

FILED
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

05 MAY -9 PM 4: 26

ELIAS GONZALES,

CLERK-ALBUQUERQUE

Plaintiff,

vs.

CIV 03-1150 BB/WDS

**THE CITY OF ALBUQUERQUE,
ROBIN BURGE and KEVIN FULLER,
City of Albuquerque Police Officers,**

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANT ROBBIN
BURGE'S MOTION FOR SUMMARY JUDGMENT AND CROSS-
MOTION FOR SUMMARY JUDGMENT**

Introduction

Defendants have presented to the court a tautological nightmare. Defendants' redundant recitation of irrelevant material facts threatens the conciseness, brevity and precision that this simple litigation deserves. Defendant Burge devotes much of her motion for summary judgment to plaintiff's alleged lavish lifestyle while ignoring her own testimony that the cash she seized from plaintiff was not evidence of a crime and not subject to forfeiture. In this country, we don't punish people for living "lavish" lifestyles. In this country we don't seize property on the suspicion that something is not right. Defendant Burge

seized plaintiff's cash and dumped it in the black hole of APD evidence. She had no reason to believe anything was going to happen to plaintiff's money other than what did happen - it sat in evidence, or in some unknown bank account or was stolen until plaintiff filed this lawsuit. Plaintiff now seeks nominal damages for the unreasonable search of his home and compensatory damages for the loss of use of his money as well as punitive damages and attorney fees. Defendant Burge has displayed an indifference to Elias Gonzales' property rights and the property rights of other citizens.

**Plaintiff's Statement of Undisputed Facts on Plaintiff's
Cross-Motion for Summary Judgment**

1. Sometime before May 2, 2003, Defendant Burge's supervisor (Ruben Davalos) issued a memorandum informing Defendant Burge and other officers about the change in double jeopardy law in the State of New Mexico. (Burge deposition attached as Exhibit "A", at page 23-24 ll. 14-25 & l. 1).

2. In the memorandum, Defendant Burge's supervisor informed her and others that "we were no longer allowed to do seizures". Id.

3. Defendant Burge understood the memorandum to mean that APD would no longer do cash forfeitures. (Id. at p. 24).

4. APD officers decided to send forfeiture cases above \$5,000.00 to the

DEA.

(Id. at p. 25, ll 4-7).

5. Defendant Burge knew that the DEA did not accept forfeitures under \$5,000.00. Id.

6. On May 2, 2003, Defendant Burge seized \$4,378.00 from plaintiff. (Defendant Burge's undisputed fact number 6).

7. Defendant Burge did not seize the cash as evidence of a crime or evidence in a criminal prosecution. (Id. at 92-93).

8. At the time that Defendant Burge seized plaintiff's cash, she had no intention of charging him with a criminal act. (Id. at p. 92, ll 21-25 & 93 ll 1-4).

9. At the time that Defendant Burge seized plaintiff's cash she completed no paperwork to begin the forfeiture process. (Id. at 43-44).

10. Despite the memorandum she received from her supervisor, Defendant Burge continued to seize cash from homes wherein she executed search warrants. (Id. at 44-45).

11. Defendant Burge seizes cash from people who have no criminal charges pending. (Id. at 45).

12. Defendant Buge seizes any cash (over \$100.00) that she finds in a house even if it is unrelated to drug transactions. (Id. at p. 46).

13. On June 7, 2003, Defendant Burge seized \$160.00 during the execution of a search warrant at 7515 Dixon Street, S.E.. (Return and Inventory attached as Exhibit "B").

14. A thorough search of the residence, including a K-9 sniff, resulted in finding a misdemeanor amount of marijuana. No arrests were made. (Police report attached as Exhibit "C").

15. Defendant Burge initiated no forfeiture paperwork on the cash seizure at 7515 Dixon Street, S.E.. There is no evidence that Detective Burge returned the seized money. (Burge deposition at 121-22) (completion of forfeiture paperwork was "suspended").

16. On April 5, 2003, Defendant Burge seized \$225.00 from 1125 Palisades N.W. in Albuquerque. (Return and Inventory attached as Exhibit "D").

17. Defendant Burge initiated no forfeiture paperwork on the cash seized at 1125 Palisades N.W.. There is no evidence that Detective Burge returned the seized money. (Burge deposition at 121-22).

18. On April 3, 2003, Defendant Burge witnessed the seizure of \$68.00 from 401 Dorado S.E. Apartment A. The owner was identified as Daniel Salazar. The execution of the warrant resulted in no finding of drugs. (Return and Inventory attached as Exhibit "E").

19. Defendant Burge initiated no forfeiture paperwork on the cash seizure at 401 Dorado S.E. Apt. A. There is no evidence that Detective Burge returned the seized money. (Burge deposition at 121-22)

20. On April 5, 2003, Defendant Burge witnessed and participated in a fellow officer's seizure of close to \$2,000.00 cash at 902½ Coal Avenue S.W.. (Return and Inventory attached as Exhibit "F").

21 No forfeiture paperwork was filed on the seized cash at 902½ Coal SW. There is no evidence that Detective Burge returned the seized money. (Burge eposition at 121-22).

22 On May 31, 2003, Defendant Burge seized \$328.00 from Bobby Jaramillo during the execution of a search warrant. (Return and Inventory attached as Exhibit "G").

23 Defendant Burge filed no forfeiture paperwork on the seized cash from Bobby Jaramillo. There is no evidence that Detective Burge returned the seized money. (Burge deposition at 121-22).

24 On March 22, 2003, Defendant Burge seized \$1,430.00 from William Hector, III at 7600 Montgomery N.E. #112076. No criminal charges were filed against William Hector. (Affidavit for Search Warrant and Return and Inventory attached as Exhibit "H") (Police Report attached as Exhibit "I").

25. On April 4, 2003, Defendant Burge seized \$3,537.00 from Anthony Morris at 1130 8th Street N.W.. (Return and Inventory attached as Exhibit "J") (Search result from docket search in state district court attached at Exhibit "K").

26. On July 26, 2003, Robyn Burge provided an affidavit for search warrant for Daniel Gallegos at 8904 Rhonda Street, S.W.. During the execution of the warrant APD officers seized \$215.00 from Mr. Gallegos' wallet. APD found no drugs during the execution of the search warrant. No criminal charges were filed against Daniel Gallegos. (Return and Inventory attached as Exhibit "L") (Search result from docket search in state district court attached as Exhibit "M").

27. Prior to receiving the memorandum from her supervisor, Ruben Davalos, Defendant Burge followed a paperwork procedure after seizing money. (Burge deposition at page 43).

28. Within ten days of a seizure, Defendant Burge was responsible to submit paperwork to her department. (Id.)

29. Defendant Burge understood that the people she gave the paperwork to "handled our seizures for us". (Burge deposition at 43, ll 16-18 & at 121, ll 9-20).

30. After her supervisor suspended seizures, Ms. Burge completed no forfeiture paperwork upon the seizure of cash. (Burge deposition at 122, ll 1-13).

31. At all times, Defendant Burge had the authority to release Mr.

Gonzales' money back to him. (Burge deposition at 118).

32. After placing plaintiff's cash in evidence, Defendant Burge did not think about plaintiff's cash. (Burge deposition at 37).

33. Defendant Burge agrees she should have "followed up" about the cash. (Id. at 37).

34. Defendant Burge believes she is "totally to blame because [she] dropped the ball" for her failure to return plaintiff's cash within ten days of its seizure. (Id. at 119-20).

**Plaintiff's Response to Defendant's Recitation
of Alleged Undisputed Facts**

1. Admitted.
2. Admitted that detectives found no drugs. Detectives also found no scales, no packaging material, no guns and no evidence of the storage or sale of drugs. A trained police dog was used to search plaintiff's house. To Defendant Burge's knowledge the dog did not alert to anything or any area of the house. (See plaintiff's response to Defendant Burge's alleged undisputed fact No. 15).

Defendant Burge seized cash that she found in plaintiff's pocket. Two other officers seized cash in different areas of plaintiff's home and they gave this cash to Defendant Burge. (Burge deposition at 92-94).

3. Admitted. Plaintiff was mistaken in that he received no check from

the IRS. He received a wire transfer into his account on March 7, 2003. He withdrew \$4,235.00 from his personal bank account on March 12, 2003. (March, 2003 bank statement from Santa Fe Federal Credit Union attached as Exhibit "N").

4. Denied as immaterial and argumentative. Counsel properly objected to a harassing question about the basis for an objection posed by counsel. The question sought no relevant material. The question was posed by a trained lawyer to a layperson in an apparent attempt to engage in an argument over whether counsel's objection was appropriate.

5. Admitted.

6. Admitted. Plaintiff's counsel made an error when calculating the amount shown on the Return and Inventory. Plaintiff also admits that the amount seized was less than the DEA cut-off for forfeitures of \$5,000.00.

