12 company and the truck driver brought the truck to -- first
13 the Saluda County area and then down to Edgefield County.

14 MR. MAYE: Your Honor, the one thing that I did
15 see in this case, I think the agent did testify that the
16 chimneys had not been tampered with or altered in any way.
17 It is my understanding in this extension of the border
18 doctrine that once they come in the bonded custom area,
19 Your Honor, that is still considered in limbo there at the
20 border in a bonded customs area because it's sealed off.
21 They basically bring things in in a quarantine. It -- I
22 guess it's like the sally port at the jail. They bring
23 these things and drop them in the bonded custom area an
24 they cannot leave there until customs clears them and they
25 go through the port of entry that they're talking about in

1 here.

2 Agent Mize said that the things from that point
3 on or which would be there at -- physically at the border,
4 I mean it's not necessarily a line across the ground here,
5 but once it's in that bonded customs -- I mean that bonded
6 area there, where it left from, Agent Mize has testified,
7 these chimneys were unaltered and they were in the exactly
8 the same condition there the border as they were in when he
9 left them at Tienda DeLeon and May 18. He testified that
10 they were sealed up tight there at the border and then they
11 were delivered under a controlled fashion and all the
12 federal cases that I can read, Your Honor, sometimes
13 they're at a port of entry or at that customs area,
14 sometimes they open up the packages, sometimes not, but the
15 crux of it is, is it in the same condition when it is there
16 at that area that is that gray or neutral area where things
17 are brought in and stay, is it in the same condition there
18 as when it is brought to the eventual destination.

19 And Agent Mize has testified it was in the same
20 condition from when it left the border there, Your Honor.
21 They can conduct that customs search anywhere, you know,
22 within the United States. If they have some reasonable
23 suspicion that there's narcotics. He saw the x-ray of the
24 intact truck, Your Honor. They saw anomalies and his
25 testimony is full of references as to how -- he even gave

1 an estimate as to how much he thought was in there based on
2 those. But it left the border, Your Honor.

3 Our position is that's the only agent we need.
4 He said that from the border there to Tienda DeLeon in
5 exactly the same condition. This agent from Aiken County,
6 even though he is not with customs said that it had not
7 been opened and it was not -- he went in and secured the
8 place immediately so he would have been the first
9 government agent to even -- customs, sheriff's department,
10 anyone that got there and secured the premises, Your Honor.
11 And he said that no one -- after extensive
12 cross-examination, he said that nobody had opened it,
13 nobody had done anything to it, so that establishes it was
14 in the same condition it was when Agent Mize left.

15 I think that's all we have to show for this
16 extended border doctrine. If that is not the case, I would
17 like to leave the suppression matter open until in the
18 morning because I will have another agent come in and -- if
19 that is permissible to the court, I ask that we just not
20 rest on this issue until that time.

21 MR. PUETZ: In response to that, Judge, in
22 essence what he's saying is that when it's in this
23 quarantine area, you almost have to have a chain of custody
24 to establish, you know, that there was nothing done to it
25 and that this person can testify about that. And it's my

1 understanding that Mize had limited contact with the thing
2 until he got called by Agent Dowling to go ride with the
3 truck. He sealed it and then they went off with the truck.

4 MR. MAYE: Your Honor ---

5 MR. PUETZ: I would think.

6 THE COURT: It's an interesting issue and I
7 will -- the whole point of telling ya'll to be here at 8:30
8 in the morning is that it is not closed.

9 MR. MAYE: Okay.

10 MR. PUETZ: Yes, sir.

11 THE COURT: But the whole point of telling
12 ya'll to get back there in that room and telling me if I've
13 got any other issues is so that I won't sit here until
14 midnight for nothing. So if ya'll have something I need to
15 address, I'm happy to address it and I will try to address
16 it tonight. If there's something that I cannot address,
17 then alert me to it and let me know. The jury has not been
18 sworn. I do not want this case continued. I've made that
19 very clear previously at numerous bond hearings. The case
20 has been postponed many times because of various reasons,
21 not the least of which is that Mr. Young was serving his
22 country having been deployed overseas. But I want this
23 case to move.

24 I think all of ya'll know me well enough to
25 know that if I think if it's not going to move correctly,

1 I'm not going to move it and then I will just have to deal
2 with the bond issues and whether I let people out of jail
3 or not, who are not out of jail now. But ya'll go talk.

4 MR. MAYE: Your Honor, the only thing that I
5 would add for the record is I want to make sure that I'm
6 clear. I have offered a plea negotiation in this case,
7 time served on all of these defendants, but they have to
8 all plea in this case, Your Honor. I'm not offering that
9 to all, but if all defendants plea, I will plead them to
10 time served and I will put it down so their sentences can
11 be to time served and I made that offer and I continue it
12 until right now.

13 It's my understanding that they've rejected it,
14 but I wanted to place it on the record, I have made the
15 offer but they all have to take it. I'm not taking three
16 and one but if they all take it, I will allow them to plea
17 to time served.

18 THE COURT: I appreciate that. But that ain't
19 my job.

20 MR. MAYE: I understand, but I just wanted to
21 make sure that I offered.

22 THE COURT: I need ya'll to get back there with
23 that agent to find out what ya'll need, what ya'll have.

24 (WHEREUPON a recess was observed.)

25 MR. MAYE: Your Honor, at this point in time I

1 have opened up the evidence room and I have let them look
2 at my file. I just wanted to put on the record that we
3 have done that. And I, Your Honor, at this point in time I
4 have copied everything that I have in every file that I
5 have. I have let them dig through my things in there until
6 they were satisfied. They have looked through all the
7 photographs, anything that I have. Things that were seized
8 out of the Thunderbird that was in question, we don't
9 intend to introduce, they looked through all of that.

10 There was a composite photograph back there,
11 possibly of one of the suspects in the Thunderbird, they've
12 viewed that. I asked Agent Dean Tucker, I spoke with him
13 personally, I asked him if there was anything within their
14 custody and control of the US customs control that I did
15 not have. He told me no. I have never heard anyone speak
16 of a video tape or the seizure of any video tape other than
17 the defendant in this case. I don't know that he has any
18 receipt where anybody took a video tape from him. I know
19 nothing about a tape. No one has made me aware of its
20 existence. If it exists and it's out there and it's within
21 the control of the federal government, then I've either
22 been misled or didn't talk to the right person. But I
23 endeavored to talk to anybody that I could that was
24 involved in this. Only two agencies involved, Greenville,
25 customs and United States customs out of Texas. I have the

1 Texas agent who brought their case file. I have copied
2 every page in the case file, many items that I dispute that
3 are even discoverable but they're all there.

4 MR. SUSSMAN: So my understanding is that we
5 have basically a complete copy of Agent Mize's file, a
6 complete copy of Investigator Coby Perry's file ---

7 MR. MAYE: A very brief summary of ---

8 MR. SUSSMAN: It's only a couple of pages from
9 Investigator Perry because the locals didn't do much on
10 that. But I don't have anything that's reported to be from
11 Agent Tucker's file. He's told you there is no more ---

12 MR. MAYE: He's told me there is no file, that
13 he has nothing. He generated a case report that he faxed
14 to the agent in Texas that is basically a copy of his
15 report from the agent in Texas. It appears that he
16 basically copied what they did and there is very little
17 additional information if any and sent it back as his own
18 report. I don't know that that is the case, but they
19 appear to be almost identical, the reports generated by
20 Agent Tucker.

21 MR. SUSSMAN: From the view of the paperwork
22 that they gave us I don't think would indicate, at this
23 point, that we would be seeking a continuance. I'm going
24 to look at it tonight and in the morning, but I think that
25 at this point we're probably fine to go forward and prepare

1 our cross-examination from some of these documents.

2 THE COURT: Anything else any of you need to
3 put on the record?

4 MR. MAYE: Nothing I can think of.

5 THE COURT: Thank you. I look to see you at
6 8:30 in the morning.

7 MR. MAYE: Yes, sir, thank you, Your Honor.

8 MR. HAWK: Thank you, Your Honor.

9 (WHEREUPON court was in recess until the
10 following morning.)

11 MR. HAWK: Your Honor, last night they found
12 that video tape that we were talking about. Could we have
13 just a minute or two to go back and look at it with my
14 client?

15 THE COURT: I want to deal with this issue
16 first.

17 MR. HAWK: Yes, sir.

18 THE COURT: Yesterday when I was discussing
19 with you this issue about the extended border, I told you I
20 had run across one case that went the other way and as I
21 said, unfortunately, it was a very short case and didn't
22 really have a whole lot of explanation in it. This
23 morning, that case has been cited to me. I hadn't read it
24 yesterday. The United States vs. Mendosa Cortez. Which is
25 found at 262 federal 3rd, 882, it's a 2001 case from the

1 9th Circuit in California.

2 And the situation in that case was that there
3 was lumber that was coming across the border. It came to a
4 port at Arizona or a cargo facility there and that it was
5 checked at that point. It was found to have marijuana in
6 it and so they followed that across into California and
7 delivered to a warehouse and then there was an area that it
8 was placed into in the warehouse designated as space G.
9 Observation was established over that area and then at some
10 point in time, after seeing nothing go in or come out, the
11 agents heard sounds like breaking lumber.

12 They went inside and found that the marijuana
13 was being taken out. The agents had no warrant and they
14 claimed that they did not have to have a warrant based on
15 the fact that it had come across the border and was within
16 this concept of being a legal seizure under the extended
17 border doctrine.

18 Now ---

19 (WHEREUPON there was an interruption as someone
20 entered the courtroom.)

21 THE COURT: How about ya'll just hold folks up
22 from coming in until I finish up with this. Okay. Can
23 ya'll just do that for me? The 9th Circuit quoted a
24 statute which is found in 19 USC, section 1595, subsection
25 A, I believe I've read that statute and it said the trial

1 court decision to admit the evidence, not suppress it was
2 error and that the extended border search doctrine was
3 misplaced because of that statutory prescription. The
4 court of appeals in the 9th Circuit ruled that all the
5 observations made and that all the procedures that were
6 affected inside that space G had to be suppressed.

7 The statute reads, searches and seizures and
8 then subsection A is a warrant, subsection 1 under that
9 reads, If any officer or person authorized to make searches
10 and seizures has probable cause to believe that -- and then
11 it goes into other subsections. Capital A, deals with
12 merchandise upon which duties were not paid that were
13 brought into the United States without paying duty or were
14 brought into the United States unlawfully; or B. Property
15 subject to forfeiture; or C. A document containing wrapping
16 or other articles which is evidence in violation of the
17 code section dealing with fraud or other law enforcement
18 administered by the United States Customs Service. Then it
19 picked back up after that subsection and says that if any
20 of those things were found, are in any dwelling house,
21 store or other building about or place, then the officer or
22 agent may make application under oath to any justice of the
23 peace in municipal, county, state or federal judge or in
24 any federal magistrate which thereupon be entitled to a
25 warrant to enter if it's a dwelling house in the daytime

1 only, if it's a store or other place at night or by day to
2 search for and seize such merchandise or other article
3 described in the warrant.

4 It had a special provision if the building is
5 within ten feet of the boundary line between the United
6 States and a foreign country allows the agents to knock
7 down the wall on the side of the United States and quite
8 frankly you all are well aware by now I'm no scholar in
9 this field. Quite frankly, I don't know that this has ever
10 been taught at the University of South Carolina, but I
11 suppose it will be now because of the that I think.

12 Ya'll are going to have to stand outside and
13 keep people from handling the door. I have a real hard
14 time reconciling this case.

15 As I told you all I read this case yesterday
16 and I said there was one case that -- but it was real
17 short. But it didn't give me a whole lot of guidance. It
18 just said they couldn't do it. And then there was this
19 whole other series of cases -- I didn't print it all out.
20 I think it was 144 that came up on the word search. I got
21 this whole stack of cases I did print out which seemed to
22 say the opposite. It says that the border moves as long as
23 those three factors are present and they did talk about the
24 difference between a routine and a non routine search, but
25 in many instances, it didn't matter whether it was a

1 routine or non routine search.

2 The concept was that the border moved and as
3 long as those three factors remained then the customs
4 agents had the right to go in and affect a search without a
5 warrant. Now having said my preface, I will let you all
6 say whatever it is you want.

7 MR. MAYE: May it please the court, Your Honor.
8 My understanding in addressing this with customs, it is not
9 followed in all circuits and part of it depends on --
10 whether or not they obtain a warrant or not, partially
11 depends upon where they are doing and conducting this.

12 THE COURT: The 9th Circuit followed it. It
13 seems to me -- I said something yesterday and I probably
14 shouldn't have said it, I was trying to be a little funny
15 or flippant about the 9th Circuit, but quite frankly the
16 opinions I read is that they were well reasoned from my
17 view for what little bit that's worth. They seemed to be
18 well reasoned and very easy to follow and they seem to
19 support the concept except for this one case and exception.
20 And it is a very short opinion, unlike the other ones. It
21 is very short and just cited, that statute said that the
22 statute applied and the border doctrine, the extended
23 border doctrine was misplaced. Go ahead.

24 MR. MAYE: Yes, sir. Could I retrieve the
25 cases back that I handed up yesterday, Your Honor? I just

1 need that research. I apologize. May it please the court,
2 Your Honor.

3 On this issue of extended border search, Your
4 Honor, there is just -- there's just case after case after
5 case that follows this doctrine and we think that it is our
6 view of the case at hand here, it seems to be the lead
7 case, the one that's been up to the United States Supreme
8 Court and cert was denied, the United States vs., I'm just
9 going to have to spell it, Gravioria cited as 805 F. 2nd
10 1108.

11 Your Honor, there were 70 packages that were
12 shipped be into JFK. Inspectors in that case apparently
13 tested some sample and found a small quantity of cocaine
14 wrapped in latex, said that they looked at all of it in
15 this case, Your Honor, but, it was later delivered at the
16 airport there, Your Honor, but it was later delivered. It
17 said the 70 cartons were delivered to a residence at 2520
18 McClay Avenue, somewhere in the Bronx, Your Honor. They
19 were taken away from the airport.

20 Basically in this case, Your Honor, it seems to
21 be a three prong test that they go through in these
22 extended border cases, Your Honor, this extended border and
23 the functional equivalent of the border, Your Honor. In
24 this case, Your Honor, the inspection was delayed and it
25 said customs agents may delay a search in a reasonable

1 effort to sweep an associates suspected -- and I know that
2 the reason in this case, it's obviously, you know, they
3 attempt a controlled delivery. This is out of the case
4 United States vs. Rivera, which is 247 F 2nd 108, 2003
5 case, Your Honor.

6 THE COURT: That case is one I read that I got
7 a lot of information from.

8 MR. MAYE: Yes, sir. It said customs agents
9 may delay a search in a reasonable effort to sweep
10 associates suspected smugglers. Your Honor, in this case
11 the agent saw from the anomalies in there and the type of
12 packaging it was, and these packages were singled out
13 because they showed the anomalies and the agents indicated
14 that because that is a type of item, this wooden furniture,
15 in which often packages are smuggled, these items were
16 x-rayed and showed the anomalies and based on that, they
17 would have carried out an inspection. They certainly
18 delayed the inspection, which I think that the case at hand
19 addresses, Rivera. They delayed the inspection in order to
20 go back and sweep or later sweep and get the other
21 individuals that were going to be involved.

22 In this case, there's an individual named
23 Mr. Fredy DeLeon and an address in Trenton. So they
24 delayed, certainly, carrying out that search until it was
25 delivered and handed off to them in an effort to catch the

1 other co-conspirators in this attempt to track or smuggle
2 in this case. It said that from this case, looking back at
3 the time, distance and continuous surveillance to establish
4 a reasonable certainty the contraband was not acquired
5 after crossing the border and entering the United States.

6 In this case, Your Honor, Agent Mize has
7 already testified on the stand that he observed an x-ray in
8 this case, that the trailer was sealed there at the border,
9 Your Honor, in this customs impound area, which is
10 essentially being at the border. He has testified that the
11 items were not changed, that some sort of probe was
12 inserted into one package, Your Honor. I'm prepared to
13 recall Agent Mize this morning, if it is necessary. We
14 have the chimneys in here, I will place one in front of the
15 court. It was necessary to destroy them in order to get
16 the goods out, to get the merchandise out. They are sealed
17 up and some attempt was made to put carbon paper all around
18 them in order to attempt to shield from x-rays, apparently.
19 But the chimneys physically had to be wrenched apart and
20 destroyed. Agent Mize has testified that those items were
21 not altered or they were not changed in any way at the time
22 that they were sealed with a customs seal.

23 In the case of Rivera Your Honor, one of the
24 issues that they are discussing in this case is that these
25 items were all sealed up with customs tape, even though

1 they had been inspected at the airport area or in there.

2 There's always a customs area at an airport or at a border
3 where things are basically quarantined. Those items were
4 sealed up with United States customs tape, just exactly the
5 same situation we have in this case.

6 Agent Mize testified that in his presence that
7 he looked and examined the items in there. He's prepared
8 to come in and testify again this morning if we need any
9 additional testimony on that. He testified those items
10 were in the same condition and they were undisturbed at the
11 time there at that border check-point area, that it was
12 sealed up with a tamper resistant seal.

13 He testified that a team of customs agents,
14 including himself, bottled these items up. That that
15 trailer was still -- that the seal was still intact when he
16 himself broke it and opened it here in Trenton, South
17 Carolina. And at that point in time, two co-conspirators
18 and Mr. DeLeon off-loaded these materials and placed them
19 inside of Mr. DeLeon's store. But he cooperated and
20 participated and he placed them in there. It wasn't that
21 the agents delivered it by themselves. Mr. DeLeon himself
22 participated in carrying those items in and opening up his
23 store, in other words, for those to go in.

24 The three prong test is whether or not the
25 officials have a reasonable certainty or a high degree of

1 probability that the border was crossed. In this case it's
2 clear, a trailer came from Mexico, it was in the holding
3 area and it had as its intended destination Mr. DeLeon's
4 residence here and going to Mr. Fredy DeLeon. The second
5 part, they also had a reasonable certainty that no change
6 in the object -- no change in the object of the search has
7 occurred between the time of the border crossing and the
8 search.

9 Your Honor, the first contact that the United
10 States Customs Service had basically with this trailer was
11 rolling through this high-tech x-ray machine. Now, I can
12 recall Agent Mize in this case, but he is prepared to
13 testify in this case that the items were in exactly the
14 same condition ---

15 MR. PUETZ: Your Honor I'm going to object. If
16 he hasn't testified, I think it's improper for him to be
17 arguing what he's going to testify to.

18 MR. MAYE: I will be glad to call him. But,
19 Your Honor, there is an x-ray that's already in evidence
20 that shows the furniture in the trailer. Agent Mize has
21 testified previously that those items are in the same
22 condition as they were when they came across the border and
23 that he himself was present, viewed those items, watched
24 that trailer be sealed with the tamper resistant seal.
25 Certainly these items were in the same condition. And I'm

1 going to bring one out in this case, Your Honor, and it's
2 evident from looking at it. It's necessary to destroy and
3 break apart these things because they were constructed with
4 a hidden compartment inside of them in order to conceal
5 these drugs. They built furniture and the tops of that
6 furniture, this chimney, is a dead space in which
7 marijuana, highly and tightly compressed bails of marijuana
8 were stacked.

9 They had to tear them apart in order to get
10 that out. It would be obvious in this case if they had
11 been tampered with. The agent from Aiken County that went
12 in additionally testified that they were in exactly the
13 same -- they were not tampered with. They had not been
14 opened and they were not opened until customs inspections
15 directed that they be opened and they were torn apart
16 there. But Agent Mize has testified, he puts them in that
17 store, Your Honor, in the same condition as when they came
18 across the border.

19 The third is that they have a reasonable
20 suspicion that criminal activity was occurring. And
21 certainly in this case, Your Honor, they did. From the
22 outset, the mere fact that the x-ray was made and showed
23 these anomalies inside of the trailer, Your Honor, would
24 have given them reasonable suspicion in this case that
25 smuggling was taking place just from seeing that. In

1 addition to that, Your Honor, we have the fact that customs
2 did perform a field inspection there and did a, basically a
3 field test, Your Honor, to determine there was some
4 contraband, but that not-with-standing customs would have
5 searched those packages and broken them apart at some point
6 in time just based on the x-ray.

7 And there are numerous cases in here, Your
8 Honor, that say that x-rays are nonobtrusive that that's an
9 allowable method of search. Thousands of trailers come
10 through that border check-point every day and are x-rayed.
11 In this case, Your Honor, there's certainly nothing
12 intrusive about that search. But that would have given
13 them rise at that point in time to conduct that search.
14 There was reasonable suspicion based only on that. Not
15 considering the field test or anything else that was done
16 in this case.

17 It basically just said that it's got to be
18 determined by the totality of the circumstances, and one
19 thing that the State wants to point out in this case, this
20 is an unusual issue here in South Carolina because it is
21 very unusual for a private individual to order something
22 from overseas to have it directly delivered to them. There
23 was no wholesaler, no middleman involved. This shipment
24 originated overseas -- not overseas, in Mexico. It
25 originated from Mexico and was coming here directly to this

1 address in Trenton. But it had to go through that border
2 check-point. At some point in time, customs has a
3 legitimate right to search those items. But certainly
4 under this case of Rivera, Your Honor, they can delay that
5 search in an effort to sweep for associates of suspected
6 smugglers and that's exactly what they were doing in this
7 case, Your Honor.

8 They delayed that search that they certainly
9 had a reasonable suspicion and a right to do in this case,
10 Your Honor, until it arrived here at the Tienda DeLeon in
11 Trenton, South Carolina. Certainly, Your Honor, in this
12 case, this is a reasonable search, in the State's position,
13 under the totality of the circumstances, Your Honor.

14 There's certainly an expectation if you order something
15 from overseas or from a foreign country and it's being
16 shipped to you. It is reasonable that customs is going to
17 inspect or it's subject to inspection and Mr. DeLeon could
18 expect that in ordering something from overseas.

19 In fact, the State maintains in this case that
20 it was carried out at his store. He doesn't basically have
21 a right to contest that in this case. The search occurred
22 there at his store, Your Honor, he placed those items
23 inside of it. Customs didn't put them in without his --
24 it's not like it was some drop box that they went there
25 while he wasn't there and there was some mail slot and they

1 slid them inside. They delivered them where he wanted them
2 delivered, and he allowed them to place them there in the
3 store and that's where they needed to go in order to
4 conduct those inspections. They had delayed that
5 inspection, Your Honor, until they had an opportunity to
6 sweep for the associates.

7 At the time that that truck became bogged down
8 in the mud and the operation was concluded and they took
9 all these individuals down, Your Honor, would have been the
10 first reasonable time for the government to carry out and
11 conduct that inspection because to have done so earlier and
12 to have broken those chimneys apart down at the border in
13 Texas, Your Honor, it would have been obvious they had been
14 opened. There would have just been no way to take out the
15 marijuana in those compartments without destroying the
16 furniture, and the government would have been denied that
17 right to sweep for associates in this case.

18 Certainly, the State maintains that under the
19 totality of the circumstances in this case it does fit this
20 extended border exception. We would ask that the court
21 follow that. I think that the 4th Circuit cases support
22 and lend authority to that. This case of Gaviria and many
23 of those other cases, Your Honor, are from the various
24 circuits around, but I don't know how many of them have
25 been up and had cert denied at the Supreme Court. And

1 Gaviria has, G-a-v-i-r-i-a, the case is very similar, Your
2 Honor. 70 packages. It is very similar to this case in
3 the fact that these things were sealed.

4 In this case, it was customs tape. In the case
5 at hand we have, we have a tamper resistant customs seal
6 that was placed on them there in the impound area, and that
7 seal was not broken until it was basically done at Mr.
8 DeLeon's store by the agent that actually placed the items
9 inside of the store. The agents indicated that they could
10 not go in if it was a dwelling, but this was not a
11 dwelling, Your Honor, this was a building. The customs had
12 a right to go in without a warrant in this case and conduct
13 a search there and they had a right to wait until they
14 could carry out that sweep for co-conspirators and other
15 people involved -- people involved in this smuggling. And
16 in that regard, it was carried out.

17 These other individuals were arrested in this
18 case, Mr. DeLeon was arrested. It allowed them to extend
19 out and sweep for those other associates. I have handed up
20 a great deal of authority to the court, numerous cases,
21 Your Honor. You've had the time to read and look over
22 them. I would ask that this court follow what I believe to
23 be the majority in the United States of allowing this
24 extended border search doctrine and certainly under the
25 totality of the circumstances in this case, Your Honor,

1 this is entirely reasonable. Certainly in South Carolina,
2 it is of great concern to be able to combat and fight
3 international smuggling. The fact that it does not occur
4 very often here and this is an area of novel impression, at
5 least for me locally, nothing that they did was
6 unreasonable in this case, Your Honor.

7 In looking at this thing in an overall fashion,
8 they did what they were supposed to do, a search warrant
9 was not necessary in this case and we would ask that the
10 court allow these drugs to come in and not suppress them.

11 MR. MIZELL: Your Honor, if it please, just one
12 housekeeping matter, I honestly thought we were going to
13 take some testimony to start with this morning, and I
14 brought Agent Mize in the courtroom, but perhaps he
15 shouldn't be in here. If not, I will be glad to take him
16 out.

17 MR. PUETZ: I would just say it's a little bit
18 late and I think the rule of sequestration has been broken.

19 MR. MAYE: Your Honor, I will hand all these
20 cases back up.

21 THE COURT: I think I have them all.

22 MR. MAYE: Okay. Thank you.

23 THE COURT: I guess the first question that I'm
24 going to have -- I'm trying to look at all these cases
25 thoroughly, I'm sorry I didn't pick up on this yesterday.

1 The first question I'm going to have with all these other
2 cases is whether any of them involved a search inside of a
3 store or building. I saw that one of them was in a hotel
4 lobby, it was luggage before the person checked into his
5 room, so I suppose that was inside a building. You all
6 made clear yesterday that the rule is different for a
7 dwelling.

8 MR. MAYE: We would concede that, Your Honor.
9 They'd have no right to go in if it was a dwelling and they
10 would have needed to obtain a search warrant, but certainly
11 our position, a grocery store is not a dwelling, they did
12 not need it in that case.

13 THE COURT: What bothers me is that 9th Circuit
14 case, which is a very brief case, which is interjected that
15 the government was misplaced in their analysis because
16 there's a specific statute that deals with the inside of a
17 store or building when something has been across the border
18 illegally. If something comes across the border illegally
19 and winds up in some store or building inside of the United
20 States and there's a statute that deals with that, the 4th
21 and 9th Circuit, that's what controls it. Even though the
22 language in that statute uses the word may and not the word
23 shall. And I don't pretend to know enough about federal
24 law to know if it has the same distinction with regard to
25 the use of those words that the South Carolina law does.

1 We all know that in South Carolina the
2 legislature deemed shall to be mandatory, except in a few
3 instances where they used may and the courts interpret it
4 differently. All right. Let me hear from the other side.

5 I guess we need to tell the jury it's going to
6 be a while. Go tell them it's going to be a while.

7 You have anything?

8 MR. PUETZ: Judge, the way I read that
9 particular -- the case is -- I don't think is the thing
10 that's important. I think the code section that governs
11 and controls the activity of customs agents.

12 THE COURT: Hold on one second. If ya'll have
13 a newspaper reporter outside, ya'll need to let him in.
14 You can let anybody else out there who wants to come in
15 right now come in. They're -- I just don't want them to
16 come in and disrupt this. Well, I don't want to invite
17 them in, but I thought I saw a newspaper reporter walking
18 back and forth and I don't want to be excluding the press.
19 Before the only reason I said close the door was because we
20 told all the defendants to be back at 9:00 and they were
21 all coming in.

22 All right. Mr. Puetz, I'm sorry.

23 MR. PUETZ: Just as I said, I think what's
24 important is the statute itself, and here again we're
25 dealing with a statute that says, "And shall thereupon be

1 entitled to enter and search." I think the may aspect or
2 the phrase may, it's just telling those customs officers
3 that are required to get that warrant for merchandise,
4 which is what we're dealing with in this particular case.
5 Virtually all the cases that have been cited by the State
6 have, in fact, dealt with the search of the person or their
7 luggage as it relates to the border or proximity to the
8 border. And so I think that this particular code section
9 as pointed out by the appellate court, the 9th Circuit, is
10 controlling and it just says that, Agent may make it before
11 a local magistrate, who doesn't have to go running in front
12 of a federal magistrate to go ahead and obtain his warrant.

13 One other thing that concerns me, Judge, in
14 this particular case, is the State is asking you to go
15 ahead and approve the seizure of this particular item of
16 merchandise that was taken from Mr. DeLeon's store and
17 they're telling you factually that they have laid out the
18 basis to show that there's been no changes made to the
19 tractor trailer load or to the items that are inside of
20 that tractor trailer load.

21 I would point out to the court, those several
22 cases that we had handed up, one of which was the Colorado
23 case and as it indicated in that particular case, these
24 exceptions to the warrant requirement have to be jealously
25 guarded. And in this particular case where you have an

1 agent who comes up here and uses catch phrases, like
2 there's been no change or modification to any of the items
3 of merchandise in it, but it's not founded on personal
4 knowledge, it's not founded on a change of custody that
5 shows us where this particular trailer sat for 2 days prior
6 to the time that he put his seal on it and prior to the
7 time that -- we don't even know if he looked in it prior to
8 putting the seal and whether he inspected those items that
9 were actually inside of it.

10 Now admittedly, I will take him at his word
11 that no change would have been made if it was the seal --
12 if the seal had been unbroken from May 16 to the time that
13 he broke it May 18th. But I think that to ask this court
14 to go ahead and approve an extension of this border search
15 here some 2000 miles away -- for we really -- and I know
16 Mr. Maye has told a lot or given a lot of information to
17 the court, but you're -- we're asking you to decide this
18 case on the record that's before you, not the argument of
19 counsel.

20 And there aren't any documents that establish
21 where this truck sat. There -- I don't know who's got
22 access to it. Mr. Maye says it's in quarantined. But the
23 evidence of that is not before this court and why isn't the
24 case agent, the person who was in control of this operation
25 here to tell this court and to explain to this court why,

1 in fact, it was -- or that it was under surveillance for
2 that 4 day period. And I think that that's an important
3 element of this particular exception. They have to prove
4 by clear and convincing evidence that particular aspect of
5 the case. Another thing that concerns me, I still don't
6 understand who it was that gave the order to go in and
7 seize this, if it was a local law enforcement, because the
8 feds had quote, stepped out of it. I find it impossible
9 that a local law enforcement officer can be conducting a
10 border search.

11 And so given the Mendosa case, given the fact
12 that, this record as it is before this court, we're asking
13 the court to go ahead and grant the motion. I think that,
14 in fact, this code section, 19 US C section 1595 is
15 applicable, is controlling and that's the exact reason why
16 the appellate court in California sent it back to the
17 district court and said you need to apply this particular
18 statute. I don't think it was addressed or brought up to
19 the court, the district court in that particular case.

20 Thank you.

21 THE COURT: Do you have any response?

22 MR. MAYE: Your Honor, the only thing I would
23 say is he did testify that he looked in the trailer and
24 that the items were in the same condition, that they were
25 unchanged and it was sealed in his presence, Your Honor.

1 It was sealed from the time that it left the border.

2 Basically all these cases talk about the areas at JFK, if
3 it's a direct flight into the United States, wherever the
4 airport or the facility is. They left the border. What
5 the state maintains in this case is that those items were
6 in the same condition as they left the border in this case,
7 Your Honor, which was the area where Agent Mize sealed that
8 trailer.

9 He testified he broke the seal himself here in
10 Trenton. In this case, Your Honor, I think it is important
11 that the federal government did not place those items where
12 they were when the search was conducted. They delivered
13 them to Mr. DeLeon, he signed for them, he placed them in
14 there. The store was open for business at that point in
15 time, Your Honor, the agents entered. Mr. DeLeon had
16 chosen where those items were going to be placed, Your
17 Honor. They had a right to go in and carry out and conduct
18 that inspection of those items, Your Honor, from the time
19 that they had come from the border to there, they were in
20 the same condition.

21 The agent has testified that they were. He was
22 not -- he was not gray in any way about that. He's
23 testified they were in the same condition to the extent
24 that I could reopen on that and present additional
25 evidence, I'd like to bring one of those chimneys in. We

1 were not going to do it while the court was out, basically
2 just bring it in and let the court look at it in this case,
3 Your Honor. It would be obvious if they had been tampered
4 with. To assert that these chimneys were somehow tampered
5 or modified while they were in that customs area and all
6 these drugs were placed in there, it's just a ludicrous
7 argument. It is just -- the court is looking at the
8 totality of the circumstances in this case and what is
9 reasonable and just in this case.

10 And to somehow assert that all this stuff was
11 tampered with and all these drugs were placed in there,
12 which would be the concern in the case of the defendant
13 here, who ordered -- I don't know if he ordered them or
14 not, but had items come to him, delivered to him from
15 overseas, directly to Trenton, South Carolina. It's just
16 not reasonable, and under the totality of the
17 circumstances, certainly those items coming across the
18 border, being delivered in his store, he signed for them.

19 It was clear on the bill of lading where they
20 were coming from. He had known -- certainly one would have
21 to expect or there would be an expectation that those items
22 could be looked at and inspected. And the fact that he
23 moved them into another area, Your Honor, he shouldn't
24 benefit from that, given the fact that this is a very large
25 quantity of a controlled substance. I'd just like to bring

1 that item in. I won't produce any testimony, but I would
2 like for the court to view and see one of those items in
3 the condition that it's in.

4 MR. PUETZ: Again, Judge, his argument is a
5 perfect example. He keeps saying DeLeon ordered this.
6 DeLeon did this. The facts that are before this case, this
7 agent got up here and testified he doesn't have any
8 knowledge that Fredy DeLeon ever contacted, ever requested,
9 ordered anything but rather this bill of lading simply
10 shows that in fact his store was the point where this,
11 quote, merchandise was going to be delivered. We don't
12 know that Fredy DeLeon did that.

13 THE COURT: Again, I don't profess to be any
14 scholar on this. But, quite frankly, you all are primarily
15 talking about things I'm not concerned about.

16 MR. MAYE: Okay.

17 THE COURT: And I can be completely wrong in my
18 analysis and I apologize if -- and I didn't mean to malign
19 the University of South Carolina either.

20 MR. MAYE: Yes, sir.

21 THE COURT: We have a port in Charleston and we
22 have international businesses of some very large magnitudes
23 and I suspect that we have a great deal of trade that goes
24 both directions into and out of the State of South Carolina
25 from other countries. And they probably were teaching this

1 and I didn't have enough foresight to realize that it might
2 actually become a practical matter to me one day or that I
3 went to law school so long ago that it didn't matter back
4 then, and that they are teaching it regularly now. Be that
5 as it Maye, from what I read of this doctrine, the three
6 factors that have to have existed and have been cited, the
7 officials are reasonable certainty or a high degree of
8 probability that a border was crossed. That's been shown.
9 Second, that if the officials have reasonable certainty
10 that there's no change in the object of the search, that it
11 occurred between the time of the border crossing and the
12 search.

13 Well, in many of these instances, folks, the
14 border patrol or the customs service or whomever is
15 watching this doesn't have control of the thing. Somebody
16 else does. If you're talking about luggage, they give the
17 luggage back to the person who carried it across. If
18 you're talking about balloons swallowed within somebody,
19 they obviously don't have control, they being the agents,
20 don't have control.

21 I would say many of these cases that I've read
22 did not have anywhere near the degree of control over the
23 thing itself across that border. And it was sealed. I
24 don't think they have to go in and inspect every single
25 crate or seal every single crate or put some sort of

1 magical sign on it that only they can tell if it's been
2 tampered with or not. They sealed the compartments.
3 That's good enough in the courts view so I think they've
4 accomplished the second one.

5 And the third, they have reasonable suspicion
6 that a criminal activity was occurring. In my view, though
7 that is the weaker of -- weak is not the correct word, that
8 is the least of the three perhaps. I don't see any
9 weakness in it. I have certainly reasonable suspicion that
10 criminal activity has occurred. They've got probable cause
11 I think that reasonable criminal activity was done.
12 They've met those three factors.

13 And I talked to you earlier about whether
14 it's -- I can't remember what word they used. It was a
15 routine search or a non-routine search within many of the
16 cases it doesn't make any difference because you're talking
17 about the extended border concept. What does concern me is
18 this 9th Circuit opinion. It goes back to the concern I
19 had initially before you all educated me and my access to
20 Westlaw and pulled up 144 cases and started reading like
21 crazy. What concerns me is that fundamental concept of the
22 law we talked about being secure in the person's house,
23 places and things. And now they come along and in this --
24 this one case out of the 9th Circuit, they cite a federal
25 statute that indicates that if the thing gets into a

1 building, you need a search warrant. And I've been looking
2 fast as I can look.

3 Now, again, a hotel is a building. Somebody
4 who takes something into a hotel lobby is taking it into a
5 business, the building may not belong to that person who
6 was carrying the luggage, but it's a building. And
7 honestly I'm going to be taking a shot in the dark about
8 this. But everything I'm reading as far as the rational,
9 the reasoning all of that relates to the fact that this
10 thing was something that could be searched at the border.
11 It came across the border. There was one case where it
12 dealt with the people that had come across the border. We
13 don't have that here. But they didn't focus on that, they
14 just used that as an additional justification for the fact
15 that these people, if they had any expectation prior to
16 this, certainly they didn't have it when they crossed the
17 border.

18 But the rationality, getting back to the
19 rationality, gets back to the fact that you just take that
20 border wherever it is, Canada or Mexico and you move it to
21 Trenton, South Carolina. And my concern, which I expressed
22 to you yesterday before I had done all this reading was
23 that it wasn't taken down right there when it was unloaded.
24 It wasn't taken down out in the parking lot or on the
25 street. And I told you we're not even talking about what

1 happened down the road with the truck.

2 MR. MAYE: I understand.

3 THE COURT: The problem I have is once it goes
4 inside that building, do you have to get a search warrant
5 to get in there and open that thing up. Now, as far as you
6 bringing in one of those Chimneys ---

7 MR. MAYE: The court has indicated that there's
8 no issue about the tampering problem.

9 THE COURT: Well the testimony was that it was
10 furniture that was constructed that had anomalies in it and
11 if I recall the testimony of the officer from Aiken, he
12 said that there was no, once they -- which didn't
13 particularly help the State's position at that point. He
14 testified that it wasn't indication that there was any
15 modification of it and he was very strong in his
16 description that there's no way any dope had come out of
17 that thing. Because at that time, we still at exigent
18 circumstance issue about whether marijuana was being taken
19 out of the building in those bags by other people.

20 What I want to do is this, ya'll have made
21 arguments. I want to back off of this, and I want to skim
22 through these cases as fast as I can and I want to see if
23 any of them deal with a building other than that hotel one.
24 Because the other ones I see they happen in a vehicle, a
25 lot of them did and we all know those are different and the

1 statute, 19 US C section 1595 specifically deals with a
2 house, store, or other building or place in which
3 merchandise is found. There's actually one section where
4 it says dwelling house, store or apartment or other
5 building or place in everywhere ---

6 MR. SUSSMAN: Judge, can I make one observation
7 before you go off. I went back and did a search too last
8 night. In my view of the cases indicates that the vast
9 majority of them deal with when they extend the borders,
10 they're talking about extending the boarders to places like
11 airports, bus stations, none of them seem to indicate any
12 time where they go into any kind of building. There's one
13 case in particular though and I don't know if you've come
14 across it or not, but I did not bring it with me today, but
15 it was where some dope was in some sort of a container,
16 luggage or something, and the man gave it to his partner
17 and the federal agent, the customs agent staked outside the
18 apartment to wait to see what would happen.

19 The man came back out of the apartment with the
20 luggage or whatever it was that had the dope in it and at
21 that point he stopped the man and they ruled that it was
22 permissible under the extended border search. I think that
23 what the courts have all been talking about is a balancing
24 test between protecting our borders from drugs being
25 imported and relaxing the Fourth Amendment to allow

1 reasonable searches without a warrant. Extend these border
2 searches balanced against the Fourth Amendment right to an
3 expectation of privacy and I think the point is that all
4 these, all those cases dealing with drugs that comes in or
5 contraband that comes in outside of the border, as long as
6 these people don't go into an area like a building or a
7 dwelling, then the border search will apply. But when they
8 go into a building or a dwelling, that there's an
9 additional expectation of privacy that seems to indicate
10 that a warrant needs to be taken.

11 In the Mendosa case that we handed up to you,
12 that's part of the discussion that once it was inside the
13 building in that space G building, then it falls to the
14 next tier of the Fourth Amendment privacy which would
15 require a warrant. That case involving the lobby was a
16 public area which might be differentiated factually from
17 the DeLeon's building because it wasn't in a common area
18 but it was in the storeroom.

19 THE COURT: It was not in the common area of
20 the store. The testimony was, it was back in the storage
21 room and there was testimony that I recall that that was
22 not an area where people went back to get groceries.

23 MR. SUSSMAN: And so I think that could be a
24 fact that could be differentiated from the lobby case.

25 THE COURT: And I don't disagree with that.

1 MR. SUSSMAN: I think it's interesting that
2 that one case where the gentlemen, it was an apartment they
3 did not go into the apartment but waited until he came out.

4 THE COURT: Well Agent Mize said, We don't go
5 in dwellings. But what weakens the defense's argument
6 related to that goes to the issue about the same condition,
7 because the man went in the apartment with something. He
8 was in there not observed. He came out with something that
9 was the same thing he took across the border and if the
10 courts upheld that, they would pretty much up hold
11 anything, I would think because one of the logical things.
12 You would think someone would do is to go into a house and
13 take the stuff out of the suitcase or box or whatever it
14 be.

15 So I think that while they haven't even argued
16 about a dwelling, I think your point is well taken about it
17 was in a separate area of the store, it was not a common
18 area of the store in this instance. But I think that that
19 case would make their position, their being the State's,
20 strong with relation to control. But I've already ruled on
21 that. That thing was within sufficient control. They
22 sealed and contained it. It came to South Carolina.

23 MR. MAYE: May it please the court, Your Honor,
24 the only thing is to the issue of the grocery store. This
25 is a different situation. When they came here, this place

1 was all locked up and closed up. When they went back in,
2 it was open for business. A grocery store is a little bit
3 different than a lot of places of business because I've
4 been in the back room in grocery stores many times and
5 that's usually where the bathroom is in a grocery store.
6 And we're talking about reasonable behavior here in a
7 store, Your Honor, unless it was cordoned off and it is a
8 locked area, people do go in the back of grocery stores.

9 That is just, I think this is an opened grocery
10 store. I think this is different, it's a place where the
11 public is invited, invitees, whether it is directly in
12 there where the merchandise is, Your Honor, unless people
13 would be prohibited, unless something was -- this was not a
14 locked area like area G in that case. This was not some
15 locked warehouse or apartment buildings. This is an area
16 in a strip mall grocery store, Your Honor. I think that
17 it's different.

18 I think this would be a case, certainly, given
19 the fact that he placed it in that area of the store while
20 it was closed. The store is then opened in this case. I
21 think when we're looking at the totality of the
22 circumstances of whether or not this is reasonable, the
23 type of business it is and that issue is important in this
24 case.

25 THE COURT: You had something Mr. Hawk?

1 MR. HAWK: Your Honor, there's no evidence in
2 the record about what is and is not in the storage room.
3 Matter of fact, the agent testified that the storage room
4 door was closed and he didn't know which one of them had
5 opened it and that this was not a public access area.

6 THE COURT: It was testified it was not an area
7 that the public went into. That's my recollection. There
8 was also testimony, however, that they asked where this
9 thing was and they were pointed to it.

10 MR. HAWK: Okay.

11 THE COURT: You learn something every day and
12 then a year and-a-half later you find out whether you
13 learned it right or wrong.

14 MR. MAYE: That's right, absolutely.

15 THE COURT: I'm going to go back here and I'm
16 going to flip through these pages and I will come back and
17 make a ruling and in a year and-a-half from now I will find
18 out whether I'm right or wrong.

19 (WHEREUPON a short recess was observed.)

20 THE COURT: We may have had a case in Edgefield
21 with more lawyers, but I don't remember it. All right. I
22 appreciate -- they pointed out that you weren't in the room
23 and I told them I appreciated them pointing it out because
24 I'm not accustomed to looking for that many different
25 people. It's time for me to make a ruling. And I will

1 tell you quite honestly that I have gone back and forth on
2 this. When I was first hit with this yesterday, I had a
3 completely different view. The ruling from the 9th Circuit
4 and the statute caused me concern, but then I read other
5 cases and these are recent cases, they're not old cases.
6 The one from Puerto Rico was 2003 where they were dealing
7 with a tire on an automobile.

8 The ruling of the court is that the motion to
9 suppress is denied. I read yesterday a whole series of
10 cases that I looked at off Westlaw. There's no need for me
11 to go through and decipher those again. I've been handed
12 up citations of cases from the attorneys, I've read all of
13 those and done the best I know how to do.

14 To me, the distance between the actual border
15 and the place where these things are ultimately seized has
16 no practical, it's mentioned many times and there is some
17 discussion about the expectations that relate to if someone
18 is in close proximity of the border versus not being in
19 close proximity to the border and I know those apply and
20 I'm not minimizing them, but there are enough cases that
21 are hundreds of miles away and thousands of miles away that
22 that line is just blown away. The question goes to those
23 three factors.

