

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3
4 UNITED STATES OF AMERICA
5
6 CRIMINAL NUMBER:
7 1:14-cr-00050-NLB
8 MYKAL DERRY, MALIK DERRY,
9
10 Jury Trial
11 Defendants.
12 Mitchell H. Cohen United States Courthouse
13 One John F. Gerry Plaza
14 Camden, New Jersey 08101
15 Wednesday, July 29, 2015
16
17 B E F O R E: HONORABLE NOEL L. HILLMAN
18 UNITED STATES DISTRICT COURT JUDGE
19
20 A P P E A R A N C E S:
21 PAUL J. FISHMAN, UNITED STATES ATTORNEY
22 BY: PATRICK C. ASKIN, AUSA
23 JUSTIN C. DANILEWITZ, AUSA
24 EDMUND MALLQUI-BURGOS, AUSA
25
26 LAW OFFICES OF R. EMMETT MADDEN
27 BY: ROBERT EMMETT MADDEN, ESQUIRE
28 Attorney for Defendant Mykal Derry
29
30 Certified as true and correct as required by Title 28, U.S.C.,
31 Section 753
32 /s/ Robert T. Tate /s/ Karen Friedlander

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1 ALSO PRESENT:
2 MARKOWITZ GRAVELLE, LLP
3 BY: JOSHUA L. MARKOWITZ, ESQUIRE
4 Attorney for Defendant Malik Derry
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13:11 1 after the jury is in the box. So, just so you know, I'll be
 13:11 2 asking you to do that.
 13:11 3 If you want to position the bible over here to make it
 13:11 4 easier for him.
 13:11 5 MR. ASKIN: May I position the mic, your Honor?
 13:11 6 THE COURT: Yes, maybe position the mic away and
 13:11 7 maybe put the bible -- he's going to put his left hand and
 13:11 8 raise his right hand, so maybe by the -- over there.
 13:11 9 MR. ASKIN: He's going to affirm, your Honor.
 13:11 10 THE COURT: I'm sorry. I apologize. Very good.
 13:11 11 Then you can move that out of the way then. All right. Very
 13:11 12 good.
 13:11 13 All right. You ready to proceed, Mr. Madden?
 13:11 14 MR. MADDEN: Yes, your Honor.
 13:11 15 THE COURT: Mr. Markowitz?
 13:11 16 MR. MARKOWITZ: Yes, your Honor.
 13:11 17 THE COURT: All right. If you want, you can stand
 13:12 18 now, Mr. Young. We stand for the jury when they come in.
 13:12 19 THE DEPUTY COURT CLERK: All rise.
 13:12 20 (Whereupon the jury entered the courtroom.)
 13:12 21 THE COURT: All right. Thank you. Please be seated.
 13:12 22 Welcome back.
 13:12 23 All right. Mr. Askin, you have a witness?
 13:12 24 MR. ASKIN: Yes, your Honor. The Government would
 13:12 25 call Kareem Young.

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13:12 1 THE COURT: All right. Mr. Young, if you would
 13:13 2 please follow the directions of my courtroom deputy regarding
 13:13 3 the taking of an oath.
 13:13 4 THE DEPUTY COURT CLERK: Sir, please rise. Raise
 13:13 5 your right hand.
 13:13 6 (KAREEM YOUNG, HAVING DULY AFFIRMED, TESTIFIED AS FOLLOWS:)
 13:13 7 THE DEPUTY COURT CLERK: Please state your name and
 13:13 8 spell your last name for the record.
 13:13 9 THE WITNESS: Kareem Young, K-A-R-E-E-M Y-O-U-N-G.
 13:13 10 THE COURT: All right. Mr. Young, if you could have
 13:13 11 a seat there in the witness chair, sir. There's a light blue
 13:13 12 piece of paper there in front of you. Do you see that? Could
 13:13 13 you read that silently to yourself? And then I'll give you
 13:13 14 further direction.
 13:13 15 All right. Slowly, clearly, and loudly enough for
 13:13 16 everyone to hear you. There's a microphone there that will
 13:13 17 help you, which you recognize, project your voice out.
 13:13 18 If you hear the word objection, don't give any further
 13:14 19 testimony until I give you further direction.
 13:14 20 Also, wait until the end of a question before giving an
 13:14 21 answer so that the reporter can take down everything that's
 13:14 22 said. All right, sir?
 13:14 23 THE WITNESS: Yes.
 13:14 24 THE COURT: Very good.
 13:14 25 Mr. Askin, your witness.