7. Admitted.

8. Denied. Plaintiff agreed to pay \$147,000.00. The sales price of the home was \$147,000.00. The home was fully mortgaged.

9. Admitted.

10. Admitted.

11. Denied. Mr. Gonzales gave the following testimony:

Q. What was the cost of the [Humvee]?

A. Like thirty-four.

Defense counsel did not ask for the purchase price - she asked for cost. The cost of the Humvee, after trade-in, was about \$34,000.00.

12. Denied. The purchase price was listed as \$55,000.00. Mr. Gonzales financed about \$34,000.00 as he testified.

13. Denied as immaterial.

14. Denied as immaterial. Defendants have ignored and continue to ignore that plaintiff has had a live in girlfriend for a number of years. She contributes to household expenses of about \$800.00 per month. (Gonzales deposition at 12).

15. Denied as beyond credulity and as impermissible hearsay. The fact purports to offer a statement of an alleged person who is unnamed and unknown for the truth of what that person is saying.

Defendant Burge has an unacknowledged problem with the reliability of her CS.

On or about June 21, 2003, Robbin Burge alleged a controlled buy involving crack cocaine at 1300 Coal SW. The execution of the search warrant resulted in finding no drugs. Detective Burge alleged she found paraphernalia and residue (1300 Coal Avenue search warrant attached as Exhibit "O").

On May 30, 2003, Robbin Burge obtained a search warrant for 500 Adrian Road SW. Detective Burge alleged a buy of cocaine. The execution of a search

warrant resulted in finding “nothing” in the house. Detectives seized marijuana from a purse in a bedroom (Copy of Affidavit for search warrant attached as Exhibit “P”).

On May 29, 2003, Robbin Burge obtained a search warrant for 7515 Dixon Street SE. Detective Burge alleged a purchase of crack cocaine. The search resulted in a finding of a small bag of marijuana and a bag of “unknown substance”. (Affidavit for Search Warrant and Return and Inventory attached as Exhibit “Q”).

On May 29, 2003, Robbin Burge obtained a search warrant for 6500 Cochiti Road SW. In the affidavit for search warrant Detective Burge alleged a purchase of marijuana. The return and inventory shows “nothing taken”. (Affidavit for Search Warrant and Return and Inventory attached as Exhibit “R”).

The alleged buy involving Elias Gonzales lacks corroboration. Detective Burge alleged in her search warrant affidavit that crack cocaine was purchased, and initially stated in her deposition that it was crack cocaine. (Burge deposition at 50). Later in her deposition, Ms. Burge changed her testimony and alleged it was powder cocaine. (Burge deposition at 69).

Detective Burge alleged in her deposition that she and “detectives” met with the CS and that she and “detectives” witnessed the controlled buy. (Burge deposition at page 75, ll 1-9). Detective Burge actually testified that Kevin Fuller

was with her when the alleged buy occurred. (Id. at 76).

However, Kevin Fuller testified that he never met with the CS. (Fuller Deposition, Exhibit "S" at 19, ll 14-25). Fuller never saw the CS. (Fuller Deposition at 20, ll 24-25). Mr. Fuller asserted the confidential informant privilege when asked whether plaintiff is alleged to have sold crack cocaine or powder cocaine. (Id. at 21, ll 7-23). Mr. Fuller could not corroborate Detective Burge's allegation that the CS met with plaintiff. (Id. at 22-23 & 25 ll 9-20).

Detective Burge found no trace amounts of cocaine. (Burge deposition at 68 ll 3-5). (Detective Burge found no scales pp 48-49). Detective Burge found no guns in plaintiff's house, despite the propensity of drug dealers to possess guns. (Id. at 56, ll 6-14).

Thus, the alleged statement of "moving birds", even if admissible is subject to impeachment on multiple grounds. Attached to this brief are affidavits for search warrants and returns and inventories for ten separate searches. We have a record of eleven (11) search warrants executed on the basis of alleged controlled buys supervised by Defendant. In the affidavits, Defendant Burge alleges a sale of crack cocaine or cocaine. In the affidavit for 6500 Cochitti, Defendant Burge alleged a sale of marijuana. In only two (Bobby Jaramillo and 1125 Palisades) did the execution of the search warrant result in a finding of the identified drug alleged to have been sold from the residence. At least six residences were completely dry

of any drugs. Two of the remaining searches resulted in a finding of marijuana in the house, in user amounts. The warrant executed at 500 Adrian resulted in a finding of a user amount of marijuana in a purse. Under New Mexico law, all the marijuana appeared to be chargeable as misdemeanors. Thus, Robbin Burge and her alleged C.S., if any exist, has a success rate of about 20% when looking for cocaine being sold from homes in Albuquerque.

16. Denied as uncorroborated. Denied per affidavit of Elias Gonzales.

17. Denied as uncorroborated. Plaintiff's contention is that there is no CS. Defendant has hidden the identity of the alleged informant.

18. Denied. There is not evidence or rule of law that would have required the disclosure of the CS in a criminal prosecution.

19. Denied as immaterial. Citizens of the United States are not subjected to invasions of their privacy because of the "curious" manner in which they may keep cash.

20. Denied. Defendant Burge has not produced the "marijuana pipe". It was never tested.

Legal Argument

Plaintiff moves for summary judgment on his claims under the Fourth Amendment and the Fourteenth Amendment to the United States Constitution. While Defendant expressed uncertainly whether a Fourteenth Amendment claim is

stated against her, a review of the docket makes it clear that plaintiff has stated a Fourteenth Amendment claim against Defendant Burge. (Plaintiff's First Amended Complaint, Docket No. 47 (Count IV); Amended Initial Pre-Trial Report, Docket No. 66 ("The individual defendants deprived plaintiff of due process")).

Plaintiff's Fourth Amendment Claim of False Affidavit for Search Warrant

Plaintiff incorporates herein the evidence submitted in his original response brief to Defendant Burge's Motion for Summary Judgment. There appears to be no reason for the court to change its findings that plaintiff presented a triable issue of material fact on his claim that Detective Burge lied in the affidavit for search warrant. In fact, discovery has allowed plaintiff to gather more information which raises an inference that Detective Burge lied in her affidavit. This information includes her "confusion" about whether plaintiff allegedly sold crack cocaine or powder cocaine, the failure of a witness (Kevin Fuller) to corroborate her claims (after she identified him as a corroborating witness) and the alarming rate at which Detective Burge executes "dry" warrants.

Defendant Burge attempts to buttress her motion for summary judgment by asserting her belief in her C.S. and by claiming she filed no criminal charges against plaintiff because of her fear that the C.S. would be exposed. When counsel probed Detective Burge of the basis for her fear that the C.S. would be burned, she was only able to state "training" and she was unsure who provided the training.

(Burge deposition at 91). Also, Defendant Burge makes a ludicrous claim that plaintiff was selling “kilos” of cocaine. Plaintiff has presented enough evidence to allow a jury to infer that Burge made up a C.S.. Plaintiff’s theory of the case is that Burge made up the C.S. and the buy. Plaintiff has denied making the buy. This is a dispute clearly within the purview of a jury.

Plaintiff’s Claim of Unreasonable Seizure of Cash

As this court stated: “In order to seize property pursuant to a search warrant, the officers conducting the search must have probable cause to believe the property is subject to forfeiture or is evidence of a crime”. (Memorandum Opinion at 6).

Plaintiff contends that discovery has shown that there was no probable cause to believe that the money was “evidence of a crime” or subject to forfeiture.

Defendant Burge testified that before seizing the cash, she knew she was not going to charge plaintiff with a crime. Defendant Burge also testified that she was instructed that APD was no longer doing forfeitures. Defendant Burge’s sole contention is that she was going to offer the money to the DEA for forfeiture. However, she knew that the DEA did not adopt forfeitures of less than \$5,000.00. Thus, she had no probable cause to believe the DEA would adopt plaintiff’s money. Indeed, based on the facts available to her, she knew that the DEA would not adopt the forfeiture. Thus, Defendant Burge seized the money subject to further investigation. Such a seizure is impermissible.

Defendant Burge has seized from residences and persons multiple times. She seizes the cash despite knowing APD does no forfeitures. The blanket seizure of cash is unconstitutional.

Plaintiff's Due Process Claim

Defendant Burge admits that she "dropped the ball". Defendant Burge intentionally took plaintiff's property and failed to begin any due process. She acknowledged a "paperwork" responsibility to notify APD civilian employees to initiate the forfeiture action. Her "dropping of the ball" renders her liable for the deprivation of plaintiff's use of his money.