24 We've been over those three factors. The
25 evidence is established that -- now I'm not saying that I'm

1 making an ultimate ruling on the admissibility of the
2 evidence. I'm making a ruling on the motion to suppress
3 the evidence. There has to be a sufficient foundation
4 established, it has to be properly presented and it has to
5 meet all the criteria for admission into evidence before
6 the jury. But it seems to me that this situation is
7 controlled by the extended border search doctrine and the
8 motion to suppress the evidence seized is denied.

9 Mr. Hawk, you said you needed to look at a
10 video or something?

11 MR. PUETZ: Yes, sir, Judge, there are going to
12 be two other issues that I think are going to be -- need to
13 be addressed and I'm going to talk to Mr. Hawk about it
14 while we're watching this video, just looking at it, but
15 one of the things that we are going to be asking the court
16 to do in limine is to prohibit the State to not -- or
17 require the State -- order that the State make no reference
18 to this log that was found in this green Thunderbird and
19 has an entry on April 5th, of 2002, until we have had an
20 evidentiary hearing on whether or not that is admissible.

21 MR. MAYE: May it please the court, Your Honor,
22 I think I can short circuit that. The log that we have in
23 evidence was seized from an abandoned vehicle here, Your
24 Honor. It's the State's position that none of these
25 defendants have any right to even contest that search. I

1 mean, it's uncontradicted this vehicle was abandoned here.
2 The testimony -- this vehicle was abandoned. I mean, I'm
3 getting ahead of the game here. And law enforcement --
4 this was the Thunderbird that the other -- the two
5 co-defendants were in this case, Your Honor and they left
6 and abandoned the car here at grocery store parking lot and
7 they don't have any standing to contest any items or search
8 items that came out of this vehicle.

9 MR. PUETZ: I'm not talking about contesting
10 the aspect of its being seized. I'm talking about its
11 relevance and the effect that it has on our ability to
12 cross-examine whoever the author was of that particular
13 writing that was found in the car. And just for the
14 court's benefit, there is a notation made on one of the
15 pieces of paper in this little note pad that has F-r-e-d-y
16 and then there is a notation 4502, 23 grandes. That's the
17 extent really of the -- or I suspect that -- I don't know,
18 maybe there's more that they're going to argue at some
19 point in time how it's relevant, but it's our position,
20 Judge, that given the fact that we don't know who the
21 author is, we don't know what Fredy or which Fredy they're
22 referring to and that's a very common way of spelling the
23 name Fredy in Spanish. So it's not like it's something
24 that's peculiar to Fredy DeLeon and we don't even know if
25 the entry was made by a member of the conspiracy and that

1 it is in furtherance of the conspiracy. And also we do
2 not, as I said, we're not going to be able to cross-examine
3 whoever the author of that particular entry was that was
4 made on that particular document.

5 THE COURT: Don't mention it until we have an
6 evidentiary hearing, okay?

7 MR. MAYE: Okay.

8 THE COURT: All right. What's the other issue?
9 You said there were a number of issues. I don't know if
10 you meant that literally or if it's just ---

11 MR. PUETZ: The one other thing that does
12 concern me is, is that this person who drove this -- well,
13 that's fine. There aren't any other ones.

14 THE COURT: Let me ask you this, is it
15 necessary to review this video tape before we do opening
16 statements?

17 MR. HAWK: I don't think with need to before we
18 open and get started. I can do it at lunch break or
19 whenever. Whenever I think will be fine.

20 THE COURT: I would really like to get the jury
21 out here. They've been back there for an hour and
22 and-a-half.

23 MR. MAYE: May it please the court, Your Honor,
24 I had one matter in limine regarding this -- just as to
25 opening statements, Your Honor. We're not going to

1 introduce anything about any statements that any of these
2 defendants made. We don't intend to put up any of those in
3 our case in chief. It's our position that exculpatory --
4 any statements made, they're exculpatory or an attempt to
5 explain away these things would be hearsay, it would be
6 self-serving hearsay and necessary for those statements to
7 come out before the jury, anything they told the law
8 enforcement officers that was exculpatory, Your Honor, that
9 they would have to testify and be subject to
10 cross-examination.

11 We don't intend to put in any of those
12 statements. If they don't testify and those statements do
13 not come in, if the statements have already been published
14 to the jury on opening statement, you just can't un ring
15 the bell. If they say, Well they told the law enforcement
16 officers X Y and Z at the time they got arrested and nobody
17 paid them any attention, to not subject them to
18 cross-examination, they couldn't get that out through the
19 -- that out through the officers, self-serving hearsay,
20 Your Honor. I'd ask that that not be addressed in opening
21 statement.

22 If there's some way that they can get that in
23 or somebody else is going to testify to that at some point
24 in time, but to allow them to publish whatever statements,
25 we don't intend to offer their statements, to bring that in

1 on opening statements, Your Honor, it's just impossible to
2 un ring the bell because these defendants can elect not to
3 testify, you know, at the close of our case, but they
4 wouldn't be subject to cross-examination on any of those
5 statements, which would be hearsay unless they were to
6 testify or if they came in under some exception.

7 THE COURT: Is that going to be a problem?

8 MR. HAWK: Your Honor, I do intend to tell the
9 jury what Mr. DeLeon said to the police officers as well as
10 elicit from the police officers themselves. It's going to
11 be in the evidence in the case and I would like to be able
12 to refer to that because he did cooperate. He told them
13 everything he knew about it, he gave them a video tape,
14 told them that the guy was on the tape.

15 THE COURT: All right. Anything else?

16 Motion in limine is denied. Anything else?

17 Ready to argue?

18 MR. MAYE: Your Honor, I would just like one
19 second to use the restroom.

20 MR. PUETZ: I will concur in that.

21 THE COURT: We're at ease.

22 (WHEREUPON a brief recess was observed.)

23 THE COURT: All right are we ready now?

24 MR. MAYE: The only concern I have, we were
25 not -- because we don't have the individual that took their

1 statements here, gave them their rights in Spanish and all
2 those issues, but I assume they're going to open the door
3 to talk about the statements they made and all that's going
4 to be fair game any way. If they're bringing out the
5 statements, obviously they couldn't pick and choose what
6 parts of them are going to come in.

7 And if all of their statements or anything they
8 told law enforcement is coming in, I don't have any
9 objection to that. That is apparently the direction we're
10 headed and if I'm wrong, I just wanted to -- I want some
11 guidance otherwise on that. Because I didn't intend to
12 offer any of their statements because I didn't feel like I
13 could get through all the verbiage of advising them of
14 their rights in Spanish and all that. If they're going to
15 talk about their statements that will be fine.

16 MR. HAWK: As long as we've been provided them
17 all, we're fine. I mean, you said everything's been
18 provided. We've got them all.

19 THE COURT: I've played enough of what if
20 games.

21 MR. MAYE: Yes, sir. We're ready.

22 THE COURT: I'm ready to start the trial.
23 Bring the jury.

24 (WHEREUPON the jury entered the courtroom at
25 10:10 a.m.)

1 THE COURT: Ladies and gentlemen, the first
2 order of business is that you must be placed under oath. I
3 need for you to stand and raise your right hand and the
4 clerk will administer your oath.

5 (WHEREUPON the jury was sworn at 10:12 a.m.)

6 THE COURT: Anyone unable to take that oath for
7 any reason?

8 No one indicated their inability to take the
9 oath.

10 **OPENING REMARKS**

11 THE COURT: Ladies and gentlemen, we met here
12 this morning at 8:30. We've been working ever since and
13 we're now ready to start the trial. The first thing I'm
14 going to do is I'm going to begin by giving you a brief
15 overview of how I expect the case to begin. After I do
16 that, then I'm going to give you some instructions that you
17 have to follow throughout the trial.

18 The way the case is expected to begin is that
19 the attorneys will first make their opening statements to
20 you. In their opening statements, the attorneys are not
21 permitted to argue. Opening statements are permitted to be
22 introductory in nature, an outline, an overview.

23 After the opening statements are finished, then
24 I will call upon the State to present its evidence in these
25 cases. As I told you, there are separate and distinct

1 cases here. Each has to be evaluated separately and
2 distinctly. They're being tried together for purposes of
3 convenience. The State has the entire burden of proof and
4 the State has to prove the guilt of each defendant beyond a
5 reasonable doubt. Each defendant is presumed innocent, so
6 what I will do is I will recognize the State, the solicitor
7 to present evidence in an attempt to meet the burden of
8 proof as to each case.

9 When the State finishes putting up its cases in
10 chief, it will say to me the State rests. At that point, I
11 have to send you out of the courtroom, wherever we are at
12 that point, I have to send you out of the courtroom and I
13 have to confer with them about some legal issues. And
14 after you come back in, I will tell you where we go from
15 there. But that's how we're going to get started. I'm not
16 going to go through the whole trial. That's how we'll get
17 started with the case.

18 Now, it's really important that you understand
19 some things. First, this oath that you just took was one
20 in which you promised us that you'll decide the cases based
21 on the evidence and the law, so you need to know where
22 those things are going to come from. The law is going to
23 come from me. It's my job to decide the law and at the end
24 of the trial to tell you the law that applies to the case.
25 The evidence is going to come from the sworn testimony of

1 witnesses. Evidence can also come in the form of an
2 exhibit.

3 Now an exhibit can be anything that's tangible
4 that's marked into the record in the case. An exhibit can
5 be a photograph, a map, a chart, some item, anything
6 tangible. If something is marked as an exhibit in a trial,
7 it will go back with you in the jury room when you decide
8 the case, the cases. Folks, if I use the word case, ya'll
9 realize I mean it plural. It's just habit. But whatever
10 exhibits are admitted go back with you. The reason I'm
11 telling you that is because it's not at all unusual for an
12 attorney to have something like a regular size photograph
13 and to show it to you from a distance or even hand it in
14 the jury box and ask you to circulate it around while
15 you're trying to look at this thing while you're also
16 trying to pay attention to what's going on up here. So
17 just understand the exhibits will be back there with you to
18 review as much as you need to review them.

19 Now, it's important that you understand that
20 what the lawyers say is not evidence. I want you to pay
21 attention to the attorneys, they facilitate the
22 introduction of the evidence, but what comes out of their
23 mouths is not evidence. Evidence comes from the testimony
24 and the exhibits. There's one exception to the rule I just
25 told you about the lawyers not providing evidence. And if

1 we come across it, I will tell you about it; otherwise I'm
2 not going to burden you with it.

3 Now, it's also really important, ladies and
4 gentlemen that you understand that there are two judges in
5 the courtroom. I told you that I'm the judge of the law
6 and at the end of the trial what that means. I will also
7 preside over the trial and I will rule over legal issues as
8 they arise. You're the other judge. It's really important
9 that you understand that you are the only judge of the
10 facts, that only you get to decide such things as whether
11 evidence is believable or not and only you get to decide
12 whether evidence is entitled to any weight and if so, how
13 much. That's entirely your prerogative and I will not
14 invade your province. You're the judges of the facts, I'm
15 the judge of the law.

16 Now, while you promised us that you're going to
17 decide these cases based on the evidence and the law, you
18 must do that. I am not telling you to leave your common
19 sense at home. We want you to use your common sense. We
20 want you to use your sense of logic and reason and your
21 good judgement. We've got 12 people on the jury, we want
22 the benefit of the collective wisdom and judgement of 12
23 people. Use your common sense.

24 It just makes good common sense that you keep
25 an open mind about these cases and that you do not make up

1 your mind about these cases until you know all the evidence
2 and you know what the law is that applies to the case. So
3 we insist on a rule, and it's very hard to follow, but you
4 must do it. That rule is that you are not to discuss this
5 case among yourselves until I tell you to.

6 Now you 12 people may feel that you have very
7 little in common except that you all live in Edgefield
8 County and you all got drawn on this jury. And when you go
9 back in that jury room the logical thing that you're going
10 to want to talk about during these breaks is something that
11 just happened out here in the courtroom or what you just
12 heard or saw. It's just natural, it's logic and I know
13 that. So folks you need to wait until you got all the
14 evidence and you've heard the law before you start
15 discussing the case in any way because if you say something
16 in one of those breaks about something that just happened
17 or some piece of evidence, you may feel some sort of
18 reluctance to retract from that or somebody might
19 misinterpret what you meant or said. So wait until all the
20 evidence is in. Wait until I tell you to deliberate and
21 then we'll wait on you. Don't discuss the case in any way
22 until I tell you to.

23 Now, to repeat what I told you earlier, but I
24 have to tell you again, don't let anybody discuss the case
25 with you, don't discuss the case with anybody else, family

1 members, friends, anyone outside of your 12 -- you're not
2 to discuss the case with them at all until this case is
3 completely over and your burden as been removed. Okay. So
4 don't discuss it among yourselves until I tell you to,
5 don't discuss it with anybody else until the case is
6 completely over.

7 If there's any media coverage, get away from it
8 and report to me what you saw, heard or read through the
9 media and if anybody attempts to contact you and discuss
10 the case, report that to me so that I can deal with it.

11 All right. The last thing, I want to say thank
12 you. Ladies and gentlemen, I sincerely mean it and I will
13 not repeat it over and over again. I know you have other
14 things to do and other places to be involved in and you have
15 waited on us a great deal more than I like for a jury to
16 have to wait. I promise you if you're ever waiting on us
17 we're working really hard to get you out here. That's all
18 I can do. That's all I can promise you is I'm doing
19 everything I can not to waste your time. And I hope you
20 believe me and I hope at the end of the trial I will have a
21 chance to explain to you any matters that you may want to
22 talk to me about. But I just promise you if you're
23 waiting, we're working.

24 To honor my commitment to you I'm going to shut
25 up and I'm going to invite your close attention while you

1 hear the opening statements.

2 Mr. Maye? You're recognized for your opening
3 statement.

4 **OPENING STATEMENTS**

5 MR. MAYE: May it please the court, Your Honor.

6 THE COURT: Yes one other thing, folks I know
7 you've noticed it by now. Obviously, there's an
8 interpreter. He's going to be interpreting everything
9 that's said. If it's a little distracting at first to you,
10 I think you'll find that it eventually blends into the
11 background. I think I've already -- it probably goes
12 without saying, but if it is a distraction to you let me
13 know and we'll try to do something. But I've worked with
14 this interpreter before, he does an excellent job of
15 interpreting and hopefully it will not be a distraction to
16 you, but if it is, let me know and we'll deal with it.

17 All right. Mr. Maye?

18 MR. MAYE: May it please the court, Your Honor.

19 THE COURT: Yes.

20 MR. MAYE: Ladies and gentlemen of the jury, my
21 name is Ervin Maye. My purpose here today, I represent the
22 State of South Carolina. I am appointed assistant
23 solicitor of your elected solicitor. I handle prosecution
24 in Edgefield, McCormick and Saluda. This case began back
25 on May 14, of 2002. A long way from where we're sitting in

1 Edgefield County, down at the border between the United
2 States and Mexico is Laredo, Texas. It's kind of a
3 desolate town with a lot of people right there on the
4 border. There's a bridge that comes across there. Tractor
5 trailer trucks, thousands of the them, cars, people,
6 everything you want or can imagine comes back and forth
7 across that; people, lots of different things.

8 You will hear testimony and the State's going
9 to prove to you in this case, thousands tractor trailer
10 trucks go back and forth across there carrying cargo. And
11 the way that usually takes place is, they don't let tractor
12 trailers from Mexico just roll right across the border most
13 of the time because they need to be able to inspect it.
14 The United States Customs Service's primary task is to
15 control what comes in and out. The border patrol, INS
16 officials make sure that people have the proper paperwork
17 for their citizenship and those sorts of issues.

18 The customs service is primarily concerned with
19 goods and materials going back and forth. The way it
20 typically takes place with a tractor trailer is when they
21 come from the Mexican side and they go to a yard over on
22 the Mexican said and they drop that tractor trailer. Then
23 there's a little short haul they come through and they put
24 this in an impound area. They bring all these thousands of
25 tractor trailer trucks in there when they come across and

1 they drop it in this impound area. That gives the customs
2 service, everything has to have a bill of lading, shipping
3 documents and it's, if it's going to come across the
4 border, showing where it's coming from and where it's going
5 to. That also gives the customs service an opportunity to
6 inspect things, to see if they might have things that are
7 not supposed to be brought into the United States.

8 One of the things that their primarily looking
9 for other than weapons and that sort of things, are illegal
10 narcotics. That's one of the things that's flowing across
11 the border; common knowledge; from a foreign country into
12 the United States, illegal drugs. On May 14, 2002, this
13 particular truck got singled out by the customs service
14 because it had a cargo that basically from customs
15 experience is commonly used to conceal narcotics.

16 It had wooden furniture in it. And one thing
17 about wooden furniture is, depending on what the item,
18 there's a lot of opportunity to put furniture, to have
19 compartments inside of them, depending on how it's
20 constructed. And because of that, customs is particularly
21 interested in those shipments where things can be hidden
22 inside different things, places where there could be hidden
23 compartments. They've got some high tech solutions to
24 that. In the past it was just eyeballing it, looking at it
25 or letting dogs sniff around trying to sniff out the

1 narcotics, just basically, human effort. Which you can
2 imagine the thousands and thousands of tractor trailers
3 coming across the border, they don't have enough people --
4 we couldn't pay enough people to physically inspect every
5 item that comes across the border.

6 So just like down at the doctors' office,
7 they've got a gigantic x-ray machine and you're going to
8 see the x-ray. The State's going to put it in evidence in
9 this case from this x-ray machine that's so big that they
10 can drive an entire tractor trailer truck into this thing
11 and they can shoot from the side and just like when you go
12 down and get an x-ray at the doctors' office where it shows
13 your bones all inside, you can see the engine block, the
14 muffler, you can see things inside the cab of the truck.
15 It's transparent.

16 But certain things are going to block it out.
17 But when they x-rayed this particular tractor trailer it
18 just leaps out. Inside of this wooden furniture that you
19 can see all of the outlines of this x-ray, are all of those
20 blocks in these compartments inside this furniture. It
21 just jumps out like that. And for a trained customs agent,
22 they know what this is concealing and that's going to call
23 for additional inspection.

24 Ladies and gentlemen, you're going to learn in
25 this case what was inside these hidden compartments was 905

1 pounds of marijuana. I mean compressed down and vacuum
2 sealed, just like Maxwell House coffee, just hard as a
3 brick. This leafy green marijuana compressed down and
4 wrapped and stacked up in the tops of these fake wood
5 chimneys. And you're going to see one of them. It's going
6 to be in the evidence in this case. The State is going to
7 be -- it's going to be referred to as furniture, but that's
8 going to be loose because this is nothing but a -- you can
9 look at the woodwork and the quality of this material and
10 it's a shell, is what the State's going to present into
11 evidence in this case.

12 This stuff is just slapped together just to
13 create some kind of compartment in an attempt to smuggle
14 this marijuana across the border. It's going to be
15 obvious. After they got the bills of lading and started
16 taking a look at everything, of all the places this tractor
17 trailer truck load of this fake furniture and this
18 marijuana is destined for right here in Edgefield County,
19 Trenton, South Carolina. What would be the Mexican store
20 up in Trenton, the Tienda DeLeon which means, I think
21 Tienda means store.

22 You're going to probably hear a lot of people
23 in this case who's Spanish is not too sharp. The Tienda
24 DeLeon, which is owned and run by Mr. Fredy DeLeon, that's
25 sitting right here in the striped shirt. The Mexican

1 grocery store. The bill of lading has got like 216 Breezy
2 Oaks. You're going to see that bill of lading in this
3 case, 216 Breezy Oaks is actually his home. That set the
4 wheels to turning with the United States Customs Service
5 because obviously they have an interest in stopping the
6 flow of illegal narcotics coming into the United States.

7 But they have a further interest in finding out
8 who it is that's trafficking or attempting to traffic
9 illegal narcotics into the United States. And because of
10 that, oftentimes when they intercept a shipment like this,
11 you'll learn they don't do anything. They don't do
12 anything to let anybody know or tip anybody off that they
13 have discovered it. They conduct their x-ray or particular
14 tests and make whatever tests they need to do to make it
15 purposeful. And this is, they follow it to its intended
16 destination, and to catch the traffickers. And that's
17 exactly what they did in this case.

18 Once it came across the border they began to
19 put together a plan and the United States Customs Service
20 got a man in the truck. And you'll learn, the trucking
21 company in this case cooperated with the United States
22 Customs Service and they actually provided the driver. The
23 driver that would have initially -- or the company that
24 would have initially brought this from the Mexican
- 25 border -- because once it dropped in that holding area

1 there's a delay here, it's picked up by a tractor trailer
2 from the United States once it's cleared customs and it's
3 taken to it's intended destination. This driver for this
4 trucking company, both the company and the driver
5 cooperated and agreed, We'll assist the customs service in
6 his investigation in an attempt to deliver these things
7 into the United States.

8 So they provided the driver, they provided the
9 tractor to pull the trailer. And they started out with
10 customs agents in tow to Trenton, South Carolina. But
11 before they did that, this particular agent in this case,
12 Patrick Mize, who's stationed down there in Laredo. He's
13 going to come in here and he's going to testify. He
14 actually followed along with the dope, the marijuana that
15 was in the trailer in the furniture. He looked at it and
16 saw what all was inside the trailer and they sealed that up
17 with a customs seal, a tamper-resistant seal on the
18 trailer. He sealed that up right at the border.

19 Then they followed that tractor trailer truck
20 all the way up. They stopped in Slidell, Louisiana and
21 then up here in Saluda where they stopped. When they got
22 there, they called in the local customs service and they
23 called in the sheriff's department, the Aiken County
24 Sheriff's Department and they got all the local law
25 enforcement officers that know the lay of the land and

1 knows Edgefield County and knows the roads and different
2 places here in Edgefield County to assist and help them.

3 Agent Mize comes up with a whole group of
4 agents. But the truck driver, he gets in the truck over
5 here in Saluda, South Carolina on May 18, 2002, and they're
6 going to carryout and make this delivery to Mr. DeLeon
7 here. They're going to take him the marijuana. You'll
8 find out they don't end up at his residence at 216 Breezy
9 Oaks, but they go to the Mexican store, Mr. DeLeon's store.
10 Both Agent Mize and the driver show up there.

11 But in the interim, SLED, local law enforcement
12 agents, a lot of agents were cooperating and participating
13 and working jointly together in this. They set up
14 different surveillance positions all around. All areas to
15 watch, down at Billy's Super Store, across up there in
16 Trenton. All different places. They spread out all around
17 the area there so that they can observe what's going on and
18 they can work and cooperate with each other in carrying out
19 this investigation.

20 You're going to hear from Agent Mize in this
21 case who gets up to the store and there's Fredy DeLeon at
22 the store. There's a box truck there, some kind of a white
23 box truck. And there's a green Thunderbird also there.
24 Apparently late model, a green Thunderbird. And there are
25 two individuals. The evidence in this case is going to

1 show that one of these guys by the name of Ramos lived in a
2 trailer up there. The evidence is going to show you one of
3 them. The other guy, the agent can give a description but
4 all of them say he's a Hispanic guy and his got a real bad
5 complexion. They get up there.

6 Agent Mize, he breaks that seal on that trailer
7 right there outside of the Tienda DeLeon at the store with
8 Fredy and the two guys there. And the guy with the bad
9 complexion gets in there and he selects out certain pieces
10 of that furniture. But marijuana has been sealed in these
11 wooden fireplaces. Like those little fireplaces with a top
12 and a mantle on it. And the marijuana is in the tops of
13 those mantles.

14 So they unloaded more furniture out of there
15 after they break the seal on the trailer, but only one of
16 those chimneys or the fireplaces gets off-loaded. Then Mr.
17 DeLeon signs for it. He signs for it, we're going to put
18 in the bill of lading where he signs his name. F-r-e-d-y
19 DeLeon. They take 13 pieces off of that truck. One of
20 those is a chimney. And then he opens up the store and
21 Agent Mize and Mr. DeLeon himself and the other individuals
22 there, they take that furniture and they put it in the back
23 of the Tienda DeLeon, the store there.

24 And then Mr. DeLeon locks that store back up.
25 After they do that, they still have the remainder of all

1 that load. Now the stuff is coming from Mexico to Fredy
2 DeLeon and he signs for it. But at this point in time, Mr.
3 DeLeon, he points them down to Billy's Super Store and they
4 pull down to Billy's Super Store. He doesn't speak a whole
5 lot of English. How much, it's up to you to decide. But
6 he's up there on the side of the truck where the driver is
7 and he's pointing for him to go down to Billy's and he
8 whips out this phone and he says my spouse and hands the
9 phone to the driver.

10 After then, Agent Mize and the truck driver
11 take the remainder of the goods and leave out of the Tienda
12 DeLeon in Trenton and then start heading back down 25 to
13 Billy's Super Store where they turn in Billy's Super Store
14 and they stop and they wait.

15 Now Agent Mize is in radio contact at least
16 some of the time because he's got a radio. He's holding it
17 in his lap. He's careful so that nobody sees him talking
18 because he's undercover. He's just acting like a helper,
19 as the guy who helps load and unload the truck, knew the
20 driver was doing the driving in this case agreed to
21 cooperate. They leave out of Tienda DeLeon to go down to
22 Billy's Super Store and they pull in there where the trucks
23 gather and stop out there. And they stop and they wait.
24 And after just a little bit that green Thunderbird shows
25 back up. But there's a Ryder truck along with it.

1 Now they're backed in at the edge of the
2 parking lot and the green Thunderbird and the Ryder truck
3 pull up together and they block in the tractor trailer
4 truck where the tractor trailer truck can't go anywhere.
5 And the guy in the van, he jumps out and comes around to
6 the cab of the truck and starts trying to get in the truck.
7 There's no way that Agent Mize, you're going to hear his
8 testimony in this case. He's not going to let that happen
9 because to let anybody else in the truck, he would have
10 lost control of the situation. He could no longer
11 communicate with any officers that are running the
12 surveillance and keeping an eye on things to ensure his
13 safety and the safety of the driver. They absolutely
14 cannot let him get in the cab of that truck.

15 So they shoo him away, not letting him in the
16 cab of the truck. They couldn't. They didn't want to lose
17 control. But they're blocked in, they can't leave. Three
18 guys in the Ryder truck and the evidence in the case is
19 going to show that the fellows in the Ryder truck, Alfredo
20 Arojona, Raphael Hernandez, Honoroio Guerrero, those are
21 the guys in the Ryder truck. They pull up and block that
22 tractor trailer truck in where it can't leave and one of
23 the other guys -- after the guy can't get in the cab of the
24 truck, he wants him to follow him somewhere else.
25 Certainly the customs agent and the local law enforcement

1 wanted to see where the remainder of this marijuana was
2 going.

3 And you're going to hear testimony, street
4 value of what we're talking about here in this case. 905
5 pounds of marijuana, you're going to hear from testimony in
6 this case, is about \$1.5 million worth of marijuana. Each
7 of these chimneys had between 40 and 50 pounds of marijuana
8 in it. And you're going to hear testimony of what it was
9 worth. What was dropped at Mr. DeLeon's place, the value
10 on that was \$140,000 to \$200,000 of marijuana just in the
11 one chimney off-loaded at Mr. DeLeon's place.

12 Once he can't get in the truck, they leave out
13 of Billy's Super Store, following the green Thunderbird and
14 the Ryder truck with these three individuals in the cab of
15 that Ryder truck. And they start going down 25. They go
16 on past to the Jackson peach stand. There's a road there
17 called Padgett Road that runs from Highway 25 over there
18 back to Vann Road and that's a dirt road.

19 They follow -- that tractor trailer follows the
20 green Thunderbird and the box truck, the Ryder truck that
21 these three guys are in down near that peach stand and turn
22 to the right there on Padgett Road. All the while Agent
23 Mize is trying to communicate with them and they were
24 watching from all their vantage points to see what's going
25 on and where they are headed. Well they turn down and get

1 on Padgett Road, which starts out in the sand but during
2 wet weather and the testimony in this case, there was a lot
3 of rain around that time, apparently Padgett Road turns
4 into one of them red mud, absolute sticky Edgefield County
5 mud holes when it starts raining like that.

6 As they were going down the road, the tractor
7 trailer truck and the Ryder truck just become absolutely
8 and hopelessly stuck. Mired up completely to the axles.
9 You'll learn from testimony in this case, that it takes
10 bulldozers to pull out that tractor trailer truck. But all
11 of the officers in this case are staying with them in an
12 attempt to follow the marijuana. They followed it at this
13 point all the way from the border and some of it was going
14 to Fredy DeLeon's but they want to see where all the rest
15 of it's going. So they're doing their best to follow
16 along.

17 Now the Thunderbird is in front, the box truck
18 is next and then the tractor trailer truck. The box truck
19 and the tractor trailer get mired down in that Edgefield
20 red mud and have to stop. They're not moving anymore now.
21 They can only seal off so many areas in Edgefield County
22 when they're conducting an operation like this and you're
23 going to learn in this case that the Thunderbird, although
24 it had difficulty getting down that road as well in an
25 automobile, with the guy with a bad complexion and Ramos,

1 gets out on that road and they're gone. Well about the
2 time the tractor trailer truck gets stuck, law enforcement
3 know that's as far as it's going and they take everybody
4 down. And the sheriff of Edgefield County, Sheriff Doby
5 and his deputies, Chris Wash and other individuals. They
6 were in that area out there to take everything down. The
7 three guys in the Ryder truck trying to block them in there
8 at Billy's. They take them down.

9 At about the same time back up there, officers
10 still have the Mexican grocery store, Mr. DeLeon's store
11 under surveillance, watching to see the comings and goings.
12 Now the officers back on Padgett Road and that box truck,
13 they descend on them. They catch one of the Spanish guys
14 in the truck and they catch two of them trying to get away,
15 walk away. And they get them and bring them back and they
16 get them all under arrest and they're charged with
17 trafficking marijuana.

18 When they go back in to the grocery store, in
19 the interim what has been going on at the grocery store
20 over here after the officers have kept it under
21 surveillance, Mr. DeLeon, he gets in that white truck back
22 there at the store after the marijuana is off-loaded in his
23 store and locked back up, he gets in his truck and he heads
24 down and he's being tailed by officers who follow him as he
25 goes back down 25 right back out there to Layman's Nursery

1 where Mr. Ramos lives. In the interim now, the green
2 Thunderbird has disappeared. They tail Mr. DeLeon right
3 back up there where Ramos works. He leaves there.
4 Officers still following him and he heads like he's heading
5 toward Aiken and then turns around and goes back to the
6 store.

7 But what Mr. DeLeon doesn't know in the
8 interim, that law enforcement have descended on the store.
9 Now, they don't go in with blue lights blazing and they
10 don't go in with 200 people. A few guys slip in in plain
11 clothes, undercover narcotics guys. Because at this point
12 in time the store is open and Mr. DeLeon's wife, Teresa
13 Gonzales is running the store. They see people coming in
14 and out of the store. They secure everything in the store.

15 In the interim Mr. DeLeon comes back up. They
16 break open a chimney inside, of the store; which is back in
17 the storage area where Mr. DeLeon was having to put it back
18 there and they break it open. And they find 20 bricks or
19 so of that compressed marijuana. Mr. DeLeon is arrested
20 for trafficking in marijuana.

21 You're going to hear in this case from Agent
22 Mize, you're going to hear from Agent Coby here from SLED
23 who worked this operation and you're going to hear from
24 Roger Lowe who participated in recovering documents in this
- 25 case, motel receipts that these three guys in the Ryder

1 truck had. You'll see documents -- you'll hear testimony
2 in this case linking Mr. DeLeon in this case to Mr. Ramos.
3 You'll hear a chemist come in and tell you they tested each
4 and every one of those hundreds and hundreds of bricks of
5 compressed marijuana and it is marijuana. You're going to
6 hear that this is trafficking.

7 The indictments in this case, Mr. Guerrero
8 Mr. Hernandez, and Mr. Arojona, the guys in the Ryder truck
9 are charged with trafficking marijuana, between 100 pounds
10 and less than 2,000 pounds of marijuana. You're going to
11 hear evidence in this case that Mr. Fredy DeLeon, is
12 charged with trafficking in marijuana, between 100 and
13 2,000 pounds.

14 Ladies and gentlemen, all that I ask that you
15 do is you pay close attention to the evidence in this case.
16 The 12 of you are going to hear the evidence and you're
17 going to bring in your life experiences in this case. I
18 ask that you apply your common sense to what's going on
19 here in this case, in this trafficking for more than a
20 million dollars worth of marijuana here in Edgefield County
21 and come back with a verdict that renders and speaks the
22 truth and does justice for everybody here in Edgefield
23 County. And if you'll do that you'll have done all that's
24 expected of you in this case. I appreciate your attention.
25 When I come back at the close of all this evidence, I'm

1 going to ask you for guilty verdicts for Mr. Fredy DeLeon
2 for trafficking marijuana, Mr. Mr. Alfredo Arojona for
3 trafficking in marijuana, for Mr. Raphael Hernandez for
4 trafficking marijuana and for Mr. Honorio Guerrero,
5 trafficking in marijuana.

6 I appreciate your attention.

7 THE COURT: Thank you, Mr. Maye.

8 Mr. Hawk?

9 MR. HAWK: Thank you, Your Honor.

10 THE COURT: You're recognized for your opening
11 statement.

12 MR. HAWK: Thank you, Your Honor. Ladies and
13 gentlemen, let me remind you what the judge has already
14 told you. There's been no evidence presented in this case,
15 just like Mr. Maye, what I present to you is not evidence.
16 What I present is what we expect to prove from the
17 witnesses who take the stand, based upon our view of the
18 evidence. He wasn't there and I wasn't. The witnesses
19 that were involved were there, and we want you to listen to
20 them carefully. I want you to understand that Fredy DeLeon
21 was born in Mexico on October 26, 1976. He was the son of
22 Thomas DeLeon and Teresa Tamayo. And he goes by the name
23 of Fredy. You'll see as a child he grew up, entire life he
24 worked in the fields. He immigrated here 8 years ago in
25 order to start his own business and he initially worked in

1 some of the nurseries and things like that to save some
2 money. He saved enough money and he opened a little
3 Mexican shop known as Tienda DeLeon. It's a little Mexican
4 Tienda where they sell Mexican foods and Mexican grains,
5 things like that that you can't normally find in the
6 grocery stores here. It's full of Mexican food.

7 He also, as part of that business, he wanted to
8 have ways to help Mexicans that work here as immigrant
9 workers to get money safely to their families back home
10 through the SEG Corporation, where they electronically
11 transferred the funds. Many times when they mail money to
12 Mexico, it would get stolen in the mail and things like
13 that. This guarantees that the money was electronically
14 transferred.

15 So he was able to make money out of this. So
16 he makes a couple hundred dollars a month doing that.
17 You'll see that at one time he had opened up another little
18 store in Trenton, which he eventually lost because of this
19 arrest, but now, the main -- he still works for this little
20 grocery store. You got to understand that a lot of these
21 workers do not have cars, they don't have trucks, they
22 don't have the ability to come to his shop. So what he
23 does is he goes out to these nurseries and all and takes
24 groceries. He delivers things to them so that they can
25 have groceries and things like that.

1 And this was the business that he was working
2 at at the time of this particular incident. Also, at the
3 time of this incident, he had married. He was married to
4 Teresa Gonzales. They were married July 12, 1999. Their
5 first child was born September 3rd, 2000, and they -- at
6 the time he was running his regular businesses, his two
7 shops, his delivery trucks, his transfer business to help
8 raise a couple hundred dollars. You'll see that during
9 Fredy DeLeon's entire life, he's never been arrested for
10 anything, never been in any trouble. He's spent all of his
11 life working, trying to make something for himself.

12 Now, you'll see that Fredy DeLeon does not live
13 in some mansion. He lives in a trailer, a single-wide
14 trailer with about three bedrooms. You'll see that at the
15 time of this particular incident, he did not do drugs. He
16 has never done drugs. That no drugs have ever been in his
17 house. He's never had large sums of cash in his house,
18 never had any drug paraphernalia in his house, never had
19 scales, packaging material or anything that you would
20 associate with somebody that's into drugs.

21 You'll see that even the investigators involved
22 in this case, the ones investigating this narcotics case
23 and cases with people involving drugs, the narcotics
24 investigators here have to tell you that when this incident
25 happened, they had never heard of Fredy DeLeon being

1 involved in drugs. They never heard of Fredy DeLeon using
2 drugs, selling drugs, anything within this community at
3 all. You'll see that Fredy DeLeon, at this time got these
4 goods from certain places and everything. But he had never
5 in his entire life, since he was a child, ever had any
6 contact with the people that shipped this furniture. He
7 had never ordered anything from them, called them, had
8 contact with them in any way, shape or form; never utilized
9 this carrier, never ordered anything from this company,
10 never been involved with them in any way, shape or form.

11 It's very important, and you'll see how he's
12 gotten entangled in this web that has been weaved by a drug
13 dealer. He met a man -- well, first of all, you need to
14 understand Fredy DeLeon and his reputation in this
15 community. He's always out there helping. He's always
16 done it and because of this I think that would -- well
17 you'll see he was approached. He was approached by a man
18 named Paco. Paco is a man that came to him with a business
19 proposition. Paco said, Listen, I can get some furniture
20 from Mexico, and get a real good deal on it. I can bring
21 it here and I can sell it and if I bring it here and I sell
22 it and I make a good bit of money and I will give you a
23 portion of what I make. Okay. Paco talks to him two or
24 three times about the business proposition. Paco says he's
25 got one problem. He says that the business that he wants

1 the furniture from won't sell it to him, won't give him a
2 shipment of furniture unless it is shipped to a business.
3 They won't allow it to be shipped to him personally. And
4 you all will be able to see after looking at all this is
5 going down and see that Paco did that. Paco said if you'll
6 just give your business information, I will have it sent
7 here.

8 "You'll store some of the furniture for me, I
9 will sell the furniture and we'll make some money," he
10 said. After the truck lines said, "I'm not interested," he
11 gives them the information. Paco calls this company and
12 you'll see it's obvious this problem because there's no
13 communication at all from Mr. DeLeon from any of his
14 phones, any of his stuff to these people. The only thing
15 there was a fax from him to his shop one time. But other
16 than that there's no, absolutely no connection with him to
17 any of those people.

18 You'll see that the people that sent it was
19 Sebastian Exportantes, Jamco international. They sent it
20 through the border, they had a carrier, they had a carrier
21 that had agreed to carry it called Border Carriers. They
22 had a driver to drive it when it was sitting in Laredo,
23 Texas and it came from the particular place in Mexico and
24 that the shipment was hooked up by a man named Louis, or
25 the driver was ordered to be picked up by a man name Louis

1 Flores Mexico. And you'll see that there had never been
2 any contact with Mr. DeLeon and any of them; ever, either
3 before or after.

4 Now, you'll see that when they shipped this
5 particular load and I think you'll -- you would imagine
6 it's loaded with marijuana. They put three security seals
7 on it and this is very important. There was three security
8 seals to make sure that they would know if anything is
9 tampered with it. Anyway they got these three seals on it
10 and that's how it's found at the border. They do run it
11 through. They are suspicious of it, they pull it aside
12 through the x-ray machine.

13 They see that it has marijuana in it. You'll
14 see that it's packed in this furniture and if you look at
15 it, it looks like furniture. It smells like furniture.
16 They have cedar chips in there. Cedar hides different
17 smells. It looks like furniture, smells like furniture,
18 pick it up, it feels like furniture and the only way that
19 anybody knows that it's anything other than furniture is
20 they have this humongous x-ray machine that they look at.

21 So when they get it they look at it and they
22 say, "Oh this is drugs or whatever," but then when they
23 reseal it, they don't reseal it with the three security
24 tapes that the drug dealers put on it. They put one seal
25 on it. Now, then what they also do is they get a driver

1 who does not speak Spanish. They go and get an agent who
2 does not speak Spanish and they get them to transport this
3 load here that stopped in Louisiana one night and then they
4 come up here.

5 You'll see that they questioned the driver of
6 the load from Mexico. And you'll see that when they
7 questioned him, what they found out is he says, I don't
8 know them. I didn't know what was in it. And they clearly
9 find out that they can't prove that he was anything but
10 used and they let him go. You'll see that they also
11 interviewed people with Border Carriers and find out that
12 they were also used and that they didn't know anything.
13 And they are release them.

14 You'll see that customs has people that speak
15 Spanish. You'll see that customs has video, you'll see
16 that customs has audio. You'll see that customs has all
17 kinds of surveillance type things to document what happens
18 with a shipment, a load.

19 They put these two guys in here that neither
20 one of them speak Spanish. They did not give them any
21 audio, they did not wire them, they did not set up any
22 video equipment. You'll see that during the delivery that
23 there were several conversations or attempts at
24 conversations with him but they couldn't understand one
25 another. And since no notes were made, no recordings were

1 made, we don't know who was it was or what was said or what
2 was meant by the conversations that occurred. You'll see
3 that they arrived there the day of the incident and when I
4 say the incident, I'm talking about the day that everyone
5 was arrested, the day they attempted this delivery.

6 The day that they had picked was just a
7 nightmare. It was raining all day long. At times,
8 Roosevelt Young will tell you when he was sitting in a
9 little area here, he said I couldn't see from here to the
10 wall. It was raining so hard that day. They get teams of
11 officers. They have customs agents, they have local
12 agents, they have DEA and they spread them all out in this
13 area. They don't use video on them, anything to document
14 what's going on.

15 You see they get a call from Paco saying that
16 the load is going to come or whatever and he's sending a
17 couple of guys out to them. Paco doesn't show up. You see
18 he didn't want to be anywhere near it. He sends a guy
19 named Ramos. They've identified him and they know the guy.
20 You'll see one of the first things they do is go to the
21 rear of the truck where they have one seal instead of the
22 three. You'll see that Mr. DeLeon didn't pick any pieces
23 of furniture to be loaded or unloaded, you'll see that
24 these -- one of the guys gets up in the truck, he picks
25 every piece.

1 Mr. DeLeon, knowing that this particular
2 furniture, not knowing it's marijuana, he's got a little
3 store he's running, you can't put hardly anything in there.
4 Matter of fact, they had to sit it down on the curb in the
5 rain for a little while. And then when you go into his
6 room, he's still got stuff in there. That's how concerned
7 he is about this furniture. And then they figure out
8 there's no way they can get just anything in there. They
9 unload 13 pieces that's picked by this other man, some of
10 which had no marijuana at all in them. You'll see that
11 this load, when it got there that unless you have an x-ray
12 machine, there's no way you could know that the marijuana
13 was in it.

14 Mr. DeLeon did help carry some of this stuff
15 inside his store. He did. Then once they realize there's
16 not enough room they say let's load it back up. What
17 you've got unloaded, there's no way it's going to fit here.
18 Ya'll load it back up and then you'll see that the driver
19 and the agent, who's the customs agent says no, leave this
20 here. We'll go unload this other stuff. Just leave it
21 here. When Mr. DeLeon is trying to say load it back up, we
22 ain't got enough room.

23 So anyway it sits there and the two guys that
24 are unloading, you'll see that nobody ever got their names.
25 Nobody got their address. Nobody got any ID information.

1 They were not residents. They were picking the furniture
2 to unload and they just sort of eased on out of there --
3 after they saw that one seal. See this -- then this
4 Thunderbird shows up, okay. This Thunderbird -- and starts
5 directing everything. And you'll see that he starts, two
6 people, two unidentified people, one is identified, one is
7 not identified in that green Thunderbird. One is that guy
8 and you'll see a sketch of him and we have information on
9 him about where he used to live and all that sort of thing.

10 You'll see that they come and they start
11 directing everything, you'll see that Mr. DeLeon doesn't
12 even so much as go and look at this furniture. Once it's
13 in he says, hey I've got my job to do, I've got groceries
14 to deliver. I've got to go take some orders. He gets in
15 his white step van like he always does and goes out to the
16 same places he always does to deliver groceries. And
17 you'll see exactly no evidence that any of these guys were
18 ever at the Tienda.

19 It's raining so hard that it's pretty much
20 useless going out there and he turned to call his wife to
21 let her know that he's not going to go. No one's answering
22 the phone in his shop. And he's wondering what's going on
23 here. I'm supposed to be open and nobody's answering the
24 phone. So he heads back to his business. He was so
25 concerned about these drugs, he's out selling his

1 groceries. You see awaiting Mr. DeLeon, what's going on
2 this Thunderbird is pulled up and basically directing what
3 everybody should do, what to do with this load of
4 marijuana. You have the passenger and the the bird is the
5 one that's directing everything and he is the one that they
6 describe with the pocky face or whatever is wrong with his
7 face, that nobody got his name, got his address any ID
8 information, didn't get a picture of him, he's never been
9 arrested he was running the whole show out there and making
10 all the calls about what to do.

11 You'll see that the -- there was a box truck
12 that showed up out there that Mr. DeLeon also had. You'll
13 see that the driver and the passenger in the T-Bird have no
14 connection whatsoever. You'll see that the three people in
15 the box truck were hired from North Carolina. They're not
16 even from around here, they were hired to come down and
17 move some furniture. You'll see that the T-Bird was
18 leading down this road, they get stuck with the tractor
19 trailer and the T-Bird just leaves.

20 All this marijuana that they've got the step
21 van for and they leave. The three security seals are not
22 on the back of that truck. You'll see that they find the
23 T-Bird which was owned by this other character completely
24 abandoned. He just leaves his car. But I don't think
25 there's any dispute amongst the officers. He knew the

1 deal. The guy that was with him, haven't seen hide nor
2 hair of him. I don't think there will be any dispute at
3 all as to that he knew, what was up. And possibly these
4 other three. You'll see that they did a nationwide record
5 search on Fredy DeLeon just to try to find something and
6 came back negative. You'll see that this man worked at
7 Laymans from time to time, and that he's no longer there.
8 His house is empty. And he's gone. He had a couple of
9 friends named Fredy that worked with him.