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13:14 1 MR. ASKIN: Thank you.
 13:14 2 (DIRECT EXAMINATION OF KAREEM YOUNG BY MR. ASKIN:)
 13:14 3 Q. Mr. Young, good afternoon.
 13:14 4 A. Good afternoon.
 13:14 5 Q. Mr. Young, how old are you?
 13:14 6 A. 22.
 13:14 7 Q. And where were you born?
 13:14 8 A. Atlantic City.
 13:14 9 Q. And did you grow up primarily in the Atlantic City area?
 13:14 10 A. Yes.
 13:14 11 Q. And when you were younger, did you live with both your
 13:14 12 parents?
 13:14 13 A. Yes.
 13:14 14 Q. At some point when you were a juvenile, younger, did
 13:14 15 something happen between your parents? Did they stay together
 13:14 16 or did they split up?
 13:14 17 A. They split up.
 13:14 18 Q. Okay. And when they split up, approximately how old were
 13:14 19 you?
 13:14 20 A. About 5.
 13:15 21 Q. And when that happened, did you live primarily with one
 13:15 22 or the other at that time?
 13:15 23 A. Yes.
 13:15 24 Q. And who did you live with first?
 13:15 25 A. My father.

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13:15 1 Q. Okay. Were there points where you lived with your father
 13:15 2 for a period of years?
 13:15 3 A. Yes.
 13:15 4 Q. Okay. Until you were about how old?
 13:15 5 A. About 11, 12.
 13:15 6 Q. Okay. And when you lived with your father, where are
 13:15 7 some of the places you lived with your father in that area?
 13:15 8 What towns?
 13:15 9 A. Mays Landing.
 13:15 10 Q. And that's where your father was living after your
 13:15 11 parents split up?
 13:15 12 A. Yes.
 13:15 13 Q. And if I understand your testimony, your dad had primary
 13:15 14 custody of you at that time?
 13:15 15 A. Yes.
 13:15 16 Q. During that time, did you still see your mother?
 13:15 17 A. Yes.
 13:15 18 Q. When you were around 12 years old, what happened with
 13:15 19 respect to your custody status and who you were living with?
 13:15 20 A. I started staying with my mother.
 13:15 21 Q. Okay. And where was your mother staying when you went to
 13:15 22 live with her when you were about 12 years old?
 13:16 23 A. Stanley Holmes.
 13:16 24 Q. At some point -- are you familiar with the location, a
 13:16 25 building that they referred to or a complex they referred to

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- 13:16 **1** as Six Bedrooms?
- 13:16 **2 A. Yes.**
- 13:16 **3 Q.** Where was that? Was that in Atlantic City?
- 13:16 **4 A. Yes.**
- 13:16 **5 Q.** And where was it?
- 13:16 **6 A. I forget the street.**
- 13:16 **7 Q.** Okay. Well, where was it with respect to Stanley Holmes?
- 13:16 **8** Nearby?
- 13:16 **9 A. Yes.**
- 13:16 **10 Q.** And what ultimately happened to the Six Bedrooms complex?
- 13:16 **11 A. It was tore down.**
- 13:16 **12 Q.** Was that Six Bedrooms complex private housing or was it
- 13:16 **13** public housing?
- 13:16 **14 A. Public.**
- 13:16 **15 Q.** Okay. Did you live there at any period of time in the
- 13:16 **16** Six Bedrooms?
- 13:16 **17 A. Yes.**
- 13:16 **18 Q.** Before, of course, it was torn down, correct?
- 13:16 **19 A. Yes.**
- 13:16 **20 Q.** And who did you live there with, if you recall?
- 13:16 **21 A. My mother.**
- 13:16 **22 Q.** Okay. When Six Bedrooms was torn down, where did your
- 13:16 **23** mother go to live?
- 13:16 **24 A. Stanley Holmes.**
- 13:16 **25 Q.** Did you go with her at that time?