In Summers v. State of Utah, 927 F.2d 1165 (10th Cir. 1991), the Tenth Circuit found that an officer can be held liable for failing to provide due process notice after the seizure of a car. In Summers, a municipal police officer seized a car for forfeiture pursuant to state law. The car was sold at auction without notice and hearing. The Tenth Circuit held that the seizing officer could be held liable under a due process claim for his failure to initiate due process by failing to notify the State Motor Vehicle Division of the seizure. The Court Stated:

Certainly, any police officer or department misfeasance in this regard cannot plausibly deny an affirmative link to the consequent failure to provide notice to the vehicle owner.

Id. at 1170.

The mental element necessary to find a due process violation is the

intentional taking of the property. A defense claim that she simply forgot to provide notice is of no avail. In Soubeer v. Robinson, 791 F.2d 1094 (3rd Cir. 1986), the Third Circuit held that even a no fault failure to afford procedural due process is actionable when the deprivation is intentional. In Sourbeer, a prisoner sued for a claimed failure to procedural due process in his placement in administrative segregation. The Third Circuit found that keeping the prisoner in administrative segregation was the intentional act:

It was not necessary for the district court to make any other state of mind finding. We know of no authority for the proposition that an intentional deprivation of life, liberty or property does not give rise to a due process violation because the failure to provide due process was without fault.

Id. at 1105. See also, Franklin v. Aycock, 795 F. 2d 1253, 1261-62 (6th Cir. 1986).

Thus, Defendant Burge's claim of "I forgot" gives her no defense. Her seizure of plaintiff's cash was intentional. Her failure to give notice to plaintiff renders her liable for plaintiff's damage of loss of use of his cash - interest.

Conclusion

Plaintiff requests a jury trial on his claim that Defendant Burge lied in her search warrant affidavit. The jury will need to decide whether Defendant Burge or Plaintiff is telling the truth.

Plaintiff also requests summary judgment on his claim of unreasonable

seizure of his cash and on his claim that Defendant Burge denied him of his due process rights.

Respectfully submitted,



KENNEDY & OLIVER, P.C.

Joseph P. Kennedy

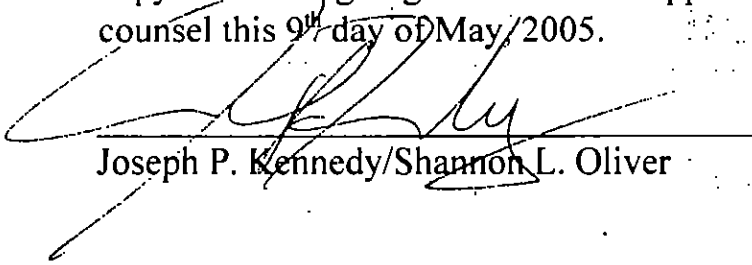
Shannon L. Oliver

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I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to opposing counsel this 9th day of May, 2005.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ELIAS GONZALES,

Plaintiff,

vs.

CIV 03-1150 BB/WDS

THE CITY OF ALBUQUERQUE,
ROBIN BURGE and KEVIN FULLER,
City of Albuquerque Police Officers,

Defendants.

DEPOSITION OF ROBBIN BURGE

Wednesday, February 16, 2005
9:00 a.m.
500 Fourth Street, Northwest
Suite 105
Albuquerque, New Mexico 87102

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: MR. JOSEPH P. KENNEDY
ATTORNEY FOR PLAINTIFF

REPORTED BY: GERALD R. SCHULTZ, N.M. CCR No. 230
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, Northwest
Suite 105
Albuquerque, New Mexico 87102

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1 southeast area?
2 A. Yes.
3 Q. But you carried your notes with you?
4 A. Yes. I got served with this case when I
5 was in the gang unit.
6 Q. Okay.
7 A. So I brought the stuff with me.
8 Q. So you preserved your notes—
9 A. Yes.
10 Q. —and other things?
11 Okay. What else do you have written
12 related to this incident?
13 A. Nothing.
14 Q. And the notes are handwritten?
15 A. It's a report from this buy.
16 Q. Okay. So it's actually a written report on
17 a police report form?
18 A. Yes, sir.
19 Q. Okay. And is there anything else as far as
20 just writings on a piece of paper: a tablet, anything
21 like that?
22 A. No.
23 Q. Okay. And do you know whether those notes
24 reflect whether Detective Lopez was with you in the
25 meeting with this confidential source?

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1 A. No, it doesn't, but I— He was my partner
2 and I—we generally almost always worked together.
3 Q. Okay.
4 A. So I'm pretty sure it was him.
5 Q. Okay. Were there are any other detectives
6 at that meeting?
7 A. During the buy or at the meeting?
8 Q. Yeah, at the meeting referenced in—where
9 you say "affiant and other detectives," where I
10 pointed out on the—
11 A. Kevin Fuller assisted during the
12 transaction. I don't remember if Kevin was at our
13 meeting place or not.
14 Q. Okay. Yeah, the second—the next sentence
15 there says, "During the controlled purchase,
16 detectives kept the CS under surveillance."
17 Do you know who the detectives are who kept
18 the CS under constant surveillance?
19 A. Mc, Detective Lopez, and Detective Fuller.
20 Q. Okay. Where was this?
21 MS. MAGGIORE: I'm going to object to the
22 disclosure of the location of the buy pursuant to the
23 Rule 510 privilege and instruct not to answer.
24 Q. Can you tell me when this occurred?
25 MS. MAGGIORE: Same objection. Same

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1 instruction.
2 Q. Have you ever used this confidential source
3 before this?
4 A. Yes.
5 Q. How many times?
6 A. Several.
7 Q. Is the confidential source a drug user?
8 A. I don't know. Not to my knowledge he is.
9 Q. Not to your knowledge?
10 A. No.
11 Q. Okay. Is the confidential source a
12 convicted felon?
13 A. No.
14 Q. Have you ever paid the confidential source
15 for information?
16 A. Yes.
17 Q. How much? Do you know?
18 MS. MAGGIORE: I'm going to object on the
19 form. Do you mean this source or any source?
20 Q. I mean this source in total, if you know.
21 If not, we'll go— The next question is: how much?
22 A. I think we paid \$50 a buy, I believe.
23 Q. Do you know whether the confidential source
24 has ever been arrested for any drug-related offense?
25 A. I don't know.

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1 Q. Okay. Do you have a file on the
2 confidential source?
3 A. I personally do not, no.
4 Q. Does the department keep one? Do you know?
5 A. Yes.
6 Q. Who maintains that? Do you know?
7 A. The captain of SID.
8 Q. Do you still use this confidential source?
9 A. I haven't because I'm kind of in a
10 different area right now in the southeast. So I
11 haven't for a while.
12 Q. How did you develop this confidential
13 source?
14 A. Detectives from—
15 MS. MAGGIORE: Give me a minute here to
16 think about that. I don't object to sort of a general
17 discussion of how the source was developed, but
18 anything specific that would tend to identify the
19 source themselves would fall under the Rule 510
20 privilege.
21 So I don't object to sort of a general
22 discussion of how a source is developed, but I don't
23 want any specifics about this particular source.
24 MR. KENNEDY: Okay. Well, I want the
25 question to stand of how this source was developed,

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1 A. My experience is, when we had a large
2 amount, like 20,000, we used—we went—and drugs, we
3 used the DEA.
4 Q. Okay.
5 A. And we had an officer, Sam Candelaria, that
6 was assigned to the DEA. And so the one—the one case
7 I had where we had a large amount that was 20,000 or
8 over, we gave it to them.
9 Q. Okay.
10 A. And then they seized it, and then APD got a
11 percentage and then the DEA got a percentage.
12 Q. Okay. And Sam Candelaria: what's his
13 position?
14 A. He's retired.
15 Q. Oh. At the time what was he?
16 A. He was assigned to the DEA on the task
17 force.
18 Q. So he was a detective that was assigned to
19 the DEA?
20 A. Yes.
21 Q. Okay. So he didn't have—he didn't have
22 a— To your knowledge, did he have a formal
23 administrative position with the city as a liaison to
24 the DEA?
25 A. Yes.