10 You'll see that when he returns in the pouring
11 rain-- team one goes up to him and according to
12 investigators they had to tell him what's in his storage
13 room. They said, "You know what you have in your storage
14 room?"

15 He said "Yeah, some furniture."

16 And then they said, "No, no, you have something
17 else."

18 He doesn't believe it. He says, "No, the only
19 thing I have is some furniture."

20 They said "No, no, no." And you've got to
21 understand when they come there, they don't call Mr. DeLeon
22 and say listen, we're getting ready to come search over
23 there, okay? He didn't have any warning about anybody
24 coming. When they search and they find absolutely no drug
25 paraphernalia. They don't find any cash to pay for any of

1 this, they don't find any packaging material to repackage
2 it and distribute it. They don't find any scales to weigh
3 it up and repackage it and distribute it. They don't find
4 anything.

5 And I know this case they have not even done so
6 much as a search warrant on this house or his car or his
7 work and you'll see Mr. Young says, Investigator Young
8 says, "Well, I didn't think he was a dealer."

9 You'll see he's cooperated, he's told them
10 everything he knows about it. He even gave them a video
11 tape from his store that has recordings of this Paco fellow
12 in his store so they would have a picture of him. And up
13 until yesterday, they didn't even know they had it. And
14 they just recently found it and got it out again. I guess
15 we'll look at it now.

16 His only crime that Fredy has committed is the
17 crime of he's been trying to build a better life for him
18 and his family and he got sucked in by a drug deal. And,
19 oh, then you'll see that everybody acknowledges that
20 there's no way, there's no proof he had any knowledge of
21 what was in the mantle and you'll see the lead investigator
22 didn't even open it.

23 THE COURT: Thank you, Mr. Hawk. Which of you
24 wish to be first?

25 MR. SUSSMAN: May it please the court?

1 THE COURT: Mr. Sussman, you're recognized for
2 your opening statement.

3 MR. SUSSMAN: Thank you, Your Honor. Ladies
4 and gentlemen of the jury, thank you for your attention I
5 will try not to test it any further. My name is William
6 Sussman. I'm an attorney practicing in Augusta and also
7 Carolina, and I represent two of the gentlemen who are here
8 before you today. Raphel Hernandez and Alfredo Arojona.
9 Now, Raphel is -- works in Charlotte, was working in
10 Charlotte. The evidence will show you that he or Honorio
11 who is the gentlemen who is seated in the middle and is
12 represented by David Miller, who will speak next and the
13 sum total of these gentlemen's involvement in this whole
14 case is that and I'm going to do this to make it easier
15 because the names, I even have a hard time with the names.

16 These two guys that I represent did not even
17 know each other. One was in Georgia and one was in
18 Charlotte working. The day before this -- two days before
19 this arrest came up Honorio asked Alfredo to come up from
20 Georgia because they wanted -- they had a job to do with
21 some furniture and he also asked Raphel, who he worked with
22 to help.

23 It was raining as everybody's going to tell you
24 and since they worked construction, there was no work for
25 them to do, so this was another way to pick up some money.

1 They drove down here to Edgefield in a box truck.

2 Everybody's going to talk about a Ryder box truck. My two
3 gentlemen were riding with each other in the box truck and
4 they came down here and eventually were going to meet up
5 with some folks who helped unload some furniture off of a
6 tractor trailer. Interestingly enough, I'm not here to
7 tell you what the evidence will show about my clients, but
8 basically what the evidence won't show.

9 The evidence will not show any connection at
10 all between Fredy DeLeon and my two gentlemen. They don't
11 know each other. The evidence will not show that these
12 gentlemen had any contact or connection with Edgefield,
13 South Carolina whatsoever. The evidence will not show that
14 my two clients ever got out of this truck before they were
15 arrested. The evidence will not show that they were
16 anywhere near this store where some of this furniture was
17 off-loaded. The evidence will not show that they had any
18 communication with anyone about anything. Basically what
19 happened is, they were riding with Honorio in this Ryder
20 rental truck and they got up as everyone said at Billy's
21 Super Store.

22 That's the first time that any of the agents
23 ever saw my two guys and then just following this car and
24 it got stuck in a field. A couple of times the undercover
25 agent got out of the trailer to help their truck get

1 unstuck and he got back in because, see there was this car
2 in front and when our guys were following this lead car and
3 then the tractor trailer was behind our guys and because
4 the tractor trailer, the 18 wheeler and our guys had the
5 heavier vehicles they kept getting stuck in this roar that
6 was all muddy. And see they were helping each other get
7 unstuck.

8 Well finally they got so stuck they couldn't
9 move and then Honorio and Raphel got out and started
10 walking down the road to get some help and apparently
11 that's when the agent decided that the thing had just got
12 as far as it could go and they arrested everybody. That's
13 the evidence against Alfredo and Raphel. And I will ask
14 you at the close of the case after the judge instructs you
15 in the law to find my two gentlemen not guilty. Thank you.

16 THE COURT: Thank you, Mr. Sussman.

17 Mr. Miller, you're recognized for your opening
18 statement.

19 MR. MILLER: May it please the court, Your
20 Honor.

21 THE COURT: Yes, sir.

22 MR. MILLER: Ladies and gentlemen, good
23 morning, my name is David Miller and I represent Honorio
24 Guerrero. And before I get too far along in this, you've
25 heard a lot about this case and I have a confession to

1 make. This is the first general sessions case that I ever
2 brought to trial. Mr. Guerrero sits over there and doesn't
3 even understand English. Everything that's being said has
4 to be translated for him. It's a difficult situation for
5 him and a difficult time. I don't tell you that to invoke
6 sympathy or pity on anybody but only ask you this, this is
7 a complex case with multiple defendants. Inevitably I'm
8 going to make mistakes along the way. And when I do, I ask
9 you, hold those mistakes against me, not against my client.

10 Having said that and with the knowledge that
11 you have to watch me fumble around up here, I will tell you
12 there is a silver lining, and that's solicitor Maye. He is
13 an outstanding solicitor, he's a seasoned trial attorney.
14 No offense but he's been trying cases since before I was in
15 law school. He is a solicitor for this area, for Edgefield
16 County, McCormick County, Saluda County. He is one of
17 Donny Myers elected solicitor's chief deputies. He tries
18 murders, he tries drug dealers, when someone needs to be
19 put behind bars Ervin Maye is certainly one of the most
20 capable in the state to do so.

21 Unfortunately in this case, he is also quite
22 capable when an example needs to be made of taking facts
23 that occurred in certain situations and making someone who
24 is in fact innocent appear to be guilty. And I don't want
25 to let that happen. I don't want ---

1 MR. MAYE: Your Honor, I object to that. I
2 object to any information that there was any misconduct on
3 my part. I ask that be stricken from the record and I ask
4 that he apologize to me.

5 MR. MILLER: And certainly, I do apologize to
6 Mr. Maye. I'm not saying anything is improper about what
7 he's doing. I've already made my first mistake.

8 I want you to understand that there is a burden
9 and that if there was a question, or excuse me, if there
10 was not a question about whether or not the State can meet
11 its burden in all likelihood, we wouldn't be here today.
12 There is a question. The State has to prove beyond a
13 reasonable doubt that not just Honorio, but the two
14 gentlemen sitting on either side of him knew something
15 about what was in this truck. They have to prove that they
16 knew there was marijuana in the truck.

17 What you're not going to hear any testimony
18 about is the truck was never opened in their presence until
19 they were under arrest. They never communicated with
20 anyone in the truck. They were pawns in this game, exactly
21 the way that Mr. Hawk had said there is a game. Yes,
22 Honorio did ask Mr. Sussman's clients go with him from
23 Charlotte to Edgefield. He thought he was helping somebody
24 out. He thought he was needed to move furniture. He
25 thought he would help them. So he took these two guys with

1 him. That's what happened. They came do down here
2 following someone because as the -- as you've already heard
3 they weren't sure where they were going to follow somebody
4 to wherever the location was they were supposed to move the
5 furniture and got stuck.

6 So they get out of the truck and the gentlemen
7 driving the 18 wheeler who I don't recall right now whether
8 it was the customs agent or the Canadian driver of the 18
9 wheeler, but one of them helped get the van unstuck. The
10 green car is gone. Now they don't know where they're
11 going. Well maybe the road only goes to one place. So
12 they drive a little bit further, trying to figure out where
13 that green car went. As it turns out, that's what
14 everybody's trying to figure out. Where did that green car
15 go.

16 So they go down the road a little bit further
17 and they get stuck again, but this time, the 18 wheeler
18 gets stuck again. Well everybody is stuck. So Honorio and
19 one of his friends start walking down the road to try to
20 find help. The solicitor has characterized it as when the
21 police came they were hot footing it down the road, but
22 they left one of their friends in the truck? We'll hear
23 all the evidence and at the close of the evidence we'll
24 make our arguments. But I can tell you this and this is
25 something that I'm relatively certain about.

1 There are two people that were absolutely, in
2 my mind, guilty of trafficking in marijuana. They are the
3 people that are in that green car. You're not going to
4 hear testimony from them. You're not going to see the
5 presentation of any evidence of what they said and they're
6 not going to appear in this courtroom and it's not because
7 they're locked away somewhere and the solicitor doesn't
8 want to be bothered with them, because he'd be happy if he
9 could because they don't know where they are. They're
10 gone.

11 The only link between the marijuana in that 18
12 wheeler, my client and for that matter any of the people
13 sitting at that table, is that green Thunderbird. That is
14 the only link between any of them and it's not here. The
15 occupants of that vehicle aren't here. If they were here,
16 they may walk through the door and say none of those people
17 had anything to do with it. They didn't know what was
18 going on. They might not. We don't know what their
19 testimony is because their testimony is not going to be
20 presented in evidence, in written statements from them, no.

21 The conversations that did go on or not go on
22 at the store as they pointed out, none of that was
23 recorded. There's no video tape, you didn't look and see
24 what the people were doing at the time that it was going
25 on. So it's up to the store some other way. Mr. Maye did

1 say in his opening argument that he was going to ask you at
2 the close of this case to do justice for the people in
3 Edgefield County. Justice does not mean finding everybody
4 guilty that the State puts up in front of you. 904 pounds
5 of marijuana called for someone so go to jail. There's no
6 question. However, what you're going to be called upon to
7 answer is does 905 pounds of marijuana call for everybody
8 who's even tangentially associated with the vehicle
9 containing it to go to jail. I submit to you it does not.

10 Doing justice at the end of this case for the
11 people of Edgefield County is having the courage to say
12 they're not guilty because they didn't have anything to do
13 with it. They're not guilty because the State was simply
14 unable to prove beyond a reasonable doubt that they knew
15 what was in that truck. Thank you

16 THE COURT: Thank you, Mr. Miller. All right.
17 Ladies and gentlemen, we'll take a 10 minute recess and
18 then you'll hear the first witness. When you go back to
19 your jury room don't discuss the case. I will get you back
20 out here in 10 minutes.

21 (WHEREUPON the jury left the courtroom at 11:24
22 a.m.)

23 THE COURT: Translate this for me, please. The
24 trial has begun. The jury has been sworn. This trial will
25 continue whether they are here or not. I know three are in

1 jail and one is on bond, but they have to be in the
2 courtroom when they are supposed to be in the courtroom.
3 If they are not here, the case is going on regardless.

4 We're at ease for 10 minutes.

5 (WHEREUPON a short recess was observed.)

6 THE COURT: The State ready?

7 MR. MAYE: Yes, Your Honor, State's ready.

8 THE COURT: Defense?

9 MR. HAWK: Yes, Your Honor.

10 THE COURT: Bring the jury.

11 (WHEREUPON the jury entered the courtroom at
12 11:39 a.m.)

13 THE COURT: Call your first witness, Solicitor.

14 MR. MAYE: The State calls Patrick Mize with
15 the United States Customs Service.

16 THE COURT: Come up please and be sworn.

17 THEREUPON,

18 PATRICK MIZE,

19 after being duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 By Mr. Maye:

22 Q Agent Mize, if you would, introduce yourself to the
23 ladies and gentlemen of the jury. Tell them a little
24 bit about your background and where you're from and how
25 you ended up with customs.

1 A Brian Patrick Mize, I'm currently in the Department of
2 Homeland Security, US Immigration and Customs
3 Enforcement, which was, prior to 9/11, part of the US
4 Customs Service and the Department of the Treasury and,
5 therefore, a part of Homeland Security. Prior to that
6 I was a police officer with St. Louis Metropolitan
7 Police Department for 6 years.

8 Q Okay. And how long have you been a customs agent?

9 A A little over 3 years.

10 Q A little over 3 years. Agent Mize, where were you
11 assigned back in May of 2002, and where are you
12 currently assigned? What's your duty station?

13 A Laredo, Texas.

14 Q Tell the ladies and gentlemen of the jury about where
15 Laredo is. What geographically is it's position in the
16 United States?

17 A It's a border city directly due south of San Antonio
18 about 2 hours, 540 miles due south of San Antonio,
19 Texas.

20 Q Does the town itself, does it go right up to the border
21 or how is it situated?

22 A Yes, sir. It's right up to the border on one side of
23 the river and Laredo, Texas and on the other side of
24 the river is now Nuevo Laredo, Mexico.

25 Q Okay. What's the river that runs along there?

1 A The Rio Grand.

2 Q All right. Is that, in fact, the border between the
3 United States and Mexico, the Rio Grand?

4 A Yes, sir, it is.

5 Q What kind of duties and responsibilities do you have
6 working for the United States Customs Agency. What are
7 your area of responsibility? Your agency's and yours
8 personally?

9 A Criminal investigations. Currently I'm assigned to the
10 national security group, which includes narcotics,
11 anti-terrorism, strategic investigations, which is
12 weapons technology, stuff like that, weapons and
13 systems going out of the country and things like that.

14 Q What does customs in fact do? What are they
15 responsible for? The United States customs service or
16 what they responsible for ---

17 A At that time, was any merchandise that either comes
18 into the country or goes out of the country and that
19 pretty much includes anything, any type of property,
20 any items, any merchandise falls into the jurisdiction
21 of the United States Customs Service.

22 Q Agent Mize, tell the ladies and gentlemen of the jury
23 how you began your involvement in this case that led to
24 Edgefield County?

25 A On May 14, I was contacted by another special agent in

1 my office. She indicated to me that that day a trailer
2 had come across the border that contained marijuana. I
3 was contacted because there was a chance that at that
4 time that we were going to do a controlled delivery to
5 South Carolina and she just wanted to give me heads up
6 so I could get my bags packed and be ready to go.

7 Q Did you in fact do that?

8 A I did.

9 Q Okay. What did you do in preparation and what happened
10 there as -- describe for the ladies and gentlemen of
11 the jury what kind of volumes go back and forth?
12 What's going on there at the border? How that works?

13 A There are several bridges in Laredo, Texas. This
14 particular bridge is called the World Trade Bridge. It
15 is open only to commercial vehicle traffic. That
16 bridge can -- coming into the country can have anywhere
17 from roughly 4,000 to 7,000 tractor trailers a day come
18 across that border. It's been told me it's the biggest
19 international port -- I'm sorry, the biggest commercial
20 port, land port in the country.

21 Q Okay. How are the tractor trailers and all that come
22 across -- how does it work if you're here in Trenton,
23 South Carolina or Edgefield County, if you want to get
24 a tractor trailer truck load of stuff over here, how
25 would it work? What would we do?

1 A A legitimate business? I'm sorry.

2 Q Well, tell us if you were wanting to bring a tractor
3 trailer load of goods up here what would happen?

4 A Okay. A person or business somewhere here would
5 contact -- if they were looking for a supplier in
6 Mexico, would place an order. That order would then be
7 put together into a container truck and that would be
8 taken from there to the border on the Mexican side. It
9 would be dropped off on a lot and abeyance would be
10 arranged through customs brokers or general shipping
11 companies to bring that tractor from a Mexican lot to
12 an American lot on our side. Their driver, or they're
13 called drayage drivers and their sole job is to drive a
14 tractor trailer, to pick up a trailer in Mexico, they
15 drive it across the border and drop it off at a yard or
16 a shipping company here in the United States.

17 Q How long how long is that trip for that drayage driver?

18 A It depends on the traffic as far as time wise but mile
19 wise it can be, without traffic it can be a trip as
20 short as 15, 20 minutes or up to 30 minutes to an hour,
21 just depending being on what yard.

22 Q Is this a short haul over to the yard?

23 A It's not quite that short. It would be like driving
24 things from one part of the city to another part of the
25 city. Not long haul by any means, but not just moving

1 it from parking space to parking space.

2 Q How is it determined that that particular tractor
3 trailer truck had marijuana in it?

4 A A pre filed paperwork -- whenever someone brings
5 something into the country, they typically file a pre
6 trip which basically lets the government know that
7 they're bringing this merchandise into the country on
8 such and such a date at such and such a time. There
9 are a group of inspectors at that port that look
10 through that paperwork and they are members of what's
11 called the Data Analysis Unit and what they do is they
12 look at that paperwork and they basically try and pick
13 out the ones that are most likely to involve something
14 illegal.

15 And that particular shipment was a new consignee
16 which mean a new name on it that they had never
17 encountered before. It was a low entry value plus it
18 was wooden furniture, which is very common for us to
19 have contraband within wooden furniture.

20 Q So based on that, what was done with that trailer?

21 A It was selected for an intensive examination which
22 means it was selected ahead of time before it got into
23 the country. Once it came in that initial customs
24 inspector at the entry point they sent it for intensive
25 inspection.

1 Q Let me show you what's been marked State's Exhibit 3
2 for identification. Can you identify that?

3 A This is an x-ray that was taken of the tractor trailer.

4 Q Is that the same tractor trailer that was delivered
5 here in Edgefield County or the truck body itself? The
6 van body?

7 A The truck itself, no.

8 Q The trailer?

9 A The trailer, yes.

10 Q That's the same one?

11 A Yes, it is.

12 Q Does that fairly and accurately represent the view of
13 the contents and that trailer as made by that x-ray
14 machine there?

15 A Yes, it does.

16 MR. MAYE: I move to admit this into evidence,
17 Your Honor.

18 THE COURT: Any objection?

19 MR. HAWK: No objection on behalf of DeLeon.

20 MR. SUSSMAN: No objection.

21 MR. MILLER: No objection.

22 THE COURT: Mark it into evidence, please
23 ma'am.

24 By Mr. Maye:

25 Q Agent Mize, if you would, come down here, although

1 people probably know how an x-ray works. Tell them how
2 it works when it's involving a trailer and what that
3 showed?

4 A You can see these two top pictures are actually
5 pictures of the trailer itself when it's parked and
6 it's showing that it's under the hood. This is
7 actually an x-ray of the tractor itself. What there is
8 is there's a moving x-ray that runs down the entire
9 length and as it's going, the x-ray is pulled up inside
10 of the control station and this is an x-ray of the
11 truck itself.

12 Q Point out to the ladies and gentlemen what that showed,
13 the red flag?

14 A The red flag that you can see here, there are dark
15 patches which we call anomalies. If you look real
16 close you can see that they're extremely segregated.
17 We didn't know at the time but this would be a definite
18 area of interest to us as far as what we would be
19 looking for.

20 Q Agent Mize, you're getting to the anomalies. Tell us
21 the difference?

22 A I mean it's just plain for us to see that there was
23 something strange about this truck.

24 Q What does that trigger? What does that trigger once
25 ya'll get some showing, those dark spots, places

1 inside?

2 A That trailer will be inspected further.

3 Q Was that trailer inspected further?

4 A Yes, it was.

5 Q What did they find?

6 A They opened it up and found wooden furniture within
7 that and they probed one of the pieces of furniture and
8 found a green leafy substance within that which was
9 later field tested and found to be -- to test positive
10 for marijuana.

11 Q Did anybody else break into any of the other containers
12 or were they altered in any way?

13 A No, they were not.

14 Q Okay. As you look at that photograph there, the x-ray,
15 did you have a chance to look inside that truck
16 yourself there at the border?

17 A Yes, I did.

18 Q Are you capable of seeing outlines of the furniture and
19 things in the trailer?

20 A Yes, sir.

21 Q Did you look at the contents of the trailer prior to
22 you sealing it up or it being sealed up?

23 A Yes, sir.

24 Q Were these things in the same condition when it was
25 sealed up in your presence as they were when the x-ray

1 was taken?

2 A To the best of my knowledge and from what I saw, yes,
3 sir.

4 Q Okay. Did you physically look inside the trailer prior
5 to it being sealed up?

6 A Yes, sir, I did.

7 Q Did you observe any evidence that anything had been
8 opened or tampered with in the furniture or did it all
9 appear to be in the same condition?

10 A In the same condition.

11 Q Okay. Once the trailer was x-rayed, what happened
12 next?

13 A It was taken over to the set dock, which is a set that
14 stands for contraband enforcement team, it's a group of
15 inspectors that conduct further inspections such as
16 this.

17 Q Okay. And after these tests were run and that sort of
18 thing, what was the next step that customs took?

19 A That's when my side of the house gets involved as far
20 as the investigation. And at that point -- and the
21 reason why they don't contest, it was still
22 interference with the cargo itself, once they go in
23 there and find something, they stop right there. The
24 idea is that we keep everything as pristine as possible
25 for us to execute what we call a controlled delivery,

1 which is taking it to its destination.

2 Q Well ya'll had marijuana right there, why didn't you
3 destroy it right there on the spot or turn it around
4 and send it back where it came from?

5 A The goal of all of our investigations is to go after as
6 many okay conspirators as we can. And in this case, we
7 were able to bring it to South Carolina and attempt to
8 affect arrests.

9 Q Okay. Okay. What did you do after ya'll assembled
10 that trailer. You got a field test done, you
11 established it was marijuana. What did ya'll do to
12 prepare for to come here?

13 A Well the legitimate trucking -- well the trucking
14 company was contacted where this trailer was supposed
15 to go. They were legitimate, they were a nationwide
16 company. We asked for their assistance in taking this
17 to South Carolina.

18 Q Did ya'll charge the driver that brought it over on the
19 short haul from Mexico?

20 A No, we did not.

21 Q Why did ya'll not charge him? He brought marijuana
22 over?

23 A He was interviewed and after reviewing all the
24 paperwork, after seeing the type of cargo and
25 everything and the seals were intact it was deemed that

1 he was not involved in the smuggling.

2 Q Okay. Was there any specific driver for this big
3 international trucking company that was supposed to
4 pick this up?

5 A No.

6 Q All right. What arrangements did ya'll make with the
7 trucking company? The US trucking company here?

8 A We requested that the US trucking company provide us
9 with a driver and a tractor to effect this controlled
10 delivery. We explained to them that we would be in the
11 care and custody of the shipment the entire time. It
12 was purely consensual. At the time they assigned us a
13 driver.

14 Q Let me ask you this. Prior to ya'll leaving, what is
15 the area considered to be at the border there where the
16 truck is held prior to coming into the United States?
17 What is the status of the that area?

18 A That is still considered a form of entry until you
19 leave the exit gates of -- I couldn't even tell you how
20 many acres this is. It's a very large complex with
21 secured yards as far as chain link fences and barbed
22 wire around them. That is all considered the port of
23 entry. It is not considered entering into the commerce
24 of the United States until it exits through our exit
25 gates.

1 Q Okay. Did you -- were you present when the off-loading
2 stuff up here in Edgefield County?

3 A Yes, I was.

4 Q Were you part of it?

5 A Yes, I was.

6 Q What, if anything, was done back there in that commerce
7 area at the border to ensure that nothing was tampered
8 with or anything else to assure the merchandise was in
9 the same condition as when it arrived here and what was
10 done? What steps were made?

11 A We placed a tamper-proof seal on the doors of the
12 trailer and that tamper-proof seal was not removed
13 until I removed it here.

14 Q Did you look at the trailer prior to it being sealed
15 up?

16 A Yes, I did.

17 Q Did you break the seal on it yourself?

18 A Yes, I did.

19 Q In Trenton, South Carolina?

20 A Yes, I did.

21 Q Any evidence it had been tampered with or changed at
22 all in any way?

23 A No, sir.

24 Q Okay. Once ya'll leave, the truck's sealed up, the
25 tamper seal is on, ya'll start out through the gates,

1 what happened, where do ya'll go?

2 A We basically just form a convoy and -- with myself and
3 six other agents, three vehicles including the -- I'm
4 sorry, plus the tractor. We then took it -- we drove
5 it as far as Slidell, Louisiana that night.

6 Q Let me ask you this, how did ya'll know where ya'll
7 were going?

8 A On the manifest ---

9 Q Let me ask you this, can you identify that document
10 that I've just handed you?

11 A Yes, sir.

12 Q What is that?

13 A This is a bill of lading from the ---

14 Q What's a bill of lading? How does that work?

15 A Basically, it's an instruction sheet to the carrier to
16 tell them what they're taking, where they're taking it
17 too and contact information for their destination.

18 Q Okay. Does it tell you where it's going to?

19 A Yes, it does.

20 Q Okay. Is that a fair and accurate representation of
21 the bill of lading for the tractor trailer truck that
22 came across the border there and was eventually
23 delivered here into Edgefield County? That trailer?

24 A Yes, it is.

25 MR. SUSSMAN: Judge, I'm going to object to

1 them testifying about this bill of lading until they can
2 lay a foundation as to whether or not this agent actually
3 produced it, had something to do with making it, and had
4 some involvement in its production. It would just be
5 speculation without the authenticity of the document.

6 THE COURT: You wish to be heard?

7 MR. MAYE: Yes, sir, Your Honor. I will ask
8 him is that the paperwork that came through with the
9 trailer?

10 By Mr. Maye:

11 A This is the paperwork that was provided to the trucking
12 company.

13 Q Was that taken straight from the trucking company?

14 A Yes, it was.

15 Q And taken into custody by the United States Customs
16 Service?

17 A Yes, it was.

18 Q Okay. Does it have on there -- is it basically
19 self-authenticated? Does it tell what it is on its
20 face?

21 A Yes, it does.

22 MR. HAWK: Your Honor, I ---

23 MR. MAYE: Your Honor, I could read all of it
24 into the record. I don't believe he wants me to do that in
25 front of the jury.

1 MR. SUSSMAN: Your Honor, if I may, I think a
2 lot of the agents knowledge apparently is hearsay from what
3 someone told him or what his understanding is and so we
4 would object regarding improper foundation of the document
5 and its contents therein.

6 THE COURT: May I see the document, please.

7 MR. HAWK: Your Honor, we join in the objection
8 made by Mr. Sussman on behalf of Mr. DeLeon as stated.

9 THE COURT: Anything else?

10 MR. MAYE: From the State in this regard?

11 THE COURT: Yes, sir.

12 By Mr. Maye:

13 Q Agent Mize, was that the document that was accepted and
14 signed by Fredy DeLeon here in Trenton, South Carolina.

15 A Yes, sir, it was.

16 Q Okay. Did you witness him sign that document? Is that
17 the original of the document that he signed and
18 accepted?

19 A Yes, sir, it is.

20 Q That's the bill of lading for that tractor?

21 A Yes, sir, it is.

22 Q Are all loads required to have a bill of lading before
23 they enter the United States?

24 A Yes, sir.

25 Q Is that a regular business record provided to the

1 United States Customs Service?

2 MR. HAWK: Your Honor, I'd object now. There's
3 no way he would know what this company's policies are with
4 regards to bill of lading. There's no way he would know
5 unless somebody's told him, which would be hearsay.

6 MR. MAYE: No, sir, Your Honor. The bill of
7 lading is required by the United States Customs Service.
8 It's a regularly reported business record. They've got to
9 have it before it comes into the United States. It's got
10 to be provided to customs, he's the custodian of that
11 official original document.

12 MR. HAWK: He doesn't know the policies of this
13 company as to whether they regularly keep these records,
14 regularly record them, regularly make the entries at or
15 near the time that they are entered into the document as a
16 business record foundation requirement.

17 THE COURT: Is there anything else?

18 MR. HAWK: No, Your Honor.

19 MR. MAYE: Nothing else, Your Honor.

20 THE COURT: Anything else, Mr. Sussman?

21 MR. SUSSMAN: I think they've all said it very
22 well, Judge.

23 THE COURT: Bear with me a second I don't
24 really think it's necessary to get to the other issue
25 because this witness has testified -- and again when I make

1 these rulings, I'm not commenting on the facts in any way
2 because I'm not the judge of the facts. This witness has
3 testified that this is a bill of lading that was signed for
4 on this particular sheet by one of the defendants in the
5 case. It's admissible.

6 By Mr. Maye:

7 Q Agent Mize, looking at that bill of lading as the
8 trailer came across the United States, came across the
9 border from Mexico to the United States, who was it
10 going to?

11 A It was going to the Tienda DeLeon, contact person,
12 Fredy DeLeon in Trenton, South Carolina.

13 Q What's the address?

14 A 216 Breezy Oaks, Trenton, South Carolina 29846.

15 Q Okay. Is there a phone number on there?

16 A Yes, sir, there is.

17 Q Okay. What's the phone number?

18 A 803-275-2017.

19 Q Okay. So who did ya'll attempt to make the controlled
20 deliver to?

21 A The Tienda DeLeon.

22 Q To whom?

23 A Fredy DeLeon.

24 Q Okay. All right. When you stopped testifying before
25 ya'll were headed out of Texas. What's the next thing

1 ya'll did, and where did ya'll go?

2 A We convoyed to Slidell, South Carolina, where we stayed
3 for the night.

4 Q Slidell, South Carolina?

5 A I'm sorry Slidell, Louisiana.

6 Q That's extending it own out. Once ya'll left --
7 where's Slidell?

8 A Slidell, I believe is about 20 or 30 miles north of New
9 Orleans.

10 Q How do you get to New Orleans from Slidell?

11 A You cross a very long bridge?

12 Q How long?

13 A About 24 miles. It's about 24 miles in distance. I
14 traveled it before.

15 Q But ya'll went across the bridge and you're in Slidell.
16 Where did ya'll go next?

17 A Just to clarify, we actually went around that area, but
18 the next day we came to Trenton, South Carolina.

19 Q You came to Trenton?

20 A Correct.

21 Q Where did ya'll pause or hesitate prior to coming up to
22 Trenton?

23 A That night we stayed in -- or we brought the truck to
24 Saluda County Airport.

25 Q Okay. Who all met you out there? Did you begin to

1 meet a group of people at that point in time?

2 A That night there was a customs agent named Dean Tucker
3 and then there was a member of, -- I believe he was the
4 South Carolina commercial motor vehicle, the
5 enforcement for commercial motor vehicles, I don't
6 remember his name.

7 Q Yes, sir. Okay. Prior to ya'll leaving that location
8 there, did ya'll get together with local law
9 enforcement?

10 A That next morning, we briefed at 7:00 a.m. that morning
11 with numerous members of different departments within
12 the local area.

13 Q Okay. The address that's on the bill of lading, is
14 that the address for the Tienda DeLeon?

15 A No, sir, it is not.

16 Q What is that address for?

17 A This is the address for what was later identified as
18 his residence.

19 Q As his residence. In fact, it was supposed to go to
20 the residence?

21 A Yes, sir.

22 Q According to that bill of lading?

23 A Correct.

24 Q Okay. Did ya'll end up going to the residence?

25 A No, we did not.

1 Q Prior to ya'll getting out here, were you actually in
2 the cab of the tractor trailer truck or were you
3 following?

4 A I was in the cab.

5 Q You were in the cab, so you rode up with the tractor
6 trailer?

7 A From Slidell to here, I rode in the tractor trailer.

8 Q Okay. Was the driver an agent or what was he?

9 A He was just a normal truck driver giving us the
10 courtesy of assisting us.

11 Q Just a civilian, he's not law enforcement?

12 A He was working for the company and we fully told him
13 what was going on and he agreed to help us out.

14 Q He agreed to cooperate?

15 A Correct.

16 Q It's kind of dangerous, isn't it?

17 A Yes, sir, to an extent it is. That's part of the
18 reason we were on it.

19 Q So once you get together with law enforcement out there
20 in Saluda, what do you do on the morning that the
21 delivery took place, on May 18, 2002? What happened?

22 A Myself and the truck driver left the staging area and
23 drove to the Tienda DeLeon.

24 Q Okay. I'm going to show you this. Come down here and
25 basically orient the ladies and gentlemen of the jury

1 where this is in relation to some landmarks that are on
2 here. Just point out whatever you need to point out?

3 A This is up here would be the Tienda DeLeon 121 turning
4 into 25, 19 coming across 25 here and this is the
5 Billy's Super Store right around here near that
6 intersection.

7 Q So, you can retake the stand. What did you do at this
8 point in time when ya'll left out there from Saluda?
9 Tell us what happened.

10 A We drove to the Tienda DeLeon and upon our arrival, I
11 observed the defendant, Fredy DeLeon and two other
12 unidentified individuals near that store.

13 Q Okay. Could you -- is Fredy DeLeon here in the
14 courtroom?

15 A Yes, he is.

16 Q Could you point him out, please?

17 A He is the Hispanic gentlemen sitting at the defense
18 table next to the attorney in the blue suit. He's
19 wearing a brown plaid shirt.

20 Q Okay.

21 MR. MAYE: Let the record reflect he's
22 identified the defendant Mr. DeLeon.

23 THE COURT: It is so noted.

24 By Mr. Maye:

25 Q Okay. What vehicles were there? You said there were

1 three individuals, what vehicles were there at the
2 store?

3 A I observed a white box truck and a green Ford
4 Thunderbird.

5 Q About what time of the morning is this?

6 A It would have been around 8:30 in the morning.

7 Q Around 8:30 in the morning? When you got there, did
8 the store appear to be open for business or closed?

9 A I couldn't tell whether or not the doors were unlocked,
10 but there was no lights in the window or it didn't
11 appear that there was any light on inside the store to
12 indicate that the store was open for business.

13 Q Was there any other individual there other than the two
14 unidentified guys and Mr. DeLeon?

15 A No.

16 Q Okay. And the vehicles there again?

17 A A white box truck and a green Ford Thunderbird.

18 Q Did you get the tag number of the green Ford
19 Thunderbird?

20 A Not at that time, but I did.

21 Q Later? Is that the green Thunderbird that you saw
22 there at the Tienda DeLeon?

23 A Yes, it is.

24 Q Okay. Is that a photograph, a representation of it?

25 A Yes, sir, it is.

1 MR. MAYE: I move to introduce this into
2 evidence.

3 MR. SUSSMAN: What is the Exhibit No. for the
4 purposes of the record.

5 MR. MAYE: It hasn't been marked yet.

6 THE COURT REPORTER: It would be State's 5.

7 MR. HAWK: No objection on behalf of the
8 defendant DeLeon.

9 MR. SUSSMAN: No objection.

10 THE COURT: Mark it into evidence, please.

11 By Mr. Maye:

12 Q This is the green Thunderbird?

13 A Yes, sir.

14 Q Okay. What happened once ya'll rolled up there to the
15 Tienda DeLeon and called up to Mr. Fredy DeLeon what
16 happened next?

17 A The driver and I exited the truck and walked around to
18 the rear of it. We broke the seal on the truck and
19 opened up the trailer.

20 Q Had the seal been tampered with in any way?

21 A No, sir, it had not.

22 Q Okay. Was it just the way it was back at the area at
23 Laredo?

24 A Yes, sir, it was.

25 Q Okay. Did you open up and look inside then?

1 A Yes, sir, I did.

2 Q Were any of the contents different? Had they been
3 changed at all in any way?

4 A No, sir, they had not.

5 Q Okay. What happened next?

6 A One of the other unidentified individuals, the best way
7 I can describe him ---

8 Q Yeah, tell us how -- everyone though you don't know the
9 names of the individuals ---

10 A Sure.

11 Q Tell us how you would identify them. You noted Mr.
12 DeLeon and identified him. The other two?

13 A The other two individuals, the first individual that
14 was unidentified was a Hispanic male about 25 to 30
15 years old, looked to be about 5'10" to 4 foot, about
16 200 pounds or so. The description from that day, he
17 was wearing a baseball cap. The next individual was a
18 gentlemen about my height, 5'8", 5'10", about 165, 175,
19 Hispanic male also, 25 to 30 years old and he had a
20 very poor complexion.

21 Q Okay. Two guys, two Hispanic males, rougher complexion
22 one guy?

23 A Correct.

24 Q And a guy had a cap -- let me ask you this, the guy
25 that didn't have the bad complexion, is that a fair

1 representation of him? Is that him?

2 A That's a very good representation of him.

3 MR. MAYE: You'll have seen this?

4 MR. HAWK: Yeah, no objection.

5 MR. SUSSMAN: No objection.

6 MR. MAYE: I move to admit this into evidence.

7 THE COURT: All right. Mark it into evidence,
8 please.

9 By Mr. Maye:

10 Q State's Exhibit 6 refers to this guy as Ramos,
11 R-a-m-o-s, so if you would refer to him as Ramos and
12 the other one is the guy with the bad complexion and
13 Mr. DeLeon. Tell us what happened next?

14 A The gentlemen with the bad complexion hopped into the
15 back of the trailer and started selected assorted
16 pieces of furniture and handing them down to us.

17 Q Where is Fredy DeLeon at this time?

18 A He's in the rear of the trailer with us or down from
19 it, down on the side of it.

20 Q He's outside, near the trailer?

21 A Yes, sir.

22 Q Are all of ya'll inside the trailer at this point in
23 time?

24 A Yes, sir.

25 Q So the bad complexion guy is up in there rooting

1 through the furniture?

2 A Yes, sir.

3 Q Okay. What happens next?

4 A He starts handing down pieces of furniture, which the
5 three of us that were left downstairs, myself, Mr.
6 DeLeon and Mr. Ramos were then stacking up furniture
7 against the wall in front of Mr. DeLeon's store.

8 Q Okay. What happened next?

9 A He hands down what turned out to be 13 pieces of
10 furniture and then he gets out of the trailer.

11 Q The bad complexion guy?

12 A The bad complexion guy gets out of the trailer.

13 Q Then what happens?

14 A Mr. DeLeon signs this document with his signature, this
15 is the bill of lading for the things and puts down the
16 number 13 to signify he accepted 13 pieces of
17 furniture.

18 Q How does he spell his name?

19 A Fredy DeLeon, F-r-e-d-y DeLeon and I can't really, it's
20 a signature so I really can't see it. And then what
21 you can surmise would be DeLeon, however, it's not
22 really decipherable.

23 Q Okay. So he signed the bill of lading accepting
24 delivery for this shipment?

25 A Yes, sir.

1 Q Okay. Who was the bill of lading addressed to.

2 A The Tienda DeLeon contact person next -- well next to
3 it down the line is Fredy DeLeon where someone put that
4 phone number next to it.

5 Q And he's the one signed accepting it?

6 A Yes, sir.

7 Q Okay. What did ya'll do next?

8 A We carried the furniture that was out in front of the
9 store and we took it inside the store and placed it in
10 a storeroom within that store.

11 Q Who let you in the store?

12 A I was with, accompanied with -- I don't remember who
13 unlocked the door. It was unlocked at this point. I
14 don't remember who opened the door, per se, but myself
15 Mr. DeLeon and Mr. Ramos and the poor complexion
16 gentlemen all entered the store carrying these items.

17 Q What kind of stuff are we talking about? What's this
18 furniture like?

19 A It was one mantelpiece -- it's all wooden furniture.
20 It was one mantelpiece, assorted chairs, tables and
21 additional items.

22 Q We'll call this furniture, are we talking about high
23 grade stuff or what kind of stuff is this?

24 A I don't want to classify it, in my eye it was pretty
25 poor grade.

1 Q What kind of wood is it made of?

2 A Very cheap wood.

3 Q Okay.

4 MR. MAYE: Excuse me, Your Honor, may we
5 approach.

6 (WHEREUPON there was a bench conference out of
7 the hearing of the jury and the court reporter.)

8 (WHEREUPON some of the furniture was brought
9 into the courtroom.)

10 By Mr. Maye:

11 Q Are these examples of the pieces of furniture taken out
12 at Mr. DeLeon's store?

13 A Yes, sir, they are.

14 MR. MAYE: I hate to do this, Mr. Dunn, but I'm
15 going to admit it into evidence, I'd ask that at some point
16 in time that a photograph be allowed to be substituted.

17 MR. HAWK: No objection, Your Honor, on behalf
18 of DeLeon.

19 MR. SUSSMAN: No objection, Your Honor.

20 MR. MILLER: None, Your Honor.

21 THE COURT: Those things are not going into
22 storage in the Edgefield County courthouse.

23 MR. MAYE: We'll work something out.

24 THE COURT: You've got to put stickers on them
25 for purposes of this trial and at the end of this trial

1 before that court reporter leaves, there has to be a
2 photograph, measurements, charts, whatever you want, but
3 that wood ain't staying here. Do you understand.

4 MR. MAYE: Yes, sir, understand. I understand,
5 crystal clear.

6 THE COURT: We've had stop signs, we've had
7 hundreds of liquor bottles. We've had everything under the
8 sun and we don't have anywhere to put them all.

9 By Mr. Maye:

10 Q Agent Mize, stand if you will. On State's Exhibit 7,
11 tell me how this is constructed. What's inside here?

12 A This is a compartment and it's lined with carbon paper.
13 Carbon paper, I don't know why they think this, but
14 carbon paper is something very commonly used among drug
15 smugglers because they feel it can defeat our x-ray
16 machine, which you see, it can't. They use assorted
17 other methods, wrapping it in cow manure or grease or
18 anything like that to try to throw the scent off the
19 dogs. You name it, they try it.

20 Q How was the marijuana inside that shell?

21 A Stacked in bundles.

22 Q Well, describe the packaging of the marijuana.

23 A To be honest with you, I don't recall what that looked
24 like.

25 Q In that top section?

1 A That's correct.

2 Q So it goes in -- those 13 pieces of furniture goes go
3 into Mr. DeLeon's store?

4 A Yes, sir.

5 Q Was he helping take them in?

6 A Yes, sir.

7 Q Okay. What then happens?

8 A I exited the store after a few minutes. All three
9 individuals exited the store and indicated that we were
10 going to be moving to a second location as yet not told
11 me.

12 Q Did you select any of the furniture that was to be
13 off-loaded at Mr. DeLeon's store?

14 A I did not.

15 Q Okay. Did Mr. DeLeon willingly allow those things to
16 be put inside his store?

17 A Yes, sir.

18 Q Did he ever attempt to reject the shipment at any time?

19 A No, sir.

20 Q Did you ever attempt to force him to accept? Did you
21 try to exercise any control over any of these items?

22 A Absolutely not.

23 Q Okay. Did he ever try to return them or tell you that
24 he did not want them?

25 A No, sir.

1 Q After the furniture gets inside the store, what does he
2 do in the store there? Does he close the store back up
3 again?

4 A I don't know, sir.

5 Q Okay.

6 A As far as I saw while I was there, the store had never
7 opened. Besides the front door would be unlocked,
8 there were no additional lights turned on or anything
9 to indicate to me that the store was open for business.

10 Q Once the things were inside the store, did he ever do
11 anything to try to communicate to you anything about
12 this furniture once it was inside?

13 A No, sir.

14 Q Was there any discussion at all about the furniture
15 being in there?

16 A No, sir.

17 Q Okay. Once the furniture is inside the store, what do
18 ya'll do then?

19 A I had exited the business, been outside for a few
20 minutes. All three gentlemen came out, indicated we
21 were moving to a second location. Didn't tell me ---

22 Q How is it indicated you were going to the second
23 location and who indicated to you to go to the second
24 location?

25 A I believe it was either Mr. Ramos or -- at that time it

1 was Mr. Ramos or the other gentlemen with the bad
2 complexion. I then ---

3 Q Could they speak any English?

4 A I ---

5 Q If you don't know -- did they speak any to you?

6 A My Spanish is very poor. Their English, if they said
7 anything it was piece mill words that were very -- it
8 was very difficult for me to understand.

9 Q Okay. What happens next?

10 A I then got back into the tractor trailer. Within a few
11 minutes, Mr. DeLeon then climbed up on the diver's side
12 of the tractor and began attempting to give us
13 directions of where to go.

14 Q How was he indicating where you were to go?

15 A Saying piece mill words that I could understand as far
16 as like going somewhere and then pointing back in the
17 direction, back south on 121 towards 25, towards
18 Billy's Super Store.

19 Q Pointing toward Billy's Super Store?

20 A That's correct.

21 Q Okay. Do you pick up some Spanish words?

22 A A few, yes.

23 Q Okay. So he's directing you towards Billy's Super
24 Store. What else does he do?

25 A When it was clear that we couldn't understand his exact

1 directions, he then made a phone call and handed the
2 phone to the driver of the truck stating the words mi
3 esposa, which translated means my wife.

4 Q My wife?

5 A Yes, sir.

6 Q Okay. What happened after he indicates that it's his
7 wife? What does he do with the phone?

8 A He hands it to the driver then the driver then speaks
9 with that individual.

10 Q Okay. Did the driver speak Spanish? Do you know?

11 A No, sir, he did not.

12 Q Okay. Where do ya'll then go after the phone call with
13 the person who's identified as his spouse?

14 A We then proceeded to Billy's Super Store at this
15 intersection, 25, 121 and we parked in that lot,
16 awaiting people that were supposed to meet us.

17 Q Okay. Let me ask you this, did anybody break open the
18 chimneys in Laredo? Did anybody break and force these
19 chimneys open in Laredo?