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- 13:16 **1 A. No, I moved with my father.**
- 13:17 **2 Q.** Okay. But at some point -- how old were you -- at some
- 13:17 **3** point -- I'm sorry.
- 13:17 **4** At some point, did you go to Stanley Holmes and live
- 13:17 **5** with your mother in Stanley Holmes?
- 13:17 **6 A. Yes.**
- 13:17 **7 Q.** Okay. And approximately how old were you at that time?
- 13:17 **8 A. About 11 or 12.**
- 13:17 **9 Q.** And you're in custody right now, correct?
- 13:17 **10 A. Yes.**
- 13:17 **11 Q.** You pled guilty to a federal drug trafficking offense, an
- 13:17 **12** offense that you're awaiting sentencing?
- 13:17 **13 A. Yes.**
- 13:17 **14 Q.** Do you remember when you were taken into custody,
- 13:17 **15** approximately?
- 13:17 **16 A. April 3rd, 2013.**
- 13:17 **17 Q.** Okay. From the time you were roughly 13 years old or
- 13:17 **18** whatever, when you moved with your mom to Stanley Holmes,
- 13:17 **19** until the time of -- until about mid February of 2013, where
- 13:17 **20** were you living most of the time?
- 13:17 **21 A. Stanley Holmes.**
- 13:17 **22 Q.** With your mom?
- 13:17 **23 A. Yes.**
- 13:18 **24 Q.** What village did your mom live in?
- 13:18 **25 A. Second.**

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- 13:18 **1 Q.** Do you know the two individuals in the courtroom? Do you
- 13:18 **2** see guys in the courtroom that you recognize?
- 13:18 **3 A. Yes.**
- 13:18 **4 Q.** And who are they?
- 13:18 **5 A. Mykal Derry and Malik Derry.**
- 13:18 **6 Q.** Okay. And what did they refer to Mykal Derry by, what
- 13:18 **7** name or nicknames?
- 13:18 **8 A. Koose.**
- 13:18 **9 Q.** Okay. And how about Malik Derry, what name or nicknames
- 13:18 **10** did they use for him?
- 13:18 **11 A. Lik.**
- 13:18 **12 Q.** How long have you known Mykal Derry, approximately?
- 13:18 **13** Since what year do you think you've known him?
- 13:18 **14 A. 2010.**
- 13:18 **15 Q.** Okay. And how -- now, is Mykal Derry older or younger
- 13:18 **16** than you?
- 13:18 **17 A. Older.**
- 13:18 **18 Q.** By a year or two or by much more than that?
- 13:18 **19 A. Much more than that.**
- 13:18 **20 Q.** How about Malik Derry, how long have you known him?
- 13:18 **21 A. Since he was little.**
- 13:18 **22 Q.** Did Malik also grow up in Atlantic City in that same
- 13:18 **23** area?
- 13:18 **24 A. Yes.**
- 13:18 **25 Q.** Okay. And you've known him since -- when you say little,

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- 13:19 **1** since you were a child?
- 13:19 **2 A. Yes.**
- 13:19 **3 Q.** Okay. Is Malik older or younger than Mykal?
- 13:19 **4 A. Younger.**
- 13:19 **5 Q.** And is Malik closer in age to you?
- 13:19 **6 A. Yes.**
- 13:19 **7 Q.** During the period of roughly from the summer of 2011
- 13:19 **8** through February, mid February of 2013, were you, in fact,
- 13:19 **9** primarily living with your mother in the second village of
- 13:19 **10** Stanley Holmes?
- 13:19 **11 A. Yes.**
- 13:19 **12 Q.** Now, when you were a juvenile, did you get in trouble
- 13:19 **13** with the law?
- 13:19 **14 A. Yes.**
- 13:19 **15 Q.** Were you arrested several times as a juvenile?
- 13:19 **16 A. Yes.**
- 13:19 **17 Q.** Going all the way back to when you were 13 years old; is
- 13:20 **18** that right?
- 13:20 **19 A. Yes.**
- 13:20 **20 Q.** What types of offenses or crimes did you get in trouble
- 13:20 **21** for as a juvenile, that you recall?
- 13:20 **22 A. Selling drugs, carrying firearms.**
- 13:20 **23 Q.** Did you also get in trouble when you were 13 for, and
- 13:20 **24** placed on probation, for assaulting a teacher; do you remember
- 13:20 **25** that, when you were 13 years old?