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1 Q. He did?
2 A. Through SID. He was actually assigned SID
3 and then assigned to the DEA task force.
4 Q. Okay. Do you know if he's still in
5 Albuquerque?
6 A. I have no idea.
7 Q. Okay. How long ago did he retire? Do you
8 know?
9 A. 2003.
10 Q. And that one seizure you just referenced
11 which was over \$20,000 and went to the DEA, do you
12 know when that was?
13 A. 1998, 1999.
14 Q. All right. Now, did you ever become aware
15 of a change in forfeiture law in July of 2002 in the
16 State of New Mexico?
17 A. Yes.
18 Q. How did you become aware of that?
19 A. The deputy chief put out a memo about the
20 double jeopardy law.
21 Q. What chief? I'm sorry.
22 A. Ruben Davalos, the deputy chief.
23 Q. He actually wrote a written memorandum
24 about the double jeopardy law?
25 A. Yes, and about we were no longer allowed to

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1 do the seizures based on that.
2 Q. Did the memorandum contain anything as far
3 as working with the DEA on seizures, that you know of?
4 A. No. No.
5 Q. Okay. So your recollection is, the
6 memorandum said that we—and when you say "we," do you
7 mean the City of Albuquerque or the detectives?
8 A. The police department.
9 Q. The police department.
10 A. Well, specifically SID, because he was our
11 deputy chief.
12 Q. Okay. That SID could no longer do
13 forfeitures?
14 A. Forfeitures based on the double jeopardy.
15 Q. Okay. Forfeitures of cash related to drug
16 transactions?
17 A. Yes.
18 Q. All right. Was there anything written as
19 to what you would do with cash? Say you execute a
20 warrant where you find drugs, clearly a sales
21 situation going on, and you find cash. Is there any
22 written—anything written in Ruben Davalos' thing as
23 to what to do with that cash?
24 A. No.
25 Q. All right. Did you ever develop— Did you

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1 or anyone else that you know of that you worked with
2 develop a process or procedure for what to do with
3 cash in that situation?
4 A. I don't know where it came from, but we
5 knew that the DEA could seize cash. Their cutoff
6 was— They had a cutoff point. I think it was
7 \$5,000. So we would send our cases to them.
8 Q. Okay. And you don't know where that— I
9 mean, you say—you phrased it you don't know where
10 that came from. Did you ever see— I'm going to ask
11 you a question. Did you ever see anything written
12 related to that?
13 A. No.
14 Q. All right. Did you ever— Do you recall
15 having any specific discussions with any coworkers or
16 supervisors as to doing that?
17 A. We worked closely with the DEA for a couple
18 years during that time.
19 Q. Right.
20 A. I don't specifically remember speaking to
21 one special agent about it—
22 Q. Okay.
23 A. —or anybody from central narcotics, but
24 that's what we decided to do is we would have them
25 seize the money.

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1 Q. And when you say "them," you mean the DEA?
2 A. DEA-I'm sorry-- Yes.
3 Q. Do you know who Evelyn Gilchrist is? Do
4 you know her?
5 A. No.
6 Q. She's a DEA agent.
7 A. No. We worked with David Tyree.
8 Q. David Tyree?
9 A. Marcus West, Mark Prusseman, and Tim-- I
10 don't know Tim's last name.
11 Q. Okay. And when you say you worked with
12 them, do you execute warrants with them?
13 A. We did. I recall one warrant we did with
14 them. We did surveillance with them. I think just
15 one warrant that I can think of right off the top of
16 my head.
17 Q. Okay. There were no-- Were there-- Let
18 me ask you: were there any DEA agents involved in the
19 execution of the search warrant at Elias Gonzales's
20 home on Red Robin?
21 A. No.
22 Q. Okay. And I notice that on the affidavit
23 you wrote that-- Well, let me ask you this. You
24 seized the cash in Elias Gonzales's house: is that
25 fair?

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1 A. Yes.
2 Q. All right. And was there any intention as
3 to approaching the DEA about whether the DEA wanted to
4 forfeit that money?
5 A. Yes.
6 Q. Okay. And what was your intention in that
7 regard? Who were you going to talk to? And if you
8 did talk to that person, you can tell me that too.
9 A. I don't recall if I had a specific
10 conversation with Marcus West or David Tyree. But I
11 prepared the case. After we did the warrant I was
12 getting ready to go on vacation, so I gave the
13 completed case to Detective Lopez and asked him to get
14 it to--I'm pretty sure it was Marcus West and have
15 them look at it and see if they wanted to seize the
16 cash.
17 Q. Okay. And did you ever hear back from
18 either West or Tyree?
19 A. No.
20 Q. Did you ever hear back from Detective Lopez
21 as to any contacts he had with West or Tyree or the
22 DEA?
23 A. No. I wouldn't ask him because I--he was
24 reliable.
25 Q. Okay. So, physically, what did you do with

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1 the money?
2 A. Tagged it into the APD evidence unit.
3 Q. How do you do that: just put it in a
4 bag--a plastic bag or something or--
5 A. You count it and then you put it in a
6 plastic bag. You seal it, with your initials, and
7 then staple your evidence tag on it and then drop it
8 in a secure box. You log it and then you drop it into
9 a secure box.
10 Q. You don't actually hand it to a person?
11 A. No.
12 Q. No?
13 A. No.
14 Q. Okay. And what was your intent as far as
15 putting that into-- And that's APD evidence. Right?
16 A. Right.
17 Q. Okay. Where is that located?
18 A. Within us or where did I put it?
19 Q. Yeah, where did you put it?
20 A. At SID we have lockers. In lockers.
21 Q. Okay. And then someone from evidence comes
22 and picks up the material?
23 A. Yes.
24 Q. Okay. So where is SID physically located?
25 A. I can't answer that.

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1 Q. Oh, okay.
2 A. Well, actually I can because they moved.
3 We were off-- At that time we were off of Bogan.
4 Q. Off of where?
5 A. Bogan.
6 Q. Okay. Northeast? Northwest?
7 A. Northeast.
8 Q. Northeast. And you actually had one locker
9 for--
10 A. There were several.
11 Q. Several lockers for evidence?
12 A. Right.
13 Q. Okay. So the treatment of-- But was it a
14 locked sort of box or something?
15 A. It was actually a locker, like an athletic
16 locker.
17 Q. Uh-huh.
18 A. And then it had the handle where you pull
19 up and you can open it, and they had Master Lock locks
20 on them. Obviously, we didn't have the keys. But
21 once you put your property into it, you had to lock
22 it; and once it was locked, it was locked. You
23 couldn't get into it because we didn't have the keys.
24 Q. Okay. Who has the keys? Do you know?
25 A. I would assume evidence technicians, but I

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1 don't know.
2 Q. Okay. And to your understanding, evidence
3 technicians would come by and just pick up the
4 evidence?
5 A. Yes.
6 Q. And where would they hold it—do you
7 know—at that time?
8 A. It would get transported to the main
9 evidence unit.
10 Q. And that's on— Is that on Second Street?
11 A. Second, yes.
12 Q. And at the time it was on Second as well?
13 Do you know?
14 A. I don't know if they were in the process of
15 moving or if they were still at the main.
16 Q. So at the time that you placed the cash
17 seized as a result of the execution of this warrant in
18 the locker at SID, you didn't know whether DEA was
19 going to adopt that forfeiture or not?
20 A. Right, I did not.
21 Q. And how were you— And you were
22 expecting— How were you expecting to find out
23 whether they would or not?
24 A. Before we left, I gave Mr. Gonzales my cell
25 phone number and asked him to call me in a few weeks

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1 and I would have an answer for him. And when he would
2 call me, I would call the DEA to see if—what their
3 status was on the money. And if they didn't take it,
4 I'd have to give it back to him.
5 Q. Okay. So your expectation was that you
6 would have to make a call to the DEA to follow up on
7 this?
8 A. Yes.
9 Q. Okay. You didn't have any expectation that
10 someone was going to, you know, shoot you a memo or
11 call on the phone and say we do or don't want this?
12 A. They could have, yeah.
13 Q. Have they done that in the past or...
14 A. The last time we did it—it was so long
15 ago, I don't remember—it was Sam Candelaria.
16 Q. Okay.
17 A. I don't remember.
18 Q. Have you ever read the law related to
19 forfeiture in New Mexico?
20 A. At what point?
21 Q. At the point when it was changed in July of
22 2002?
23 A. Yes. The state statute?
24 Q. The state statute. Okay. Was there
25 anything in that state statute which, in your mind,

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1 dictated how you would handle—should handle cash that
2 you seize?
3 A. I thought it was confusing.
4 Q. Did you ask for any clarification from
5 anyone: A supervisor? Attorneys? Anyone?
6 A. No.
7 Q. Do you have an attorney— Do you have
8 access to the district attorney's office to ask them
9 questions about warrants and probable cause?
10 A. Yes. Yes.
11 Q. What department would that be?
12 A. Gangs.
13 Q. Gangs. Is there an attorney over there
14 that you were dealing with at the time, in 2003?
15 A. Ray Montano is the person that I mostly
16 contact.
17 Q. Marie Montano?
18 A. Ray.
19 Q. Ray Montano?
20 A. Yeah.
21 Q. And the affidavit for search warrants—
22 Well, let me ask you this specifically as to Elias
23 Gonzales. Is that— Did you submit that to an
24 assistant district attorney for review at all?
25 A. I don't recall on that specific one if we—