20 A No.

21 Q When they were placed inside Mr. DeLeon's store, did
22 ya'll break them open inside the store?

23 A No, sir.

24 Q What condition were they in once they were placed
25 inside Mr. DeLeon's store, would you say?

1 A They were intact.

2 Q Intact?

3 A Yes, sir.

4 Q And were they in exactly the same condition that you
5 saw them in when you sealed the trailer back up in
6 Laredo?

7 A Yes, sir.

8 Q Okay. Ya'll are now sitting at 25 waiting. What
9 happens next?

10 A We parked there in the lot and after about 25, 30
11 minutes, I see this green Thunderbird come from around
12 the backside of Billy's which would have been I guess
13 it would have been from the west. Can I use the map
14 just to orient myself? I'm pretty sure it would have
15 been the west side.

16 Q Hold on just a second.

17 MR. PUETZ: Judge can we approach?

18 (WHEREUPON there was a bench conference out of
19 the hearing of the jury and the court reporter.)

20 By Mr. Maye:

21 Q I hand you three photographs and ask you if you can
22 identify those and tell us what they represent?

23 A This one is the Tienda DeLeon.

24 Q Does -- does that fairly and accurately represent the
25 place where you off-loaded this chimney?

1 A Yes, it does.

2 Q Or a representative chimney?

3 MR. MAYE: We'd move to admit that into
4 evidence.

5 MR. HAWK: No objection, on behalf of defendant
6 DeLeon.

7 MR. SUSSMAN: No objection.

8 MR. MILLER: No objection, Your Honor.

9 MR. MAYE: Any objection to the other two
10 photographs either?

11 MR. HAWK: No objection, Your Honor, to either
12 one of them.

13 By Mr. Maye:

14 Q What do the other two reflect?

15 A This is also the Tienda DeLeon.

16 Q Okay. And then ---

17 MR. MAYE: She can't handle those and take down
18 what you're saying too.

19 A I'm sorry.

20 Q That's all right.

21 (WHEREUPON the court reporter marked exhibits.)

22 THE COURT REPORTER: That's State's 9, 10 and
23 11, Your Honor.

24 THE COURT: Thank you.

25 MR. MAYE: Thank you ma'am.

1 By Mr. Maye:

2 Q Let's do this, just come down off the stand, if you
3 would. Show them the Tienda DeLeon. Publish that
4 photograph that shows the Tienda DeLeon?

5 (WHEREUPON the witness complied.)

6 Q Is that a fair and accurate representation of the store
7 where ya'll took this stuff?

8 A Yes, sir, it is.

9 Q Is that where you met Fredy DeLeon?

10 A Yes, sir, it is.

11 Q Okay. What is this other photograph? What is this
12 other photograph -- what is the view -- what is the
13 view in that photograph?

14 A This is the parking lot of the Tienda DeLeon, face
15 being towards the Billy's Super Store.

16 Q Can you see it from there?

17 MR. SUSSMAN: Can we have that Exhibit Number?

18 By Mr. Maye:

19 A Sure. 11.

20 Q This is going to sound like a silly question, but what
21 county is that in?

22 A Edgefield County.

23 Q Okay. Could you see where he was pointing you to?

24 A I could not.

25 Q Okay. All right.

1 A He was pointing down -- he was on the driver's side of
2 the vehicle and he was pointing down the backside of a
3 trailer which was -- as the trailer was facing -- the
4 trailer was facing to the north, so running down the
5 backside of the trailer, which is the direction which
6 he was pointing would go straight into the Super Store
7 and that intersection.

8 Q To Billy's?

9 A Right.

10 Q Okay. Now ya'll were sitting there waiting at Billy's,
11 correct?

12 A Correct.

13 Q Let me show you another photograph. Tell me what that
14 is.

15 A That is a picture of the parking lot where Billy's
16 Super Store is.

17 Q Is that also a wider angle shot?

18 A Yes, sir, it is.

19 MR. MAYE: I move to admit these two
20 photographs into evidence.

21 MR. SUSSMAN: No objection.

22 MR. HAWK: I have no objection.

23 MR. MILLER: No objection, Your Honor.

24 THE COURT: Mark them into evidence, Madame
25 Court Reporter.

1 THE COURT REPORTER: It's State's 12 and 13,

2 Your Honor.

3 THE COURT: All right.

4 By Mr. Maye:

5 Q Did you observe any of the vehicles that were back at
6 the Tienda DeLeon leave?

7 A I did not.

8 Q You did not?

9 A No, sir.

10 Q Okay. That's fine. So ya'll were sitting at the
11 Tienda DeLeon -- I mean down at Billy's Super Store.
12 What happened?

13 A After being there for about 25, 30 minutes -- can I
14 show the jury where we were parked?

15 Q Sure just come down off the stand.

16 A We were parked ---

17 Q Refer to the exhibit number.

18 A I'm sorry. Exhibit No. 13.

19 Q Okay. State's 13?

20 A Yes. We were parked -- the back of our trailer was
21 coming back in this direction. We were parked on this
22 side of the parking lot, this being 121 right here, we
23 were about right there.

24 Q What is behind you?

25 A This is a grassy area.

1 THE COURT REPORTER: It's State's 12 and 13,
2 Your Honor.

3 THE COURT: All right.

4 By Mr. Maye:

5 Q Did you observe any of the vehicles that were back at
6 the Tienda DeLeon leave?

7 A I did not.

8 Q You did not?

9 A No, sir.

10 Q Okay. That's fine. So ya'll were sitting at the
11 Tienda DeLeon -- I mean down at Billy's Super Store.
12 What happened?

13 A After being there for about 25, 30 minutes -- can I
14 show the jury where we were parked?

15 Q Sure just come down off the stand.

16 A We were parked ---

17 Q Refer to the exhibit number.

18 A I'm sorry. Exhibit No. 13.

19 Q Okay. State's 13?

20 A Yes. We were parked -- the back of our trailer was
21 coming back in this direction. We were parked on this
22 side of the parking lot, this being 121 right here, we
23 were about right there.

24 Q What is behind you?

25 A This is a grassy area.

1 Q Okay. What did that do to ya'll's ability to go
2 anywhere?

3 A We had trailers and debris blocking us from the right
4 side. The green vehicle was to our left, so we
5 couldn't go to the left without really hitting it and
6 the yellow box truck was about 10 to 15 feet in front
7 of us, parked directly in front of the us so there was
8 no way we could have gotten out without hitting
9 anything.

10 Q Just as soon as the vehicles pulled up there, what
11 happens?

12 A The passenger -- well, as the green vehicle was driving
13 in front of us, I got a good look at the driver and the
14 driver was Mr. Ramos.

15 Q Okay.

16 A Immediately, as -- as soon as it pulled around to the
17 side of us, the passenger, which was the poor
18 complected gentlemen, jumped out of the car and climbed
19 up on the driver's side of the tractor.

20 Q What did he start to do once he got up on the side of
21 the tractor?

22 A He attempted to open the door and he kind of pulled on
23 it and flipping with the latch a little bit.

24 Q What did ya'll do?

25 A We told him no, no, no, where we going, where we going,

1 you can't come in, you can't come in.

2 Q And did he persist to try to come in in spite of ya'll
3 telling him to the contrary?

4 A Yes, he did.

5 Q Okay. Did he eventually stop?

6 A He did eventually stop when we told him that the
7 company -- it was somewhat hard to convey, but the
8 company would not allow anybody else to get in the cab.

9 Q But he was trying to get in?

10 A He was trying to get in there. He said he wanted to
11 show us where we were going.

12 Q What was your reaction to that?

13 A My immediate cause was concern.

14 Q Why?

15 A I've got no outlets at that point. I have got --
16 unless we were going to back up through the field,
17 which I didn't know if we could make it through there,
18 we've got no outlets with the truck itself without
19 hitting him or somebody else. I've got three -- well,
20 at the time I only knew it was two individuals, parked
21 in front of me and I have no idea where they came from
22 and who they were, never had heard a word about them or
23 been introduced to them before. So now I know instead
24 of dealing with the three individuals before, now I've
25 got these four individuals to deal with. I've got a

1 gentlemen attempting to gain entry into the driver's
2 side of the vehicle I was in, which I was not about to
3 let that happen.

4 Q Why would that have affected the operation to allow him
5 to get in?

6 A That would cause me to lose control.

7 Q How does it cause you to lose control?

8 A I was keeping in touch with my surveillance teams and
9 everybody else that was out there with us that day by
10 handheld radio. I had a pistol in the vehicle, I don't
11 know if this guy is armed. I'm supposed to be a
12 legitimate truck driver and it would have looked odd
13 for me to go and frisk this guy before he got into my
14 vehicle.

15 Q Let me stop and ask you this. Do you speak Spanish?

16 A Very little.

17 Q Why did they put you in the cab? Why were you in the
18 cab with a driver who don't speak Spanish?

19 A For security purposes, that's why I was there -- I was
20 there for the protection of that driver. I'm a former
21 street police officer of St. Louis, Missouri, which is
22 not a pleasant place to be. My experience -- a lot of
23 people within US customs service, at the time, didn't
24 have prior law enforcement experience. A lot of them
25 are out of college --- I'm sorry.

1 Q Of the other agents there, how did you end up in the
2 truck?

3 A I was selected that day.

4 Q Okay. To be the one in the truck?

5 A And there were a couple of other factors also. The
6 gentlemen who was driving the truck spoke with a very
7 Canadian -- he spoke with a very Canadian accent. He
8 was a white male. To make sure things looked as smooth
9 as possible, they wanted another white male in the
10 truck also. This is kind of it telling on myself, I
11 was the scruffiest looking one of all of the bunch.

12 Q Okay.

13 A I guess this was a little bit shady area to me.

14 Q You looked a lot more?

15 A I was wearing a t-shirt -- I was scruffy, I would have
16 never looked at me as ---

17 Q Okay. All right. So bad complexion, you finally got
18 him to relent on getting in the truck, what happens
19 next?

20 A We asked him where we were going. He said it's right
21 down the street, right down the street. We tried to
22 get an address, he said he didn't know the address,
23 right down the street. How far? A couple of miles.
24 And then it was finally deemed that we were going to
25 follow him to the location.

1 Q Follow him to the location. Okay. Did there later
2 come a time that you saw the occupants in the Ryder
3 truck?

4 A Yes, sir.

5 Q Okay. How many occupants were in that Ryder truck that
6 pulled up in front of you?

7 A Three.

8 Q Three guys?

9 A I found out there were three.

10 Q When did you find that out? Later on in the day?

11 A Yes, within 15 minutes of that initial.

12 Q Okay. Are those three individuals present here in the
13 courtroom that were in that Ryder truck by chance?

14 A Yes, sir.

15 Q Point them out to the court.

16 A They are the three Hispanic.

17 THE COURT: Excuse me.

18 AGENT MIZE: I'm sorry.

19 THE COURT: All right. I've asked this before,
20 there's no hearing necessary? Hearing none, go ahead.

21 By Mr. Maye:

22 Q Okay. Point them out.

23 A The three Hispanic gentlemen sitting to Mr. DeLeon's
24 right, blue shirt, blue and reddish color shirt and a
25 white and kind of lime green striped shirt.

1 MR. MAYE: Your Honor, please let the record
2 reflect that Agent Mize has identified Alfredo Arojona,
3 Honorio Guerrero, and Raphel Hernandez as the three
4 individuals in the Ryder truck.

5 THE COURT: So noted.

6 By Mr. Maye:

7 Q You start to leave from Billy's Super Store. What
8 happens next?

9 A As we were leaving the green Thunderbird pulls around
10 in front of us and this is when I saw the license plate
11 of the vehicle. This is the first time I got a good
12 look at the license plate.

13 Q Let me ask you this, was there any contact between the
14 individual in the Thunderbird and these three
15 individuals, Mr. Hernandez, Mr. Guerrero and
16 Mr. Arojona? Was there contact with anyone else in the
17 vehicle?

18 A Well, the bad complexion gentlemen walked up and was by
19 us on the driver's side of our vehicle, Mr. Ramos got
20 out of his vehicle and walked back to the driver's side
21 of the Ryder truck.

22 Q Is he interacting with the three individuals in the
23 truck?

24 A Yes, sir.

25 MR. SUSSMAN: Objection, Your Honor, regarding

1 the characterization or interacting. That calls for
2 speculation and hearsay as well. Unless he gives us a
3 foundation for the interaction.

4 THE COURT: Rephrase your question, please.

5 By Mr. Maye:

6 A Appeared to be talking too ---

7 THE COURT: No, I asked him.

8 AGENT MIZE: I'm sorry.

9 By Mr. Maye:

10 Q What was the guy doing around there at the cab? What
11 could you see?

12 A He was standing near the driver's side of the cab and
13 appeared to be talking.

14 Q Okay. That's fine. That's fine, appeared to be
15 talking. Were are you able to identify the green
16 Thunderbird as the same one that was at Fredy DeLeon's
17 store?

18 A Yes, it looked exactly the same. I'm sorry, I -- as it
19 was pulling out I saw the license plate.

20 Q What was the license plate number?

21 A South Carolina license plate, 363 K, as in king, T as
22 in Tom, K as in king.

23 MR. MAYE: I'm going to move to admit this into
24 evidence. There's already a picture of the bird in
25 evidence, but I'm going to put this in evidence.

1 MR. HAWK: No objection on behalf of DeLeon.

2 MR. SUSSMAN: No objection.

3 MR. MILLER: No objection.

4 THE COURT: Is it in?

5 THE COURT REPORTER: No. 14.

6 By Mr. Maye:

7 Q Start out with where ya'll go from Billy's?

8 A We pulled out of the entrance that was right there next
9 to where we were parked, which would have been on South
10 Carolina 121 to the north of the intersection. We then
11 proceeded south across the intersection to what turned
12 into 25 to ---

13 Q Coming this way?

14 A Yes, sir. To Padgett Road.

15 Q What were you doing at that time?

16 A I was a passenger in the tractor trailer and I was
17 communicating by handheld radio to my surveillance team
18 landmarks, directions, I'm not really familiar with the
19 area so we usually try to use landmarks and when I
20 would see a street sign, I'd call it out as far as what
21 we were passing.

22 Q Okay. Were you doing your best to communicate your
23 position to the other people?

24 MR. PUETZ: Objection to leading.

25 ///

1 By Mr. Maye:

2 A Yes, sir, I was.

3 THE COURT: Ask your question in a non leading
4 fashion.

5 MR. MAYE: I will withdraw it.

6 By Mr. Maye:

7 Q Where did you then go off of 25?

8 A We made a right, going west on Padgett Road.

9 Q Let me show you this. I ask you if you can identify
10 that?

11 A Yes, sir, there is the intersection of 25 and Padgett
12 Road.

13 MR. MAYE: Ask that that be admitted into
14 evidence.

15 MR. HAWK: No objection on behalf of Defendant
16 DeLeon.

17 THE COURT: Any objection.

18 MR. SUSSMAN: No objection, sir.

19 MR. MILLER: No objection, Your Honor.

20 THE COURT: Mark it into evidence, please
21 ma'am.

22 THE COURT REPORTER: State's Exhibit 15, Your
23 Honor.

24 THE COURT: Have you got other photographs?
25 Ask them if they have any objection.

1 MR. MAYE: Any objection to those other two?

2 MR. HAWK: No objection, Your Honor.

3 MR. SUSSMAN: No objection.

4 MR. MILLER: No objection.

5 MR. SUSSMAN: No objection.

6 MR. MAYE: If you would go ahead and mark

7 these ---

8 THE COURT: Hold it, hold it.

9 MR. MAYE: I'm sorry, I was trying to get ---

10 THE COURT: Were there any objections to those
11 photographs?

12 MR. MILLER: No, sir Your Honor.

13 THE COURT: Okay.

14 THE COURT REPORTER: Those are State's Exhibit

15 16 and 17.

16 By Mr. Maye:

17 Q Where did you go when you got to the intersection of
18 Padgett Road and 25? Where did ya'll go?

19 A We made a right turn so we were heading west on Padgett
20 Road, I guess. It would be about a half mile down the
21 road it reaches a dead end and it forks.

22 Q What are the vehicles -- the order of the vehicles were
23 traveling?

24 A The green Thunderbird, the yellow Ryder truck and then
25 ourselves.

1 Q Okay. What happens next?

2 A We observe the green Ford Thunderbird and the Ryder
3 truck make a right at the dead end down the dirt road.

4 Q Okay. What did ya'll do with the tractor trailer?

5 A We got to that intersection, it was a gravel road and
6 the turns were kind of tight, so we followed a bit
7 behind. When we got to that intersection, we looked to
8 the right maybe 50 yards or so and at that time did not
9 see the other two vehicles in front of us.

10 Q So what did ya'll do?

11 A We then made a right -- it was raining pretty decently
12 at this point. The driver got out to check the road.
13 It was -- at that point it was, the best way to
14 describe it is as a sand packed dirt road, fairly
15 steady, turned down that road and went down about a
16 quarter to half mile and we observed the yellow box
17 truck stuck in the mud and we stopped at that point and
18 I got out and that's when I really learned what the
19 rest of the day was going to be like.

20 Q Okay. What did ya'll start -- what did you start to
21 try to do once they got stuck?

22 A I walked up to the vehicle and at that point was when I
23 got my first good look at the other three defendants,
24 Mr. Arojona, Mr. Hernandez and Mr. Guerrero and that's
25 when I saw that they were sitting three long and one

1 gentleman was sitting kind of back, so, that's the
2 first time I really got a good look that there were
3 three people in that box truck.

4 Q Did you try to assist them -- what did you do next?

5 A I communicated as best I could if there was any
6 assistance that I could personally give them to help
7 them get unstuck.

8 Q Why did you want them to get unstuck?

9 A Because we were stopped, they were stopped, the deal
10 was at a stalemate. If they couldn't move and I can't
11 move, then, you know, if we're stuck, we're stuck.

12 Q Okay. Could you see the Thunderbird at this point in
13 time?

14 A At that point in time, I could not.

15 Q What did you do next, once you got -- did you get them
16 unstuck the first time?

17 A Mr. Hernandez, Mr. Arojona and myself, Mr. Guerrero was
18 driving, spent -- this is all relative, probably an
19 hour and a half to two hours, pushing them from one
20 side of the road to the other. I have never
21 experienced that red clay mud like this. You sink into
22 it.

23 Q Do they have anything like that in St. Louis or Laredo?

24 A Laredo is just dust. St. Louis, dark mud, nothing like
25 this. I would imagine on that stretch, they probably

1 got stuck four times and it was a process of -- it was
2 kind of a rolled road, so we would get them off on one
3 side, get them in the middle and they would just slide
4 off onto the other side. And once that tractor trailer
5 got stuck, I don't know, the tractor trailer wasn't
6 going much further at this point. We were in trouble.

7 Q Ya'll were all stuck?

8 A We were all stuck.

9 Q Were the guys in the truck trying to keep moving?

10 A Yes, they were. Myself, Mr. Guerrero driving, the
11 other two gentlemen -- like I said, we spent about an
12 hour and-a-half, 2 hours, pushing them out of the mud.
13 Finally, they made it up and around a bend out of my
14 site and at that point was when ---

15 Q Show the ladies and gentlemen of the jury about where
16 you were on Padgett Road using those State's exhibits.
17 Come down, give them the number and tell them about it.

18 A This is going to be -- this part of the road bends to
19 the right and there was a heavy tree line along here so
20 you couldn't really see around the corner or anything
21 like that. We were about, I guess, 50 to 100 feet from
22 that to begin with and then they disappeared around the
23 corner.

24 Q What happened next on Padgett Road?

25 A I went back to the tractor trailer and that's when I

1 learned that we were stuck, that we weren't going
2 anywhere. We tried for another 15 to 20 minutes.

3 Q Where is the Thunderbird at this point in time?

4 A The Thunderbird is out of site. I didn't -- I hadn't
5 seen it in a while.

6 Q Now the Thunderbird is gone, what are they still trying
7 to do?

8 MR. PUETZ: Judge, I'm going to object. That
9 calls for pure speculation.

10 By Mr. Maye:

11 Q What were their actions ---

12 THE COURT: Rephrase the question, please.

13 By Mr. Maye:

14 Q What were their actions? The Thunderbird is gone, what
15 were their actions?

16 A At that point in time, with radio communications with
17 my surveillance teams, I then walked down to the end of
18 where I could see and I saw the yellow box truck struck
19 in the mud again about 50 to 500 yards ahead of me. I
20 approached it.

21 Q What were they still doing? The box truck?

22 A They were in the truck at that point in time, they were
23 stuck in the mud again. Mr. Guerrero got out and then
24 we tried to communicate the best we could. The truck
25 wasn't moving again.

1 Q Is the Thunderbird anywhere around at this point in
2 time?

3 A No, sir. I asked Mr. Guerrero if he had a telephone.
4 He handed me his telephone and I opened it up -- well
5 ~~he kind of made a hand signal and I looked and I could~~
6 see that there was no signal for the telephone.

7 Q What did you do then?

8 A I then went back to your tractor trailer, I reached out
9 to my surveillance teams because my cellular telephone
10 had no signal either.

11 Q Why was it important for you to get cell phone signal
12 or having to communicate? Why was that important?

13 A I wanted -- I requested a cell phone that would get a
14 signal so that I could take it back up to these
15 gentlemen so that they could make a phone call and we
16 could possibly get back up with the green Thunderbird.

17 Q Once they lost site of the Thunderbird, did they just
18 stop dead or what did they do?

19 A They were stuck in the mud off and on. I don't know
20 exactly what their actions were, the ones inside the
21 truck.

22 Q Did they continue to try to get unstuck and move
23 forward even though the Thunderbird was gone?

24 A Once I made it back to the tractor trailer -- the green
25 Thunderbird was gone from the point that I saw them

1 stuck. I never saw that green Thunderbird again.

2 Q The green Thunderbird is out of site, are they
3 continuing on without the green Thunderbird there?

4 A Yeah, they were trying to keep moving.

5 Q They're trying?

6 A They're trying to keep moving.

7 THE COURT: Let me know when you get to a good
8 stopping point.

9 MR. MAYE: Okay.

10 By Mr. Maye:

11 Q Did they indicate to you any location or anything else
12 that they wanted you to do at that point in time? Do
13 ya'll try to get the cell phone?

14 A When I requested ---

15 MR. SUSSMAN: I would object to that question,
16 Judge.

17 MR. MAYE: I will withdraw it.

18 MR. SUSSMAN: It's ambiguous as to who they is.

19 MR. MAYE: I will withdraw it.

20 By Mr. Maye:

21 Q What was the next thing that happened -- what was the
22 next thing that happened?

23 A When I had gone back to them on the radio and requested
24 the cell phone, members of my surveillance team drove
25 up and gave me the phone and said -- they asked ---

1 Q Don't say what anybody else said?

2 A I'm sorry, I'm sorry.

3 Q That's okay.

4 A I indicated to the gentlemen that the vehicle -- our
5 tractor was stuck and I was told that, that ---

6 Q Don't say what anybody else told you?

7 A I'm sorry.

8 Q What did you do?

9 A My part was over because we -- at that point ---

10 Q Who did you notify that ya'll were stuck?

11 A The surveillance team behind us.

12 Q Okay. After you did that, what happened next?

13 A The -- when I requested the cell phone, they came up
14 and I thought that I was going to receive a cell phone.
15 At that point in time, we terminated that part of the
16 operation, is the best way to -- they were going to
17 take it down. They were going to take them down at
18 that ---

19 Q Did they in fact get taken down then?

20 A Yes, it did.

21 Q What did you do -- when it was taken down, what
22 happened that you know of your on knowledge and could
23 see?

24 A I stayed with the tractor trailer. I did not see
25 anything beyond that. The Ryder truck was up and out

1 of my view at that point in time right there.

2 Q Where did you then go after you got out from that
3 location where you were stuck with the tractor trailer,
4 where is it that you went?

5 A I went back to the Tienda DeLeon in one of the
6 vehicles.

7 Q You road back up to the Tienda DeLeon?

8 A Correct.

9 Q Okay. Who was there when you got there?

10 A Mr. DeLeon was there.

11 Q Who else was there?

12 A A female, which was indicated to me was his wife and I
13 believe there were numerous law enforcement officers
14 from both faces I knew and faces I didn't. A lot of
15 local law enforcement officers, along with a couple of
16 federal agents.

17 Q How were you dressed when you came back to the store?

18 A I was in jeans, t-shirt, thoroughly muddy and I had my
19 badge on a chain around my neck.

20 Q You had your badge on a chain around your neck?

21 A Correct.

22 Q What happens when you saw Mr. DeLeon?

23 A I would definitely say he was surprised.

24 Q Describe his physical -- what happened physically to
25 him when he saw you with the badge and your neck?

1 A Looked like his eyes got about that big around.

2 Q Okay.

3 A He was surprised.

4 Q Did he show surprise on his facial expressions?

5 A Facial expressions, yes.

6 Q Okay. Did you see these other three individuals that
7 night?

8 A Yes, I saw them.

9 Q Where?

10 A At the Edgefield County jail.

11 Q Okay. How were you dressed at that time?

12 A Same dress with my badge around my neck.

13 Q What were those three individuals -- describe their
14 reactions?

15 A Same reaction.

16 MR. SUSSMAN: Objection, Judge, he's asking him
17 to describe their actions. It sounds like he's asking him
18 to speculate as to their state of mind.

19 By Mr. Maye:

20 Q Describe their physical characteristics when they saw
21 you. Describe what you saw, just what you observed.

22 MR. MAYE: Excuse me, Your Honor.

23 THE COURT: The objection is sustained. Ask
24 him another question.

25 MR. SUSSMAN: Thank you, Your Honor.

✓

1 By Mr. Maye:

2 Q Describe what you observed of these three individuals
3 when they saw you with your badge around your neck?

4 A The facial expressions were the same.

5 Q How were they the same?

6 A Wonderment, eyes getting wide open, what I would
7 describe as near disbelief.

8 Q That's showing surprise?

9 MR. SUSSMAN: Your Honor, I object to that
10 characterization and move to strike and direct the jury to
11 disregard. Again ---

12 MR. MAYE: I will move on, Your Honor.

13 MR. SUSSMAN: Ask him not to speculate to what
14 one or all of these clients state of mind.

15 THE COURT: Ladies and gentlemen, you're to
16 disregard the witnesses words of disbelief.

17 By Mr. Maye:

18 Q What else did you do that night, Agent Mize?

19 A At this point in time, I became purely an assistant and
20 assisting the Edgefield County Sheriff's Department and
21 when they brought the tractor down as far as observed
22 them bring out the furniture and receive the narcotics.

23 MR. MAYE: Hold on just one second, Your Honor.

24 By Mr. Maye:

25 Q Did you see the furniture that had been off-loaded when

1 you went back up to the store? Did you see it again?

2 A Yes, I did.

3 Q What condition was it in when you saw it?

4 A It was broken open at that point.

5 Q Was it already -- were there law enforcement on the
6 scene there?

7 A There were law enforcement officers on the scene.

8 Q What agents were there? What departments were there?

9 A There is a gentlemen from SLED.

10 Q Among your customs agents, who did you see?

11 A Special Agent Dean Tucker, Special Agent Giavani Perez,
12 Special Agent Michelle Dowling, she's Michelle
13 Williams, she's married since.

14 Q Where is Michelle Williams?

15 A She is now in DC right now.

16 MR. PUETZ: Relevance.

17 THE COURT: Hold on just a moment.

18 By Mr. Maye:

19 Q What is her condition?

20 THE COURT: Hold on just a minute. Overruled.

21 By Mr. Maye:

22 A She just had a child with complications so she's off
23 work.

24 Q She did not come with you?

25 A No, she did not.

1 Q Okay.

2 MR. MAYE: Your Honor, I wanted to reserve the
3 right to recall this witness for a brief matter. At this
4 point in time, that's all I have for this witness.

5 THE COURT: All right. Who's going to tote
6 that thing out of here?

7 MR. MAYE: Your Honor, I will be happy to, I'm
8 pretty healthy, I will be happy to do so.

9 THE COURT: I don't want the jury to have to
10 have it.

11 MR. MAYE: I tell you what, if it's all right
12 we'll put it over there for now.

13 THE COURT: I'd like for both of them to be put
14 over there in that section that we carved out for
15 wheelchairs.

16 MR. MAYE: Yes, sir.

17 THE COURT: Ladies and gentlemen, we're going
18 to recess for lunch. I need you back at 2:15 in the jury
19 room, please, don't discuss the case. Remember all those
20 admonitions I gave you earlier. Watch your step as you go.
21 I need you here at 2:15. Thank you.

22 (WHEREUPON the jury left the courtroom at 1:02
23 p.m.)

24 THE COURT: Agent Mize, it's a good thing you
25 weren't down in the muddy section of the county when all

1 this happened.

2 All right. Folks, as you leave be very careful
3 not to have any conversations that may in any way be heard
4 by a juror. Make sure if you go to a restaurant that you
5 don't have any contact with the jurors. Avoid them around
6 the courthouse property and anywhere else.

7 During the break, Agent Mize, you certainly may
8 step down, but you cannot discuss your testimony with any
9 of the lawyers.

10 AGENT MIZE: Yes, sir.

11 THE COURT: We're at ease. Thank you.

12 (WHEREUPON a recess was observed for lunch.)

13 THE COURT: All right. Is the defense ready?

14 MR. HAWK: Yes, Your Honor.

15 MR. SUSSMAN: Yes, Your Honor.

16 MR. MILLER: Yes, sir.

17 THE COURT: The State?

18 MR. MIZELL: Yes, sir, Your Honor.

19 THE COURT: Ya'll need Mr. Maye?

20 MR. MIZELL: He's coming. He'll be here
21 shortly.

22 (WHEREUPON the jury entered the courtroom at
23 2:18 p.m.)

24 THE COURT: All right. Cross-examination.

25 MR. HAWK: Thank you.

1 STATE OF SOUTH CAROLINA) IN THE COURT
 2 COUNTY OF EDGEFIELD) OF GENERAL SESSIONS

3
 4 INDICTMENT NO. 2004-GS-19-137
 5 2004-GS-19-138
 6 2004-GS-19-139
 7 2004-GS-19-140

8 STATE OF SOUTH CAROLINA,)
 9 Plaintiff)

10 VS.)

11 TRANSCRIPT OF RECORD
 12 Volume II

13 FREDY DELEON,)
 14 RAPHEL HERNANDEZ,)
 15 HONORIO GUERRERO,)
 16 ALFREDO AVILA-AROJONO,)
 17 Defendants)

18 March 23-25, 2004
 19 Edgefield, South Carolina

20 B E F O R E:

21 THE HONORABLE WILLIAM P. KEESLEY, JUDGE AND A JURY.

22 A P P E A R A N C E S:

23 Ervin J. Maye, Assistant Solicitor
 24 Joe Mizell, Assistant Solicitor
 25 11th Judicial Circuit

26 Martin C. Puetz, Esquire
 27 Jacque D. Hawk, Esquire
 28 David Miller, Esquire
 29 William J. Sussman, Esquire
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CROSS-EXAMINATION

1
2 By Mr. Hawk:

3 Q Agent Mize, you've been in this particular case almost
4 from the very beginning to the end, am I correct?

5 A Yes, sir.

6 Q Okay. And your duty was -- excuse me your duties were
7 surveillance and what else?

8 A I performed the undercover operation.

9 Q Okay.

10 A Part of the operation.

11 Q Now, did you do any of the followup investigation?

12 A No, sir, I did not.

13 Q Okay. Do you know anybody that did?

14 A I believe it would have been the local and county
15 authorities.

16 Q Okay. Did you ever or were you ever able to establish
17 that Fredy DeLeon himself had ever contacted any of the
18 people at Sebastian Exportante?

19 A I have no knowledge of that, no, sir.

20 Q Okay. Either in the past or during this occasion or
21 anytime in the future? Any time up to this point?

22 A The manifest with his name on it is the only
23 association I have.

24 Q And that particular manifest that you talked about, you
25 have no idea who provided that information that's in

1 there, do you?

2 A No.

3 Q Okay. And you don't know how that information got on
4 that manifest? That's just the manifest you found?

5 A That's the manifest we were provided with.

6 Q Okay. Have you ever been able to discover any
7 information, telephone calls, correspondence, anything
8 whatsoever that would indicate that Fredy DeLeon has
9 had a prior contact or prior dealings with Jamco
10 International?

11 A No, sir.

12 Q Okay. Any correspondence, phone calls, anything to
13 Laredo, Texas?

14 A The only thing I can go by, sir, is with his name and
15 number on the manifest, that was the contact number
16 that we had with the carrier.

17 Q Okay. All right. So, other than this manifest, did
18 you find any other contact, either by telephone, by
19 letter, correspondence, anything between Fredy DeLeon
20 and Laredo, Texas?

21 A Nothing that I had personally, no.

22 Q Do you know if anybody has pulled his phone records to
23 see if he's ever called Sebastian Exportante, Jamco
24 International or anybody in Laredo, Texas?

25 A Not that I have any knowledge.

1 Q Okay. Have you found any information that he's had any
2 connections, phone calls, correspondence, anything with
3 Border Carriers before?

4 A Before this occasion?

5 Q Yes, sir. Other than this one manifest?

6 A I have no knowledge of it, no.

7 Q Okay. Are you aware or were you able to find any
8 connections between him and the driver of the tractor
9 trailer that came to the border when it was
10 confiscated?

11 A No, sir.

12 Q Okay. Did -- were you ever able to connect him or
13 determine whether there was any connection between him
14 and the driver of the green Ford Thunderbird?

15 A Besides that day?

16 Q Right.

17 A Their association that day?

18 Q Right.

19 A No, sir, this is all stuff that I wouldn't know, not
20 being the investigating agent on this part, I wouldn't
21 have known.

22 Q Okay. But even as part of your knowledge of the
23 general investigation, have you heard anything which
24 would tie them together to show that they had any
25 relationship prior to this day?

1 A Nobody has told me.

2 Q Okay. Do you have any proof or any way of -- any
3 evidence as to why the man in the green Thunderbird
4 showed up that day or what led him to be there that
5 day?

6 A Only by assuming that he was there with us unloading
7 the furniture, I figured he was part of the group that
8 was involved in this.

9 Q Okay. And do you have any idea of who told him to be
10 there or how he came to be there?

11 A No knowledge, sir.

12 Q Okay. Do you have any -- were you ever able to
13 translate or understand any conversation with the
14 driver of that Thunderbird?

15 A No, sir, just basic -- the only real conversation --
16 point where I was ever really with him was when they
17 were trying to associate that we were moving to another
18 location, but it was broken.

19 Q Okay. So that was only in regards to getting
20 directions to go to Billy's?

21 A Yes, sir.

22 Q Okay. And have you ever found, discovered any evidence
23 any correspondence, any communication whatsoever which
24 would indicate that Fredy DeLeon had some part in
25 renting this box truck?

1 A Nothing's been told to me, sir.

2 Q Okay. Were you ever able to determine whether there
3 had been any prior communication, contact or
4 correspondence between Fredy DeLeon and these three
5 gentlemen over here? The other three co-defendants?

6 A I was never told about it, sir.

7 Q Okay. Now, you eventually obtained possession of the
8 Thunderbird, did you not? Or as part of the case file,
9 ya'll did?

10 A Not as we -- my effective involvement ended once the
11 delivery was made. I went back to Texas.

12 Q I got you. All right. Are you aware of any evidence
13 which has been turned up in this case which indicates
14 that Fredy DeLeon had some connection or some ties to
15 the person that this car was registered to? The Ford
16 Thunderbird?

17 A I was told that there was a ledger in the vehicle.

18 Q Okay. All right.

19 A With his name on it.

20 Q Okay. All right. Anything else?

21 A Not personally that I'm aware of.

22 Q Weren't you aware that the entire car was searched?

23 A I was told that, yes.

24 Q All right. And did all the items in the car were taken
25 out of the car?

1 A I would assume so, sir.

2 Q And all were fingerprinted?

3 A I don't know what their procedures are. I would assume
4 so.

5 Q Did you in any way -- are you aware of any fingerprints
6 of Fredy DeLeon's that were ever found in the car?

7 A I haven't been told about any fingerprints found, sir.

8 Q Okay. Now, the -- when ya'll went to unload the
9 furniture, there were two guys at the store with Fredy
10 DeLeon is that correct?

11 A Correct, sir.

12 Q All right. And did you identify either one of those
13 guys? Or have you identified either one?

14 A The only thing we've come close to identification is
15 that sketch made where there called Mr. Ramos.

16 Q Okay.

17 A As far as -- I have not personally seen an actual
18 picture of this gentlemen before.

19 Q Does that look like one of the guys that helped unload?

20 A It is a very good likeness.

21 Q Okay. All right. So -- but he's one of them that was
22 not arrested?

23 A I don't believe he was ever found.

24 Q Okay. Were you ever able to make any connection
25 between him and Fredy DeLeon in the past?

1 A Just from the manifest that was found in the vehicle
2 that he was occupying, the ledger he had.

3 Q Now, did you -- there was also another guy, a guy with
4 the problems with his face?

5 A The poor complexion, yes, sir.

6 Q Poor complexion? Now, you were never able to tie him
7 to Mr. DeLeon?

8 A No, sir, I don't know.

9 Q And he was the one actually telling everybody we need
10 to go here, we need to go there, we need to go there,
11 is that right?

12 A No, sir. The only time he told us any part of where we
13 needed to go was once we were in Billy's lot. That's
14 the only time that he really spoke to us that I can
15 really differentiate that it was him telling us.

16 Q And didn't they also tell you to follow the green
17 Thunderbird?

18 A Follow them and the box truck, yes, sir.

19 Q Okay. Now, to your knowledge, has anybody, any of your
20 witnesses -- excuse me, any of the co-defendant's
21 implicated Fredy in any way? Said that Fredy is the
22 man?

23 A I didn't interview him, sir, I don't know.

24 Q Now ---

25 THE COURT: Hold on just a moment.

1 MR. HAWK: Okay.

2 THE COURT: Ladies and gentlemen, would you all
3 step back in the jury room. Don't discuss the case,
4 please. Take them back to the jury room.

5 (WHEREUPON the jury left the courtroom at 2:28
6 p.m.)

7 THE COURT: Okay. I'm -- I don't know anything
8 much about this case. We're not getting into a Bruton
9 issue here are we? You're asking a witness whether
10 somebody else has made any statement against another
11 defendant and I've got four guys over here on trial
12 together. You told me there were no statements. I'm
13 assuming there are no statements. I don't want to get into
14 any kind of Bruton problems.

15 MR. MAYE: I'm unaware of them implicating each
16 other in this thing. I'm unaware of any statements made
17 where they are antagonistic and I'm not aware of that. And
18 I've not heard any of my witnesses say that. If they've
19 got information about that, that would be news to me.

20 MR. HAWK: Yes, there's no implicating -- my
21 guy implicating any of them or them implicating him in any
22 way. Matter of fact, nobody implicates anybody else at
23 all. So I don't think we ---

24 THE COURT: And nothing is going to create a
25 situation where there is a comment upon the right any of

1 them to remain silent?

2 MR. HAWK: Your Honor, I will move straight
3 away from this. That's the only thing I intended to bring
4 out, nothing more.

5 THE COURT: And earlier before lunch, I stopped
6 you all. I didn't send the jury out -- about the identity
7 issue. If there's a Neal vs. Biggers hearing, that needed
8 to be conducted, I wanted to know.

9 MR. HAWK: Yes, sir.

10 THE COURT: And I'm assuming there wasn't, so
11 we'll move on.

12 MR. HAWK: We don't have any of these issues.

13 THE COURT: I'm sorry for interrupting your
14 flow.

15 MR. HAWK: No.

16 THE COURT: I don't want to have any of those
17 kinds of situations in this case.

18 MR. HAWK: Yes, sir.

19 THE COURT: Bring the jury back in.

20 (WHEREUPON the jury entered the courtroom at

21 2:34 p.m.)

22 THE COURT: Ladies and gentlemen, I'm sorry.

23 And also, Mr. Hawk, I apologize to you for
24 interrupting your flow. You may continue.

25 MR. HAWK: Thank you.

1 By Mr. Hawk:

2 Q You had said one of the guys that you believed was
3 unloading was this Ramos fellow. And then you said the
4 other guy -- did he have pockmarks? Is that the one?

5 A Yes, sir.

6 Q Okay. Did you see him later in the Ford Thunderbird?

7 A Yes, sir, after we were directed by Mr. DeLeon from the
8 store down to Billy's, when the green Thunderbird came
9 back and met with us he was the passenger in that green
10 Thunderbird. He's the one that got out and came up to
11 the door of the truck.

12 Q Okay. Are you saying that the same two that were out
13 there unloading were the same two in the Thunderbird?

14 A Yes, sir, they were.

15 Q Okay. And not that there were two people out there
16 unloading that got away and two people in the
17 Thunderbird that got away?

18 A No, sir, they were the same people.

19 Q All right. And when you -- when you originally stopped
20 the tractor trailer at the border, you said that ya'll
21 had discovered that it had marijuana in there, did a
22 sampling and all. And then you put a seal on the
23 truck, did you not?

24 A Yes, sir, prior to our leaving that port, yes, sir.

25 Q Okay. And that seal is to show that nobody's been in

1 that tractor, that trailer and tampered with anything?

2 A That's correct, yes, sir.

3 Q One seal on there?

4 A One seal on that door, sir.

5 Q Okay. But when it came across the border, it had three
6 seals, didn't it?

7 A I don't recall, sir.

8 Q Do you have any idea how many seals it had?

9 A No, sir, I don't.

10 MR. HAWK: Your Honor, may I approach.

11 THE COURT: Certainly.

12 By Mr. Hawk:

13 Q Okay. Does that refresh your recollection a little
14 bit?

15 A Yes, it does.

16 MR. MAYE: May I see? Is that his statement or
17 someone else's?

18 AGENT MIZE: That's not my statement.

19 MR. MAYE: Your Honor, I object to him being
20 required to testify as to what the contents of someone
21 else's statements or recollections are. If he knows of his
22 own knowledge, it's certainly permissible. For him to be
23 cross-examined on someone else's writings, I would object
24 to it.

25 MR. HAWK: I just asked him if it refreshed his

1 recollection. I'm not ---

2 By Mr. Hawk:

3 Q Do you remember how many seals it had there when?

4 A Sir, I was not present ---

5 THE COURT: Hold on just a second.

6 MR. HAWK: I'm sorry.

7 THE COURT: The objection is sustained.

8 MR. HAWK: Okay.

9 THE COURT: Ask the questions.

10 By Mr. Hawk:

11 Q Do you remember how many seals it had on it when it
12 came in?

13 A The only thing -- I know what you know as far as the
14 indication that's on the report. I was not present at
15 the border itself when the truck came across.

16 Q When it first came across?

17 A That's correct, sir.

18 Q Okay. So you don't know how many seals it had?

19 A Personal knowledge, just from what I've been told and
20 what the paperwork that you've read today.

21 Q But generally the reason you put seals on the trailer
22 like that is to make sure that you know if somebody's
23 been in it, is that right?

24 A That would be correct, sir.

25 Q And generally anybody in the shipping industry would

1 also put seals on it so they would know whether
2 somebody had been in it?

3 A That's correct, sir.

4 Q Okay. And if -- say for instance, if you put three
5 seals on a truck and later on you found that the three
6 seals I put on there were gone, and one seal was put on
7 there, would you think the truck had been into?

8 A That would be a common response, sir.

9 Q Okay. Now, this particular load of marijuana had been
10 hidden pretty well, had it not?

11 A Yes, sir.

12 Q They had went to quite a bit of effort to hide it in
13 this furniture. They put carbon paper around it, they
14 were doing their best to hide it, isn't that fair to
15 say?

16 A Yes, sir.

17 Q Trying to do everything they could to avoid it being
18 detected?

19 A Yes, sir.

20 Q Did you find it a little bit unusual then, after going
21 through all that trouble that you would ship it to your
22 house where you're newborn baby and your wife are?

23 A Not necessarily, sir.

24 Q Okay. Is that a normal thing that drug dealers put
25 their names on the bill of lading of where they're

1 going to ship it to and put their correct name and
2 their correct address?

3 A Stores, yes, sir, it was listed as the Tienda DeLeon if
4 I remember correctly. And it was going to be shipped
5 to that store.

6 Q It has Fredy DeLeon on it, doesn't it?

7 A That's as the contact person, yes, sir.

8 Q All right. And you don't run into it in your line of
9 work where they put somebody else's name?

10 A In a similar situation to this in my past experience,
11 no, sir.

12 Q They always put their name in? They go through all
13 this trouble to hide it and avoid detection and then
14 they put their name on it and their address?

15 A If that's where they want it to be shipped to, then I
16 would assume they would put it on the manifest.

17 Q Okay. All right. Now, is there any doubt in your mind
18 that Mr. Ramos knew what was going on?

19 A I have no doubt.

20 Q Okay. He fled didn't he?

21 A Yes, sir, he did.

22 Q He left his car behind, didn't he?

23 A Yes, sir, he did.

24 Q He left his home?

25 A Yes, sir, he did.

1 Q Left his job?

2 A I'm assuming.

3 Q And without having some problem or some trouble, you
4 wouldn't expect people to normally just flee like that
5 under these circumstances?

6 A That is one characteristic of suspects, when they're
7 wanted to arrest, they flee.

8 Q Okay. And also this guy with the bad complexion, we've
9 not seen hide nor hair of him around here again, have
10 we?

11 A I have not been here, I don't know.

12 Q Nobody's been able to arrest him or find him again?

13 A Not to my knowledge.

14 Q Okay. All right. And the man, Mr. Ramos, that is
15 pictured in that drawing that you have there, there is
16 a warrant out for him, is there not?

17 A I don't know sir, it would be at the State level, I'm
18 not privy to it.

19 Q Now, this particular T-Bird, do you know or do you have
20 any information generally about it's use in the past,
21 before this day other than what you just saw that day?