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13:20 1 **A. Yes.**
 13:20 2 **Q.** When you were a juvenile and you were arrested for
 13:20 3 selling drugs, were you, in fact, selling drugs as a juvenile?
 13:20 4 **A. Yes.**
 13:20 5 **Q.** And where were you selling drugs as a juvenile?
 13:20 6 **A. Stanley Holmes.**
 13:20 7 **Q.** And what drugs were you involved in selling back then
 13:20 8 when you were a juvenile?
 13:20 9 **A. Crack and heroin.**
 13:20 10 **Q.** Did some of these arrests when you were a juvenile result
 13:21 11 in your -- a court, a New Jersey court adjudicating you
 13:21 12 delinquent of offenses?
 13:21 13 **A. Yes.**
 13:21 14 **Q.** And did you receive periods of probation at times or
 13:21 15 supervision of some type for some of those juvenile offenses?
 13:21 16 **A. Yes.**
 13:21 17 **Q.** Okay. When you were placed on supervision as a juvenile,
 13:21 18 in general, did you stop selling drugs?
 13:21 19 **A. No.**
 13:21 20 **Q.** Did you stop carrying guns?
 13:21 21 **A. No.**
 13:21 22 **Q.** So, do you admit to the jury that you, while you were on
 13:21 23 juvenile supervision after being adjudicated delinquent, that
 13:21 24 you continued to sell drugs and carry guns?
 13:21 25 **A. Yes.**

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13:21 1 **Q.** And where were you doing that primarily?
 13:21 2 **A. Stanley Holmes.**
 13:21 3 **Q.** When you were a juvenile, at what age do you believe, to
 13:22 4 the best of your recollection, you started getting involved in
 13:22 5 the drug dealing and selling drugs when you were a juvenile;
 13:22 6 how old were you then?
 13:22 7 **A. About 12, 13.**
 13:22 8 **Q.** At some point when you were a juvenile, were you brought
 13:22 9 into court for violating -- at various times for violating
 13:22 10 your juvenile probation?
 13:22 11 **A. Yes.**
 13:22 12 **Q.** And at times, was the probation -- at any point, was the
 13:22 13 probation rescinded, in other words, withdrawn, and the judge
 13:22 14 imposed a sentence on you, another sentence on you?
 13:22 15 **A. Yes.**
 13:22 16 **Q.** Okay. Were you actually sent away, in other words, sent
 13:22 17 to juvenile custody as a juvenile at one point for violating
 13:23 18 your probation?
 13:23 19 **A. Yes.**
 13:23 20 **Q.** Okay. And do you, in fact, admit that you were in
 13:23 21 violation of your probation by not abiding by the rules of
 13:23 22 probation?
 13:23 23 **A. Yes.**
 13:23 24 **Q.** And do you, in fact, admit that your criminal conduct,
 13:23 25 selling drugs, carrying guns, et cetera, continued even while

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13:23 1 you were on juvenile probation; is that right?
 13:23 2 **A. Yes.**
 13:23 3 **Q.** Do you know, do you recall where you spent time as a
 13:23 4 juvenile when you were sentenced to time for these probation
 13:23 5 violations?
 13:23 6 **A. Albert Elias.**
 13:23 7 **Q.** Could you spell that?
 13:23 8 **A. I don't know how to spell it.**
 13:23 9 **Q.** Do you know how to spell it?
 13:23 10 **A. No.**
 13:23 11 **Q.** But Albert Elias?
 13:23 12 **A. Yes, it's a JJC program.**
 13:23 13 **Q.** Okay. And where, do you remember where that was located?
 13:23 14 **A. Hopewell, New Jersey.**
 13:23 15 **Q.** Hopewell, New Jersey?
 13:24 16 **A. Yeah.**
 13:24 17 **Q.** Do you recall, if you remember, do you recall what year
 13:24 18 that was that you were in that program?
 13:24 19 **A. 2008.**
 13:24 20 **Q.** And to the best of your recollection today, how long do
 13:24 21 you think you were in the Albert Elias facility for that
 13:24 22 juvenile program in 2008 or starting in 2008?
 13:24 23 **A. Probably about nine months.**
 13:24 24 **Q.** After you turned 18, you know you became an adult,
 13:24 25 correct, in the eyes of the law; is that right?