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1 They're hard to get ahold of.
2 Q. Okay.
3 A. And I don't recall if I attempted. I
4 generally do attempt to get ahold of somebody, but a
5 lot of times you can't find them.
6 Q. Okay.
7 A. So there's no initials from a DA on that
8 warrant.
9 Q. Right.
10 A. But I don't recall if I tried to get ahold
11 of somebody or not.
12 Q. Okay. But Ray Montano was the person you
13 dealt with most often on questions about probable
14 cause and warrants and things like that?
15 A. Yes. And I still do.
16 Q. And you still do?
17 A. Yes.
18 Q. Okay. Did you ever— Have you ever had a
19 discussion with him about the forfeiture law? Do you
20 recall?
21 A. I don't remember.
22 Q. Did you ever have a discussion with
23 anyone— Well, the memorandum from Ruben Davalos says
24 that the City of Albuquerque is not going to do
25 forfeitures anymore, right, essentially in the

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1 situation in which we're talking about?
2 A. Yes.
3 Q. Okay. Did you ever have any discussion
4 with a supervisor as to whether that giving the money
5 to DEA was consistent with Ruben Davalos's memorandum?
6 A. Not that I can recall.
7 Q. Okay. Did you ever get a sense that it was
8 a way around Ruben Davalos's memorandum?
9 A. No.
10 Q. Did you get the sense that it was an
11 approved method from your supervisors as to how to
12 handle money that you seize?
13 A. Yes.
14 Q. And certainly-- Well, Sam Candelaria: was
15 he a detective or did he have another rank?
16 A. Detective.
17 Q. Detective. And Sam Candelaria knew about
18 the decision to give money--or offer money to the DEA
19 for forfeiture?
20 A. You'd have to ask Sam.
21 Q. Okay. I may be missing something, but I
22 thought you had dealt with him before on a DEA--
23 A. On a previous seizure, yes.
24 Q. On a previous seizure where the DEA was
25 involved?

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1 A. Uh-huh. Yes.
2 Q. But that was because it was over \$20,000?
3 A. Yes.
4 Q. Okay. And that was before the 2002 law
5 change. Is that right?
6 A. Yes.
7 Q. Okay. What was your reaction to-- Well,
8 you found out about the law change in--based on Ruben
9 Davalos's memorandum: is that fair?
10 A. No. It was in the newspaper. It was in
11 the media.
12 Q. Did you have any reaction as to whether
13 that was a good change or not a good change?
14 A. It doesn't matter to me.
15 Q. Okay.
16 A. I have no control over it.
17 Q. Who was your supervisor at the time?
18 A. Which time?
19 Q. At the time of the execution of the warrant
20 in Elias Gonzales?
21 A. Joe Hudson.
22 Q. Hudson. He's a sergeant?
23 A. He was at that time, yes.
24 Q. What's he now?
25 A. Lieutenant.

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1 Q. Okay. Do you know where he is now?
2 A. Violent crimes.
3 Q. Have you ever talked with him about Elias
4 Gonzales's cash?
5 A. Not that I recall.
6 Q. Did he ever transmit any phone messages to
7 you from either me or Elias Gonzales?
8 A. Nope, he didn't.
9 Q. Do you have a-- I mean, do you have a
10 phone message system-- And based on what I was just
11 asking, do you have-- I mean, is there a notepad or
12 anything like that where a fellow officer can write a
13 note to you?
14 A. At work?
15 Q. Right.
16 A. Yes.
17 Q. Okay.
18 A. We have secretaries.
19 Q. You have secretaries?
20 A. Uh-huh.
21 Q. Okay. And so you have a system where phone
22 messages can be put in your box?
23 A. Right.
24 Q. Okay. All right. And you never received
25 any written message indicating a phone call was made

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1 by Elias Gonzales or by me about this cash?
2 A. I didn't get one from you, and I gave Elias
3 my cell phone number, which I have voice mail on it.
4 I didn't give him the office number.
5 Q. Okay. And you didn't get a voice mail from
6 Elias Gonzales about the cash?
7 A. No, I did not. No.
8 Q. Did you ever even think about the cash
9 after putting it in the locker at SID until the
10 lawsuit was filed?
11 A. No, I didn't.
12 Q. Okay. So there's never an occasion where
13 you checked up to find out, you know, the status of
14 the DEA or the cash or anything?
15 A. No, I didn't.
16 Q. Okay. So, basically, your understanding
17 was that if the DEA didn't want to adopt the
18 forfeiture, you were going to return the money to
19 Elias. Right?
20 A. That was my intent, yes.
21 Q. Okay. But, essentially, you didn't
22 remember about the cash: is that fair?
23 A. Yeah, that's fair.
24 Q. Okay.
25 A. I should have followed up and I didn't.

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1 Q. Okay.
2 A. And so we worked the case together.
3 Q. Okay. Did the DEA come out to respond to
4 that?
5 A. No.
6 Q. All right. Where was the cash placed after
7 it was taken from the car, the Humvee?
8 A. APD evidence.
9 Q. So it was handled in the same way that the
10 money seized from Elias Gonzales's house was handled?
11 A. Yes.
12 Q. All right. And who made contact with DEA?
13 Do you know? Do you recall?
14 A. We contacted-- On which case?
15 Q. On the--I'm sorry--the Jaramillo/Silva
16 situation?
17 A. We contacted Sam Candelaria.
18 Q. And then he made contact, as far as you
19 know, with DEA?
20 A. He does whatever he does.
21 Q. Whatever he does?
22 A. Yeah.
23 Q. Okay. Did you have any follow-up
24 responsibilities on that?
25 A. For the money?

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1 Q. Yeah.
2 A. Sam would either talk to me or my sergeant,
3 Dan Torggrimson at that time. So it would be just
4 within passing at SID and...
5 Q. Okay.
6 A. Like Sam would say, "Yeah, I'm working on
7 it" or something along those lines.
8 Q. Okay. Were there any-- Were you aware
9 either at that time or with Elias Gonzales of any time
10 limits on seizure and forfeiture of money?
11 A. Ten days.
12 Q. All right. And what does that ten days
13 relate to?
14 A. That the paperwork has to be submitted.
15 Q. Okay. Submitted to whom? Do you know?
16 A. We give it to-- We have a-- At that time,
17 and I'm sure they still do, we had a group of people
18 at SID that handled our seizures for us.
19 Q. Okay. So within ten minutes you would have
20 to submit some sort of paper--
21 A. Ten days.
22 Q. --ten days you would have to submit some
23 sort of paperwork to the folks at SID who coordinated
24 this for you?
25 A. Yes.

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1 Q. Did you do that in Elias Gonzales's case?
2 A. No, because it wasn't SID that was doing
3 it. It was the DEA.
4 Q. DEA. Okay. And since, say, 2002 have
5 you--other than Elias Gonzales, have you had the
6 occasion to seize cash from any other suspects or
7 criminal defendants?
8 A. Yes.
9 Q. And can you estimate about how many times?
10 A. Since Elias?
11 Q. Yes, let's do that.
12 A. I don't know.
13 Q. Okay. Do you have a standard procedure as
14 to what you do with the cash you seize?
15 A. Yes.
16 Q. What do you do?
17 A. We count it and then it gets tagged into
18 our evidence unit.
19 Q. Okay. And what happens to it there?
20 A. It goes to evidence.
21 Q. That's it?
22 A. That's all I know.
23 Q. That's all you know. Okay. Do you have
24 any responsibility or obligation to start any
25 paperwork for forfeiture or anything like that?

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1 A. If we-- If you decide to forfeit it you
2 do, yes.
3 Q. Have you decided to forfeit any cash since
4 Elias Gonzales?
5 A. No.
6 Q. Okay. And then on the situations in which
7 you seize and tag cash into evidence, are there
8 criminal charges pending on those folks?
9 A. Sometimes.
10 Q. Okay. And sometimes not?
11 A. Uh-huh. Yes.
12 Q. All right. What purpose-- Why would you
13 seize cash from a person who doesn't have criminal
14 charges, other than what we talked about with Elias
15 Gonzales and the DEA--possible DEA forfeiture? What
16 purpose would it serve to seize cash from a person
17 who's not a criminal defendant?
18 A. Because it's part of your affidavit.
19 Q. Part of your affidavit. I don't
20 understand.
21 A. Is money, guns, whatever items that you
22 list are items to be seized.
23 Q. Okay. Okay.
24 A. Generally, if it's under \$100 we just leave
25 it. Anything over 100 we seize.