22 A I have none, sir.

23 Q Do you have any idea who primarily drove it from
24 day-to-day?

25 A No, sir.

1 Q Do you have any idea as to whether it was ever loaned
2 out to somebody else?

3 A I have no idea, sir.

4 Q Okay. Would it be fair to say you don't know how it
5 was used, by who it was used or when it was used?

6 A Except for that day.

7 Q Except for that day?

8 A Yes, sir.

9 Q Okay. Now, have you spoken or did you ever speak to
10 Mr. Ramos about the number of friends he may have named
11 Fredy?

12 A No, sir.

13 Q Okay. Do you know how many friends he may have named
14 Fredy?

15 A No, sir.

16 Q All right. Do you know how many friends the other
17 person that was in the car may have named Fredy?

18 A No, sir.

19 Q Okay. Do you know whether or not anybody else who rode
20 in that car -- well you don't know anything about
21 anybody else in the car, is that correct?

22 A That would be correct, sir.

23 Q Okay. You have some information about Mr. Ramos, do
24 you not -- only the composite?

25 A Yes, sir.

1 Q His social security number, his date of birth, his
2 height, his weight, hair color, eye color, and his
3 former address, am I correct?

4 A Yes, sir, it's on the sheet.

5 Q Do you know what, if anything, anybody has done to try
6 and track him down?

7 A I don't know, sir.

8 Q Okay. Are you aware of anything that's been done?

9 A I'm in Texas, sir, I just don't know.

10 Q Okay. Now -- now, if you're sitting here and you --
11 before ya'll -- I know ya'll got one of these things
12 busted open, but before it was busted open, and I know
13 I just helped carry it over the rail, it pretty much
14 feels like furniture, doesn't it?

15 A Yes, sir.

16 Q I know it's not pretty furniture, right?

17 A (Witness nodded head.)

18 Q It's ugly furniture, but it's furniture, right?

19 A (Witness nodded head.)

20 Q And if you were expecting furniture and this was
21 brought, you wouldn't really have any idea that there
22 was marijuana in it unless you knew that there was
23 marijuana in it, is that right? Just by looking at it
24 you couldn't tell, right?

25 A I would assume not, sir.

1 Q Okay. And the reason that ya'll knew that there was
2 marijuana in it was that ya'll had that x-ray machine
3 that helped ya'll find it, am I correct?

4 A That is correct, sir.

5 Q And Mr. DeLeon did not have the benefit of that when
6 this furniture was dropped off, did he?

7 A No, sir.

8 Q Okay. And the pieces that were dropped off with him,
9 isn't it true that 12 out of the 13 pieces didn't have
10 any marijuana?

11 A That's correct, sir.

12 Q All right. They were regular furniture pieces like
13 chairs, tables and I think we only had one chimney
14 there, is that correct?

15 A That's correct.

16 Q And the pieces that were selected to go to Mr. DeLeon's
17 place were not selected at all by him, were they?

18 A No, sir, he was down by us.

19 Q The other man got up in the back of the truck and said
20 let's take this and this and this and this out, right?

21 A He handed items to us, sir.

22 Q Okay. And ya'll initially put them outside just lined
23 up along the wall, am I correct?

24 A That is correct, sir.

25 Q And isn't the reason that you took it in is because it

1 was raining?

2 A It was raining. Whether or not that's why we took it
3 in, I don't know. It was under kind of a little bit of
4 an overhang.

5 Q Right.

6 A So we had it flushed against the wall.

7 Q Right. And -- but it rained hard that day, didn't it?

8 A At that point it wasn't raining too hard, but it did
9 later on.

10 Q Okay. Would you agree that if you're trying to unload
11 as much of the marijuana as possible, you're not doing
12 very good, you're not grabbing the pieces that has the
13 marijuana in it?

14 A That's all the marijuana he wanted to keep at that
15 store.

16 Q Okay. All right. Now, did you go back and look at the
17 storeroom itself?

18 A Yes, I carried items of furniture back in the store.

19 Q Not a very big storeroom, is it?

20 A No, sir.

21 Q Okay. And it had already had stuff in it too, didn't
22 it?

23 A Assorted stuff, but it wasn't what I would call
24 nothing.

25 Q Okay. I got you. Did you find it a little bit

1 surprising that somebody that would be expecting a load
2 of marijuana like this and would not have prepared and
3 made room for it so you could get it in there and out
4 of the truck and out of the rain and out of the public?

5 A The night before, when we drove by the store and we saw
6 how small it was and the size of the truck we were in,
7 we figured that if that's the store we were going to be
8 delivering some to that we were going to be going to
9 another location. So that room definitely couldn't
10 hold all the stuff, but it could hold some of it.

11 Q All right. Were you surprised that more preparations
12 had or hadn't been made to get this humongous load of
13 marijuana off the streets and in and out of the public
14 view?

15 A No, sir.

16 Q Now, did you also find it surprising that when ya'll
17 drove off with all Mr. DeLeon's marijuana, that he just
18 went somewhere else and didn't seem to care?

19 A I'm sorry, what, sir?

20 Q Did Mr. DeLeon go with ya'll with the green Ford
21 Thunderbird and the tractor trailer?

22 A No, Mr. DeLeon just directed us where to go.

23 Q Okay. And that was after ya'll got directions, you
24 tried to get directions from the other guy, he was
25 trying to tell you, Mr. DeLeon tried to tell you,

1 right?

2 A No, sir. All he did was indicated that the first
3 gentleman behind the trailer just indicated we are
4 going to another location.

5 Q All right. And who was that?

6 A It was one of the two. It wasn't Mr. DeLeon. It was
7 one of the other two gentlemen and Mr. DeLeon, when we
8 were back in the tractor hopped up on the driver's side
9 of the tractor and was indicating to us where to go.

10 Q Okay. That's my point. In other words, that man
11 decided, hey we are going somewhere else. And Mr.
12 DeLeon just helped try to interpret and give ya'll
13 directions, is that correct?

14 A I can't say that, sir.

15 Q Okay.

16 A I don't know who made the decision on where it was
17 going next. Like I said Mr. DeLeon told us where to go
18 next.

19 Q Okay. Well, wasn't Mr. DeLeon trying to give ya'll
20 directions and ya'll couldn't understand one another?

21 A Just basic.

22 Q All right. And then he got his wife on the phone?

23 A I would assume. He said, mi esposa.

24 Q All right. And she gave ya'll directions?

25 A That's correct, sir.

1 Q Now, when the driver from Mexico came over, ya'll
2 interviewed him, am I correct?

3 A He was interviewed, yes, sir.

4 Q And when you found out or when you interviewed him
5 ya'll, or you determined, the customs people determined
6 that he didn't have any knowledge that marijuana was in
7 his truck?

8 A That is correct, sir.

9 Q Okay. That somebody had put the marijuana in the
10 trailer and he was just hauling it?

11 A That's correct, sir.

12 Q Okay. And because of that, because he didn't have any
13 knowledge or any real way to know, ya'll released him,
14 did you not?

15 A I was not there, but I would assume so, sir.

16 Q Okay. Also, the -- you interviewed, I believe and
17 received a petition from the owner of Border Carriers
18 did you not.

19 A I'm a little bit -- I'm sorry, sir?

20 Q Do you remember seeing a petition from somebody with
21 Border Carriers?

22 A I don't recall a petition, sir. Maybe I'm just not
23 understanding what you're talking about.

24 Q Okay. You ever see that before?

25 A I saw Mr. Gordon, the driver writing in it, sir.

1 Q Okay. And it was him acknowledging that he didn't have
2 any knowledge that marijuana was involved in this
3 shipment. Am I correct?

4 A That's correct, sir.

5 Q And once ya'll found out or discovered that he did not
6 have any knowledge that the marijuana was in this
7 furniture, ya'll cut him loose, didn't you?

8 A That's not an accurate representation of Mr. Gordon's
9 involvement in this. Mr. Gordon, after the marijuana
10 was found and we learned that it was going to Border
11 Carriers, at that point we contacted Border Carriers,
12 told them that one of their trailers had a load that
13 had marijuana in it. We asked for their assistance in
14 helping us to affect other arrests and make a
15 controlled delivery. At that point in time, they
16 assigned Mr. Gordon to be our driver. That morning
17 that we left, I had met with Mr. Gordon just as a
18 courtesy just to tell him what was going on, what we
19 were doing to make sure to tell him we were going to be
20 with him the whole time, just to make sure he, for his
21 personal safety, we wanted to make sure he knew what
22 was going on and if he would assist us. Mr. Gordon
23 wrote that as a representative of the company.

24 Q Okay. And basically saying that Border Carriers was
25 not involved in the attempted smuggling of marijuana

1 secreted within wooden furniture and, therefore, had no
2 knowledge of the contraband on the trailer, is that
3 right?

4 A That's correct, sir.

5 Q And once ya'll determined that that was correct, ya'll
6 released him?

7 A He was never in custody so I can't say that we released
8 him.

9 Q Okay. Release is a bad term. You didn't arrest him?

10 A No.

11 Q Okay.

12 A Sir.

13 Q And the reason you don't arrest him is because if
14 somebody says -- like if I tell you this is an empty
15 cup, okay, and I have it sealed where you can't see
16 inside it and you take me at my word and it's a empty
17 cup and it turns outs to be empty, then there's, you
18 know, there's surely no crime. But if I also give you
19 an empty cup and I sell it and I tell you this is an
20 empty cup and you look at it and it looks like it's a
21 cup, it looks like it's empty, whatever, if it's turns
22 out it has something in it, anything, maybe some
23 illegal substance, some contraband, if you didn't know
24 that contraband was in there, you acknowledge that
25 you're not guilty, am I correct? That you haven't

1 committed any crime?

2 A The reason why we released Mr. Gordon is because he
3 came in well after the fact and was purely assistance.
4 He had nothing to do -- I mean, if we're trying to
5 associate with Mr. DeLeon, his name was on the
6 manifest, so, of course, he was going to be the
7 suspect.

8 Q I understand.

9 A That was the delivery, so he was going to be the
10 suspect.

11 Q My point is this, sir, in the drug trafficking
12 business, it's not unusual for these carriers, these
13 drivers and other people along the line to be used and
14 deceived about what they're carrying?

15 A Anything is possible to have unwilling members.

16 Q And when you run into these people and you understand
17 that they had no knowledge of what they were dealing
18 with, you release them or don't arrest them, how about
19 that? Isn't that fair to say?

20 A Yes, but not people that would have necessarily had the
21 same involvement as your client. I'm a little bit lost
22 at what you're trying to ---

23 Q I'm not asking you about my client. I'm asking you
24 about what you routinely do when you run into people
25 that are used by drug dealers and tricked by drug

1 dealers, told they're getting furniture or car tires or
2 whatever they say that they're smuggling, when, in
3 fact, they're shipping drugs, and then you find out
4 that these people are being used by drug dealers and,
5 in fact, didn't realize drugs were in these items.
6 Don't you release those people or don't you not arrest
7 them?

8 A We release and don't arrest people that we do not think
9 are involved in drug trafficking.

10 Q Okay. And the reason you do that is because they have
11 no knowledge?

12 A If they're not involved in the crime, we're not going
13 to arrest them.

14 Q Okay. Now were you involved in the nationwide records
15 search on Fredy DeLeon?

16 A No, sir.

17 Q To see if he had any prior record or anything?

18 A No, sir, I was not.

19 Q Are you aware or have you ever found any record on this
20 man at all?

21 A I never have, I never looked.

22 Q Have you ever talked to any narcotics agents or agents
23 that regularly investigate drugs in this area that know
24 Fredy DeLeon that said that he had some prior -- that
25 he had been suspected of using or selling drugs at any

1 time in the past?

2 A I haven't spoken to anybody about Mr. DeLeon like that
3 at all.

4 Q Mr. DeLeon turned over a video to ya'll when he was
5 arrested?

6 A Not to me, sir.

7 Q Who did he turn it over to?

8 A I don't know, sir. I didn't get to see it.

9 Q Have you or anybody with customs done anything with
10 that video to try and identify any people on that tape?

11 MR. MAYE: Your Honor, I would object to this.
12 He's already said he didn't know anything about any tape.
13 He's persisted in asking him questions about the tape.
14 He's already said he doesn't know anything about it. He's
15 continuing to ask him questions about something that's
16 asked and answered. I'm going to object to that.

17 MR. HAWK: May I be heard briefly?

18 THE COURT: Yes, sir.

19 MR. HAWK: And I said to him is he aware of
20 anybody in customs who has done anything with this tape.

21 THE COURT: Rephrase the question, please.

22 By Mr. Hawk:

23 Q Okay. Are you aware then, of anybody with your customs
24 agents that have done anything with this tape to try
25 and identify anybody on the tape?

1 A The first thing I ever heard about a tape, sir, was
2 when Mr. Maye came in and asked us yesterday did any of
3 us have a tape. I guess you guys were requesting one.
4 That's the first I ever heard about that.

5 Q Okay. Now, when you did unload this particular
6 furniture into Fredy's store, did Fredy or anybody in
7 his place ever try to do anything with it as far as
8 open it up, look to see what's in it, to your
9 knowledge?

10 A I couldn't do it in front of them. Not in front of
11 them by any means.

12 Q Okay. And when ya'll got there, to the best of your
13 knowledge, it had been completely un tampered with?

14 A Yes.

15 Q Do you remember having -- do you remember somebody from
16 your team advising Fredy DeLeon of what was in this
17 chimney?

18 A No, sir.

19 Q Do you remember anybody having to tell him what he had
20 in this chimney?

21 A No, sir.

22 Q Do you have any information or any proof other than
23 this bill of lading that Fredy DeLeon had any knowledge
24 about what was in this chimney?

25 A Besides the manifest and the actions that day, I have

1 none, sir.

2 Q Okay. And would you agree with me there's nothing
3 illegal about accepting furniture if you really believe
4 it's furniture and not drugs?

5 A I'm sorry, could you ---

6 Q There's nothing illegal about taking furniture or
7 receiving furniture?

8 A Not normal furniture.

9 Q Okay.

10 A But if it's the furniture ---

11 Q And it wouldn't be illegal?

12 MR. MAYE: What did he say? I didn't hear the
13 last part of his answer. What was your answer.

14 AGENT MIZE: It would be illegal to accept
15 furniture with narcotics.

16 By Mr. Hawk:

17 Q Okay. But only if you had knowledge that narcotics was
18 in it, right?

19 A I would assume so, yes, sir.

20 Q Okay. Now, I know customs has video tape equipment,
21 don't they?

22 A Yes, sir.

23 Q Okay. I know you have audio equipment?

24 A Yes, sir.

25 Q Okay. And despite sending six agents out on this

1 particular occasion, nobody was equipped with a video
2 camera or audio recorder, am I correct?

3 A I didn't have an audio recorder, I can only testify to
4 myself.

5 Q I understand. Are you aware of any agent that had a
6 video camera or an audio recorder?

7 A No, sir.

8 Q Do you remember anybody putting any kind of audio
9 equipment or anything in the truck so that you could
10 hear any conversations of people that came up to the
11 truck?

12 A No, sir.

13 Q Okay. And any conversations that you did have with
14 these various Hispanic males, there were never any
15 notes made about those recordings, am I correct? I
16 mean notes about those conversations?

17 A Just my own testimony, sir.

18 Q Okay. And you can't really tell us what they said
19 about anything, can you? The Spanish part?

20 A Parts and pieces sir, parts and pieces.

21 Q Okay. All right. Did anybody go and try and obtain
22 the phone records that may be involved with the
23 different cell phones that were being used and all?

24 A I was not involved in that part, sir.

25 Q Do you know who was?

1 A No, sir, I don't.

2 Q Do you know of anybody that has?

3 A I wasn't involved in that part, sir, I don't know.

4 Q Okay. Now, correct me if I'm wrong, was this a customs
5 operation?

6 A Beginning, yes, sir.

7 Q Well when did it become somebody els?

8 A Away from me, sir, I honestly don't know.

9 Q Okay. Well was it a customs operation when everybody
10 was arrested?

11 A I honestly don't know, sir. The only parts I can
12 attest to are the parts where we took it, it was a
13 customs operation and this briefing that morning. I
14 would only assume that it was a customs operation
15 because that would be normal procedure. After that,
16 sir, I was in the truck and away from any decisions
17 that were made.

18 Q The decisions about how to do this operation were
19 customs, were they not? Weren't ya'll in charge?

20 A I can only attest from the parts that I'm privy to,
21 yes, sir.

22 Q Okay. And each of you were assigned different duties,
23 am I correct? When you were sent out?

24 A I can only tell you what I was assigned to do, sir, I
25 don't know what anybody else was assigned to do.

1 Q You were supposed to be doing surveillance and PH --

2 PH, photos, were you in charge of photos?

3 A No, sir, not at that point.

4 Q You remember ever seeing that?

5 A Yes, sir, this is an operation plan.

6 Q All right. And it's a plan put together by who?

7 A By our office in Laredo, Texas.

8 Q Okay. And you were special agent, is that you, number
9 4?

10 A That is me, correct, sir.

11 Q And is this one of the things that you're supposed to
12 be? Your assignment, am I correct?

13 A That is correct.

14 Q And S means what?

15 A Surveillance, sir.

16 Q All right. PH means what?

17 A Photos, sir.

18 Q So you were in charge of getting the photos for us
19 regarding this particular op, am I correct?

20 A That is not correct, sir.

21 Q All right. I thought you said this was a plan that
22 ya'll had put together?

23 A That is an operational plan just from the point where
24 we leave Laredo, Texas until we arrived here.

25 Q Okay.

1 A And once we get here, we normally become support
2 personnel. Now, if on that journey, there would have
3 been a reason for photos to be taken, whether it be
4 something happen -- the only thing I can think of is if
5 something had happened along the way. But being that
6 there wasn't, it never became an issue.

7 Q You didn't have any cameras with you, did you?

8 A We probably did, I don't know.

9 Q Would you read the equipment needed list here that
10 ya'll put together?

11 A Surveillance and tactical enforcement equipment,
12 portable radios with coded key capability, fully
13 charged cellular telephones, issued firearms, spare
14 magazines.

15 Q Okay. Now, did you have any camera to your knowledge
16 with you at any time?

17 A I personally did not have one.

18 Q Well we don't have any photos of any of these people do
19 we? The people that are gone now?

20 A Sir, that was not part of my -- our responsibility
21 would have only been from Laredo to here.

22 Q Okay. But we do not have any photos of any of these
23 people that have gone now, do we?

24 A I don't have any photos.

25 Q Who's decision was it to put a driver up that did not

1 speak Spanish and an agent that did not speak Spanish
2 in this op to go and deliver the marijuana?

3 A Basically with the driver, we have to take what we can
4 get. It wasn't our decision to be made. It was a
5 company's decision and then we just talked to the
6 gentlemen and made sure he was willing to be the
7 driver.

8 Q Okay. But I know working the border at Laredo, Texas,
9 at the border on Mexico, customs has some people there
10 that speak Spanish, do they not?

11 A That is correct, sir.

12 Q But none was assigned to this op?

13 A My purpose in being there was as security and as a
14 former police officer and having been in many
15 situations, it was a protection factor.

16 Q You were just there for protection?

17 A That was my main responsibility.

18 Q Now, have you participated in search warrants and
19 raids?

20 A Yes, sir.

21 Q From drug dealers?

22 A Yes, sir.

23 Q And have you also executed affidavits for search
24 warrants?

25 A At the State level, yes, sir.

1 Q Okay. And it's not unusual for you to write in the
2 affidavit for search warrant that you expect that
3 there's drugs going to be -- that drugs will be found
4 where the drug dealers are at, am I correct?

5 A That would be my assumption.

6 Q Okay. Because that's a common thing that you find when
7 you go and raid a drug deal?

8 A Drugs.

9 Q All right. Another thing that you also put in your
10 affidavit of search warrant many times is that you
11 expect to find large sums of cash?

12 A Sometimes, yes, sir.

13 Q Okay. Packaging material to package and resell drugs?

14 A That's one of the things you would look for.

15 Q Okay. Also many times put in there that you expect to
16 find scales because they have to reweigh it to sell it?

17 A If that was their intention, then I would assume that
18 there would be scales there.

19 Q Okay. And drug paraphernalia generally sometimes used
20 to use the drugs?

21 A I would assume drug paraphernalia.

22 Q Okay. Now, when Fredy DeLeon, the day he was arrested,
23 nobody called ahead of time to let him know, "Hey,
24 Fredy we're coming to your place today?"

25 A Not to my knowledge, sir.

1 Q Okay. And when you searched his little Tienda or
2 whatever, nobody found any drugs, did they? Other
3 than -- I know you found what was hidden in the
4 chimney. I'm not talking about that, but anywhere
5 else? Did they find any drugs?

6 A I don't know, sir.

7 Q You don't know?

8 A I don't know.

9 Q Okay. Well, to your knowledge, did any customs agents
10 or any investigators as part of this investigation, to
11 your knowledge, did any of them find any?

12 A I was not told of any.

13 Q Okay. Did you find any large sums of cash?

14 A I was not told.

15 Q Okay. Well, nobody has said Mr. DeLeon paid for this
16 marijuana or that they witnessed him pay for this
17 marijuana, did they?

18 A I don't know, sir.

19 Q And nobody found any large sums of cash where he could
20 pay for this marijuana in his place, did they?

21 A I don't know, sir.

22 Q Did you or are you aware of any agent who said they
23 found a large sum of cash in Mr. DeLeon's shop?

24 A I did not and nobody has mentioned anything to me, sir.

25 Q Okay. Did you or anybody in the investigation that

1 you're aware of find any drug paraphernalia?

2 A Nobody told me anything, sir.

3 Q Did you or anybody involved in your investigation to
4 your knowledge, found any scales?

5 A I was not told, sir.

6 Q Did you or anybody in your investigation to your
7 knowledge find anything to repack these drugs and
8 sell them?

9 A I was not told about any, sir.

10 Q Did you go to his house and see how he's living?

11 A I did not go to his house, sir.

12 Q It's not unusual for investigators when they get this
13 much marijuana from somebody to use that as a basis to
14 show probable cause to get a search warrant to search
15 their house. Would that be fair to say?

16 A Some investigators would, yes, sir.

17 Q Okay. And customs and the agents involved in this
18 particular investigation had all this marijuana in
19 Fredy's shop. Did anybody go out and execute an
20 affidavit to get a search warrant to go search his
21 house?

22 A I don't know, sir.

23 Q Would you agree that if agent -- if you really thought
24 he was a dealer, you really thought he was involved in
25 drug trafficking that that would be a good thing to do?

1 A That's probably what I would do, but I just don't know.

2 Q Now we've got six customs agents, we've got people from
3 Edgefield County, we've got people from Aiken County,
4 we've got DEA agents, am I correct?

5 A Yes, sir.

6 Q Drug enforcement agents and nobody does it? Nobody
7 thought that was a good thing to do?

8 A I can't testify to whether people would think it was a
9 good idea.

10 Q Was any of the reason for you personally not seeking a
11 search warrant or whatever, was any of it that you
12 didn't think he was a dealer involved in this?

13 A My personal opinion is that he was involved.

14 Q Okay. But you did not in any way go search his house
15 or try to find out what was in his house or anything?

16 A It wasn't part of my duties, sir.

17 Q Who's duty was it?

18 A I don't know, sir.

19 Q And this was a customs operation?

20 A At least the beginning, sir.

21 Q Based upon everything you know in this particular case,
22 is there a chance that Fredy DeLeon did not know what
23 was in these chimneys and was being used by a drug
24 dealer?

25 A As part of the circumstantial evidence to include the

1 manifest and his actions that day, I personally have no
2 doubt.

3 Q How?

4 A I personally have no doubt.

5 Q So you don't think it's possible at all?

6 A I think he was involved in the conspiracy.

7 MR. HAWK: That's all I have, Judge.

8 THE COURT: All right.

9 MR. MAYE: May it please the court, Your Honor,
10 I hate to do this, but as a matter of personal privilege, I
11 wouldn't mind having just a very short break.

12 THE COURT: Ladies and gentlemen, please step
13 in the jury room. We'll take a break for about 15 minutes,
14 don't discuss the case.

15 (WHEREUPON the jury left the courtroom at 2:34
16 p.m.)

17 MR. MAYE: Thank you, Your Honor.

18 THE COURT: You may step down, but you may not
19 discuss your testimony with anyone.

20 We're at ease.

21 MR. MAYE: Thank you.

22 (WHEREUPON a short recess was observed.)

23 THE COURT: Are we ready?

24 MR. HAWK: Yes, sir.

25 MR. SUSSMAN: Yes, sir.

1 THE COURT: Mr. Miller?

2 MR. MILLER: Yes, sir.

3 MR. MIZELL: Yes, sir we are ready, Mr. Maye
4 will be right here.

5 (WHEREUPON the jury entered the courtroom at
6 2:34 p.m.)

7 THE COURT: All right. Mr. Sussman?

8 MR. SUSSMAN: Thank you, Judge. May it please
9 the court.

10 **CROSS-EXAMINATION**

11 By Mr. Sussman:

12 Q Mr. Mize, let me turn your attention to chronologically
13 what happened from when this all began. Did you say
14 that this bridge over in Laredo was the most heavily
15 traveled commercial bridge going back and forth across
16 the border of the United States?

17 A What I've been told it is, land border wise, it's the
18 busiest port as far as commercial traffic.

19 Q World Trade Bridge?

20 A World Trade Bridge.

21 Q And when this semi came across it, would you describe
22 being driven by Jose Contreras Dominguez?

23 A If that's the paperwork you have, I don't have that in
24 front of me, sir.

25 Q Do you remember furnishing some paperwork to the

1 solicitor to give to us?

2 A I provided the solicitor with the information within
3 the case file.

4 Q And you know that the driver of the semi was detained?

5 A Yes, sir.

6 Q And he was questioned?

7 A Yes, sir.

8 Q And it was determined that he had no knowledge of what
9 was inside the trailer?

10 A That's correct, sir.

11 Q So he was let go?

12 A That's correct, sir.

13 Q And there was a question about whether or not there
14 were any other agents in the operation that could speak
15 Spanish. You remember that question?

16 A Yes, sir, I do.

17 Q Okay. Was Jose Hernandez a part of the operation?

18 A He was our group supervisor, yes.

19 Q Can he speak Spanish?

20 A Yes, he can.

21 Q How about Carlos Cardenas?

22 A Yes, sir, he was.

23 Q Can he speak Spanish?

24 A He can, sir.

25 Q He was part of the operation?

1 A Yes, sir, he was.

2 Q Auturo Rocha?

3 A Yes, sir.

4 Q Can he speak Spanish?

5 A He can, sir.

6 Q Was he part of the operation?

7 A He was, sir.

8 Q Now I'm going out on the limb here, Giavani Perez?

9 A You got it right, sir.

10 Q He speak Spanish?

11 A Yes, sir, he does.

12 Q He part of the operation?

13 A He was, sir.

14 Q Now how long have you been -- were you a police officer
15 in St. Louis before you came to the customs?

16 A Just over 6 years.

17 Q And what was your highest rank when you left?

18 A Police officer.

19 Q Did you do any investigations whatsoever?

20 A I wrote and executed my on search warrants, but I was
21 never officially active.

22 Q Okay. But you participated in investigations as a
23 police officer?

24 A As far as narcotics and weapons violations, yes, sir.

25 Q Did you have any kind of training at the police academy

1 to be a certified police officer?

2 A Yes, sir, I did.

3 Q And part of the that training teaches you how to
4 prepare reports of your investigation?

5 A Correct, sir.

6 Q And during your 6 years as a police officer, did you,
7 in fact, have occasion to prepare reports?

8 A Yes, sir, I did.

9 Q Okay. And wouldn't you agree that when you prepare
10 these reports, you try to put everything in there that
11 would be important or significant in your
12 investigation?

13 A For my official report, yes, sir.

14 Q I mean, you don't want to leave out anything important
15 if you're going to go to the trouble of writing a
16 report?

17 A My official report, yes, sir.

18 Q Okay. And actually in this case, you did prepare a
19 report?

20 A What report are you referring to, sir?

21 Q Well, there's a document that I've got that's 2 pages.
22 I will hand it up to refresh your recollection?

23 A Yes, sir, this is not an official report. This is a
24 summary of my involvement in that incident, sir.

25 Q Okay. Well let's talk about that then. You prepared a

1 writing of your activities in this case?

2 A That's correct, sir.

3 Q Whether or not you call it an official report or a
4 summary, but basically, it's a writing that you put
5 down to document what you did in this case?

6 A Yes, sir.

7 Q Okay. And in this report -- I'm sorry I will say
8 summary, that's your word. This summary was prepared
9 within a short time after your participation was
10 concluded?

11 A Approximately 6 months afterward.

12 Q Okay. So you had nothing written down within say a
13 week or two of your participation?

14 A No, sir, I did not.

15 Q But you did prepare this summary approximately 6 months
16 later?

17 A That's correct, sir.

18 Q And your memory 6 months after the incident, would you
19 agree, would be better than your memory would be now, 2
20 years later?

21 A I would assume as time would go on, you would lose a
22 little bit, yes, sir.

23 Q Okay. All right. Now, and this summary, you tried to
24 put down what you thought was significant in your
25 participation?

1 A I summarized the event, yes, sir.

2 Q And have you reviewed this summary before testifying
3 here today?

4 A I have, sir.

5 Q Did it help refresh your recollection of what you
6 actually did in the investigation?

7 A Yes, sir, it did.

8 Q Okay. And would you agree that a lot of your testimony
9 both from direct and from cross-examination, a lot of
10 it has already been covered in this summary?

11 A I would assume a portion of it is, yes, sir.

12 Q Well you did review the summary?

13 A Yes, sir.

14 Q Okay. Now, I'm sorry, let's go back just for a minute
15 to the border crossing of this semi.

16 A Okay.

17 Q Were you present when the marijuana inside the semi was
18 field tested?

19 A No, I was not, sir.

20 Q Were you present when any of these chimneys were
21 initially opened?

22 A No, sir, I was not.

23 Q Were you present when the mantle was resealed?

24 A No, sir, I was not.

25 Q Okay. You weren't present when they initially opened

1 the back of the semi?

2 A The first time, no, sir.

3 Q But you were present when they closed it back up?

4 A When we sealed it before the trip, yes, sir.

5 Q That means closing the doors back up and putting those
6 seals on it?

7 A Absolutely.

8 Q Now a couple of things I want to talk about, just what
9 happened at Mr. DeLeon's store. Just so the jury is
10 clear, there was a box truck at Mr. DeLeon's store?

11 A That is correct, sir.

12 Q But it wasn't the Ryder rental truck?

13 A That is correct, sir.

14 Q Mr. Arojona and Mr. Hernandez and for that matter
15 Mr. Guerrero were not ever at Fredy's store during this
16 operation?

17 A Not at any point while I was at the store, sir.

18 Q And the first time that you really saw these guys, as I
19 understand it, was at Billy's?

20 A That is correct, sir.

21 Q As a matter of fact they never got out of the truck at
22 Billy's, did they?

23 A That is correct, sir.

24 Q And as a matter of fact you never saw them have any
25 contact with the guys in the T-Bird at Fredy's? At

- 1 Fredy's?
- 2 A They were never at Fredy's that I saw.
- 3 Q The only contact that you saw was supposedly one of the
- 4 occupants of the T-Bird got up and walked up to the
- 5 Ryder truck?
- 6 A Yes, sir, the person we're assuming was Mr. Ramos.
- 7 Q But you couldn't hear what was said?
- 8 A No, sir.
- 9 Q The conversations didn't last but a minute or so, if
- 10 there was one?
- 11 A Correct.
- 12 Q Because at the same time that was taking place, the
- 13 other guy from the T-Bird was trying to get into your
- 14 truck?
- 15 A That is correct, sir.
- 16 Q So you were trying to keep an eye on him?
- 17 A Yes, sir.
- 18 Q You were talking to him about, "No, you can't get in
- 19 here, that's against company policy?"
- 20 A Correct, sir.
- 21 Q So your attention was directed at him?
- 22 A Correct, sir.
- 23 Q And not primarily on what was happening at the Ryder
- 24 truck?
- 25 A That's correct, sir.

1 Q And that's part of the reason, is it not, that you
2 weren't really sure, that you didn't really see the
3 third person in the Ryder truck until later?

4 A I would say that along with the angle of where they
5 were parked compared to where I was. It was just a
6 tough angle.

7 Q Because they were about 10 or 15 feet away from you?

8 A 10 or 15 feet from the front of the truck.

9 Q All right. Now, do you think it's significant at all
10 that the guy in the T-Bird got out, this guy in the
11 composite and seemed to walk over to the Ryder truck?

12 A I would assume that they were part of the group that
13 was with him, yes, sir.

14 Q So you think it was significant?

15 A Yes, sir, I did.

16 Q Did you think it was real significant?

17 A I couldn't testify how significant, sir.

18 Q Show me on your summary of your significant involvement
19 where that's mentioned that the guy in the T-Bird got
20 out and approached the Ryder truck?

21 A Once again, sir, that's just a summary of my testimony,
22 not all the specifics.

23 Q Okay. For all you know, the guy in the T-Bird could
24 have been giving the Ryder truck guys directions, just
25 like the other guy was giving you?

1 A I have no idea, sir, what was said.

2 Q And you have already said that that the driver in your
3 vehicle was not involved in this conspiracy or whatever
4 you want to call it, this group of people, as far as
5 you could tell?

6 A Yes, sir.

7 Q Well you know that because they knew that from the
8 beginning?

9 A Definitely, definitely.

10 Q As far as you know, these gentlemen have never been to
11 Edgefield before?

12 A I have no idea, sir.

13 Q As far as you know, the guy that was driving the semi,
14 loaded up with dope that came across the border, he's
15 never been in Edgefield either?

16 A Not to my knowledge, sir.

17 Q As far as you know, these guys over here, Arojona,
18 Guerrero and Hernandez have never even seen the inside
19 of that semi tractor trailer, the one that was with all
20 the dope?

21 A No, sir.

22 Q As far as you know, the guy that was driving the semi
23 tractor trailer that was loaded with 900 and some odd
24 pounds of dope, he never saw the inside of that tractor
25 trailer either?

1 A That's correct, sir.

2 Q Now, let's talk about our trip down red clay road?

3 A Okay.

4 Q T-Birds in the lead?

5 A Correct.

6 Q Rental guy is following?

7 A Correct.

8 Q Tractor trailer following?

9 A Correct.

10 Q Convoy going down the road, right?

11 A Yes, sir.

12 Q Agents all around monitoring?

13 A Yes, sir.

14 Q You hope so?

15 A Definitely.

16 Q For your safety?

17 A Definitely.

18 Q Team one and team two and whatever other teams we had.
19 You were in that briefing earlier before the operation
20 started?

21 A Yes, sir, but once I learned that I was going to be in
22 the tractor trailer, I went straight to the driver and
23 started basically giving him a safety talk.

24 Q You've never been to Edgefield before?

25 A No, sir.

1 Q Didn't know where you were headed?

2 A That's correct, sir.

3 Q Didn't know who you were dealing with?

4 A Aside from what I assumed was Mr. DeLeon from the
5 manifest.

6 Q Well, I'm saying, just like you said before, these
7 other three guys show up, you don't know who they are?

8 A That's correct, sir.

9 Q So when you're out on this operation you kind of like
10 to have a general idea before you start, where your
11 back up is, don't you?

12 A That's correct, sir.

13 Q So you had a general idea where they would be?

14 A Correct, sir.

15 Q Did you have -- did you look on a map at this briefing?

16 A I didn't sir.

17 Q You didn't look and see where you were going to be
18 going?

19 A We had passed it the night before, so it was like ---

20 Q So you had a general knowledge of where everything was?

21 A Sure, yes, sir.

22 Q So you walked down red clay road, is it pouring rain at
23 this point?

24 A It's raining pretty hard by that point.

25 Q How long did it take you to get to that point when you

1 turned off the main road?

2 A From the time we left until the time we got to that
3 point, maybe around 20 minutes or so.

4 Q Were you going fast?

5 A Not particularly.

6 Q 18 wheeler is not exactly what we would call a Porsche?

7 A By no means.

8 Q So the green car was kind of leading you?

9 A Correct, sir.

10 Q Leading you and the Ryder truck?

11 A That's correct.

12 Q And it wasn't like they were attempting to leave you?

13 A No, sir.

14 Q Okay. So you follow them onto red clay road. Is that
15 on the diagram where you went? Is it on here?

16 MR. SUSSMAN: Judge, can I ask him to step
17 down?

18 THE COURT: Sure.

19 By Mr. Sussman:

20 Q Thank you. Show me.

21 A This, as far as I can tell is what would have been
22 initially Padgett Road where it split.

23 Q Where did you guys start from?

24 A Up here.

25 Q Okay.

- 1 A At the Tienda DeLeon.
- 2 Q And then you cruised down this way?
- 3 A That's correct.
- 4 Q Okay. And you turned -- where do you turn?
- 5 A It's not marked at this point, but obviously it's
- 6 Padgett Road.
- 7 Q Okay. So this is a paved highway right?
- 8 A That's correct.
- 9 Q And now this is the gravel road or the dirt road?
- 10 A It seems to be somewhat of hard packed. It's not a
- 11 paved road, but it's definitely got -- assuming it had
- 12 some gravel.
- 13 Q And it's raining?
- 14 A Correct.
- 15 Q Was it raining hard at this point?
- 16 A Compared to up here, yes, sir.
- 17 Q What kind of day was it when you finally got down
- 18 there? Approximately?
- 19 A Approximately 10:00, 10:30.
- 20 Q In the morning?
- 21 A In the morning.
- 22 Q So it's light out but your visual was obscured because
- 23 of the rain?
- 24 A Badly.
- 25 Q You could see?

1 A I could see.

2 Q Did you have eye contact on the T-Bird in front of you
3 around the back of the yellow Ryder truck?

4 A Sure.

5 Q Because you guys were pretty high?

6 A Well, it's not just that, but when they would go around
7 the bends in the road.

8 Q Okay. So you came right here?

9 A Right.

10 Q And then what happened at this point?

11 A At this point, this is a very high semi so at this
12 point we were moving pretty slow.

13 Q Okay.

14 A So the T-Bird and the Ryder truck, while it didn't
15 appear that they were trying to get away from us by any
16 means, they were pulling ahead of us a little bit.

17 Q Just because you guys had to slow down?

18 A Just because we had to slow down for the curves. So
19 there's a little bit more distance between us at this
20 point.

21 Q Right.

22 A When I know they got down to the end where the dirt
23 road, where it forms a Y, they both turned to the
24 right.

25 Q Did ya'll see that?

1 A We saw them turn to the right.

2 Q Do you follow them?

3 A Yes.

4 Q They're going on?

5 A At that point, that was the last time I ever saw is
6 green T-Bird.

7 Q So you guys had them in sight?

8 A Correct.

9 Q And then he takes off?

10 A Well there is normally about 50 yards.

11 Q Is that that picture we saw, that stretch, where there
12 was -- I think you were telling Mr. Maye the bend in
13 there and you can't see around the bend?

14 A Not at that point.

15 Q Okay.

16 A At this point all you're going to see is about 50 yards
17 and the canopy was fairly saggy, so to be honest with
18 you, I didn't know what was beyond that. So we didn't
19 see them at all once we first reached the Y.

20 Q Okay.

21 A Then we made the turn.

22 Q Right.

23 A We went down a little bit and that's where I saw the
24 other three defendants stuck in the red dirt. If I was
25 assuming from this map -- I know it's not to scale ---

1 Q Right.

2 A --- but I would say somewhere in through this area at
3 first.

4 Q Sort of got longer as you went in?

5 A It seemed like it turned from sand to that red mud.

6 Q Okay. So they're stuck there?

7 A Correct.

8 Q And the T-Bird is nowhere in sight?

9 A I didn't see the T-Bird.

10 Q So then for the next hour to hour and-a-half, you guys
11 in the 18 wheeler and the three guys in the rental are
12 getting stuck and unstuck?

13 A The tractor trailer didn't really get -- we found out
14 that it was just flat out stuck at that point. Where I
15 spent the next hour and-a-half to two hours was
16 assisting those gentlemen in trying to get their truck
17 out of the mud.

18 Q So you were working as a team?

19 A I would say that was part of it.

20 Q Good deal. Have a seat, thank you. Now, the T-Bird's
21 gone?

22 A Correct.

23 Q Once you make that wide turn. These guys keep getting
24 stuck, right?

25 A Correct, sir.

- 1 Q It's raining?
- 2 A Yes, sir.
- 3 Q Okay. And your getting out and helping them?
- 4 A Yes, sir.
- 5 Q How about the Canadian guy, what was he doing?
- 6 A He was staying in the truck.
- 7 Q That's not part of his job description to get out and
- 8 help, huh?
- 9 A It's the safety issues.
- 10 Q Right, I got you. Did he have a radio in the cab?
- 11 A I left the handheld portable radio in the truck with
- 12 him.
- 13 Q Okay. Now, all this time you're working with these
- 14 guys, trying to get their truck unstuck, did you ever
- 15 feel like you were in danger?
- 16 A Nervous at points, yes, sir.
- 17 Q From these guys?
- 18 A They were strangers to me, sir, and I was involved in a
- 19 narcotics dig, so yes, sir.
- 20 Q But were they being friendly to you?
- 21 A As much as I could assume, they weren't threatening me,
- 22 no, sir.
- 23 Q Weren't they actually glad you were helping them?
- 24 A I would assume so.
- 25 Q And were you guys speaking? Were you communicating?

1 A As far as, push this way, turn the steering wheel this
2 way -- and mind you, during all this time, I'm not
3 supposed to be part of the conspiracy, I'm supposed to
4 be a legitimate truck driver, so that's also a little
5 bit of a safety issue for me also.

6 Q I understand, but the conspiracy that you may have been
7 involved in at this point was conspiring to help get
8 their truck unstuck?

9 A That was my number one job at that point, sir.

10 Q Now, I have your summary here and I never see anywhere
11 in here where they ever went back to check on the 18
12 wheeler?

13 A Who is they, sir?

14 Q Our three here. They didn't go back and check on the
15 18 wheeler did they?

16 A At one point -- I ---

17 Q While ya'll were out on the road, trying to get the
18 truck unstuck. They never walked back to the 18
19 wheeler, did they?

20 A After about an hour and-a-half to 2 hours, sir, when we
21 were moving back and forth and they went out of
22 sight -- open ---

23 Q I understand that.

24 A I went up and around and that's when I went back to the
25 18 wheeler. I don't know if they were worried about me

1 getting stuck or not. I don't know.

2 Q All I'm asking is this, they never went back while
3 ya'll were slopping through the mud, they never went
4 back to the 18 wheeler?

5 A That's correct, sir.

6 Q The T-Bird never came back?

7 A No, sir.

8 Q And your conversation with them during this hour
9 and-a-half or so was just kind of pigeon kind of
10 Spanish English going?

11 A How are we going to push you out, and then at the end,
12 do you have a telephone, and try to communicate that we
13 were going to try and call somebody to get them out.

14 Q And Honorio actually gave you his phone, didn't he?

15 A It was Mr. Guerrero sir.

16 Q Guerrero. He gave you his phone?

17 A Yes, sir, he showed it to me.

18 Q So that maybe you could make a call for him?

19 A Or that I could see that it doesn't work.

20 Q You never really had that much of the discussion did
21 you?

22 A When I asked him if he was going to make a phone call,
23 he handed me the phone, I opened it, it showed no
24 signal. That's all I can tell you.

25 Q And you went back to the 18 wheeler?

1 A I went back to the 18 wheeler.

2 Q And he and one of the other guys got out?

3 A I don't know if he ---

4 Q You never saw them again?

5 A I never saw them again until later and that was it.

6 Q And then you guys were stuck, the 18 wheeler was stuck?

7 A That's correct, sir.

8 Q And that was finito, you're basically done at this
9 point?

10 A At this point we took it down.

11 Q Which means for normal every day people, they got
12 arrested?

13 A Yes, sir.

14 Q Thank you. That's all the questions I have?

15 THE COURT: Mr. Miller?

16 MR. MILLER: May it please the court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 By Mr. Miller:

20 Q Agent Mize, Mr. Sussman has already gone through
21 several of these with you but not all of them. Where
22 was Jose Hernandez whenever the controlled delivery was
23 made?

24 A You mean the actual at the -- when we went to the
25 Tienda?

1 Q Right.

2 A He was a part of the one of the surveillance teams, I
3 would assume.

4 Q Do you know where he was located?

5 A I do not.

6 Q How about Carlos Cardenas?

7 A Same. I don't know specifically where he was.

8 Q Giavani Perez

9 A I don't know specifically where he was.

10 Q Arturo Rocha?

11 A I don't know.

12 Q All right. When you were standing at DeLeon's store,
13 could you see Billy's gas station in the distance?

14 A You can see it from there. Whether or not -- I don't
15 remember if I looked around and saw it at that point.
16 I didn't know it played any factor at that point.

17 Q How many surveillance teams were around that store?

18 A I don't know, sir.

19 Q Do you know about how far any of them were away from
20 that store?

21 A I believe there was at least one at the laundromat,
22 just what I believe. I don't know. Right down the
23 street.

24 Q Where is the one in relationship to the store?

25 A If I recall correctly, it's in between Billy's Super

1 Store and the Tienda.

2 Q Okay. You said on several occasions that this began as
3 a customs operation?

4 A That's correct, sir.

5 Q Was it always a Laredo customs operation, or did it at
6 some point in time become somebody else's operation?

7 A The way we do a controlled delivery, the way it works
8 is we make the initial seizure and we provide from that
9 point to the destination. Once we're at the
10 destination -- we're not familiar with the area, we're
11 not familiar with local law enforcement. It's then
12 turned over to another body who becomes the primary and
13 we become support personnel.