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1 Q. So you have had situations since Elias
2 Gonzales in which there's been warrants executed where
3 no drugs are found but money is seized?
4 A. I don't think so.
5 Q. Okay.
6 A. Not that I can remember off the top of my
7 head, no.
8 Q. All right. So when the search warrant
9 affidavit—or affidavit for search warrant, I guess—
10 Do you have that?
11 A. Yes.
12 Q. Okay. I'll put it all back together there
13 for you, because I have a copy here.
14 On the top of the second page, the second
15 sentence there, it says, "U.S. currency, firearms,
16 ammunitions, or any equipment used to facilitate drug
17 transactions, such as manufacturing or preparation for
18 distribution." That's what you're asking authority to
19 seize: is that fair?
20 A. Yes.
21 Q. All right. And you read to that say that
22 if you find cash in the house, you are authorized to
23 seize it?
24 A. Yes.
25 Q. And you don't read that to say that the

1 Q. Well, why would a drug dealer use different
2 color plastic wrap?
3 A. It's common. You see them. People sell
4 like single rocks of crack cocaine—
5 Q. Right.
6 A. —that they're individually wrapped, and it
7 could be a plastic wrap like Glad Wrap. I've seen
8 black—it appears to be like a Baggie, like trash bags
9 that have been torn up, and then they just twist the
10 end and tie it.
11 Q. Okay.
12 A. I've seen clear plastic, the same type of
13 thing.
14 Q. Okay. So you've seen situations in which
15 it appears to you that even though there's no—maybe
16 no drugs that the person is actively engaged in using
17 plastic material to package drugs, such as ripped up
18 Baggies and things like that?
19 A. Yes.
20 Q. Okay. And, typically, in a—in a— Well,
21 what are some of the other things you look for as
22 evidence of drug sales out of the house when you
23 execute a warrant other than just drugs themselves?
24 A. Scales.
25 Q. And did you find any scales in Elias

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1 cash has to be related to drug transactions?
2 A. No.
3 Q. All right. And the same for firearms too?
4 A. Yes.
5 Q. All right. Now, in Elias's situation you
6 didn't find any packaging material?
7 A. No.
8 Q. What would you typically— When I refer to
9 "packaging material," I've seen that in warrants and
10 I'm wondering if you have an understanding what that
11 is or as it relates to drug transactions.
12 A. Yes.
13 Q. What is it?
14 A. It could be an assortment of things. It
15 could be Baggies, different sizes of Baggies. It
16 could be a heat-and-seal item that's commonly used in
17 kitchens, different types of plastic wrap, different
18 colors of plastic wrap.
19 Q. So if someone has in their kitchen various
20 colors of plastic wrap, that's a signal to you that—
21 A. At times, yes.
22 Q. At times. Okay. Because is it different
23 amounts or types of drugs that they might package
24 under different colors?
25 A. Say that again.

1 Gonzales's house?
2 A. No.
3 Q. What else, typically, would you find?
4 A. Packaging materials, scales, other—like
5 larger Baggies or larger containers that hold larger
6 amounts—
7 Q. Okay.
8 A. —of illegal substances. Sometimes you
9 find pipes: new pipes, used pipes, glass pipes. It
10 could be an assortment of different types of smoking
11 pipes.
12 Q. How about material to modify or dilute
13 drugs: is that something you might find?
14 A. Yeah, baking soda they use. Now they're
15 using— Creatine is a big thing.
16 MS. MAGGIORE: Using what?
17 THE WITNESS: Creatine.
18 MS. MAGGIORE: Creatine?
19 THE WITNESS: Like that workout supplement.
20 Q. So I have a small box of baking soda in my
21 house. I mean, would you expect a drug dealer to have
22 a larger box of baking soda?
23 A. I've seen both sizes.
24 Q. You've seen both sizes?
25 A. Yes.

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1 Q. And creatine: is there anything related to
2 how much—the amount of creatine a person has?
3 A. It depends how pure they—they want
4 their—how pure they want their cut and how they want
5 the—how pure they want their cocaine to be.
6 Q. Okay. How about guns?
7 A. You generally find guns.
8 Q. All right. So most drug dealers— It's
9 fair to say most drug dealers have guns in their
10 houses?
11 A. It's fair to say they have guns to protect
12 their stash, yeah, and their money.
13 Q. All right. And did Elias have any guns?
14 A. No.
15 Q. The CS turned over a portion of crack
16 cocaine. Is that tagged into evidence still?
17 A. Hopefully, yeah.
18 Q. Okay. You tagged it in, anyway.
19 A. Yes.
20 Q. And you used the same procedure we talked
21 about as far as the cash?
22 A. Yes.
23 Q. Do you recall what amount that was?
24 A. It was a small amount.
25 Q. Okay. Like small in what way? I mean, I

1 Do you know what I mean?
2 A. I know what you mean. But other
3 than—other than us sealing it and our trustworthy
4 that we didn't tamper with it.
5 Q. Okay.
6 A. Sometimes we have scales and sometimes we
7 don't.
8 Q. Okay. Okay.
9 A. Like at the southeast I don't have access
10 to a scale.
11 Q. All right. So you don't recall whether
12 this was a rock, two rocks, I mean, as far as street
13 nomenclature?
14 A. I don't.
15 Q. No?
16 A. No, I don't.
17 Q. And you don't recall the weight, I mean,
18 obviously?
19 A. No.
20 Q. Yeah. But you do recall it was essentially
21 a user amount?
22 A. Yes.
23 Q. How much money did you give the CS to buy
24 it?
25 A. That I don't recall either.

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1 don't know. Grams? Can you put it in grams or— You
2 didn't weigh it, did you? Or maybe you did.
3 A. I don't recall if I did or not.
4 Q. Okay. I mean, would that— If you weighed
5 it, would that be reflected on the evidence tag?
6 A. Probably not.
7 Q. I mean, what is the— Is there a
8 procedure—a written procedure as to weighing drugs?
9 A. If you have access to it. There was a time
10 in our unit where we had scales, and then they
11 disappeared and then we got new scales. So it just
12 depends whether or not we have access to scales.
13 Q. Okay. How do you— I mean, when you
14 testify in court, is there any way you have of keeping
15 track of whether— I mean, let me withdraw that.
16 Because the drugs have to be tested by a
17 lab, right—
18 A. Correct.
19 Q. —in order to prove your case in court?
20 A. And weighed.
21 Q. And weighed.
22 A. Yes.
23 Q. Right. Do you have any way of verifying
24 that, of accounting for the drugs that were taken to
25 test as opposed to the drugs that were in evidence?

1 Q. Is that documented anywhere?
2 A. Yes.
3 Q. That's accounted for in the same way that
4 the \$50 payment was accounted for?
5 A. Yes.
6 Q. Is that cash handled at the same time?
7 A. It's when we meet with them at a
8 predetermined location.
9 Q. Right.
10 A. And we search them and take all that stuff
11 from them, anything he has on him, and then we give
12 him the cash, and then—just the cash to buy the
13 selected amount.
14 Q. Right. Okay.
15 A. And then when we meet them back, we search
16 them, we get whatever they purchased, and then we give
17 him the buy—the money that we had arranged—or agreed
18 upon, yeah.
19 Q. Okay. But when you get a—when you go to
20 your sergeant and say, "I want to do a controlled
21 buy," essentially you fill out the form or
22 whatever—the paperwork that you talked about?
23 A. Yes.
24 Q. You ask at that time for the money for the
25 CS and the money to buy the drugs?

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1 form under the Rule 510 privilege and instruct not to
2 answer.
3 Q. Did the CS-- And the CS was someone that
4 you had had a relationship with before, or you had
5 used this CS before?
6 A. Not a relationship, but, yes, I used him
7 before.
8 Q. And I mean relationship in confidential
9 informant relationship.
10 A. Yes.
11 Q. All right. Okay. Do you have knowledge as
12 to whether this CS, or confidential source, ever
13 worked for any other police officer with the City of
14 Albuquerque?
15 A. Yes.
16 Q. Who else has he worked for, or she?
17 MS. MAGGIORE: I'm going to object again
18 under the Rule 510 privilege and instruct not to
19 answer.
20 Q. How many officers has this CS worked for?
21 A. Okay. Give me a minute.
22 MS. MAGGIORE: Don't write.
23 THE WITNESS: Okay.
24 A. Over ten that I'm aware of.
25 Q. Do you know how long the CS has been

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1 working with the City of Albuquerque police officers
2 before this controlled buy?
3 A. Over five years.
4 Q. Has the CS, to your knowledge, ever given
5 false information to law enforcement?
6 A. Not to my knowledge.
7 Q. After having searched Elias Gonzales's
8 house, did you make any conclusions as to whether he
9 moves a lot of kilos of cocaine?
10 A. Do you want my opinion?
11 Q. Yeah.
12 A. Because that's all I have.
13 Q. Sure.
14 A. I would say he was living above his means,
15 yes.
16 Q. Okay. Do you have an opinion as to whether
17 he moves a lot of kilos of cocaine?
18 A. I would say based on the cash that we
19 found--drug-trafficking is a cash business--he didn't
20 have enough to buy a kilo, but I would say he could
21 possibly be, yes.
22 Q. Other than the cash and the--your opinion
23 that he's living above his means, what did you
24 discover in that house that would indicate to you that
25 he was moving a lot of kilos of cocaine, if anything?

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1 MS. MAGGIORE: I'm going to object to the
2 form. I think it mischaracterizes the testimony.
3 Q. Let me ask you this. You didn't find any
4 trace amounts of cocaine in that house, did you?
5 A. No.
6 Q. Did the dog alert on anything in that house
7 other than on the envelopes of cash when you placed
8 the cash in the envelopes? Did the dog alert on
9 anything in that house?
10 A. The headboard area where the cash was
11 found.
12 Q. Okay. Any other area?
13 A. Not that I'm aware of.
14 Q. And when someone-- I mean, cocaine is sold
15 in distribution form in kilos: is that fair? Is that
16 what we've been talking about?
17 A. It's sold in any way I think that somebody
18 can make a buck off of it.
19 Q. Understood. But is it transported into
20 this country in kilos, generally?
21 A. Yes, generally.
22 Q. And if Elias Gonzales is moving kilos of
23 cocaine and selling crack cocaine-- Right? That's
24 what you're alleging?
25 A. Cocaine, yes.

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1 Q. Well, he sold crack cocaine to your CS.
2 Right?
3 A. I believe it was powder. If I put crack
4 cocaine, that was my mistake.
5 Q. Okay. So--
6 A. I'm pretty sure it was powder. And if I
7 put crack, it was my mistake.
8 Q. I'm sorry. Well, you do say-- I mean,
9 this is the sentence I'm referring to here on the
10 second page. It says, "Affiant field-tested a portion
11 of the suspected crack cocaine from the controlled
12 purchase, and the results were positive for cocaine."
13 So you didn't--
14 A. Well, some places I used cocaine and then
15 other places I used crack.
16 Q. Right.
17 A. I tagged cocaine. I'm pretty sure it was
18 powder, based on my recollection.
19 Q. Okay.
20 A. And if I put crack, it was my fault.
21 Q. Okay. And so-- And we already know that
22 you don't recall how much cocaine it was.
23 A. Yeah, I don't remember.
24 Q. Okay. And was it in a Baggie that was sold
25 to the CS?

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1 A. I don't know if it was at that time, but we
2 did have a discussion about doing a buy.
3 Q. And just so the record's clear: you're not
4 going to give me the identity of that CS. Right?
5 A. No.
6 Q. Okay. And you're not going to tell me
7 whether it was—the sale was—the alleged sale was
8 proximate to the house?
9 A. No.
10 Q. You're not going to tell me whether it was
11 proximate to his business?
12 A. No.
13 MS. MAGGIORE: And she's going— I have
14 instructed my client not to respond to those questions
15 based upon the Rule 510 privilege.
16 MR. KENNEDY: Yeah. And I'm just trying to
17 figure out what the parameters of that are as far as
18 what you're asserting.
19 MS. MAGGIORE: Case law is pretty much
20 anything that could identify the person as the CS, and
21 I think it includes location, time of the buy, sex of
22 the person, those sorts of things.
23 MR. KENNEDY: Okay. Yeah, we'll probably
24 move to compel, but— So I'll leave it at that.
25 MS. MAGGIORE: Sure.

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1 Q. Okay. And then we've already determined
2 that the other detectives at least was Kevin Fuller.
3 Right?
4 A. Yes.
5 Q. And I'm on the second page in the third
6 paragraph there where it says, "On this controlled
7 person, affiant and other detectives arranged to meet
8 with the CS at a predetermined location."
9 A. Kevin Fuller was one of them.
10 Q. Okay.
11 A. I don't remember if Scott Lopez was the
12 other.
13 Q. Okay. "And the CS's vehicle was searched
14 and found to possess no money or narcotics." Do you
15 recall who did that?
16 A. I did.
17 Q. Did the CS have to use his vehicle to get
18 to Elias Gonzales from where you did the search?
19 MS. MAGGIORE: I'm going to object to the
20 form under the Rule 510 privilege and instruct not to
21 answer.
22 Q. All right. Then the next sentence, it
23 says, "During the controlled purchase, detectives kept
24 the CS under constant surveillance, excluding
25 approximately one minute where the CS had met with the

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1 target, Elias Gonzales."
2 A. Yes.
3 Q. Okay. How far away from the CS were you
4 when you're talking about under constant surveillance?
5 A. During what time?
6 Q. When you talk about "During the controlled
7 purchase, detectives kept the CS under constant
8 surveillance, excluding"— Constant surveillance:
9 how far away were you when you were keeping the CS
10 under constant surveillance?
11 A. Gee, I'm terrible at distance. Can I say I
12 didn't have to use my binoculars?
13 Q. That's fair.
14 A. Because I cannot give you a distance.
15 Q. Do you have binoculars that you use
16 sometimes?
17 A. Yes. So I didn't use my binoculars.
18 Q. And to your best recollection, Kevin Fuller
19 was with you at that time?
20 A. Yes.
21 Q. All right. And to your best recollection,
22 was any other detective there?
23 A. I think it was Scott Lopez, but I'm not a
24 hundred percent sure on that.
25 Q. Okay. But it indicates in this sentence

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1 that at least for a minute when the CS met with Elias
2 Gonzales that you did not see that.
3 A. Right.
4 Q. Was there any reason for that? Was there
5 an obstruction or—
6 A. Obstruction.
7 Q. Okay. Is that because the CS and Elias
8 moved together or did they move separately? How did
9 that occur?
10 A. The CS moved alone.
11 Q. The CS moved alone?
12 A. Yes.
13 Q. Okay. So at some point the CS moved and
14 was out of your vision?
15 A. Yes.
16 Q. All right. And then the next sentence you
17 say, "Affiant and other detectives could not conduct
18 surveillance while the CS and Gonzales met due to
19 previous contacts with Gonzales."
20 Now, you've had previous contacts with
21 him. Right?
22 A. Yes.
23 Q. What was that?
24 A. I arrested him once on a parole violation,
25 and I've seen him at car shows where he's entered his

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1 highly reliable and all of a sudden he drops down to
2 fairly reliable, well, that would be that particular
3 detective's choice to use him.
4 Q. Okay. Who rates the reliability?
5 A. The person that initiates the file.
6 Q. Okay. All right. So on this CS, this was
7 not initiated by you, this CS?
8 A. No. No.
9 Q. Did you report the controlled buy back to
10 Mr. Gonzales's probation officer at the time?
11 A. Yes. I called--I believe I called her--
12 It was Cynthia O'Neil, and I believe I called her from
13 his house. I'm pretty sure I did.
14 Q. Okay.
15 A. She asked if we were going to arrest him.
16 I told her no, I was just giving her--letting her know
17 that we were doing the search warrant.
18 Q. Why didn't you arrest him?
19 A. Because we didn't find any narcotics.
20 Q. But the controlled buy was illegal. Right?
21 A. Illegal?
22 Q. Yeah. The agent and trafficking of drugs
23 in a controlled buy.
24 A. Oh, yes. But we were not going to expose
25 our informant to follow up the criminal charges.

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1 Q. Okay. So you had a belief that if charges
2 were filed on the controlled buy that the confidential
3 source would get burned?
4 A. Yes.
5 Q. And is that based on a past experience?
6 A. Based on training.
7 Q. Who gave you that training? Is that
8 written or oral? Let me ask you that. That's a
9 compound question.
10 The training you received on that, was that
11 written or oral?
12 A. I don't remember.
13 Q. Okay. Do you recall who gave you that
14 training?
15 A. No, I don't.
16 Q. And did Miss O'Neil indicate whether she
17 was going to violate him at all, to you on the phone?
18 A. I believe not. I remember we had a
19 conversation about the Hummer, and she said that she
20 thought that belonged to his boss or had something to
21 do with his work and his boss.
22 And I said, "No. It's registered to him."
23 Q. Okay.
24 A. I don't remember the conversation, because
25 our general practice is that if--if we're out with

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1 somebody and we call probation and they're going to
2 revoke them, they'll fax a warrant to the jail and
3 then we'll just transport them in. We'll get the--
4 Night or day. It doesn't matter what time of day it
5 is. And then we just get the warrant from the jail.
6 Q. Okay. Now, I'm looking-- Well, you
7 actually found \$318 in cash in Mr. Gonzales's right
8 pocket of his pants. Is that right?
9 A. Could I look at my report?
10 Q. Sure.
11 A. Yes, his left front pants.
12 Q. Okay. And you seized that cash as part of
13 cash that you seized and tagged into evidence?
14 A. Yes.
15 Q. And that's based upon your understanding of
16 the search warrant?
17 A. His body was included in it, yes.
18 Q. All right. And you had authority to
19 search--to seize any U.S. currency?
20 A. Yes.
21 Q. But yet, based on the search of the house,
22 you had no intention of filing criminal charges
23 against him for trafficking.
24 A. Yes, because we didn't-- No, because we
25 didn't find any narcotics.