14 Q So it went from Laredo to customs to some other body,
15 some other agency?

16 A Somebody within this area. I don't know. At the
17 onset, I would say I thought it was a customs
18 operation.

19 Q Was the operation control ever turned over to the
20 Greenville customs office in Greenville, South
21 Carolina?

22 A Yes, sir.

23 Q When did that happen?

24 A Once we arrived in this county. They prepared all the
25 prep work for us while we were in route. Once we

1 arrived here, we in essence turn over command and
2 control to agents here and we become support personnel.

3 Q So did that occur in Saluda County on the 17th or did
4 that occur in Edgefield on the 18th?

5 A Technically on the 17th with -- well, actually
6 technically it could have been the 18th because it was
7 very very late at night, early in the morning.

8 Q Okay. How many agents, customs agents did the
9 Greenville office supply?

10 A I don't know, sir.

11 Q How many people were out there in total with you at
12 that briefing?

13 A Guessing, as I recall at least 15 to 20, probably. I
14 just don't know. There were -- I figure there were six
15 of us plus local. It would be a guess for me to say.
16 It was definitely a lot.

17 Q But there were six of you from Laredo?

18 A That's correct.

19 Q And your driver from Canada?

20 A That's correct.

21 Q So that's seven?

22 A Correct, sir.

23 Q At the briefing, what time was the briefing done?

24 A About 7 o'clock that morning on the 18th, sir.

25 Q And was the first thing decided at that briefing who

1 was going to sit in the truck?

2 A I wouldn't say it was the first thing. I think there
3 was a lot of people talking among each other and they
4 talked to the driver and it was decided at that point
5 that I would ride in the truck.

6 Q Do you know if there was ever any consideration of
7 putting Special Agent Michelle Williams as the
8 passenger in the truck?

9 A At no point, sir. No.

10 Q It wasn't really realistic, you didn't think? For her
11 to be on as the passenger of the truck?

12 A Well, part of the idea would be that I could help them
13 off-load. If necessary, I could conduct the business
14 and like I talked about earlier, I was by far the
15 scruffiest looking person.

16 Q So of the five agents from the Laredo office, that were
17 remaining, with Ms. Williams out of it, four of them
18 spoke Spanish and yet they chose the one who didn't to
19 get on that truck?

20 A You had a Canadian white driver. They wanted to keep
21 it the same. I myself had had experience in law
22 enforcement and our primary responsibility was for
23 safety issues.

24 Q Let's talk about that real quick. How long have you
25 been with customs service as of today?

1 A 3 years.

2 Q What day did you start?

3 A January 4th, 2001.

4 Q And when you were hired on by customs, did you go to
5 the federal law enforcement training center?

6 A I did, sir.

7 Q You did? Did everyone who you were there with go to
8 that same law enforcement training center?

9 A They did, sir.

10 Q But despite the fact that these were all trained
11 federal agents, your prior law enforcement experience
12 made you better able to handle acting as security on
13 this truck?

14 A Any additional experience is important, sir.

15 Q Do any of these other agents have any prior law
16 enforcement experience before they came to customs?

17 A I think one gentlemen was a DPS trooper for about a
18 year.

19 Q Assume it wouldn't have been one of the gentlemen that
20 spoke Spanish?

21 A Everybody else besides myself and Ms. Williams spoke
22 Spanish, sir.

23 Q You said at some point in time while you were out on
24 the road, that Mr. Guerrero offered you his cell phone
25 and you opened that cell phone and you realized it

1 didn't have a signal so it was basically useless?

2 A That's correct, sir.

3 Q You gave it back to him?

4 A That's correct, sir.

5 Q Whenever Mr. Guerrero was arrested, was the cell phone
6 taken?

7 A I don't know sir.

8 Q Did you tell anybody that he had a cell phone on him
9 whenever he was arrested so they would know to look for
10 it?

11 A I don't recall if the cell phone was mentioned.

12 Q So you don't have any knowledge as to whether or not
13 law enforcement went through the steps to find out who
14 he had called that morning, who called him that
15 morning, maybe if there was any connection between him
16 and the marijuana?

17 A I have no idea, sir.

18 MR. MILLER: One second, please. Thank you.

19 MR. MILLER: Your Honor, I have no further
20 questions.

21 THE COURT: All right. Redirect?

22 MR. MAYE: Yes, sir, I do.

23 **REDIRECT EXAMINATION**

24 By Mr. Maye:

25 Q How did Fredy spell his name on that manifest that you

1 have?

2 A F-r ---

3 MR. HAWK: Your Honor, we have a matter we need
4 to take up.

5 THE COURT: All right. Ladies and gentlemen of
6 the jury, please step to the jury room. Don't discuss the
7 case.

8 (WHEREUPON the jury left the courtroom at 4:04
9 p.m.)

10 THE COURT: Yes, sir?

11 MR. HAWK: Your Honor, at this time, the
12 solicitor is attempting to go into this document that was
13 retrieved from the Ford Thunderbird. This particular
14 document was just a document found in the Thunderbird. It
15 is a handwritten document. Have you seen a copy of it at
16 all?

17 THE COURT: No.

18 MR. HAWK: May I give you one for your review.

19 THE COURT: Sure.

20 MR. HAWK: May I approach, Your Honor.

21 THE COURT: Certainly.

22 MR. HAWK: Judge, this is a document that's
23 been reported to us that has been retrieved from the Ford
24 Thunderbird. This particular document's author is unknown.
25 The names that are referred to in this document as to who

1 those people actually are unknown. The meaning of the
2 words and the phrases in the documents are unknown. The
3 purpose for writing the document is unknown. The purpose
4 for making these recordings are unknown and there is no
5 author for us to cross-examine or confront about these
6 writings to find out what they meant when written, to find
7 out why they were written or anything else.

8 We expect that the solicitor is going to try
9 and introduce this document to make inferences that
10 these -- that this document refers to Mr. DeLeon. Fredy is
11 a name that appears on the document. Fredy is spelled
12 F-r-e-d-y that is how generally -- and I can put on a
13 witness if the court wants to know -- generally any
14 Hispanic male with Fredrico that goes by the name Fredy,
15 this is the common way they spell it, F-r-e-d-y.

16 There is no indication that any of those
17 writings were written by any of the people that were
18 actually involved in this transaction in the Ford
19 Thunderbird, first of all. They don't know who wrote it.
20 If you assume it is written, there's no proof or no
21 indication that any of the names of the people refer to
22 anybody here on trial, or whether it's some other Fredy or
23 whether it's some other person or whatever. All of those
24 things would need to be gone into in order for us to
25 protect these particular defendant's rights under the Fifth

1 Amendment of the United States Constitution, and the Sixth
2 Amendment of the United States Constitution, the Fourth
3 Amendment of the United States Constitution and also the
4 applicable and comparable provisions of the South Carolina
5 constitution in regards to the admission of those
6 particular documents. They would violate, clearly, the
7 defendant's right to confront and cross-exam the author of
8 these documents as to what they meant, when they wrote it,
9 who it's about, all these issues that would be absolutely
10 vital to the defense of these -- of Mr. DeLeon.

11 And also, Judge, there has, there's been a
12 recent US Supreme Court decision that deals with this
13 particular issue, which basically aggregated almost
14 anything like this particularly, we think it would
15 absolutely exclude the consideration or an admission in
16 this case without the author being present, being available
17 for confrontation and cross-examination and that case would
18 be Michael D. Crawford vs. --- I'm sorry, Michael D.
19 Crawford vs. Washington. And I have the Lexus cite, but I
20 don't ---

21 MR. PUETZ: It was decided May 8, of 2004,
22 Judge.

23 MR. HAWK: I have a copy, judge, if you would
24 like to look at it.

25 THE COURT: I can retrieve it.

1 MR. HAWK: Okay.

2 THE COURT: It may take me a minute.

3 MR. HAWK: Do you want to -- you're welcome to
4 use ours.

5 THE COURT: Go ahead with your argument.

6 MR. HAWK: Okay. The thrust, Judge, is that
7 without us being able to adequately confront and cross-exam
8 the author of this particular writing or statement, there's
9 no way to determine what was meant by the writings that
10 were made. These were clearly out-of-court statements,
11 made not under oath and we have no idea what they were
12 meant to convey or mean and there's no way to determine
13 that without an adequate confrontation through
14 cross-examination of the author. And we feel that they
15 should not be admitted in any way, shape or form unless the
16 author can be produced and give us some information about
17 what was written, why it was written and what was meant by
18 it.

19 We also have another complication in that it is
20 written in Spanish, not English and that it's going to be
21 subject to only to trying to determine what it means, but
22 also as to how it should be properly interpreted. And what
23 it would mean and its context and interpretation. And
24 without having the author here and without being able to go
25 into all that, it just opens up just a nightmare. You

1 could just say it means anything you want and argue
2 anything you want from it.

3 THE COURT: All right. What's the State's
4 position.

5 MR. MAYE: Your Honor, would I -- sure I'm just
6 laying the foundation about getting this document in.
7 These pages, Your Honor, in this case certainly are in the
8 form, changing this case, they're ledger or tally sheet,
9 which would be relevant evidence in a trafficking marijuana
10 case, that this is a drug ledger and these are ledgers or
11 tally sheets, Your Honor. And I'm just basically laying
12 the foundation.

13 Fredy's name the F-r-e-d-y, there's no question
14 that the green Thunderbird has been positively identified.
15 Like I said I was just getting started laying the
16 foundation, I wasn't going to attempt to put the ledger in
17 through this witness. I'm just getting straight on the
18 spelling and all of his name. And I wasn't going to get
19 into it with this particular witness. But in response to
20 Mr. Hawk's cross-examination questions, he asked him if
21 there's any other evidence linking this guy, his own
22 question, if there's any other evidence linking this fellow
23 in there and he responds, this ledger.

24 There's no objection to that, then he goes in
25 and asks this witness about four or five different

1 questions, has anybody ever -- do you know if this guy's
2 got any friends named Fredy, F-r-e-d-y or the spelling of
3 Fredy. Do you know if anybody else has mentioned anything?
4 Do you know if he's got any friends. There were four or
5 five questions that Mr. Hawk's already asked this witness
6 about a ledger. He elicited that conversation. There was
7 no objection from anyone when he started testifying about a
8 ledger. He asked him an open-ended question, was there
9 anything else tying his client into this deal.

10 This officer answered, without objection from
11 anybody, "Yes, a ledger." Then he asked him a bunch of
12 questions and there's already been discussion in front of
13 this jury about how you spell Fredy and isn't that a common
14 spelling of the Hispanic version, I guess it would be
15 F-r-e-d-d-y an Anglo spelling of that. All kinds of
16 questions come from that. I didn't go into it with this
17 witness in this case, Your Honor. But he answered there
18 was a ledger that was found and I am going to lay a
19 foundation regarding the documents that were found in the
20 Thunderbird. None of those defendants have any standing to
21 object to anything that's found in the Thunderbird. The
22 Thunderbird was an abandoned vehicle and they certainly
23 don't have any expectation as to anything that was found in
24 that vehicle.

25 It was abandoned here in Edgefield County, Your

1 Honor. It was part of a crime, a trafficking case. A
2 search warrant was obtained for the vehicle, Your Honor.
3 As part of that, this drug ledger is part of the return.
4 We've placed, already, with just one witness here this
5 Thunderbird at Fredy DeLeon's place, involved in this whole
6 transaction. There whole defense in this case is, he's got
7 no involvement with any of the individuals involved -- that
8 are inside this Thunderbird, who they maintained are the
9 individuals that are pulling the strings in this case, Your
10 Honor, but yet there's a drug ledger, a drug ledger in this
11 case or found inside that Thunderbird with Fredy's name on
12 it, his first name, F-r-e-d-y, the individual that just a
13 few hours before has been involved with Fredy of-loading
14 drugs.

15 Certainly it's our -- certainly we backed out
16 the dates of the trafficking in this to coincide with the
17 first dates that's entered in on this ledger. There's
18 obviously -- we're going to bring an interpreter in that's
19 fluent in Spanish and English, Your Honor, to interpret
20 what the words in this document mean. And it's plain
21 meaning in this case, it is someone gave somebody that's
22 talking about all these sums of money. Ledger drug
23 evidence, Your Honor, is certainly one of the things that
24 is commonly associated and are drug records, are commonly
25 associated with drug trafficking cases, Your Honor. It's

1 not like this is some -- it is a long writing in this case,
2 Your Honor, that's going to require much interpretation,
3 basically a summation of it.

4 I know we're getting premature in this, is that
5 he gave and I gave and it's how much money. And the
6 arguments that they have, Your Honor, I would say go to the
7 weight of this evidence, not as to it's admissibility at
8 this point in time. We're certainly not attempting to
9 offer it at this point in time, but we're going to lay a
10 foundation in this case. If we need to take all this up as
11 some kind of a suppression hearing to keep this from coming
12 in, but our main position is they don't have any standing
13 to object to this particular document in this case, Your
14 Honor, because they didn't have any expectation of privacy
15 or control issues over that.

16 Additionally, Your Honor, the other individuals
17 in this car, although the arrest warrants for at least one
18 of them, it's our position in this case that they're
19 unindicted, co-conspirators in this case, Your Honor, and
20 any testimony or evidence or anything that would flow from
21 any search involving them, Your Honor, we would maintain
22 would be admissible against Mr. DeLeon because it's
23 certainly our position in this case that these are all
24 co-conspirators in this trafficking.

25 I know we're premature on this issue, Your

1 Honor, I would like to continue to lay the foundation for
2 it. Like I said if any of that needs to not go before the
3 jury, I will call the agent that seized it out of the
4 Thunderbird, the agent that found the car and we'll put in
5 our interpreter to go through what this document means and
6 translate these words from Spanish to English.

7 MR. HAWK: Judge, see, this is exactly what
8 we're talking about. We've gone to a writing that we don't
9 know whether any of the people involved in this even wrote
10 this document, number one. There's absolutely no proof of
11 that.

12 THE COURT: Say that again.

13 MR. HAWK: All right. The first thing that we
14 have is we've already made the assumption that this was
15 written by one of the two people involved in this
16 transaction, which ---

17 MR. PUETZ: In the car.

18 MR. HAWK: In the car, the ones in the green
19 Thunderbird. Okay. We've already jumped to that
20 assumption. And now we're jumping to the assumption that
21 not only did they write it, but this is a drug ledger and
22 it a drug ledger and now we're going to make one more leap
23 that it's Fredy's, our Fredy and not some other Fredy or
24 not any other person in the world that's referred to on
25 this drug ledger. So we have to make these quantum leaps

1 over and over and over without the benefit of us being able
2 to cross-exam or confront the person who put this thing
3 together.

4 I don't know whether it came out of some
5 child's notebook about 'losing a marble game and how many
6 big marbles he lost or how many little marbles he lost or
7 what this thing means because we don't have the author. We
8 don't know and there is no proof whatsoever anywhere that
9 either one of these two people in the green Ford
10 Thunderbird are the author. There is no proof whatsoever
11 that the Fredy referred to in the document at all is Fredy
12 DeLeon. There's not going to be any proof whatsoever as to
13 what exactly was meant by this.

14 Okay. And then we're going to add one more
15 thing, we are going to say, "Well, we're going to interpret
16 it and we interpret it this way and not only do we
17 interpret it this way, but this is what it means, it means
18 that this is money for a drug transaction, this is a drug
19 ledger. It was written by these two people, it was
20 recording drug transactions and that the Fredy they're
21 talking about is the Fredy DeLeon." That's what you're
22 going to get in argument at the closing of this case.

23 It's going to be presented like that in front
24 of the jury and everything else and you know what we're
25 going to do, Judge, without the ability to cross-exam and

1 confront the person that wrote it, we're going to have to
2 try and eat it and explain it without so much as the
3 benefit of having the author, any information about what he
4 was, what his purpose was for writing it or what it meant,
5 what it did not mean, the whole nine yards.

6 And it's on the crucial -- it's on the central
7 issue in this case that I would say be allowed to make that
8 leap. And we feel like if they're allowed to do it, it
9 would clearly violate the constitutional rights of Fredy
10 DeLeon as previously stated.

11 MR. SUSSMAN: Just for the record, we sure
12 would like to join in that objection, Judge.

13 THE COURT: Well, the question that prompted
14 all this is how is Fredy spelled on that manifest. So the
15 precise question I have before me, I suppose would be,
16 could this witness testify as to how the word Fredy is
17 spelled on an exhibit that is in evidence over an
18 objection. And obviously the answer to that question is,
19 it's an exhibit whether it was correctly or incorrectly
20 admitted, that mistake's been made, if it's a mistake, it's
21 properly noted. Either way it's in.

22 MR. HAWK: Your Honor, that document's never
23 been offered. Oh, you're talking about the other manifest.

24 THE COURT: The question that was posed to
25 which you stood up and said you had a matter of law to

1 address was how is Fredy spelled on this bill of lading,
2 the manifest. Now, I'm not permitted to give advisory
3 opinion, but obviously, there may be a whole series of
4 objections that would flow from an attempt to introduce
5 this document or any of the contents of it into evidence.

6 Now, I will concede that during the
7 cross-examination of this witness by Mr. DeLeon's attorney,
8 there were questions about whether he had ever heard this
9 or heard that. All kinds of questions eliciting hearsay
10 and at one point in time, I don't know that it was
11 necessarily responsive or unresponsive, but the witness did
12 mention that he had heard about this ledger. I'm using the
13 word ledger not in the sense of ---

14 MR. HAWK: Yes, sir.

15 THE COURT: It is a document. What you all
16 have handed up to me looks like a legal pad and there are
17 some other pages that were found in the vehicle of the Ford
18 Thunderbird, I assume was eventually found abandoned. I've
19 got a whole bunch of questions about how this could ever
20 come into evidence. I don't know how I'm going to address
21 them without having an in-camera hearing and hear what
22 their side of it is and what they testify about these words
23 mean.

24 MR. HAWK: Sure.

25 THE COURT: And whether this is something

1 that's commonly done in the drug trade and then whether I
2 feel like there is a sufficient link to allow it to be
3 entered over the various objections which may include
4 hearsay among others. It has to be authenticated,
5 obviously. It has to be relevant. It has to be admissible
6 under the hearsay rule. A whole bunch of things that might
7 be problems. I've got reversed on that conspiracy bit
8 before. I'm going to be real careful on that one though, I
9 can tell you. I was flat wrong and I properly got reversed
10 about it.

11 Sir?

12 MR. MAYE: Your Honor, the only thing I would
13 say in this case, is our position is the door is opened in
14 this matter. He asked this witness and this witness
15 answered. He asked him a wide open question if he was ---

16 THE COURT: If that's your point ---

17 MR. MAYE: Yes, sir.

18 THE COURT: If you want to talk to me, that's
19 fine, if you want to ---

20 MR. MAYE: I'm sorry, if I'm enthusiastic. But
21 I'm certainly ---

22 THE COURT: You're enthusiastic, but it's late
23 in the day.

24 MR. MAYE: Yes, sir.

25 THE COURT: If you want to state your point, I

1 will be happy to let you do it. If you want to use me like
2 a sounding board, I'm going to yell back at you.

3 MR. MAYE: No, sir, Your Honor.

4 THE COURT: State your position, but if you're
5 position is that they opened the door with that question,
6 that is overruled.

7 MR. MAYE: That was our only -- that was the
8 only reason I was going into it with this witness
9 because ---

10 THE COURT: You just asked him how Fredy was
11 spelled.

12 MR. MAYE: Yes, sir, Your Honor. But that was
13 my first question. I had a series of other ones afterward.

14 THE COURT: Well if you're ---

15 MR. MAYE: Because of that issue.

16 THE COURT: I'm sorry, if your series of other
17 questions is based upon opening the door, that's -- that is
18 not allowed.

19 MR. MAYE: Okay.

20 THE COURT: At this point. That door might be
21 open differently. There's going to have to be a really
22 good nexus and foundation and there's going to have to be a
23 hearsay hurdle that's going to have to be crossed on that
24 thing.

25 MR. MAYE: Yes, sir, Your Honor.

1 THE COURT: Ya'll know that.

2 MR. MAYE: I understand.

3 THE COURT: What time is it? Do you all
4 envision we can finish with this witness today.

5 MR. MAYE: Yes, sir.

6 MR. HAWK: Your Honor, I hope so.

7 THE COURT: Bring that jury in for me.

8 (WHEREUPON the jury entered the courtroom at
9 4:27 p.m.)

10 THE COURT: All right. The objection -- it
11 wasn't an objection. Mr. Maye, you can pose the last
12 question.

13 By Mr. Maye:

14 Q How did Fredy spell his first name on the manifest?

15 A F-r-e-d-y.

16 Q And which Fredy were you dealing with there out at the
17 Tienda DeLeon?

18 A This defendant, Mr. DeLeon.

19 Q Okay. You have been asked on cross-examination by
20 Mr. Hawk in this case did it look like any preparations
21 had been made for you being there. Were there any
22 interruptions in the flow of getting this marijuana
23 off-loaded at the store and then subsequently meeting
24 someone else? Was that pretty seem less?

25 MR. HAWK: Objection, leading.

1 THE COURT: It suggests an answer. You have to
2 rephrase it.

3 By Mr. Maye:

4 Q You have been previously asked if it looked like there
5 had been any preparations in this case involving
6 transferring of this dope. What preparations did you
7 see that were made for the transfer of this dope?

8 A I'm a little bit lost on this question counsel, I'm
9 sorry.

10 Q That is all right.

11 A You confused me.

12 Q You were asked repeatedly if there were any video
13 cameras. Did you take a video camera or a still photo
14 camera. Would it have been your practice as an
15 undercover officer working in the capacity of
16 undercover to start taking pictures of the participants
17 when you first encountered them?

18 A Absolutely not.

19 Q Why not?

20 A Because that would kind of throw a kink in my cover. I
21 would have to say I would start to question myself if I
22 started snapping photos.

23 Q Also you didn't pat any of them down anything like that
24 did you?

25 A Once again, maintaining part of my undercover ---

1 Q Did you do anything to look like a police officer at
2 that point in time?

3 A I hope not. Not that I recall.

4 Q Who blocked the tractor trailer in while the guy with
5 the bad complexion tried to get in the truck?

6 A The green Thunderbird was up along the left side of the
7 truck and then the yellow Ryder truck was parked
8 directly in front of us.

9 Q Is that the truck that blocked you in?

10 A Yes, sir.

11 MR. SUSSMAN: I'm going to object to the
12 characterization of blocking him in intimating an intent to
13 the driver of the Ryder truck. It's not been exhibited
14 here. To say he's blocking him indicates that they have
15 some intention and that's asking him to speculate on the
16 state of mind of the driver.

17 THE COURT: It has been testified. The
18 objection is overruled.

19 MR. MAYE: Thank you, Your Honor.

20 By Mr. Maye:

21 Q Which three individuals blocked you in while the guy
22 with the bad complexion tried to get in the truck?

23 A Excuse me on the names, Defendant Arojona, Guerrero,
24 and Hernandez, I believe are their last names.

25 Q Are those the same three guys that were out there with

1 the truck stuck in the mud that got apprehended?

2 A That's correct, sir.

3 Q Okay. Other than the room inside Mr. DeLeon's store,
4 how did you encounter that day had any means to
5 transport any of the goods or have any vessel or
6 anything to transport the goods that you had in that
7 trailer? Who had that?

8 A The defendant's Mr. Guerrero, Mr. Arojona and
9 Mr. Hernandez.

10 Q I know that there are different sizes of Ryder trucks.
11 What kind of Ryder truck are we talking about in this
12 case?

13 A I would be speculating on the number of feet. I'd say
14 it's more in the neighborhood of 12 feet, a box truck.
15 That's one big enough to hold all the mantles.
16 However, not big enough by any means to hold the entire
17 trailer load of furniture.

18 Q So the remaining chimneys that you had in there or
19 these chimneys or mantles, could they have gotten all
20 those in that Ryder truck?

21 A Yes, sir, you I believe they could.

22 Q You think everyone of them would have fit in there?

23 A Yes, sir, I do.

24 Q Did the guys in the Thunderbird have any room to haul
25 any cargo like that? How many of those mantles or

1 uprights could they have gotten in a Thunderbird?

2 A Zero.

3 Q They've asked you on cross-examination about how you've
4 seen people pay. Have you ever seen people paid for
5 their participation in a conspiracy, being paid in
6 drugs?

7 A Sure.

8 Q Is that common, based on your experience and training
9 as a customs agent, that people rather than getting
10 cash get drugs as payment?

11 A As a customs officer and as a police officer.

12 Q And you off-loaded how much of the total -- how many of
13 the chimneys went off at Fredy DeLeon's store?

14 A One chimney, sir.

15 Q One chimney went off at Mr. DeLeon's store?

16 A Yes, sir.

17 Q Okay. This Padgett Road we've been talking about, is
18 it a secluded spot or is this a busy traveled area like
19 main street here uptown in Edgefield?

20 A I would definitely call it a secluded spot.

21 Q Okay. Is it more or less secluded than the lot at
22 Billy's Super Store?

23 A Absolutely.

24 Q Okay. The whole time you were down there, did you
25 encounter any other traffic down on Padgett Road?

1 A None that I recall.

2 Q Anybody pass ya'll in that red mud?

3 A I highly doubt it.

4 Q Okay. Who gave you directions back there at the store?
5 Who eventually came up on the truck and gave you
6 directions?

7 A Mr. DeLeon.

8 Q Did Mr. Bad complexion, was he up there?

9 A No, sir.

10 Q Was Mr. DeLeon?

11 A No, sir, he was not.

12 Q Okay. Fredy DeLeon gave you directions?

13 A Yes, sir.

14 Q And an individual identified as his wife, is that
15 correct?

16 A That's correct, sir.

17 Q That -- did that direct where ya'll subsequently went
18 with the remainder of the marijuana in this case?

19 A Yes, sir, it did.

20 Q You were asked a question about whether or not you had
21 any doubts in your mind about the participation of the
22 defendant, Fredy DeLeon in this case, you were asked
23 your opinion on that. Any doubt in your mind that
24 Fredy DeLeon was involved in this transaction?

25 MR. HAWK: Your Honor, I would object. He's

1 asked and answered. He's asking the same question again.

2 THE COURT: Sustained.

3 MR. MAYE: Nothing else, sir.

4 THE COURT: Thank you. Recross?

5 **RECROSS EXAMINATION**

6 By Mr. Hawk:

7 Q When you were stuck for an hour and-a-half out there,
8 you didn't have any backup, did you?

9 A There were surveillance units in the area. Nobody was
10 with me.

11 Q Okay. And you had no means of contacting them at that
12 time because of the circuit?

13 A Handheld radio, sir.

14 Q And they didn't know you were stuck did they?

15 A At this point originally, I did not know -- I did not
16 know we were stuck when I was pushing these guys out.

17 Q Okay. All right. And for that hour and-a-half time,
18 though, you basically had those -- no backup, no
19 ability to contact them and you were stuck?

20 A We had the ability to contact them. I was outside of
21 the vehicle with the other three defendants for that
22 hour and-a-half.

23 Q Okay.

24 A Helping them push out.

25 Q Okay. So there's no way you would use your radio under

1 those circumstances?

2 A The radio was in the car with the truck driver and I
3 had given him instructions that if something was
4 happening to me, please call for help.

5 Q In other words, for that hour and-a-half while ya'll
6 were stuck out there, there were no units that came up
7 there to where ya'll were at?

8 A No, sir.

9 Q Okay. That's all.

10 **CROSS-EXAMINATION**

11 By Mr. Sussman:

12 Q Tell me, which of these photographs that indicates the
13 spot or the location that the tractor was parked?

14 A Just on -- it would have been a little bit closer to
15 the road than this Your Honor.

16 MR. SUSSMAN: Judge, could I ask him to step
17 down so the jury can see what we're talking about?

18 THE COURT: Certainly.

19 By Mr. Sussman:

20 Q Just like you did before, just --

21 A This being 121 and this being the intersection of 25 up
22 ahead, it's kind of hard to tell, what we would have
23 done in the store would have been back here so we were
24 approximately just a guesstimate, about 3 or 4 maybe 5
25 stalls from the store if there were stalls marked.

- 1 About right there.
- 2 Q Where would the back of the trailer be?
- 3 A Right there at the edge of the grass.
- 4 Q At the edge of the grass?
- 5 A Correct.
- 6 Q Okay. And where would the green T-Bird have been?
- 7 A Originally when I first saw that ---
- 8 Q When he came up and stopped?
- 9 A Around this side of us.
- 10 Q Okay.
- 11 A I'm sorry, so it would have been parked around on the
- 12 driver's side of us.
- 13 Q And what was to the right of you?
- 14 A A trailer.
- 15 Q There was a trailer right to the right of you?
- 16 A Right.
- 17 Q So then the yellow Ryder truck came and came up to the
- 18 front of you?
- 19 A Yes, it marked -- this was -- it parked something like
- 20 perpendicular facing towards the road.
- 21 Q So the T-Bird was on one side?
- 22 A That's correct.
- 23 Q The trailer was on the other?
- 24 A Correct.
- 25 Q The field was behind you?

1 A Correct.

2 Q Okay. Have a seat please. Thank you. And I think you
3 said when the person in the Ryder truck pulled up that
4 person about 10 or 15 feet away?

5 A From the truck, yes, sir.

6 Q From your truck?

7 A Yes, sir.

8 Q You're sitting in the front of the truck?

9 A Correct.

10 Q Stop me -- let me start from where you remember at and
11 stop me about where they were parked?

12 A I'd figure somewhere in the neighborhood of right
13 there.

14 Q Right here?

15 A It would have been closer.

16 Q Right here?

17 A I'm trying to mesh out how far I think in front of the
18 truck they would have been. It would probably stick
19 out about 8 feet maybe 10 then probably another 10 feet
20 in front of that.

21 Q Okay. All right. So they were blocking you in about
22 this distance?

23 A Yeah, that's where they were stopped, sir.

24 Q And at first you could only see two people in the
25 truck?

- 1 A That's correct, yes, sir.
- 2 Q You couldn't see the third guy?
- 3 A I did not see that third guy.
- 4 Q It was in front of you?
- 5 A They would have been directly in front of me and a
6 little bit ahead of me because I was in the passenger
7 side. They parked long ways in the front of us.
- 8 Q They never got out?
- 9 A Not that I saw.
- 10 Q Didn't point any guns on you to make you stop or keep
11 you from leaving?
- 12 A No, sir.
- 13 Q And I think you said that they were there maybe about a
14 minute or two while the other guy got out and tried to
15 get in your cab and then ya'll pulled off?
- 16 A Yes, sir, it was just a couple of minutes.
- 17 Q Now, let's talk about these mantles for a second. And
18 this furniture. Your testimony is that the Ryder
19 rental truck was about how big?
- 20 A It was a box truck and I'm guessing it had
21 approximately a 12 foot bed.
- 22 Q Did you ever go in it?
- 23 A I did not, sir, no.
- 24 Q Are you familiar with those kind of trucks?
- 25 A Yes, sir, I am, I've been in them before.

1 Q Okay. And how many of these chimneys were inside of
2 the semi?
3 A At that point I believe 12.
4 Q Okay. How about these deals, this, what's Exhibit 8
5 which is a shelving kind of furniture?
6 A I have no idea.
7 Q You never went inside the semi to inventory the semi?
8 A No, sir.
9 Q Okay. Were you there when they unloaded the semi?
10 A Yes, sir, I was.
11 Q So you counted these mantle pieces?
12 A That would be normal since they were the ones
13 containing the marijuana.
14 Q But you didn't pay any attention to the other
15 furniture?
16 A I don't know who paid attention to what. I can tell
17 you, I don't know how many there were.
18 Q Well yesterday I asked you if all of these
19 mantelpieces, the presented one is marked Exhibit 7 for
20 the record, all of those could have fit in the box
21 truck that was driven, the Ryder right?
22 A Yes, sir.
23 Q And of course, several of these Exhibit 8 could have
24 gone in there instead?
25 A I'm sure they would fit.

1 Q Well, you're not telling this jury that you have
2 evidence are you that these guys drove this Ryder truck
3 up to load the mantles in?
4 A I would say that's a pretty good assumption.
5 Q That's an assumption. I asked you for evidence. Do
6 you have any evidence that they were there to load
7 those mantles on this box truck.
8 A Beyond their involvement in what we've already gone
9 through in all the testimony, I have nothing else.
10 Q They were just there. Let me ask you this, could that
11 Ryder rental be utilized to move some of the other
12 furniture in the semi?
13 A It could be used to move anything, yes.
14 Q It could have been used to move anything? Are those
15 your words? I think so thank you.
16 THE COURT: All right. Mr. Miller, I think
17 we're back to you.
18 MR. MILLER: Nothing further, Your Honor.
19 THE COURT: Anything else of this witness from
20 the State?
21 MR. MAYE: Nothing else.
22 THE COURT: Mr. Hawk?
23 MR. HAWK: No, Your Honor.
24 THE COURT: You may step down, thank you very
25 much.

1 Q Okay. And how many of these chimneys were inside of
2 the semi?

3 A At that point I believe 12.

4 Q Okay. How about these deals, this, what's Exhibit 8
5 which is a shelving kind of furniture?

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13 containing the marijuana.

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15 furniture?

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19 mantelpieces, the presented one is marked Exhibit 7 for
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12 furniture in the semi?

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14 Q It could have been used to move anything? Are those
15 your words? I think so thank you.

16 THE COURT: All right. Mr. Miller, I think
17 we're back to you.

18 MR. MILLER: Nothing further, Your Honor.

19 THE COURT: Anything else of this witness from
20 the State?

21 MR. MAYE: Nothing else.

22 THE COURT: Mr. Hawk?

23 MR. HAWK: No, Your Honor.

24 THE COURT: You may step down, thank you very
25 much.

1 AGENT MIZE: Thank you, Your Honor.

2 THE COURT: Do we need to maintain
3 sequestration in this?

4 MR. HAWK: Yes, Your Honor.

5 THE COURT: They say you need to remain
6 sequestered so, Mr. Mize, please don't discuss your
7 testimony with any other witnesses.

8 AGENT MIZE: Yes, sir, Your Honor.

9 THE COURT: All right. Tell me where we are
10 it's a quarter to 5:00. I know you said you had ten
11 witnesses.

12 MR. MAYE: Yes, sir, Your Honor. I've got
13 Agent Coby Perry here from SLED. I mean he won't be
14 anywhere near as lengthy as Agent Mize, hopefully. I hope
15 no other witness I ever have is any more lengthy than that.

16 THE COURT: Well when you say -- all I'm asking
17 and I apologize for asking it so poorly, is there
18 anything -- do you have a witness that we could put on the
19 stand and get some testimony from without it being so --
20 without the timeframes disjointing the testimony so much
21 that we -- do you want the think about that for a second?

22 MR. MAYE: I want to look for one second here.

23 THE COURT: Obviously, I don't know how long
24 your witnesses will testify and I don't want to mess up
25 your case. If you're going to put a 4 hour witness on the

1 stand and we have 10 minutes ---

2 MR. MAYE: Your Honor, I can put the chemist up
3 for the drug results for all the drugs that were tested.
4 It certainly would be out of order, but I can do that.

5 THE COURT: Are you going to have the drugs
6 admitted into evidence.

7 MR. MAYE: The drugs are going to have to be
8 in the courtroom, Your Honor.

9 THE COURT: I tell you what, give us just a few
10 minutes to find out where we are. Ya'll get your exercise
11 again and walk on back to the jury room. Don't discuss the
12 case.

13 (WHEREUPON the jury left the courtroom at 4:51
14 p.m.)

15 THE COURT: I'm sorry, Mr. Maye for doing that
16 in front of the jury. I just -- I will let ya'll talk a
17 minute.

18 MR. MAYE: Your Honor, I do have one witness --
19 although we're not going to put it into evidence, we can
20 just mark for identification, I have the witness that found
21 all the items, that are in the car and I will just mark it
22 for ID and ask what was found in the automobile.

23 MR. SUSSMAN: You think that's going to be
24 brief?

25 MR. MAYE: I'm not going to try to put it into

1 evidence. I'm just going to mark it in. I'm not going to
2 pose it to the jury or tell them what the consents are.
3 I'm just going to tell them that they searched it and what
4 items did you take out of the car. I will mark them for
5 ID. I'm just throwing something out there because every
6 other one, I can tell you is going to take a while.

7 THE COURT: Do ya'll envision we can do that
8 this afternoon?

9 MR. MAYE: I can call ---

10 THE COURT: No, I've heard from you.

11 MR. PUETZ: I don't even know what he's
12 testifying too.

13 THE COURT: I assume what they said was an
14 abandoned Ford Thunderbird, somebody inventoried that
15 vehicle. They're going to put that person on the stand to
16 say what the results of that search were.

17 MR. HAWK: The only concern I have, Judge, is
18 if we go to that writing that I gave you a copy of and they
19 say, "Oh, yes, this is the drug ledger, I found in the
20 car." And, you know, I mark it -- how is he going to
21 identify it. That's my concern. What is he -- I don't
22 know how he's going to say what this is. He says, "These
23 are some papers I found in the car," that's one thing. If
24 he says, you know, "This is a drug ledger I found in the
25 car," then I've got a problem with it. So I don't know if

1 he's going to ---

2 MR. MAYE: I can say the papers -- these are
3 papers that we found in the car.

4 MR. HAWK: That's fine, then I think we can get
5 it done. Otherwise, I think we're going to get into a big
6 fight. Not a fight, a legal argument.

7 THE COURT: Bring the jury in.

8 (WHEREUPON the jury entered the courtroom at
9 4:51 p.m.)

10 THE COURT: Ladies and gentlemen, they do tell
11 me they have a fairly short witness to call. While he is
12 retrieving that witness, let me go ahead and tell you what
13 little I know about scheduling. At this point in the
14 trial, I will be astounded if we did not go into next week.
15 I have never required a jury to work through the weekend
16 and I don't plan to do it now. However, even though in 13
17 years, I've only had to do it 3 times, the third one being
18 Monday of this past -- of this week and Tuesday of this
19 week, it looks like you're going to be the fourth.

20 Now, we have a week set aside for us to be in
21 the office, so I can make it work out. Matter of fact, I
22 sent an e-mail about an hour and-a-half ago telling the
23 folks in Columbia what I'm telling you now and asking them,
24 because they assign me and I have to have their permission
25 to do any of this. I'm asking them to assign me next week

1 to do this case here and asking them to send us a court
2 reporter. At this point in time, my plan would be that we
3 would work tomorrow, normal type hours unless they had some
4 big witness problem, we would work from say 9:00 or 9:30
5 until 5:30 and then stop and then we would pick up,
6 depending on what Columbia tells me, we would pick up
7 Monday and Tuesday.

8 Okay. Now they do have family court going on
9 up here next week, but when we remodeled the courthouse, we
10 built another courtroom in the back and we should be able
11 to function with that without any trouble, unlike where I
12 just came from, we had to go to the agriculture building
13 because they had family court going on.

14 Now, if you have some major problem that that
15 creates, what you need to do is write me a note. You can
16 write it and give it to me first thing in the morning. I'm
17 not discouraging you from writing it at any other time, I'm
18 just telling you that if you know of some major problem,
19 some event next week, if there is some major problem, if
20 you'll let me know, I will do my best to try to work with
21 you. As I told you, I don't have an alternate in this
22 case. I would have drawn two alternates if I had enough
23 people, but I didn't.

24 Now, also while I'm thinking about it, it is
25 very difficult to regulate the heating and air-conditioning

1 in large rooms. It is also difficult to regulate it to
2 suit different people, which is why at my house, my wife
3 burns up and I freeze in the same room. So I always try to
4 tell jurors, particularly during transition periods of the
5 year where it may be cool in the morning and warm in the
6 afternoon, that it's a good idea, you may want to bring
7 something warm to wrap up in, a sweater you can easily take
8 off and put on because at this particular courthouse -- and
9 I love it, I told you that -- but the vents are right over
10 the jury box. There aren't any vents over here where we
11 are.

12 So it's coming straight down on you, but these
13 folks over here get pretty warm, especially if you're
14 bunched up. So if ya'll will do that for me tomorrow, I
15 think everybody will be more comfortable. Now, if you come
16 another time of the year, the sun's going to be coming in
17 right through that window right there and we have another
18 issue to deal with. We have had to put the jury over in
19 that jury box because the sun was too hot.

20 I think we're ready to go, so I can shut my
21 mouth.

22 Mr. Maye, you have another witness?

23 MR. MAYE: Yes, sir, I have Agent Joe
24 Leatherman from the South Carolina Law Enforcement
25 Division.

1 THE COURT: If you could come around and be
2 sworn.

3 Thereupon,

4 JOE LEATHERMAN,

5 after being duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 By Mr. Maye:

8 Q Agent Leatherman, tell the ladies and gentlemen of the
9 jury what you do and where you're employed?

10 A I'm currently employed with the South Carolina Law
11 Enforcement Division. You've probably heard it
12 referred to as SLED. My job at SLED is in the crime
13 scene, latent print sections. We respond at the
14 request of local agencies to go to crime scenes.
15 Generally we document the crime scenes through the use
16 of photographs. Sometimes we use charts and diagrams.
17 We also collect physical evidence for processing in
18 latent fingerprints or turn that evidence over to
19 another department for analysis, such as DNA or trace
20 evidence or serology.

21 Q Okay. Do you have a particular area of experience or
22 specialty at SLED regarding laboratory testing?

23 A I've qualified at the state courts, and federal courts
24 in latent fingerprints, crime scene processing, blood
25 pattern analysis and crime scene reconstruction.

1 Q Have you been qualified as an expert in lifting and
2 testing latent prints and comparing those?

3 A Yes, sir.

4 Q You have? Have you testified before in this State as
5 an expert in that field?

6 A I have.

7 Q How many times?

8 A I've been qualified as an expert in latent prints
9 approximately 28 times.

10 Q About 28 times.

11 MR. MAYE: If ya'll would care to cross-exam
12 his credentials in the area of latent prints, I'd offer it.

13 THE COURT: Any voir dire of the witness?

14 MR. HAWK: On behalf of Fredy DeLeon, we don't
15 object to his qualifications.

16 THE COURT: Mr. Sussman?

17 MR. SUSSMAN: We don't ether, Your Honor.

18 THE COURT: Mr. Miller?

19 MR. MILLER: None, Your Honor.

20 THE COURT: He's qualified in the field of
21 latent fingerprints. Isn't that what you came here for.

22 AGENT LEATHERMAN: Yes, sir.

23 THE COURT: Thank you.

24 By Mr. Maye:

25 Q I'm going to show you State's Exhibit 5. You said you

1 made some photographs there. Did you come to assist
2 Edgefield County in regards to processing an automobile
3 for latent prints.

4 A Yes, sir, I did.

5 Q Okay. Is State's 5 the automobile that you, in fact,
6 processed? Did you take those -- those are SLED
7 photographs?

8 A Yes, sir, they are.

9 Q Okay. And you took a great number of them that
10 particular day, didn't you?

11 A Yes, sir, I did.

12 Q Okay. Is that just one of the automobile right there?

13 A Yes, sir, it is.

14 Q Okay. Did you process and basically go through the
15 automobile and remove all the contents that you could
16 find?

17 A I removed the contents that I thought would have the
18 best chance of bearing latent fingerprints.

19 Q Okay. Let me ask you -- I'm not going to move to put
20 these into evidence, just for ID. These papers here,
21 did you process -- did you find them -- where did you
22 find those papers?

23 A These papers were found on the driver's seat, on the
24 back of the driver's seat, there's a little pouch that
25 you put things in. At the time I found them, all these

1 papers were attached to a book.

2 Q To the notebook?

3 A To a notebook and I found the notebook inside the
4 pouch.

5 Q Okay. All right. I'm just going the mark these for ID
6 at this time.

7 THE COURT: Where did he say he found them?

8 By Mr. Maye:

9 Q Where did you find these in the vehicle?

10 A On the driver's seat, on the back of the driver's seat
11 in a pouch.

12 Q Okay. On the back of the driver's seat in the pouch?

13 A Yes, sir.

14 Q In that Ford Thunderbird there?

15 A Yes, sir.

16 Q Okay.

17 MR. MAYE: All right. I'm just marking these
18 for identification at this time.

19 THE COURT: All right. Let's have her read the
20 numbers.

21 THE COURT REPORTER: Those are State's 18
22 through 22, Your Honor.

23 THE COURT: Thank you.

24 Q Agent were you able to lift any prints off that
25 vehicle?

1 A No, sir.

2 Q Okay. Did you even get any partial prints?

3 A Yes, sir, we got -- there was one print off of the ---
4 in reference to the vehicle, we lifted one off -- a
5 print off of the driver's side door, I believe, and we
6 found it to be what we refer to as no value.

7 Q No value?

8 A Yes, sir.

9 Q Okay. Did you make any comparison? Did you run that
10 against the data bases that ya'll have for fingerprint
11 matching? What are those data bases called?

12 A There are two data bases that we use. The first one is
13 the fingerprint cards, the criminal fingerprint cards
14 contained in the State -- anyone arrested in the State
15 of South Carolina, the fingerprints are entered into an
16 electronically data base.

17 Q Okay.

18 A And there's also the -- another data base for the
19 federal bureau of investigation for the nation.

20 Q Do you have access to international -- the data base
21 for fingerprints from other countries?

22 A No, sir.

23 Q So no comparison -- that person's print could be on
24 file in a foreign country and you would not know?

25 A It could possibly be, gentlemen.

1 Q Possibly be. Well, let me just ask you this, you
2 didn't find any match with any of the defendants in
3 this case, according to your testimony?

4 A No, sir, I did not.

5 Q None of these individuals match any of the prints you
6 found in the car?

7 A No, sir, they do not.

8 Q Answer any questions that the other attorneys have.

9 THE COURT: Mr. Hawk?

10 MR. HAWK: Just briefly.

11 **CROSS-EXAMINATION**

12 By Mr. Hawk:

13 Q The documents that you've identified, they were found
14 behind the driver's seat, am I correct?

15 A Yes, sir, I apologize if I wasn't clear, on the
16 driver's seat, on the back of the driver's seat,
17 there's a pouch that you can keep papers and stuff like
18 that. That's where they were found.

19 Q That's like normally when you sit in the driver's seat,
20 behind your seat, sometimes, there's like a little
21 thing there and you put papers in it, is it one of
22 those?

23 A That's correct.

24 Q Okay. And it was sitting in the rear seat directly
25 behind the driver, this pouch that your talking about

1 would be directly in front of the rear passenger,

2 behind the driver's seat?

3 A That's correct.

4 Q Okay. Did you take photographs of the any of the
5 documents, any of these items, where they were located
6 in the car?

7 A No.

8 Q No more ---

9 MR. MAYE: These were taken in there.

10 MR. HAWK: No more questions.

11 MR. MAYE: If there are no objections to this,
12 I'm going to put these two pictures in, if there's no
13 objection to that.

14 THE COURT: Wait a minute let's finish with the
15 cross.

16 MR. MAYE: I'm sorry, this multiple cross
17 thing ---

18 THE COURT: You didn't offer those photographs
19 into evidence, did you.

20 MR. HAWK: No, Your Honor.

21 MR. MAYE: Okay. I'm very sorry.

22 THE COURT: All right. Mr. Sussman, any cross?

23 MR. SUSSMAN: I have no cross-examination.

24 THE COURT: All right. Mr. Miller?

25 MR. MILLER: I have no cross-examination, Your

1 Honor.

2 THE COURT: Mr. Maye, it's back to you.

3 MR. MAYE: If there's no objection, I'd like to
4 put these two photographs in.

5 MR. HAWK: I don't have any objections about
6 the photographs.

7 MR. SUSSMAN: No objection.

8 MR. MILLER: No objection.

9 THE COURT: These are in evidence?

10 MR. MAYE: Yes, sir.

11 THE COURT: Madame Court Reporter, mark those
12 into evidence.

13 THE COURT REPORTER: State's 23 and 24.

14 THE COURT: Thank you.

15 Any questions of the witness?

16 MR. MAYE: I'm going to ask just --

17 **REDIRECT EXAMINATION**

18 By Mr. Maye:

19 Q Do those photos accurately reflect the vehicle that you
20 processed there?

21 A Yes, sir, they do.

22 Q Okay. Did that show the back of the seat in one of
23 those photographs?

24 A Yes, sir, it does.

25 Q Okay.

1 MR. MAYE: Nothing further.

2 THE COURT: All right. Mr. Hawk?

3 MR. HAWK: None, Your Honor.

4 THE COURT: Mr. Sussman?

5 MR. SUSSMAN: No, Your Honor.

6 THE COURT: Mr. Miller?

7 MR. MILLER: No, Your Honor.

8 THE COURT: Thank you, very much. Does he need
9 to remain sequestered?

10 MR. MAYE: No, he's released.

11 Thank you, Agent.

12 MR. SUSSMAN: No objection.

13 MR. HAWK: No objection.

14 MR. MILLER: No objection.

15 THE COURT: Thank you, sir. Don't discuss your
16 testimony with any of the other witnesses.

17 AGENT LEATHERMAN: Yes, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, I
19 still -- I'm not in a position to tell you when I think the
20 trial might end. I just wanted to let ya'll know that I
21 think it's almost certainly going into next week so that
22 you can make plans accordingly. Again, remember those
23 admonitions I told you about not discussing the case or
24 following the media and all of those things. And I really
25 don't see any benefit at this point in us running anything

1 other than our normal schedule where we have the jury come
2 in at 9:30, so that we would meet before you got here and
3 have a chance for me to at least speak to my secretary
4 before I came over here and at least find out what I need
5 to do.

6 So if you will be here in the morning at 9:30,
7 in the jury room as close to that time as you possibly can,
8 I will get you out here and we'll continue with the case.
9 Okay. Thank you very much and you're free to go.

10 (WHEREUPON the jury left the courtroom at 5:07
11 p.m.)

12 THE COURT: Mr. DeLeon, make sure you're here
13 no later than 9:30 in the morning, or whatever sooner time
14 your attorneys tell you to be here. Does he understand?

15 MR. HUNT: Yes, sir.

16 THE COURT: Thank you. Thank you very much
17 gentlemen, we're in recess until 9:30 in the morning.

18 MR. PUETZ: Thank you, Judge.

19 MR. HAWK: Thank you, Judge.

20 THE COURT: Ya'll be careful now when you
21 leave. There are jurors all around.

22 (WHEREUPON court was in recess for the day.)

23 THE COURT: Before I bring the jury out, I do
24 want to tell you all that I am going to continue to read on
25 this issue about the extended border doctrine. I know I've

1 ruled on the motion earlier, but I'm still going to
2 continue to try to look and see -- the one issue that I was
3 trying to focus on was about moving the border to Trenton,
4 South Carolina when you take the thing inside a building or
5 inside another part of a building.

6 Now, part of my concern is that I'm trying now
7 and I was trying then to recall exactly what evidence is
8 before me and what evidence has been let in. Since I live
9 in this area, anyone who lives in an area this small knows
10 the location and would know how small the store is, even
11 though I have never been in it that I can recall.

12 I was thinking last night and all of a sudden
13 it hit me about why they were putting that section G
14 language in that one order was to show there was some
15 separation because to me without having said it, what was
16 going through my head was, well if you've got it and you
17 take it and you put it in your house and it's going to be
18 co-mingled and it's going to be in stacks of lumber or it
19 depends on how it's bound and things of that nature, but if
20 you take a wooden fireplace and put it in a grocery store
21 in a building that small, it's not any co-mingled, but I
22 thought I remembered reading in one of those cases where it
23 came in or it was something small -- any way I just want
24 ya'll to know that I'm going to continue to read on this
25 and I did indicate to you that it's one issue to rule on a

1 motion earlier and it's another issue ruling something into
2 evidence and I hope I don't hit you with things that are
3 inconsistent and I also said that I just had to make a
4 ruling, which I did.

5 I mean, we on the Circuit bench in South
6 Carolina are on the bench all the time. We don't have the
7 luxury of a lot of research. Thankfully, due to the
8 efforts of the Chief Justice and the work of the county
9 council, we do have access to things like Westlaw and other
10 things like that instantly on the bench which was a
11 tremendous help in this case. But I don't have my law
12 clerk to go back and research for me. This concept, like
13 some judges in the San Diego area or areas of Texas or even
14 a port city might have, this is the first time I've ever
15 heard of it.

16 Who's your next witness?

17 MR. MAYE: Eric Owenby. He's ready to testify
18 in front of the jury, Your Honor.

19 THE COURT: Would you get the jury for me
20 please, Mr. Maxwell.

21 While they're coming, I still have not gotten
22 word back from Court Administration about next week.

23 (WHEREUPON the jury entered the courtroom at
24 9:46 a.m.)

25 THE COURT: All right. Ladies and gentlemen,

1 good morning. Do any of you have any of those notes that I
2 asked you for? I will be happy to take them now.

3 All right. Call your next witness.

4 MR. MAYE: The State calls Eric Owenby of the
5 Aiken County Sheriff's Office.

6 THE COURT: Come around, please.

7 THEREUPON,

8 ERIC OWENBY,

9 after being duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 By Mr. Maye:

12 Q If you would introduce yourself to the ladies and
13 gentlemen of the jury and tell us where you're
14 employed?

15 A My name is Eric Owenby and I'm employed by the Aiken
16 County Sheriff's Office.

17 Q How long have you been with Aiken County?

18 A August will be 6 years.

19 Q August, 6 years. Back in 2002, specifically May of
20 2002, what were your duties at the Aiken County
21 Sheriff's Office?

22 A I was assigned as a narcotics investigator with the
23 Aiken County Sheriff's Office.

24 Q Let me ask you this, did you participate in a
25 cooperative operation with SLED, local law enforcement

1 and some federal agents that came here in Edgefield
2 County back in May?

3 A I did.

4 Q Would you tell the ladies and gentlemen of the jury
5 about your involvement in that?

6 A On May 18, 2002, like I said I was a narcotics
7 investigator with the Aiken County Sheriff's Office, we
8 were asked to assist customs from the Aiken County
9 Sheriff's Office in a controlled delivery of a quantity
10 of marijuana.

11 Q Let me ask you this, I'm going to interrupt you for
12 just a second. How is it that Aiken County officers
13 are over here working in Edgefield County? How does
14 that work?

15 A We have a mutual agreement with Edgefield County. We
16 work hand-in-hand. We often work undercover in Aiken
17 County. Oftentimes Edgefield County will work
18 undercover capacity in Aiken County. We have arrest
19 powers over here as well as they have over there.

20 Q Okay. You routinely cooperate with Edgefield County
21 narcotics?

22 A Yes, sir.

23 Q Okay. Go back and continue with what you were doing
24 May 18?

25 A We originally met at the airport in Saluda County. A

1 briefing was given. We were separated. I was placed
2 with Agent Perez, I believe it is, with customs. Part
3 of the our assignment was to maintain surveillance of
4 the Tienda DeLeon, we were maintaining surveillance,
5 but it was on Wise Street, just down from the store and
6 we got word that the package had been off-loaded of
7 marijuana at the store.

8 Q Okay.

9 A Customers were coming in and out of the store and due
10 to the possibility that some of the marijuana could
11 have been distributed and broken up inside the store
12 and distributed out, the decision was made to hit the
13 store.

14 Q At that time?

15 A Yes, sir.

16 Q Okay. So what did ya'll do?

17 A We entered the store. We were not in marked vehicles,
18 we were in unmarked vehicles. We parked outside,
19 walked into the store.

20 Q Did you have a uniform on or how were ya'll dressed at
21 that time?

22 A I was addressed in tactical gear, I had a bullet proof
23 vest on, indicating that I was, in fact, with the
24 sheriff's office or a representative of it. We were
25 not in marked vehicles, we were in unmarked vehicles.

1 We entered the front door of the store. Once inside,
2 customs made contact with Ms. Gonzales, who is I
3 understand to be Fredy DeLeon's wife.

4 Q Okay.

5 A And they were directed to a back room of the store
6 where ---

7 Q By whom?

8 A By Ms. Gonzales.

9 Q Okay. The customs agents were directed by her?

10 A Yes, sir.

11 Q Okay. So what happened? What did ya'll do at that
12 point in time?

13 A Well the customs agents were fluent in Spanish, which I
14 wasn't. I maintained surveillance of the store.

15 Q Okay.

16 A Stood back and watched and made sure that there were no
17 problems. Ms. Gonzales had pointed in the direction of
18 the mantelpiece in the back stock room.

19 Q Okay.

20 A Where the customs agents went.

21 Q Okay. That's where they went to?

22 A Yes, sir.

23 Q Okay. Did you go back and see the mantle piece?

24 A I did look back there.

25 Q Okay. What condition was that mantelpiece in?

1 A It was a very tight stock room. The mantelpiece was
2 unopened, just as described on the tractor trailer.

3 Q Okay.

4 A In the back room with some chairs.

5 Q How full was the stock room back there?

6 A It was extremely tight. I do recall that. I don't
7 remember what all was back there, but I do recall it
8 being extremely tight.

9 Q Did it look like about all that would fit back there?

10 A Yes, sir.

11 Q Was the chimney open in your presence there?

12 A It was. It was brought out into the store to be opened
13 because it was so tight back there.

14 Q Okay.

15 A And Lowe with the Edgefield County Sheriff's Office at
16 the direction of the customs opened it.

17 Q Lowe opened it at the direction of customs?

18 A Yes, sir.

19 Q Let me show you what's been marked State's 1 for ID and
20 ask you if you can identify that?

21 A Yes, sir. That is one of the mantle pieces that was in
22 the store. It was the only one that was in the store.
23 You can see is shelves of the store in the background.
24 That is the marijuana on the top that we discovered
25 inside the mantelpiece.

1 Q This is State's 1.

2 MR. MAYE: I would move to introduce this into
3 evidence for ID. I move to introduce it into evidence at
4 this time.

5 THE COURT: Any objection?

6 MR. HAWK: Your Honor, at this time, we want to
7 ask if the court would hold ruling on the introduction of
8 this until the court finishes considering the earlier
9 matter? May I approach and show the picture? That would
10 give you an indication as to why.

11 THE COURT: Sure. What did he -- have him say
12 again what that is.

13 MR. MAYE: May it please the court, may we
14 approach.

15 (WHEREUPON there was a bench conference out of
16 the hearing of the jury and the court reporter.)

17 THE COURT: Ladies and gentlemen, step back in
18 the jury room, please don't discuss the case.

19 (WHEREUPON the jury left the courtroom at 9:55
20 a.m.)

21 THE COURT: Madame Court Reporter, could you go
22 back and read me a part of his testimony, you can either
23 play it or read it.

24 (WHEREUPON the following testimony was played
25 back for the court:)

1 By Mr. Maye:

2 A That is one of the mantle pieces that was in the store.
3 It was the only one that was in the store. You can see
4 is shelves of the store in the background. That is the
5 marijuana on the top that we discovered inside the
6 mantelpiece.

7 Q This is State's 1?

8 (WHEREUPON the tape was stopped.)

9 THE COURT REPORTER: Is that enough, Your
10 Honor.

11 THE COURT: Yes, ma'am. All right. State your
12 objection.

13 MR. HAWK: Your Honor, we still object to the
14 admission of the evidence based on the earlier grounds that
15 we had raised in regards to the motion to suppress and
16 renew that at this time.

17 THE COURT: At this point -- anybody else?

18 MR. SUSSMAN: We join in that objection.

19 MR. MILLER: Yes, sir.

20 THE COURT: At this point, the objection is
21 overruled.

22 MR. HAWK: Thank you, Your Honor.

23 THE COURT: Mark it into evidence, please
24 ma'am.

25 MR. PUETZ: Judge, just for the record, can we

1 go ahead and have a continuing objection? I don't want it
2 to be considered that we've waived our motion to suppress,
3 irrespective of how this court rules.

4 THE COURT: To the extent that I can grant you
5 a continuing objection, it's granted.

6 MR. PUETZ: Thank you.

7 MR. HAWK: Thank you.

8 MR. SUSSMAN: We join in that, Your Honor.

9 THE COURT: All right. Same for the other
10 defendants.

11 MR. MILLER: Yes, sir.

12 THE COURT: Bring the jury.

13 (WHEREUPON the jury entered the courtroom at
14 10 a.m.)

15 THE COURT: The objection is overruled. Mark
16 it into evidence.

17 You may continue, Solicitor.

18 MR. MAYE: Reserving the right for one other
19 matter to recall this witness, I don't have any more
20 questions for him at this time.

21 THE COURT: Cross?

22 **CROSS-EXAMINATION**

23 By Mr. Hawk:

24 Q Is it investigator, is that right?

25 A Currently a sergeant. At the time, I was investigator.

1 Q I just want to address you properly.

2 A Yes, sir.

3 Q Sergeant, when you went in, excuse me, before you went
4 in you were doing surveillance with Perez, is that
5 correct?

6 A That's correct.

7 Q And the location where you were at, you could not
8 visually see the store, could you?

9 A No, sir.

10 Q And the -- so basically you were relying on the
11 information you were telling us about what was going on
12 at the store was information that was being relayed to
13 you by somebody else?

14 A Yes, sir.

15 Q Okay. And the first -- did you have any information or
16 knowledge or were you involved in any of the other
17 investigations of this case other than the limited part
18 you've told us about?

19 A No, sir.

20 Q All right. Were you aware of any facts or
21 circumstances regarding how this order came to come to
22 DeLeon?

23 A No, sir.

24 Q All right. And have you investigated any of that
25 portion of it?

1 A No, sir.

2 Q All right. Do you have any information whatsoever that
3 Fredy DeLeon is, in fact, this person that placed this
4 order?

5 A Excuse me?

6 Q Have you done any investigation to verify that Fredy
7 DeLeon is the one that placed this order with the
8 people in Mexico?

9 A No, sir.

10 Q Okay. That he had anything to do with that?

11 A No, sir.

12 Q All right.

13 A Other than the fact that he received it at his store.

14 Q At the store. I understand. And that's the delivery
15 that you've been talking about?

16 A Yes, sir.

17 Q Okay. And when you went over to the store, ya'll eased
18 in, I think you said?

19 A Yes, sir, walked in.

20 Q Okay. And there was nothing unusual going on there,
21 was there?

22 A Where at?

23 Q At the store?

24 A No, sir.

25 Q Okay. The store was open for business?

1 A They were.

2 Q Customers were coming in and out of the shop, like you
3 would normally expect people to come in and out of a
4 grocery store like that?

5 A Yes, sir.

6 Q And when you went inside and got inside, this
7 particular chimney had been -- do you know how long it
8 had been in the store?

9 A No, sir, not exactly. I would say anywhere from 30
10 minutes to an hour.

11 Q Okay. And in that 30 minutes to an hour that it was in
12 there, did you walk in and actually -- excuse me, after
13 you got there and arrived, did you go in and look at
14 the chimney?

15 A After I arrived?

16 Q Yes, sir.

17 A Yes, sir, I walked into the back room where it was
18 located.

19 Q At that time had it been opened by anybody else?

20 A No, sir.

21 Q Okay. So when you first got there and went to the back
22 and looked into the storeroom, if you hadn't known
23 there was marijuana in there, say you weren't a part of
24 this investigation and you knew that this particular
25 chimney had marijuana in it, would you have seen

1 anything other than furniture and furnishings?

2 A No, sir.

3 Q Okay. And until ya'll popped it open and looked inside
4 it, there was really no way from the outside, without
5 the information that ya'll had, that ya'll would have
6 known that marijuana was in it?

7 A That's correct.

8 Q Okay. And this particular stock room also was very
9 tightly packed so to speak?

10 A Yes, sir, I just recall it being very tight moving
11 around. It was very tight.

12 Q All right. Other than the furniture that was in the
13 storeroom, did you see other items like for the grocery
14 store?

15 A I did see other items, but I don't recall what they
16 were.

17 Q Okay. You don't remember anything about what they are?
18 Do you remember any of the other pieces of furniture
19 that were in the storeroom?

20 A I remember chairs.

21 Q Okay. Do you remember any tables or anything else?

22 A I don't recall.

23 Q Okay. None of the other pieces of furniture, of
24 course, had any marijuana in them?

25 A Not to my knowledge.

1 Q All right. Were you ever made aware of who selected
2 these pieces to put in the storeroom and how they got
3 in there?

4 A No, sir.

5 Q Did you ever determine why they were taken inside as
6 opposed to being left outside?

7 A No, sir.

8 Q Okay.

9 MR. HAWK: Nothing further, Your Honor.

10 THE COURT: All right. Mr. Sussman?

11 **CROSS-EXAMINATION**

12 By Mr. Sussman:

13 Q Sergeant Owenby, do you know who this is?

14 (WHEREUPON Mr. Sussman indicated one of the
15 co-defendants.)

16 A No, sir.

17 Q Do you know who this is?

18 (WHEREUPON Mr. Sussman indicated one of the
19 co-defendants.)

20 A No, sir.

21 Q Do you know who this is?

22 (WHEREUPON Mr. Sussman indicated one of the
23 co-defendants.)

24 A No, sir.

25 Q When you entered the store, was it a big store?

- 1 A No, sir.
- 2 Q Small store?
- 3 A I'd say medium size.
- 4 Q What would you say when you walk in, how far to the
5 back of the store was it, approximately?
- 6 A From the front door to where the chimney was located?
7 Is that what you're asking?
- 8 Q Yeah.
- 9 A Maybe from here to where the chimney is located now.
- 10 Q That would be the back of the store more or less?
- 11 A When you come in the store, you had to go to the left
12 and then you had to make a right into -- from what I
13 recall -- into the stock room.
- 14 Q Okay. So the stock room is a separate room off the
15 main area of the store?
- 16 A It's behind it, yes, sir.
- 17 Q Pardon me?
- 18 A It is behind it.
- 19 Q So when you walked into the store or in the area where
20 customers are, can you see a stock room entrance?
- 21 A Yes, sir, you can see the entrance to the storeroom.
- 22 Q But you couldn't see the mantle in there?
- 23 A No, sir.
- 24 Q And was that because the door was closed?
- 25 A I don't recall whether there was even a door to be

1 perfectly honest with you.

2 Q But at least when you walked in, you could see the
3 entrance to the storeroom, but you couldn't see the
4 mantle in there?

5 A That's correct.

6 Q You couldn't see any furniture in there?

7 A That's correct.

8 Q So either the door was closed or you just couldn't see
9 in there very well?

10 A True.

11 Q And that's why you had to ask -- what was her name
12 again?

13 A I believe it was Ms. Gonzales.

14 Q That was Mr. DeLeon's wife?

15 A That's my understanding.

16 Q Okay. Well anyway, his wife had to tell you where it
17 was?

18 A She didn't tell me actually, she relayed it to the
19 customs agents and she pointed in that direction. Now,
20 what they were saying in Spanish, I couldn't tell you.

21 Q So they were speaking Spanish?

22 A They were.

23 Q This Seniore Perez, this customs agent was speaking
24 Spanish?

25 A I recall.

1 Q You don't recall them actually having to go and open
2 the door to get in there?

3 A No, sir, I don't.

4 Q Were there beads maybe? Curtains?

5 A I don't recall.

6 Q All right. Okay. How long would you say -- well, let
7 me back up before I ask that question. When you went
8 into the store, how many other agents were with you
9 when you first went in?

10 A I'd say a minimum of thee to four others if I recall.

11 Q Were those others federal people?

12 A Customs.

13 Q Okay. Customs. All right. So you were the only local
14 agent?

15 A Yes, sir.

16 Q All right. And when you went in, did you stay in the
17 store the entire time up until the point -- well, did
18 you stay in the store the entire time?

19 A I did, until I left.

20 Q And how long would you say you were in there? Just to
21 give the jury an idea of how long ---

22 A Maybe a couple of hours.

23 Q Really. Was the store basically closed when ya'll went
24 in?

25 A No, sir. There were customers coming in and out

1 shopping.

2 Q The whole time you were there?

3 A Yes, sir.

4 Q Business as usual?

5 A It was.

6 Q Okay. You guys didn't have guns drawn did you?

7 A No, sir, I did not.

8 Q Did the customs agents have their guns drawn?

9 A I do recall one. I don't know his name.

10 Q But that apparently didn't stop the customers from
11 coming in and out?

12 A Well, at the time we entered the store, I don't recall
13 any customers being in the store.

14 Q Okay. If the gun was drawn by the agent, he would have
15 apparently put it back up after ya'll had secured the
16 area?

17 A Evidently.

18 Q None of the customers coming in and out were
19 questioned?

20 A I don't recall. I mean the majority of them were
21 Spanish and I couldn't question them.

22 Q You don't recall any of them being taken aside, any of
23 these customers being taken aside and questioned do
24 you?

25 A I wasn't involved in any direct questioning if there

1 was any. I just don't recall to be honest with you.

2 Q Were there any other rooms off of that store besides
3 the storeroom?

4 A I don't know.

5 Q Did ya'll search the entire store?

6 A No, sir, I didn't.

7 Q Did you observe any of the agents search the store?

8 A No, sir.

9 Q By the way, when ya'll went in, did you go in with a
10 search warrant?

11 A No, sir.

12 Q That's all I have.

13 THE COURT: All right. Mr. Miller?

14 MR. MILLER: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 By Mr. Miller:

17 Q Sergeant Owenby, would you mind coming down here and
18 showing the jury, utilizing this map, approximately
19 where you were located for your surveillance?

20 A Here's the store, there's another road I believe to be
21 Wise Street if I recall. Off the map up here back to
22 the right, maybe, if I recall quarter to half a mile
23 down the road, maybe not that far.

24 Q Okay. So you -- so you attended the briefing the
25 morning of the 18th, and where was that briefing held?

1 A Saluda County Airport.

2 Q Okay. And at that time you were informed that you
3 would be with special agent Perez, is that correct?

4 A That's correct.

5 Q Okay. Do you know where anybody else was located for
6 their surveillance?

7 A No, sir, I do know that there were agents, I don't know
8 how many that had visual contact with the store.

9 Q Did you have a map of the area whenever ya'll set up
10 our surveillance points, or did they just tell you,
11 "You're going to go to Wise Street, and somebody with
12 you will know where that's at"?

13 A I don't even recall how we got to Wise Street, I just
14 remember that we were at the corner of Wise Street and
15 I believe it was 121.

16 Q You say you don't recall how you got there. You mean
17 you don't recall the ride ---

18 A I don't recall the instructions.

19 Q Okay. Well how did you get there, I mean were you
20 in ---

21 A By car.

22 Q Your car?

23 A No, sir.

24 Q Somebody else's car?

25 A Yes, sir, the other agents' cars.

1 Q One of the customs agents cars?

2 A Yes, sir.

3 Q Okay. And you don't know where -- well, was anyone
4 locally besides you involved in the surveillance that
5 you know of?

6 A I don't know.

7 Q Do you know if there was anybody that was conducting
8 surveillance that might have positioned themselves
9 between the store and the gas station which is right
10 down the street?

11 A Could there have been? Is that what you're asking?

12 Q Well, do you know if there was.

13 A I believe there was someone in that general area.

14 Q But you don't know who it was?

15 A No, sir, and I don't know where exactly. I do know
16 that there was another business there that I believe
17 was across the street, some kind of factory or shipping
18 and receiving point.

19 Q Is it safe to say though that it was the intent to have
20 the Tienda DeLeon surrounded for purposes of
21 surveillance?

22 A Sure.

23 Q Survey from all sides?

24 A Sure.

25 Q Okay. How far is it, if you know, from the Tienda

1 DeLeon to Billy's Super Store, the gas station at the
2 intersection of 25 and 121?

3 A I don't know exactly, it is not far.

4 Q Can you see it from the Tienda DeLeon? Can you see the
5 big sign?

6 A I think you can, yes.

7 Q You can?

8 A I think you can. Once again, I'm not from this area.

9 Q But you didn't -- and correct me if I'm wrong, you
10 didn't see anything that happened at Billy's Super
11 Store?

12 A No, sir.

13 MR. MILLER: Thank you, no further questions.

14 THE COURT: Redirect?

15 MR. MAYE: Nothing else from this witness, Your
16 Honor.

17 THE COURT: Anything further from the witness?

18 MR. HAWK: No, Your Honor.

19 MR. SUSSMAN: No, sir, Your Honor.

20 THE COURT: Thank you, sir, you may step down.

21 MR. MAYE: Your Honor, if we can take a brief
22 recess at this time, I can eliminate some of the witnesses
23 that I have and I think I can speed this trial up
24 measurably if we can do that. If we can take a short break
25 at this time, I believe it will save us a lot of time

1 later.

2 THE COURT: Ladies and gentlemen, please step
3 to the jury room. Don't discuss the case.

4 (WHEREUPON the jury left the courtroom at 10:16
5 a.m.)

6 THE COURT: We're at ease.

7 MR. MAYE: Thank you, Your Honor.

8 (WHEREUPON a short recess was observed.)

9 THE COURT: All right. Is the State ready?

10 MR. MAYE: State's ready, Your Honor.

11 THE COURT: Defense?

12 MR. HAWK: Yes, your honor.

13 MR. SUSSMAN: Yes, Your Honor.

14 THE COURT: Bring the jury.

15 (WHEREUPON the jury entered the courtroom at
16 11 a.m.)

17 THE COURT: All right. Call your next witness,
18 Solicitor.

19 MR. MAYE: The State would call investigator
20 Roosevelt Young to the stand.

21 THE COURT: Come be sworn, please.

22 ///

23 ///

24 ///

25 ///

1 THEREUPON,

2 ROOSEVELT YOUNG,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Maye:

6 Q Mr. Young, where are you currently employed?

7 A United States Military.

8 Q United States Military? What branch?

9 A National Guard.

10 Q National Guard?

11 A Yes, sir.

12 Q Where were you employed back in 2002?

13 A Edgefield County Sheriff's Office.

14 Q Edgefield County Sheriff's Office? How long -- were
15 you separated from your job at the Edgefield Sheriff's
16 Office?

17 A Yes, sir.

18 Q When?

19 A February 10, 2003, until April or March of this year.

20 Q Where were you stationed?

21 A In Iraq.

22 Q How long did you work for the sheriff's office? Tell
23 us about your law enforcement career.

24 A 9 years at the sheriff's office, 3 years as a narcotics
25 investigator.

1 Q 3 years as a narcotics investigator?

2 A Right.

3 Q Were you working in the capacity of a narcotics
4 investigator in May of 2002?

5 A Yes, sir.

6 Q Okay. Did you participate in a cooperative operation
7 with a number of agencies here in Edgefield County?

8 A Yes, sir.

9 Q At this time?

10 A Right.

11 Q What was your involvement?

12 A Chief Investigator of the whole entire case for the
13 trafficking.

14 Q For the trafficking?

15 A Yes, sir.

16 Q Okay. Until you left, is that correct?

17 A Until I left, right.

18 Q Agent Young, tell us about your involvement in this
19 case? What did you do?

20 A My involvement, on May 13 or 14, I got a call from
21 Agent Tucker who said we're going to have a controlled
22 delivery coming toward Trenton, a store down in
23 Trenton. And he told me he would be down in a couple
24 of days to see the store and get a layout of it and all
25 that. At that time he came down on a Wednesday or

1 Thursday. I briefly talked with him at my office and I
2 took him to Trenton and he took pictures of the store
3 and came back and told me that Saturday there would be
4 a truckload of anywhere from 800 to 1,000 pounds of
5 marijuana would be delivered there.

6 Q What other agencies did you contact to assist Edgefield
7 County at that point in time?

8 A I then in turn contacted Saluda County, Agent Perry of
9 SLED, Aiken County Sheriff's Office and Agent Tucker
10 also brought some agents from customs and I think DEA
11 also had some up here also.

12 Q Okay. What did you then do in regards to the
13 operation, where were you?

14 A At that time when I got to the office that morning, I
15 think it was like 8:00 or 9:00, we were supposed to
16 meet. Agent Tucker had us broken down in teams. We
17 left the office site and come to Trenton, broke down in
18 teams and I was stationed at the Country Store in
19 Trenton and stationary there while everybody ---

20 Q What did you observe while you were there?

21 A Nothing too much. It was raining so hard, I was just
22 basically listening to the two way radio that we had.

23 Q Did there come a time when agents went in the store?

24 A Right.

25 Q Okay. Did you seize a quantity or substance believed

1 to be narcotics?

2 A Yes, sir.

3 Q At the store?

4 A Right.

5 Q In who's presence?

6 A In Agent Dean Tuckers presence and I forget the other
7 female.

8 Q Was she a custom's agent?

9 A She was a customs agent also. Both were from customs.

10 Q Did you take custody and control of it at this time and
11 what date was that?

12 A That was May 18, 2002. Yes, sir, I did take custody of
13 it.

14 Q Hold on just one second.

15 MR. MAYE: Bring those in, please.

16 (WHEREUPON the drugs were going to be brought
17 into the courtroom.)

18 MR. PUETZ: We object.

19 MR. HAWK: We ask to be heard, first.

20 THE COURT: Ladies and gentlemen, you need to
21 go back in the jury room. Don't discuss the case.

22 (WHEREUPON the jury left the courtroom at 11:05
23 a.m.)

24 THE COURT: Yes, sir?

25 MR. SUSSMAN: Judge, it would appear that the

1 solicitor is attempting to bring out the marijuana for the
2 purposes of having it marked for identification and our
3 concern was that it would be exhibited to the jury before
4 it was actually entered into evidence. We don't know what
5 evidence may come up in the trial between the time it's
6 marked for identification and the time it's offered, and I
7 don't think it would be permissible to exhibit any evidence
8 to a jury before it's actually introduced into evidence.
9 And I understand that they have to have it marked for
10 identification purposes when they have the witness
11 available to ID it, but I think at that point it would have
12 to be out of the presence of the jury.

13 THE COURT: Anyone else?

14 MR. PUETZ: We would join in that, Judge.

15 MR. MILLER: Yes, sir, Your Honor.

16 THE COURT: I never heard of marking anything
17 outside the presence of the jury.

18 MR. MAYE: No, sir, I've never done that
19 before.

20 THE COURT: You've got to have it identified.

21 MR. MAYE: I mean, if it doesn't come in, if
22 the dope doesn't come in because of some evidentiary issue,
23 this case is over with any way. So that's our position.

24 MR. SUSSMAN: Most of the time anything that's
25 marked for identification has been concealed so the jury

1 doesn't see it. I think the rule of law is that the jury
2 is not to see any evidence until it is admitted into
3 evidence. So generally when you have something marked for
4 identification, it's done in such a way that they don't see
5 it. But apparently this is a very large amount of evidence
6 and that was my concern.

7 THE COURT: Help me understand the scenario
8 where if the drugs cannot come in and this case cannot be
9 dismissed.

10 MR. PUETZ: Well if we're operating under that
11 premiss, that would be fine.

12 MR. MILLER: Your Honor, if the motion to
13 suppress is granted as to Mr. DeLeon, because we have not
14 standing to challenge and have not challenged the marijuana
15 that was inside the tractor trailer and all that being in
16 the presence of the tractor trailer, if the marijuana is
17 suppressed as to Mr. DeLeon, it doesn't affect us at all.
18 It really makes no difference whether it's suppressed or
19 not. The solicitor still has the same evidence against us,
20 even without the marijuana in the DeLeon store because he's
21 got another 705 pounds of it sitting on that 18 wheeler.

22 And because we never were in possession of it,
23 we certainly have no standing to challenge its ultimate
24 seizure from the roadway. But we would have three
25 defendants sitting here, who if the marijuana doesn't come

1 in, the solicitor's position as to these three defendants
2 is not materially changed. And the solicitor may ---

3 THE COURT: If none of the marijuana doesn't
4 come in.

5 MR. MILLER: If none of the marijuana comes in,
6 clearly -- but as I understood the motion to suppress, it
7 was only as to the marijuana that was in the Tienda DeLeon.

8 THE COURT: All right. The witness has to be
9 able to say in front of the jury, I took this from this
10 point and this is what I did with it or else you all are
11 going to be moving to throw it out because they didn't do
12 that. How are they going to do that without having it
13 identified?

14 MR. MILLER: Your Honor, there is an issue on
15 the chain of custody on the evidence as well. If we can
16 take that up -- if we can take that up in limine, then we
17 wouldn't have any -- I think we could eliminate the issue
18 before the jury came in. Once the jury came in, we would
19 know what the final decision was on that.

20 THE COURT: All right. I'm all ears.

21 MR. MILLER: Your Honor, this evidence was
22 seized as evidence by a custody receipt for retaining
23 receipts property. I have the number here, it's extremely
24 long. Essentially there's one, two, three, four, a line
25 out in one marijuana, held by the court 2304 and the second

1 one is line number 4, wood furniture 133 pieces.

2 Apparently, the G-a-o-n-a, Gaona, who I understand was the
3 agent who initially started up the report process, the
4 customs inspector rather, took the marijuana into custody
5 on May 14, 2002. On May 16, 2002, an M. Williams with the
6 United States Customs Service signed for it. That same
7 day, somebody by the name of Craig McGee, who I've never
8 heard of before and don't know who he is, signed for it.
9 The 17th, Ms. Williams signed for it again. The 18th, a J.
10 Tucker with the USCS, who I assume is Dean Tucker that
11 they've been talking about took it, and Roosevelt Young
12 eventually ended up with the Edgefield County Sheriff's
13 Office, with both of these -- all of these items listed on
14 these two pages on May 18th.

15 At best, from what I understand, we're going to
16 have two of these people to testify that they actually took
17 custody of this stuff, at some time, and that's going to be
18 Dean Tucker and Roosevelt Young. But there's only one
19 chain of custody and clearly at some point the furniture
20 was split up. Clearly at some point, the marijuana was
21 split up. I don't know if they supposedly took custody of
22 all of them at the same time, how that worked out. And,
23 quite frankly, that's the basis of my question yesterday to
24 Agent Mize, at what point did this become -- because I
25 understand Dean Tucker is customs service agent from

1 Greenville, at what point did this become a Greenville
2 operation and he said he didn't know.

3 Clearly Agent Mize wasn't able to testify at
4 the time as to what was going on. And interestingly
5 enough, he said that he was transported back to the Tienda
6 DeLeon to take a look at the chimney that they had there
7 that they were opening and he's not anywhere mentioned in
8 the chain of custody for the drugs, even though he
9 testified that he was present when they sealed it, he was
10 present whenever the seal was broken on May 18th, here in
11 South Carolina.

12 I think there are very serious problems with
13 the chain for all of this evidence in this case, based on
14 the fact that the state can't show whose hands it was in at
15 the very point in the process that the marijuana traveled
16 some 2,000 miles from Texas to South Carolina. And while
17 they do have testimony that indicates that it was watched
18 all the time, it certainly isn't reflected on this chain of
19 custody.

20 THE COURT: All right. Thank you. I'm
21 confused. You're claiming they have to show chain of
22 custody from the border to courtroom?

23 MR. MILLER: They have to show a chain of
24 custody from the time that they took custody of the items
25 to the courtroom. And they took custody of the items at --

1 in Laredo, Texas. And I think that's evident by the fact
2 that we do have the chain of custody showing them taking
3 custody of the items in Laredo, Texas. They were in
4 customs control. And certainly the marijuana that was on
5 that 18 wheeler when it got stuck out there in the woods
6 never was out of customs control. So absolutely, they have
7 to show custody of it from the time they took it until the
8 time it comes into this courtroom. And with the record
9 before us, they can't do that.

10 THE COURT: I'm -- I'm---

11 MR. HAWK: Your Honor ---

12 THE COURT: I'm sorry, go ahead. Yes?

13 MR. HAWK: We just, on behalf of DeLeon, we
14 join in the motion being made.

15 THE COURT: Well, I've never understood --
16 you've got two different scenarios here. You've got one
17 scenario that relates to Mr. DeLeon. You've got a
18 different scenario that relates to the other three
19 defendants. But if I set up a deal to bring drugs out of
20 the nation of Colombia and then it comes into the United
21 States and then at some point there -- the defendants are
22 taken down and the drugs are there with them, the chain of
23 custody I've always understood is the chain of custody from
24 the time that their possession, the defendant's possession
25 into the courtroom.

1 MR. MILLER: Absolutely, Your Honor. And in
2 this case, it cannot be argued under any reasonable means
3 that these three defendants ever had custody of the
4 marijuana that was in that 18 wheeler. Therefore, the
5 custody has to run back to the time that the person that
6 was in possession came in possession of it. That was the
7 United States Customs Service. The United States Customs
8 Service gained possession of that marijuana at the border.
9 There is absolutely no evidence that can be brought
10 forth -- in my opinion that can be brought forth to show
11 that anyone other than the United States Customs Service
12 was ever in possession of the marijuana in the 18 wheeler.

13 And as to that marijuana in the 18 wheeler, the
14 chain is certainly not complete. And they do have to show
15 all the way from the time that they took possession of the
16 illegal drugs up until the time it came into the courtroom,
17 or they're trying to bring it into the courtroom, that they
18 had custody of it, because no one else did. If, in
19 fact ---

20 THE COURT: Go ahead.

21 MR. MILLER: I'm sorry, sir. If, in fact, our
22 clients had ever taken possession of it, then obviously
23 they would start a chain from the time that they retrieved
24 possession of the drugs from the client. But in this case,
25 these three defendants never had possession of the drugs.

1 They were never even in the same vehicle with the drugs.

2 And quite ---

3 THE COURT: They're charged with trafficking.

4 MR. MILLER: They never had -- the chain has to
5 be continuous for the drugs, who had the drugs when. And
6 if there is not an intervening actor, in this case, the
7 defendant ---

8 THE COURT: I think all they have to show is
9 that there were drugs in Edgefield County and they have to
10 link these defendants to some conduct that would meet the
11 definition of statute that constitutes trafficking. I
12 don't know that the drugs ever actually had to get into
13 Edgefield County.

14 MR. MAYE: No, sir, an attempt or conspiracy.

15 THE COURT: They're charged with trafficking
16 which could mean involvement.

17 MR. HAWK: They could be just hanging out in
18 Edgefield.

19 THE COURT: And you all have already alluded to
20 the big fish in these types of activity, they never touched
21 the drugs. They don't ever touch the money probably,
22 except when it comes into some foreign bank account.

23 MR. MILLER: Your Honor, my position is that
24 following that line, though, all they have to do is just
25 have the drugs. The drugs are in Edgefield in the back of

1 the 18 wheeler. There were the drugs and he just picked
2 them up and he took them to the sheriff's office. And
3 clearly the subject that we're talking about here, these
4 chimneys and this furniture that was on this truck, we
5 should at least be able to argue as to the weight to be
6 given to the evidence versus the admissibility considering
7 the fact that the chain is not complete.

8 We don't know what happened to these things
9 between the time that it left the border and the time that
10 that truck got stuck o that dirt road. We presume at this
11 point that we do know what happened to these items from the
12 time that whoever it was -- and it's not clear from the
13 chain of custody that they filled out -- whoever it was
14 went onto that truck while it was stuck on that road and
15 took all those drugs out of it.

16 The point to that is, that the defendants never
17 were an intervening actor in that. There was never any
18 break in the possession of the items. So to not follow the
19 chain of custody and not require the chain of custody,
20 anything could have happened to those items between the
21 time they left Laredo, Texas or left that border and the
22 time that they got to Saluda County. And I think by and
23 large a lot of that has been covered by the testimony of
24 Agent Mize who said that he put the seal on it in Laredo
25 and he took the seal off of it at the Tienda DeLeon.

1 But Agent Mize is not even listed on the chain
2 of custody anywhere. Because this is a document provided
3 to us by the United States Customs Service in the Rule 5
4 provided by the solicitor. And none of the people, with
5 the exception of maybe of Investigator Young are even here
6 to testify as to what happened with the drugs. Where did
7 the drugs come from.

8 MR. MAYE: May it please the court, Your Honor,
9 I think maybe I can shorten this. The search was extended
10 under that extended border search doctrine that was
11 extended to here in Edgefield County. Agent Young is
12 getting ready to testify he took it in the presence of
13 those agents, Your Honor, where they conducted the search
14 under the extended border doctrine here inside Tienda
15 DeLeon.

16 In this case, Your Honor, the record is
17 complete that the items came up here, Your Honor, unopened
18 and in their original condition. The agent has testified
19 they brought them out here, they brought them out, they had
20 not been opened prior to that time they conducted that
21 search right there at the Tienda DeLeon. This officer,
22 Agent Roosevelt Young, the drugs are here in Edgefield
23 County at the Tienda DeLeon. From the presence of those
24 officers, he took custody and control of those narcotics
25 and is going to identify them as the narcotics he took

1 custody and control of in their presence, Your Honor, and
2 the drugs out at the tractor trailer truck in the presence
3 of customs. He took custody and control of them from them
4 right there at that time, Your Honor.

5 And from that point in time, we can show the
6 chain of custody. It's our position that the scene of the
7 crime here, Your Honor, all we've got to do is show that
8 the drugs were seized here in Edgefield County, that we
9 maintained custody and control of them and that they're
10 unchanged and that they were tested in this case, Your
11 Honor. And that's our position as to chain of custody, all
12 that we've got to show.

13 THE COURT: All right. Everybody state your
14 positions on this and I'll rule.

15 MR. MILLER: Your Honor, on behalf of Honorio
16 Guerrero, it is our position that, in fact, the chain has
17 to be shown, has to be proven all the way back to the point
18 that the government took control of the items, absent
19 somebody else intervening and there being a defendant that
20 did take possession. I understand the solicitor's argument
21 and that's his argument made. It makes more sense, at
22 least to me in the context of Mr. DeLeon because that's
23 where somebody else took possession of them, to show the
24 chain where you got it.

25 But in this case, US Customs had the drugs in

1 Laredo, Texas. US Customs had control of the drugs
2 whenever Mr. Young took control of them. US Customs has to
3 establish what happened to those drugs between those two
4 event and this chain of custody doesn't do it. And along
5 that line and in support of the motion, I would request
6 that these two chains of custody, these two receipts be
7 admitted into evidence.

8 THE COURT: Mark them into evidence, please.

9 THE COURT REPORTER: They are Court's 3 and 4,
10 Your Honor.

11 MR. SUSSMAN: On behalf of my two clients, Mr.
12 Arojona and Mr. Hernandez, I join in that motion and the
13 objection.

14 MR. PUETZ: And we would join in it as well on
15 behalf of Mr. DeLeon.

16 THE COURT: All right. There are two separate
17 issues. One dealt with the initial objection to bringing
18 in the bales of, or containers which appear to be marijuana
19 and having the jury see them before they're actually into
20 evidence. That objection is overruled.

21 The second objection relates to the chain of
22 custody. And I note your position, but I think the
23 ultimate ruling on the chain of custody, this is an in
24 limine ruling and has to be raised again -- the objection
25 has to be raised again at appropriate stages in order for

1 me to know how to rule and when to rule. My understanding
2 of the analysis as it relates to the extended border
3 doctrine was the item had to be in substantially the same
4 condition as it was when it crossed the border. There were
5 the three factors that we considered in that. To me that's
6 a different analysis altogether.