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1 Q. Right. And you decided not to pursue
2 charges for the controlled buy that's described in
3 your affidavit. Right?
4 A. Right.
5 Q. All right. But you already knew that going
6 in.
7 A. Right.
8 Q. Okay. So going in to execute the search
9 warrant, if you don't find evidence of drug possession
10 there that's sufficient for you to charge, you're not
11 going to charge him?
12 A. Or weapons, yes.
13 Q. Or weapons. Okay. What would be the
14 charge for weapons? For probation violation, I guess,
15 huh?
16 A. He's a convicted felon, I believe.
17 Q. Yeah. Okay. Just so it's clear: the cash
18 wasn't being held as evidence for any criminal
19 prosecution?
20 A. No.
21 Q. All right. And I'm going to ask that
22 again. Do you agree with that statement: the cash
23 wasn't being held? Do you agree with that statement?
24 A. For criminal?
25 Q. For criminal prosecution.

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1 A. I don't know what they do with it.
2 Q. Okay. Do you know whether or not this
3 cash— Well, you don't know whether or not this cash
4 was ever deposited into an account. Right?
5 A. I don't know.
6 Q. And you don't know whether or not this cash
7 was ever taken or stolen by someone employed by APD?
8 A. As far as I know, it wasn't.
9 Q. Okay. Now, at some point Mr. Gonzales was
10 given a check for the amount of money that was
11 seized: do you have an understanding of that?
12 A. I released the money back, yes.
13 Q. Now, how did that occur when you say you
14 "released the money back"?
15 A. I went down to evidence, and on the back of
16 your evidence card there's a chain of evidence, boxes
17 that you fill out, and I released it back to Elias,
18 who was the owner.
19 Q. And that was down on Second Street that you
20 did that? Do you recall?
21 A. I'm pretty sure it was.
22 Q. Okay. So when you signed the evidence, is
23 it a tag—an evidence tag that you sign to release
24 back or—
25 A. It's a hard—a hard card.

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1 Q. Okay. And did you see— I mean, was there
2 cash there?
3 A. I don't know. I didn't see it. I just saw
4 the card.
5 Q. Just the card?
6 A. Yeah.
7 Q. Okay. And did you talk to anyone there
8 about that?
9 A. About what?
10 Q. Did you ask someone to give you the
11 evidence card for this case, give a case number?
12 A. Yes.
13 Q. And a person came up and gave you the—
14 A. There were three cards.
15 Q. Two cards?
16 A. Three.
17 Q. Okay. And there wasn't any problem
18 presented to you as far as doing that?
19 A. Not that I remember.
20 Q. Okay. And did you complete any other
21 paperwork to release the money back to Elias Gonzales?
22 A. No.
23 Q. And was there any reason why you didn't do
24 that within ten days of the seizure of the cash?
25 A. Because— Well, there are several

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1 reasons. And I'm totally to blame because I dropped
2 the ball. One was Elias never contacted me, so I
3 assumed that the DEA took it. I didn't follow up with
4 the DEA. So ultimately it was my responsibility, and
5 I just didn't do it.
6 If he would have called me, I would have—I
7 know I couldn't have kept it—not me but the city—and
8 I would have given it back, and I just dropped the
9 ball.
10 Q. Okay. When you say "dropped the ball," I
11 mean, forgot about it: is that fair?
12 A. Yeah, that's fair.
13 Q. Okay. But, again, there's no—that you're
14 aware of, there's no written policies or procedures as
15 to how you should handle that money at this point in
16 time?
17 A. Like what?
18 Q. Like, you know, officers should put the
19 money into evidence within ten days.
20 A. Do the seizure paperwork like through the
21 city or give it to a federal agency within that ten
22 days. There was some— It was when that double
23 jeopardy stuff was coming through, we were told not to
24 do it. I tried finding that memo—I can't find
25 it—that Ruben Davalos wrote. There's some confusion

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1 over that. So, I mean, there was a bunch of things
2 going on. The state statute was— I mean, I even
3 talked to some of the narcotic guys about it and, you
4 know, they say they are confused about it.
5 Q. Okay. So prior to Ruben Davalos's
6 memorandum, there was some sort of paperwork within
7 ten days that you had to file and send to— And I
8 forget who you told me.
9 A. You do your—you do your report, and then
10 there's a cover sheet where you put your case number—
11 Q. Right.
12 A. —a bunch of other useless information, and
13 then you put like a vehicle, money, whatever it is
14 that you seized, and then we had other officers—or
15 there were civilians, actually, who did the seizure
16 stuff, whether it be a vehicle, money, or whatever.
17 Q. Okay.
18 A. Then you just put it in their box and then
19 they take it, and I don't know what happens after
20 that.
21 Q. Okay. But that procedure was suspended
22 with the Ruben Davalos memorandum?
23 A. And then that double jeopardy case that
24 came down.
25 Q. Right.

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1 A. And I think all of APD was confused over
2 all of that.
3 Q. Okay. So the procedure that you just
4 described about filling out the paperwork, you didn't
5 do it in the Elias Gonzales situation?
6 A. No.
7 Q. All right. Because it had been suspended
8 or ended: is that fair?
9 A. Yes.
10 Q. And is it fair to say, there's no clear
11 communication as to what was going to take its place
12 or how to proceed from there?
13 A. That's fair, yes.
14 Q. Okay. And is it fair to say that there was
15 an understanding— Was it central narcotics, the
16 understanding you gained from them about offering the
17 money to DEA for forfeiture?
18 A. Well, we had talked about it in the past,
19 and then we were working with the DEA—
20 Q. Right.
21 A. —so much for a couple of years, and we
22 just knew that option was there for us.
23 Q. Okay. So if— Let me ask you this. If
24 tomorrow you execute a search warrant and you recover
25 \$10,000 cash—no drugs, no charges pending against the

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1 guy, but you have suspicion that it's drug sales, it's
2 a result of drug sales—what procedure would you
3 follow, or what would you do with that cash?
4 A. I would do the same procedure I did in this
5 case: tag it into our evidence, do the case, complete
6 the case, contact a DEA agent and see if they're
7 interested in it.
8 Q. Okay. And nothing that you've heard from
9 your supervisors or anyone else would indicate to you
10 that that was—that violated the law or was against
11 policy or procedure?
12 A. To do it that way, the way I've just
13 explained?
14 Q. Right.
15 A. No.
16 Q. Okay. Have you ever gained any
17 understanding that currently there's—that any money
18 seized has to be deposited with a district court
19 clerk? Have you ever heard of that or any
20 understanding of that?
21 A. No.
22 Q. Okay.
23 A. So I understand your question—
24 Q. Right. Well, I guess I can rephrase it.
25 No supervisor has come to you and said, Detective

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1 Burge, if you seize cash, okay, related to an
2 execution of a search warrant which you believe is the
3 proceeds of drug sales, you must deposit that with the
4 district court clerk.
5 A. Oh, no.
6 Q. No one's ever said that to you?
7 A. No.
8 Q. All right. Have you, say, in the past year
9 or two years been interviewed by the attorney
10 general's office about any investigations into the
11 handling of the evidence room?
12 MS. MAGGIORE: I'm going to object. I'm
13 going to instruct her not to answer, and I'm going to
14 do that because I have no idea what that's about or
15 whether or not my clients had any involvement in it.
16 MR. KENNEDY: Okay. Well, I hear there's
17 an attorney general's investigation into the evidence
18 room—I mean, I think it's been reported in the
19 newspaper—into the handling of evidence by APD. And,
20 also, my understanding is, there's an investigation
21 into a narcotics unit in the City of Albuquerque
22 conducted by the attorney general's office. And I'm
23 just asking the witness whether she knows whether
24 that's true or not.
25 MS. MAGGIORE: I think everybody in the

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1 city knows that that's going on, but I—
2 MR. KENNEDY: Okay.
3 MS. MAGGIORE: As far as what involvement
4 she may have in it, I'm going to instruct her not to
5 answer based upon the fact that, at least as far as I
6 know, the investigation is ongoing. And unless I got
7 clearance from the attorney general's office, I don't
8 think that's an appropriate question.
9 MR. KENNEDY: Okay. And just so it's
10 clear: I'm asking the witness whether she's ever been
11 interviewed, not whether she's a part of this
12 investigation, ever been interviewed by the attorney
13 general's office.
14 MS. MAGGIORE: I don't—I don't want her to
15 answer any questions about that.
16 Q. What was Elias Gonzales, if you recall,
17 wearing on the day of the controlled buy?
18 A. I have no—
19 Q. No memory?
20 A. No.
21 Q. Okay. Nothing you noted?
22 A. Pants. I know he was wearing pants,
23 because that's where we got the money out of. But
24 that's it.
25 Q. Okay. Do you have any memory of the color