7 Now, I do see somewhat more on the part of the
8 three defendants other than Mr. DeLeon the argument that's
9 being made. However, my thinking is that what has to be
10 shown is that this alleged trafficking related to
11 marijuana, the marijuana being greater than 100 pounds but
12 less than 200 pounds in weight, that's one of the, or two
13 of the elements that have to be shown in order to prove any
14 of the defendants guilty. The issue of whether they
15 interpossessed the drugs, whether they ever engaged in
16 actual or constructive possession of the drugs, whether
17 they were involved in any of the multiple things that
18 constitute trafficking, including aiding and abetting and
19 assisting and doing the various activities, those are
20 different issues.

21 The one thing that does cause me concern is the
22 allegation in relation to bringing the drugs into the
23 state. There has to be some sort of a nexus, some sort of
24 a basis for determination that what was brought into the
25 State of South Carolina was marijuana in an amount greater

1 than 100 and less than 2,000 pounds. The issue before me
2 relates to whether you can bring that stuff in there and
3 let the jury see it. I've ruled on that.

4 The other issue about the chain, at this point,
5 I am unable to make any ultimate ruling on the chain. I'll
6 have to rule on that at an appropriate time. If I exclude
7 the evidence, I'll tell the jury they cannot consider that
8 in any way. And if there is no way that a jury can convict
9 without the evidence being in the record if it is, in fact,
10 is marijuana or was marijuana at an appropriate time, then
11 I've got to throw the cases out.

12 MR. MAYE: Yes, sir.

13 MR. MILLER: Thank you, Your Honor.

14 THE COURT: Bring the jury in.

15 MR. MIZELL: Your Honor, before you do that...

16 THE COURT: Hold up.

17 MR. MIZELL: I didn't know if it would speed
18 things up if we marked it for ID out of the presence. It's
19 going to take her a while.

20 THE COURT: She's got to mark each one of those
21 bundles?

22 MR. MIZELL: Well, we could do it one of
23 several ways. I've got them in boxes.

24 (WHEREUPON discussion was held regarding
25 marking the substance.)

1 THE COURT: Do it in front of the jury is all I
2 can say.

3 MR. MAYE: Yes, sir, Your Honor.

4 THE COURT: Bring the jury.

5 (WHEREUPON the jury entered the courtroom at
6 11:32)

7 THE COURT: Thank you ladies and gentlemen, you
8 may continue.

9 (WHEREUPON the substance was brought into the
10 courtroom.)

11 Q Let me ask you to come down off the stand and examine
12 these items and take a look at them. Look through
13 these boxes. Investigator Young, can you identify all
14 of those items that are in the courtroom?

15 A Yes, sir.

16 Q What are these items?

17 A These are the items of marijuana that came out of the
18 back of the tractor trailer.

19 Q Where else did you take custody of the marijuana?

20 A The custody of the marijuana at the store.

21 Q All of those items -- is that all out of both of
22 those -- what was taken out of the tractor trailer
23 truck and what was taken out of the store?

24 A Right.

25 Q Were all these items taken from the -- who was

1 present -- who's presence did you take them out of
2 custody from?

3 A Agent Tucker and the other female agent in customs.

4 Q The female agent in customs?

5 A Right.

6 THE COURT: I'm sorry, I didn't hear what he
7 said.

8 By Mr. Maye:

9 A I took custody and control from the female agent and
10 Agent Tucker with customs.

11 MR. MAYE: Beg the court's indulgence, Your
12 Honor.

13 By Mr. Maye:

14 Q Let me show you this and ask if this refreshes your
15 recollection as to the female agent's name?

16 A Ms. Williams.

17 Q Okay. Thank you. What day did you take custody and
18 control of these items cumulatively marked for
19 identification?

20 A May 18, 2002.

21 Q Who was present up there when you took control of these
22 items at the store?

23 A Ms. Williams and Agent Tucker.

24 Q Who were the local officers present?

25 A SLED Agent Perry, Investigators Jones and Owenby from

1 Aiken County, Sheriff Doby, Captain Lowe at the time.

2 Q Okay. What did you do with these items that are
3 collectively marked for identification here that you've
4 identified were taken from the store and the trailer in
5 this case? Who did you turn those over to and when?

6 A A couple of hours later on the same day, May 18, 2002,
7 we took them to the sheriff's office where we opened
8 the chimneys and got the rest of the marijuana out of
9 them and I turned it over to Captain Lowe, Roger Lowe.

10 Q Captain Roger Lowe on May 18th?

11 THE COURT: I'm having a real hard time hearing
12 him.

13 By Mr. Maye:

14 Q Could you speak up?

15 A On May 18, 2002, I turned it over to Captain Roger Lowe
16 with the Edgefield County Sheriff's Office.

17 THE COURT: What did he say about the chimneys
18 at the sheriffs department?

19 By Mr. Maye:

20 A When we got them to the sheriff's department, we
21 started breaking them open and getting the rest of the
22 marijuana out of them and that's when I turned it over
23 to Captain Roger Lowe.

24 Q But you took -- did you go out to the dirt road where
25 they were?

1 A Yes, sir.

2 Q Okay. Did you take custody and control of the whole
3 load at that point in time?

4 A Right, yes, sir.

5 Q Where did you direct that go to?

6 A To the sheriff's office.

7 Q To the sheriff's office?

8 A Yes, sir.

9 Q Were the items opened at the direction of the customs
10 at the sheriffs department?

11 A Right.

12 Q The chimneys?

13 A Yes, sir.

14 Q Were you present at that time?

15 A Yes, sir.

16 Q When they were opened?

17 A Yes, sir.

18 Q

19 MR. MAYE: Your Honor just collectively, I'd
20 like to get her to mark these items for identification.
21 The court reporter can do that at the later time if you
22 prefer.

23 (WHEREUPON there was discussion about marking
24 the substance into evidence.)

25 THE COURT REPORTER: Those will be State's

1 Exhibit 25 A through 25 S.

2 THE COURT: For ID.

3 THE COURT REPORTER: For ID.

4 MR. MAYE: If I could get you to mark this one
5 separately.

6 THE COURT REPORTER: That would be State's 26,
7 Your Honor.

8 By Mr. Maye:

9 Q Investigator Young, did you seize -- I hand you State's
10 26. Is that different from the others that you ---

11 A Yes, sir, I've seen this in the same circumstance.

12 Q You've seen this item out there under the same
13 circumstances?

14 A Yes, sir.

15 Q That come from the store or out of the tractor trailer
16 truck?

17 A Out of the truck.

18 Q Out of the tractor trailer truck?

19 A Yes, sir.

20 Q You received it in exactly the same condition as the
21 others?

22 A Under exact circumstances, yes.

23 Q How is this packaged here?

24 A That's packaged all in the chimneys.

25 Q Packaged all in the chimneys?

1 A Right.

2 Q Specifically how is this stuff packed up here? What
3 are these? How is it packaged?

4 A It was packed 20 to a chimney, 20 packs to a chimney.

5 Q Approximately 20 packs to each chimney?

6 A Yes, sir.

7 Q Okay. What is distinctive about how it was packaged
8 here? The type of packaging material at the time that
9 you took custody of these items in either the store or
10 the truck, what county was that in?

11 A Edgefield County.

12 Q Here in Edgefield County?

13 A Right.

14 Q Did you obtain arrest warrants for the four defendants
15 in this case?

16 A Yes, sir, I did.

17 Q You did? Were those arrest warrants in fact served on
18 these four individuals?

19 A Yes, sir they were.

20 Q For what?

21 A Trafficking marijuana, conspiracy to traffic marijuana.

22 MR. MAYE: I want to reserve the right to
23 recall this witness for another matter. At this time
24 that's all I have for him.

25 THE COURT: Cross?

CROSS-EXAMINATION

1
2 By Mr. Hawk:

3 Q Investigator Young, this wasn't your investigation was
4 it?

5 A Say again?

6 Q This was wasn't your investigation was it?

7 A Yes, sir.

8 Q The federal people didn't do this investigation and
9 then drop it in your lap?

10 A Well they called and told us it was coming our way, but
11 we adopt cases all the time and it's like vise versa.

12 MR. HAWK: May I approach, Your Honor?

13 THE COURT: Certainly.

14 By Mr. Hawk:

15 Q Do you remember being asked a question at the
16 preliminary hearing, sworn testimony at this time and
17 then your statement, you remember what you said at that
18 time? Can you read that for us?

19 A "We didn't know that this was going to drop in our
20 laps."

21 Q And the controlled delivery and the circumstances of
22 the controlled delivery and everything that occurred
23 out there was set up by the customs agents, correct?

24 A Can you speak up a little bit? I'm sorry I can't hear
25 you.

1 Q That's fine. The controlled delivery and the way it
2 was handled, the way everything was assigned and
3 everything was done by customs, am I correct?

4 A It was set up, yes, by customs, but like I said
5 previously, we adopt cases all the time.

6 Q I understand you adopted the case?

7 A Right.

8 Q And you had to proceed with the case?

9 A Right.

10 Q But the way the case was handled and everything about
11 deciding who was going to do what was decided by the
12 customs agents?

13 A Well, that's -- we had a big meeting.

14 Q Okay. Now, at the time I think you had indicated that
15 there were 23 chimneys that came across the line is
16 that right?

17 A Yes, sir.

18 Q Okay. And there's really no dispute about when the
19 truck came across the line, there were 23 chimneys, am
20 I correct?

21 A No, sir.

22 Q No or yes, sir? No dispute about it?

23 A No, sir, no dispute.

24 Q Okay. Now, when this particular delivery was trying to
25 be made that day, can you describe the weather that day

1 for me?

2 A Raining. I don't think it was thundering but it was
3 raining horribly.

4 Q Do you remember telling me at the preliminary hearing
5 when we were sitting in that little room that there
6 were times when you couldn't even see from here to the
7 that wall at the preliminary hearing room?

8 A Right, yes, sir.

9 Q 8 or 10 feet at the most, right?

10 A Yes, sir.

11 Q Okay. And when you were involved in this case and
12 after you reviewed the file and everything, you were
13 never able to determine or gather any proof that Fredy
14 DeLeon had ever contacted anybody from Sebastian
15 Exportantes either before this -- at any time before
16 this incident happened?

17 A Well, at the time of preliminary, like I told ya'll, it
18 was an ongoing investigation.

19 Q I understand. And you have not found anything since?

20 A Well we got -- other than the marijuana manifested to
21 come to the store.

22 Q I understand.

23 A And we got a ledger out of the car with his name on it.

24 Q All right. But here's my ---

25 MR. PUETZ: Judge, we need to be heard.

1 THE COURT: All right. Ladies and gentlemen,
2 please step in the jury room, don't discuss the case.

3 (WHEREUPON the jury left the courtroom at
4 11:47.)

5 THE COURT: Yes, sir?

6 MOTION FOR MISTRIAL

7 MR. PUETZ: On behalf of Fredy DeLeon, Your
8 Honor, we are moving for a mistrial at this point in time.
9 The government or the State has known full well that this
10 ledger was not -- has not been admitted into evidence and
11 for this officer to go ahead and reference the ledger which
12 was not responsive at all to Mr. Hawk's question, he had
13 asked him specifically whether he had any evidence that Mr.
14 DeLeon had in fact contacted the exporting company down in
15 Mexico and this ledger does not in any way, shape or form
16 indicate that he had contacted that exporting company and
17 it's extremely prejudicial and we ask for a mistrial.

18 THE COURT: Anyone else wish to be heard.

19 MR. MAYE: Your Honor, I just ask that it be
20 stricken from the record. I think that the officer
21 attempted to answer the question that he thought was being
22 asked of him, Your Honor, and that's all I can say.

23 MR. SUSSMAN: We'd like to join in the motion
24 as well, Your Honor.

25 THE COURT: Give me a few minutes to think

1 about it.

2 Mr. Young during this break, don't discuss your
3 testimony.

4 We're at ease.

5 (WHEREUPON a brief recess was observed.)

6 THE COURT: I was informed that there was some
7 other matter you wanted to have placed on the record before
8 I make a ruling?

9 MR. MAYE: Your Honor, the only thing I would
10 just like to play back into the record, I believe that was
11 an open-ended question and I want to hear that question
12 again, the exact one he asked. I don't think it was a
13 specific question about information about having -- did he
14 have any times of exporting or bringing things in. I think
15 it was an open-ended question from what I heard over the
16 tape recorder. If it was the same question, Your Honor, if
17 he had any other evidence at all. That was an open-ended
18 question, if they had any other evidence at all in this
19 case. Would you play that last question back?

20 THE COURT: Can you do that?

21 THE COURT REPORTER: It will take me a few
22 minutes, not long.

23 THE COURT: I want the question and the answer.

24 (WHEREUPON the following testimony was played
25 back for the court:)

1 Q You were never able to determine or gather any proof
2 that Fredy DeLeon had ever contacted anybody from
3 Sebastian Exportantes either before this -- at any time
4 before this incident happened?

5 A Well, at the time of preliminary, like I told ya'll, it
6 was an ongoing investigation.

7 Q I understand. And you have not found anything since?

8 A Well we got -- other than the marijuana manifested to
9 come to the store.

10 Q I understand.

11 A And we got a ledger out of the car with his name on it.

12 (WHEREUPON the tape was stopped.)

13 MR. MAYE: And I may have misspoke, Your Honor.
14 It's the State's position in this case, Your Honor, this is
15 the second time this question has been asked by the defense
16 for Mr. DeLeon in this case. The first time there was any
17 mention of the ledger and all was with Agent Mize, Your
18 Honor. The same response was elicited about the ledger,
19 that there was a ledger in this case, Your Honor. It was
20 not contemporaneously objected to and then there were
21 several follow-up questions asked by the defense in this
22 case by Mr. Hawk in this case relating to that, relating to
23 spelling of names and was there anything about a spelling
24 of a name.

25 This has already been asked and answered at one

1 point in time, Your Honor. I'd ask -- if this is to be
2 excluded, I ask that you instruct the jury to give a
3 curative instruction and instruct the jury to disregard.
4 We do not intend to put in any evidence about the ledger.
5 That was why I was -- or any paperwork found in the car. I
6 initially marked that for ID. But to expedite the trial of
7 this case, we were not going to attempt to put that in in
8 this case, Your Honor. But like I said, that testimony is
9 already before the jury without objection about the ledger,
10 Your Honor. In an automobile. And it's our position that
11 a curative instruction for them to disregard any answer
12 about that question would be sufficient in this case and we
13 ask the court not the mistry it.

14 THE COURT: Where is it in evidence without
15 objection?

16 MR. MAYE: Under Agent Mize. That same
17 open-ended question was asked of Agent Mize, if there was
18 anything else linking him in any way, and his answer was a
19 ledger in this case, Your Honor. And then several
20 questions were asked after that. I mean that was in
21 response to his question, in direct response to his
22 question. So this is the second time the jury has heard
23 about this ledger in this case, Your Honor.

24 And that question was asked and then several
25 follow up questions were asked and it was never objected

1 to. It was our position and then we argued afterwards it
2 was our position they had opened the door to that, Your
3 Honor, at that time. And you instructed that the door
4 might open again, Your Honor, in the event that questions
5 along that line were asked, that it was subject to be open
6 again.

7 It's our position he asked the same type of
8 open-ended question to this officer in this case.
9 Basically he's asked officer after officer, Do you have
10 anything linking him, even as to the question of the
11 exportante is it linked to anyone else. This officer, in
12 answering that question could have formulated that response
13 back, Your Honor, to show there were links. All of these
14 defendants in this case even on opening statement have said
15 these two individuals in the car are the traffickers in
16 this case, Your Honor. And a link between Mr. DeLeon and
17 the traffickers would be a direct link back to the
18 individuals that ordered the drugs in this case by their
19 own evidence in this case.

20 All of those defendants from opening statements
21 forward, they've informed them, Oh, these guys, somebody
22 needs to go to jail, but it's these two guys that got away
23 that are the traffickers. And all the questions that have
24 been asked and answered have certainly been tailored
25 towards directing the guilt towards those individuals.

1 That's the second time. The court had already
2 warned the defense in this case of the potential to open
3 the door into that, asking all those open-ended questions,
4 Your Honor, in our view invites that. I'd ask that the
5 court instruct the jury to just disregard that. It was
6 gone back into by, the defense, these open-ended questions,
7 do you have anything linking him and certainly the
8 inference that we have records connecting him to the
9 individuals in the car, Your Honor, in response to that
10 question would be a link back to them because the defense
11 in this case has all along indicated those two guys in the
12 car are the ones in control of this trafficking and there
13 would be a link between them and whoever placed and ordered
14 the drugs, Your Honor.

15 THE COURT: Now, before I was told before you
16 made a decision to shorten the trial, I was told that I
17 would be hearing evidence from somebody with expertise in
18 the field and also from someone who can translate the
19 meaning of the terms that are in Spanish so that I would be
20 in a position to make a ruling about the admissibility of
21 whether this document that was located in the Thunderbird
22 would be admissible.

23 All right. Anything else?

24 MR. MAYE: Nothing else, Your Honor.

25 THE COURT: Anything else from the defense?

1 MR. SUSSMAN: Judge, I think I would just point
2 out that it's my recollection when there was a question
3 about the ledger that there was an objection made and we
4 had gone into it quite a bit regarding relevancy and what
5 the language on the ledger showed and there was that
6 discussion about whether there would be someone who could
7 speak Spanish and interpret for you. I'm not sure there's
8 been any waiver there.

9 THE COURT: I'm almost positive I ruled at that
10 time the door had not been opened.

11 MR. PUETZ: You did.

12 MR. HAWK: Right.

13 THE COURT: I also recall very specifically
14 about not even calling it a ledger. At one time -- I don't
15 know if you all -- the solicitor actually walked up to
16 Agent Mize at the witness stand to tell him whatever you do
17 don't call that a ledger. That was pursuant to the
18 instructions I had given in warning to the defense as well
19 as equally to the State if not more so.

20 Anything else from the defense?

21 MR. HAWK: Just briefly, Judge, if I can ask a
22 question about a connection to Sebastian Exportantes and
23 get a ledger out of the Thunderbird, which they have
24 mischaracterized as a ledger out of the Thunderbird, then
25 there's not any question I can ask. If I ask about Jamco

1 International, then according to the analysis that they've
2 offered, then I get the ledger. If I ask about Border
3 Carriers, then I get the ledger. If I ask about Jose -- I
4 get the ledger.

5 And Judge, this was something that you ruled on
6 that they agreed they weren't going to respond to as a
7 ledger, that the witnesses were instructed not to respond
8 to as a ledger and now we got the very first question --
9 the very first part of me questioning, I'm asking about
10 Sebastian Exportantes, the company in Mexico, any
11 connection he has with that and I get the ledger from the
12 Ford Thunderbird here if Edgefield and I can't pretend that
13 I believe that that wasn't an intentional hit.

14 THE COURT: I understand the issue.

15 MR. HAWK: And I'm not saying that they
16 directed him to do it or anything, but I think he's trying
17 to do the best he can to make his case against us.

18 (WHEREUPON there was a disturbance in the
19 courtroom.)

20 THE COURT: Folks, hold on a second. Ya'll
21 cannot be talking. I am really struggling trying to tune
22 out the interpreter and listen to the issues, so for
23 goodness sakes don't do anything else to distract me.

24 MR. HAWK: I think I've said enough, Judge.

25 THE COURT: I understand -- I'm sorry did you

1 have anything Mr. Puetz?

2 MR. PUETZ: No, I'm sorry.

3 THE COURT: I think I understand the issue.
4 Let me review it.

5 (WHEREUPON a short recess was observed.)

6 THE COURT: All right. First of all, let me
7 establish what I do not find to exist. I do not find to
8 exist any intentional wrongdoing. The witnesses have been
9 sequestered so Mr. Young has not been in the courtroom
10 during any of the discussions we had earlier and has not
11 had the benefit of hearing us go through much the same
12 argument before when Agent Mize testified. So I don't --
13 there's no intentional wrongdoing on the part of the
14 Mr. Young.

15 Likewise, there's nothing that the State did to
16 elicit the response. The solicitor was sitting at the
17 table just listening to the cross-examination in response
18 to the witness and he didn't do anything to prompt that
19 response. There's been a good many issues that have been
20 taken up in limine and issues that you all have tried to
21 address with me that, quite frankly, I didn't see how I
22 could possibly address piece mill.

23 So I've given so many instructions in this case
24 that it's very easy to believe that if the solicitor went
25 back there and told every single witness don't say this and

1 don't say that that they wouldn't recall the significance
2 of everyone of those instructions when it came time to
3 actually taking the witness stand. It's not like I looked
4 at Mr. Young and said don't use the word ledger, don't
5 mention that thing. That perhaps is my fault for not
6 bringing all the witnesses out here, which I have done in
7 the past on critical issues. I have brought all the
8 witnesses out from where they were sequestered and said
9 don't say this. In a civil case I do it sometimes when
10 there's an insurance issue and it's fairly obvious because
11 of the nature of the case that somebody's going to mention
12 insurance.

13 So the question I have now is Mr. DeLeon's
14 motion for a mistrial which has been joined in by two of
15 the other defendants. Let me address Mr. DeLeon's motion.
16 It is granted. I do not know how to cure it. The
17 difficulty is that from the questions that were asked the
18 questions were directed to a connection to a company in
19 Mexico and then there was a reference to a ledger.

20 Now, I don't know that there was never any
21 statement made that the jury could connect the concept of a
22 ledger in a Thunderbird to the word ledger. You see what
23 I'm saying? I don't know that a jury is going to think of
24 a list of things in the Thunderbird automobile that's
25 abandoned as a ledger. And we have scrupulously maintained

1 avoiding calling it a ledger. So if I was sitting on a
2 jury and somebody was asking questions about a business in
3 Mexico, I would think of a business ledger of a company in
4 Mexico. The only way I can cure that is to tell them, No,
5 we're not talking about a connection to a company in
6 Mexico. I can say the words disregard what was said, but I
7 just don't have any confidence in that.

8 And to me, unfortunately, at this juncture it's
9 an essential piece of evidence. And quite frankly from
10 what I've seen of it I don't know how you're going to get
11 it in. That's not an advisory ruling, that's just to say
12 that without the benefit of hearing from all that expertise
13 that I was going the hear and hearing how drug dealers
14 operate and how traffickers operate, how they keep ledgers,
15 what these numbers mean, what the Spanish terms mean, I
16 really don't have some reasoning that this Fredy might be
17 that Fredy.

18 I know from other drug trials people don't use
19 their real names at all. They avoid using their own names
20 like the plague. I don't know how else that would
21 translate into this case. That's all I know to say. I
22 mean, I don't see any intentional misconduct. I don't see
23 anything that was done to sabotage the trial. If anything
24 I see exactly the opposite. I think it was a good faith
25 response. I think Mr. Hawk's questions are pretty

1 open-ended and you've got to concentrate on them and follow
2 them because he's basically trying to show that Mr. DeLeon
3 has nothing that's been discovered to this business, to
4 this enterprise to this illegal type of activity or any
5 illegal activity. And I'm not faulting.

6 I've been on my feet, gentlemen. You all are
7 very fine lawyers on both sides of this and I wouldn't
8 pretend to try to be critical of anything you've done and
9 I hope you don't take it that way because you've all done a
10 much better job than I would do.

11 Mr. DeLeon your case has been mistried, it
12 means that it will be tried another time absent a court
13 order. You are still on bond. You stay in touch with your
14 attorneys. You make sure you're here when you're supposed
15 to be here. Your case can be tried in your absence if
16 you're not here and you also could be arrested on a bench
17 warrant and or consequences could be involved.

18 Ask him if he understands all these things.

19 MR. HUNT: Yes, sir.

20 THE COURT: Thank you. Gentlemen you may
21 leave.

22 (WHEREUPON a mistrial was declared in the other
23 three defendants cases also well.)
24

25 * * * * * END OF TRANSCRIPT * * * * *

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PAGE 1
TIN00223INCIDENT NBR: 2002SZ003712501 FP&F CASE NBR: 2002230400054901
VIOLATOR NAME: CONTRERAS DOMINGUEZ, JOSE R
TOPIC: SEIZURE OF UNKNOWN AMOUNT OF MARIJUANA COMINGLED WITH FURNITURE

SEARCH: DATE 05142002/1915 TIME ARREST: DATE / TIME SEIZURE: DATE 05142002/1910 TIME

VIOLATOR DATA

LAST NAME: CONTRERAS DOMINGUEZ
FIRST NAME: JOSE MIDDLE NAME: R
CITIZENSHIP: MX DOB: 09121962
STREET ADDRESS: PROL.BERLIN #2138 COL.UNIDAD NACIONAL APT/SUITE:
CITY: NUEVO LAREDO STATE: TA CNTRY: MX ZIP:
VIOLATOR TRAVEL CATEGORY: VIOLATOR STATUS AT ARREST:
LOCAL USE:

TECS RECORD ID: P9C30975400C9X

OTHER NAMES:

RACE: L SEX: M HT: ' " WT: HAIR: EYES:
SSN: CITIZENSHIP: MX OCCUPATION:
BIRTHPLACE - COUNTRY: STATE: CITY:
PPN: COUNTRY: TYPE: ISSUED: EXPIRES:
DRIVERS LICENSE - NUMBER: STATE: COUNTRY:
SCARS/MARKS/TATTOOS/ETC:

MISCELLANEOUS NUMBERS-NUMBER:

TYPE:

PRIMARY DATA

OI OFFICE CODE: CASE #:
PROJECT CODES:
PRIOR INFO: NONE X DEA CUSTOMS TECS NCIC OTHERNAME-TITLE-AGENCY
DECLARATION TAKEN BY: ALARCON/R-CUSTOMS INSPECTOR-C
ARRESTING OFFICER:
SEIZING OFFICER: GAONA/R-CUSTOMS INSPR-C
SUPERVISOR: MARTIN/A-SUPVY CUSTOMS INSPR-C
PORT DIRECTOR: EUGENIO GARZA

TYPE OF INCIDENT: D DRUGS

DISCOVERY DATE: 05142002

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TIN00223INCIDENT NBR: 2002SZ003712501 FP&F CASE NBR: 2002230400054901
VIOLATOR NAME: CONTRERAS DOMINGUEZ, JOSE R
TOPIC: SEIZURE OF UNKNOWN AMOUNT OF MARIJUANA COMINGLED WITH FURNITURELAW CHARGED
18USC545
21USC952LAW CHARGED
21USC881
21USC841LAW CHARGED
19USC1595A(A)
19USC1594

AGENCY PARTICIPATION

DISCOVERING:
SEIZING:CSE
CSE

CONVEYANCE DATA

CONVEYANCE TYPE: K COMMERCIAL TRUCK
ITINERARY: DATE 05142002 TIME 1617 FROM MX MEXICOVIA
INBOUND/OUTBOUND: I CONVEYANCE SEARCHED: Y CONVEYANCE SEIZED: Y
CARRIER NAME:

BILL OF LADING:

VEHICLE YEAR: 90

MAKE:

MODEL:

BODY STYLE: TC TRACTOR, TRACK-TYPE

COLOR: ORANGE

LICENSE NUMBER: 414THT5 STATE: TA
VEHICLE IDENTIFICATION NUMBER (VIN):

COUNTRY: MX

YEAR: 02

OWNER 1 BUSINESS NAME: AMERICA TRANSFER
LAST NAME: QUIROZ
FIRST NAME: RUBEN
STREET ADDRESS: GUATEMALE #3307
CITY: NUEVO LAREDO

MIDDLE NAME: A

APT/SUITE:

STATE: TA CTRY: MX ZIP:

OWNER 2 LAST NAME:
FIRST NAME:
STREET ADDRESS:
CITY:

MIDDLE NAME:

APT/SUITE:

STATE: CTRY: ZIP:

TECS RECORD ID: V9C03143400C23

SEARCH DATA

SEARCH TYPE: P PATDOWN RESULTS: N NEGATIVE
TIME COMPLETED: 1918 FUNDS: .00SEARCHING OFFICER: GAONA/R-CUSTOMS INSPR-C
AUTHORIZING OFFICER: MARTIN/A-SUPVY CUSTOMS INSPR-C
WITNESS:
REASON FOR SEARCH:

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INCIDENT NBR: 2002SZ003712501 FP&F CASE NBR: 2002230400054901
 VIOLATOR NAME: CONTRERAS DOMINGUEZ, JOSE R
 TOPIC: SEIZURE OF UNKNOWN AMOUNT OF MARIJUANA COMINGLED WITH FURNITURE

SEIZURE DATA

REASON FOR EXAM: TYPE OF EXAM:
 SEIZURE REFERRED TO OI: FILER CODE:
 MANUFACTURER NAME/NBR:
 SHIPPER NAME/NBR:

ABANDONED: BLITZ: DOG ALERT: XRAY: X
 ENFORCEMENT AID USED:
 CONTAINERIZED: X CONTAINER NBR: 638ASL097
 ENTRY NUMBER: WC100480415 ENTRY TYPE:
 APPRAISING OFFICER: RICARDO GAONA/SI/USCS
 MITIGATING OFFICER:

ON SITE MITIGATION:

CITATION ASSOCIATED WITH PENALTY:

PENALTY: PENALTY ASSESSED .00 MITIGATED AMT .00
 AMT CLCTD .00 DATE RECEIPT# PRMSRY AMT
 PLACE OF DISCOVERY: P (WITHIN P.O.E.) LOC: V641 WORLD TRADE BRIDGE
 PLACE OF SEIZURE: P (WITHIN P.O.E.) LOC: V641 WORLD TRADE BRIDGE

1 DESC OF SEIZED ITEM: MARIHUANA

COMM/CD: MAR QTY: 1.00 UM: KG WT DET: FDIN:
 COUNTRY OF ORIGIN: COUNTRY OF EXPORT: COUNTRY OF DESTINATION:
 DEC VAL: 0 FOR VAL: DOM VAL: 0
 DUTY: 0.00 LEGAL STAT: SF PHYS STAT: HE CUST: SPC
 CONCEAL: K SEC: ENTERED TARIFF #:
 T.E.S. CODE: INV LIST: CONCEAL COMM/CDE:

2 DESC OF SEIZED ITEM: 1990 INTERNATIONAL TRACTOR

COMM/CD: 87041010 QTY: 1.00 UM: EA WT DET: FDIN:
 COUNTRY OF ORIGIN: COUNTRY OF EXPORT: COUNTRY OF DESTINATION:
 DEC VAL: 0 FOR VAL: DOM VAL: 5000
 DUTY: 0.00 LEGAL STAT: SZ PHYS STAT: HD CUST: CTR
 CONCEAL: Z SEC: ENTERED TARIFF #: 87041010
 T.E.S. CODE: INV LIST: CONCEAL COMM/CDE:

3 DESC OF SEIZED ITEM: 1988 STOUGHTON TRAILER

COMM/CD: 87041010 QTY: 1.00 UM: EA WT DET: FDIN:
 COUNTRY OF ORIGIN: COUNTRY OF EXPORT: COUNTRY OF DESTINATION:
 DEC VAL: 0 FOR VAL: DOM VAL: 10000
 DUTY: 0.00 LEGAL STAT: SZ PHYS STAT: RE CUST: SPC
 CONCEAL: J SEC: ENTERED TARIFF #: 87041010
 T.E.S. CODE: INV LIST: CONCEAL COMM/CDE:

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...CIDENT NBR: 2002SZ003712501 FP&F CASE NBR: 2002230400054901
 VIOLATOR NAME: CONTRERAS DOMINGUEZ, JOSE R
 TOPIC: SEIZURE OF UNKNOWN AMOUNT OF MARIJUANA COMINGLED WITH FURNITURE

4 DESC OF SEIZED ITEM: WOOD FURNITURE
 COMM/CD: 9403608080 QTY: 133.00 UM: EA WT DET: FDIN:
 COUNTRY OF ORIGIN: COUNTRY OF EXPORT: COUNTRY OF DESTINATION:
 DEC VAL: 0 FOR VAL: DOM VAL: 9850
 DUTY: 0.00 LEGAL STAT: SZ PHYS STAT: HE CUST: STL
 CONCEAL: J SEC: ENTERED TARIFF #: 9403608080
 T.E.S. CODE: NON INV LIST: N CONCEAL COMM/CDE:

TOTALS:	DECLARED VALUE:	0	FOREIGN VALUE:	0
	DOMESTIC VALUE:	24850	DUTY:	0.00

CIRCUMSTANCES/REMARKS:

ON 05/14/02 AT APPROXIMATELY 1617 HOURS, A SUBJECT LATER IDENTIFIED AS JOSE RUBEN CONTRERAS DOMINGUEZ ARRIVED AT THE LAREDO WORLD TRADE BRIDGE CARGO FACILITY DRIVING A 1990 INTERNATIONAL TRACTOR. THE TRACTOR DISPLAYED MEXICAN PLATES BEARING TAG # 414THT5. THE TRACTOR WAS HAULING A 1988 BLUE STOUGHTON TRAILER BEARING CANADA LICENSE PLATES # R77541.

THE TRAILER A STOUGHTON, FROM BLM TRANSPORTATION GROUP WAS CARRYING 133 PIECES OF WOOD FURNITURE AND MANIFESTED BY PRE-FILE ENTRY NUMBER WC1-00480415. CUSTOMS INSPECTOR RICARDO ALARCON, MANNING PRIMARY LANE NUMBER 2 REFERRED TRAILER FOR AN INTENSIVE INSPECTION BASED ON RESULTS FROM SELECTIVITY BY THE DAU TEAM. SELECTIVITY BY DAU MAURICIO VIDAURRI TARGETED THE SHIPMENT BASED ON 1ST TIME CONSIGNEE AND LOW ENTRY VALUE.

THE TRAILER AND MERCHANDISE WAS REFERRED FOR A NON-INTRUSIVE INSPECTION THROUGH THE VACIS. VACIS CERTIFIED TEAM SI R.GAONA AND SI J.AGUILERA NOTICED AN

ANOMALY ON THE IMAGE DISPLAYED, INDICATING POSSIBLE CONTRABAND. THE TRAILER, WITH SECURITY SEAL NUMBER "INTERNAL" #658307 AND BLUE PLASTIC SEALS NUMBER 0028439 AND 0028440 WAS ESCORTED TO THE INTENSIVE DOCK BY SI R. GAONA. AT THE INTENSIVE DOCK, A SUBSEQUENT INSPECTION REVEALED PACKAGES INSIDE THE FURNITURE. ONE OF THE PACKAGES WAS PROBED BY SI R. GAONA REVEALING A GREEN LEAFY SUBSTANCE WHICH LATER FIELD TESTED POSITIVE FOR MARIHUANA USING THE DUQUENOIS LEVINE REAGENT SYSTEM.

SI R. GAONA AND CI R. JIMENEZ ESCORTED SUBJECT TO SUPERVISOR'S OFFICE WHERE SCI A. MARTIN AUTHORIZED A PATDOWN. SI R. GAONA CONDUCTED PATDOWN, WITNESSED BY CI R. JIMENEZ WITH NEGATIVE RESULTS. A DETENTION LOG WAS INITIATED AT 1920 HOURS, AND FIFTEEN MINUTE CHECKS WERE CONDUCTED TO INSURE THE SAFETY AND HEALTH CONDITION OF SUBJECT.

CANINE OFFICER AL MCCAULEY WAS ASKED TO RUN HIS K-9 "IRK" TO CONFIRM THE

PRESENCE OF NARCOTICS. CANINE AL MCCAULEY ADVISED SI R. GAONA THAT HIS K-9 DOG
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INCIDENT NBR: 2002SZ003712501 FP&F CASE NBR: 2002230400054901
VIOLATOR NAME: CONTRERAS DOMINGUEZ, JOSE R
TOPIC: SEIZURE OF UNKNOWN AMOUNT OF MARIJUANA COMINGLED WITH FURNITURE

"IRK" DID GIVE A POSITIVE ALERT TO THE PRESENCE OF NARCOTICS INSIDE OF THE FURNITURE.

SECTOR BUSH WAS NOTIFIED AT APPROXIMATELY 1920 HOURS, AND SA GENTRY RESPONDED AT 1930 HOURS. SA M. WILLIAMS ARRIVED AT APPROXIMATELY 2030 HOURS AND SA C. CARDENAS ARRIVED AT 2100 HOURS AND INTERVIEWED SUBJECT. AT APPROXIMATELY 2300 HOURS, SPECIAL AGENT AND GROUP SUPERVISOR JOE HERNANDEZ ADVISED THAT A CONTROLLED DELIVERY HAD BEEN AUTHORIZED.

SUBJECT JOSE RUBEN CONTRERAS WAS RELEASED TO SA C. CARDENAS.

THE TRACTOR, TRAILER AND MERCHANDISE WERE SEIZED AND ALL PERTINENT CUSTOMS FORMS WERE COMPLETED.

PLEASE NOTE THAT IMPORTER WAS NOT LRI; ALSO NOT CIP NOR BASC PARTICIPANT AMOUNT OF MARIHUANA PENDING OUTCOME OF CONTROLLED DELIVERY.

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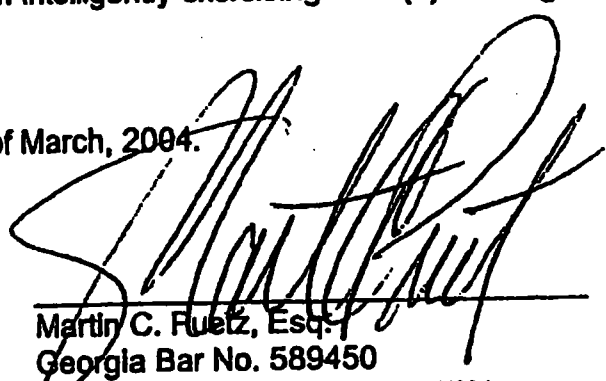
STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	
COUNTY OF EDGEFIELD	)	ELEVENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA	)	Indictment No. 2004-GS-19-140
	)	
vs.	)	
	)	
FREDDIE DELEON TAMAYO,	)	
	)	
Defendant.	)	

MOTION FOR SPECIFIC VOIR DIRE
QUESTIONS TO JURY PANEL

COMES NOW the Defendant, Freddie DeLeon Tamayo, by and through his attorney, Martin C. Puetz, and hereby moves and requests this Honorable Court, in the course of its *voir dire* examination of the jury venire to determine each juror's qualifications to sit in the trial of this criminal case, to ask of, inquire upon, and *voir dire* each prospective juror upon the following questions in the presence of the Defendant and counsel or, alternatively, to permit defense counsel to submit the questions for answer by each juror. Said questions attached hereto as Exhibit "A".

The attached questions are submitted, together with such other questions as the Court may deem proper, to aid the defense in intelligently exercising both (1) challenges for cause, and (2) peremptory challenges.

Respectfully submitted this 23rd day of March, 2004.


 Martin C. Puetz, Esq.
 Georgia Bar No. 589450
 South Carolina Bar No. M004591
 415 Fourth Street
 Augusta, GA 30901
 706-722-4283
 Attorney for Freddie DeLeon Tamayo

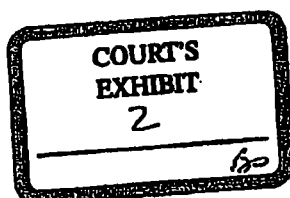


EXHIBIT "A"

VOIR DIRE QUESTIONS

1. Do any of you know the Assistant Solicitor, Ervin Maye, or any member of the Solicitor's staff/investigators/secretaries?
2. Do any of you know any of the following witnesses (*Have prosecutor name them*):
3. Have you or any member of your immediate family ever been involved in law enforcement, police security, military police, etc.?
 - a) Are you or is any member of your immediate family involved in law enforcement at the present time?
4. Are you or is any member of your immediate family retired or active-duty military?
5. Have you studied or obtained a degree in criminal justice (whether as a major or a minor)? Have you ever thought of making your career in criminal justice?
6. Are you or is any member of your immediate family a member of neighborhood watch?
7. Would any of you give more weight and credit to the testimony of law enforcement officers under oath than you would Freddie DeLeon Tamayo under oath simply because they are law enforcement officers?
8. Have any of you or your immediate family been a victim of a violent crime, or a crime against a person?

9. Is there any of you who would give greater weight to a witness testifying for the State than you would defense witnesses just because they are State witnesses?

10. Would each of you try this case on evidence and law without injecting speculation, opinions, or conjecture not supported by evidence and law?

11. Have I ever been on the opposite side of you in a legal contest?

12. Would you wait until all of the evidence is in before attempting to form an opinion as to the guilt or innocence of Freddie DeLeon Tamayo?

13. If at the conclusion of the case there is a reasonable doubt in your mind as to the guilt of Freddie DeLeon Tamayo, would any of you have any reservations about returning a verdict of not guilty?

14. Have any of you read or heard anything about this case either in the newspaper, radio or some other media?

15. Do any of you have prejudices against drugs which make it difficult to return a verdict of not guilty if the State fails to prove its case beyond a reasonable doubt?

16. Have you or any of your family members or close friends had a problem with drugs which would cause you to be prejudiced against someone who is charged with the sale or possession of drugs?

17. Is there any member of the panel whose child or children uses or has used cocaine, crack cocaine, and/or marijuana?

18. Is there any member of the panel whose child or children are or have been addicted to cocaine, crack cocaine, and/or marijuana? If so, have they received drug rehabilitation?

19. Is there any member of the panel who has a close friend or relative who is addicted to cocaine, crack cocaine, and/or marijuana, or has used these substances?

20. What, if any, attitude have you developed as a result of having your children, family member, or close friend use and/or become addicted to such a drug?

21. Do you believe that because the defendant is Hispanic and does not speak English that it would be difficult for you to return a verdict of not guilty if the State fails to prove its case beyond a reasonable doubt?

22. Have you or any of your family members had any negative encounter or negative interaction with a Hispanic person?

23. Have you, a close relative or a friend lost a job and been replaced by a Hispanic or Spanish speaking immigrant?

24. Did you oppose the passage of NAFTA (North American Free Trade Act) by the United States Congress?

CUSTODY RECEIPT FOR RETAINED OR SEIZED PROPERTY

1 PORT 2304		2 DATE 2002210400051901		3 CASE NUMBER 958-726-2041		4 OTHER CONTROL NO		5 DATE RECEIVED 05/14/2002			
6 POSTAL INSPECTION OFFICE GAONA/R-CUSTOMS INSPECTION				7 PHONE NO 958-726-2041		8 NAME & TYPE OF CARRIER					
9 HAVE ADDRESS OF CARRIER (IF APPLICABLE) JOSE CONTRERAS DOMINGUEZ PROL. BERLIN #2138 COLUMNIDAD NACIONAL NUEVO LAREDO, TA MX						10 PHONE NO		11 NO. OF PKGS 0		12 APPROX. WT 1.00 KG	
						13 QUANTITY, MAKE, TYPE, OTHER (IF KNOWN) WG100480415		14 SPECIAL INSTRUCTIONS (IF ANY) (SEE CL. 14.0)			
								15 INSTRUCTIONS FROM SENDER			
16 SECTION VI VIOLATED OR REASON FOR DETENTION 18 USC 315 21 USC 861 19 USC 1595A(A)				17 IS PROPERTY TO BE HELD AS EVIDENCE? 1 YES (Give the appropriate code) 2 NO ☐		18 RETURN TO SENDER (IF APPLICABLE) (SEE CL. 18.0)					
19 POSTAL INSPECTION ADDRESS LINCOLN SUAREZ BRIDGE II BUILDING II, LAREDO, TX 78043130											

[illegible]

DECLARATION OF CUSTOMER				
DATE	BY - INDIVIDUAL, TITLE, ORGANIZATION	OFFICE	NO. OF UNITS	SIGNATURE
12/12/02	GAOVAR CUSTOMS INSPECTION, 210-725-2287			
11/1/02	Mr. Williams USCS	001		Mr. Williams
5/14/02	George Mob...	001		George Mob...
1/17/02	Mr. Williams USCS	001		Mr. Williams
1/1/02	J. Tucker USCS	001		J. Tucker
1/1/02	R. Young, Edinfield U.S.C.	001		R. Young

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1 STATE OF SOUTH CAROLINA)

) CERTIFICATE OF REPORTER

2 COUNTY OF AIKEN)

3
4
5
6 I, THE UNDERSIGNED, Brenda W. Sigwald, Official
7 Court Reporter for the Second Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 23rd
11 through the 25th days of March 2004.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 479, constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin,
16 counsel, nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and seal at Aiken County, this 16th day of June, 2004.

19
20
21 Brenda W. Sigwald
22 Brenda W. Sigwald,
23 Court Reporter and Notary Public
24 For the State of South Carolina
25 My commission expires
February 25, 2010

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF EDGEFIELD

4
5 THE STATE,

6 V.

7 FREDY DELEON, RAPHEL HERNANDEZ, HONORIO GUERRERO, ALFREDO AVILA-
8 ARJONA,

9 DEFENDANTS.

10
11
12 B E F O R E : THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A JURY.

13
14 A P P E A R A N C E S :

15 FOR THE STATE: ERVIN MAYE, ASSISTANT SOLICITOR AND JOSEPH P. MIZZELL, JR.,
16 ASSISTANT SOLICITOR

17 FOR THE DEFENDANTS: WILLIAM SUSSMAN, ESQUIRE; MARTIN C. PUETZ, ESQUIRE;
18 JACQUES HAWKE, ESQUIRE; DAVID MILLER, ESQUIRE

19
20 COURT REPORTER: SMOKEY PERRY

21
22 WEEK OF JUNE 28, 2004

23
24 INDICTMENTS 2004-GS-19-137, 138, 139, 140

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