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13:24 1 **A. Yes.**
 13:24 2 **Q.** Okay. Did you -- did your problems with the criminal
 13:24 3 justice system and the police end when you became an adult at
 13:24 4 18?
 13:24 5 **A. No.**
 13:24 6 **Q.** Did you continue to get in trouble as an adult after your
 13:24 7 18th birthday?
 13:24 8 **A. Yes.**
 13:24 9 **Q.** Okay. And do you have several arrests by law enforcement
 13:24 10 in the Atlantic City area as an adult?
 13:25 11 **A. Yes.**
 13:25 12 **Q.** Okay. As an adult, between your 18th birthday and
 13:25 13 between February of -- or even April of -- between your 18th
 13:25 14 birthday and April of -- when you went into custody in April
 13:25 15 of 2013, were you engaged routinely in criminal activity?
 13:25 16 **A. Yes.**
 13:25 17 **Q.** You know what I mean by routinely?
 13:25 18 **A. Yes.**
 13:25 19 **Q.** Okay. What type of criminal activity were you generally
 13:25 20 involved in as an adult until you were taken into custody in
 13:25 21 2013? I'm talking about periods when you were on the street,
 13:25 22 not any times when you were in custody. When you were on the
 13:25 23 street, what type of criminal activity on an ongoing basis
 13:25 24 were you involved in?
 13:25 25 **A. Selling drugs.**

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- 13:25 1 Q. And what drugs were you primarily selling, let's say, in
 13:25 2 the last several years in 2011, 2012, 2013; what drugs were
 13:25 3 you selling?
 13:25 4 A. Heroin.
 13:25 5 Q. At times during the time frame you were out on the
 13:26 6 street, did you also sell the drug crack cocaine?
 13:26 7 A. Yes.
 13:26 8 Q. Were you involved -- I'm not just talking about arrests
 13:26 9 now; I'm talking about your history, what you've done in the
 13:26 10 past. Were you involved, in 2011, 2012, and 2013, in carrying
 13:26 11 firearms?
 13:26 12 A. Yes.
 13:26 13 Q. Okay. Once in a while or regularly?
 13:26 14 A. Regularly.
 13:26 15 Q. When you carried those firearms, were they loaded?
 13:26 16 A. Yes.
 13:26 17 Q. Did you know when you were carrying them that you were
 13:26 18 doing so illegally, in other words, that you didn't have
 13:26 19 lawful authorization to carry the firearms?
 13:26 20 A. Can you say that again?
 13:26 21 Q. You testified that you were carrying firearms rather
 13:26 22 routinely when you were on the street engaged in criminal
 13:26 23 conduct, correct?
 13:26 24 A. Yes.
 13:26 25 Q. Did you know when you were carrying those firearms that

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- 13:26 1 you were, under the eyes of the law, not allowed to be
 13:27 2 carrying them?
 13:27 3 A. No.
 13:27 4 Q. Do you understand my question?
 13:27 5 A. No.
 13:27 6 Q. Okay. Let me -- if you don't understand a question, just
 13:27 7 say you don't understand a question. Okay? Because if you
 13:27 8 give an answer, we're going to assume you know the answer.
 13:27 9 Okay?
 13:27 10 You were carrying firearms while you were engaged in
 13:27 11 illegal activity, correct?
 13:27 12 A. Yes.
 13:27 13 Q. Were you carrying firearms while you were selling drugs?
 13:27 14 A. Yes.
 13:27 15 Q. Did you know that was illegal?
 13:27 16 A. Yes.
 13:27 17 Q. In 2011, did you -- were you arrested in May of 2011 for
 13:27 18 simple assault in Burlington County?
 13:28 19 A. Yes.
 13:28 20 Q. And did that involve you punching another individual
 13:28 21 while you were in prison?
 13:28 22 A. Yes.
 13:28 23 Q. And where did that happen?
 13:28 24 A. JMSF.
 13:28 25 Q. What's JMSF?

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- 13:28 1 A. It's a juvenile medium security prison.
 13:28 2 Q. And was that facility, to the best of your knowledge, in
 13:28 3 Burlington County?
 13:28 4 A. No, it was in Bordertown.
 13:28 5 Q. Okay. All right. And did you wind up -- eventually, did
 13:28 6 you plead guilty to that simple assault charge?
 13:28 7 A. Yes.
 13:28 8 Q. And were you sentenced to serve a period of probation
 13:28 9 initially?
 13:28 10 A. Yes.
 13:28 11 Q. Did you violate that probation, if you recall?
 13:28 12 A. Yes. Yes.
 13:28 13 Q. And did you wind up serving any period of -- do you know,
 13:28 14 do you recall whether you wound up serving a period of
 13:28 15 imprisonment for that?
 13:28 16 A. No.
 13:28 17 Q. You didn't?
 13:28 18 A. No.
 13:28 19 Q. Okay. But that was a fight you had gotten in when you
 13:29 20 were around 18 years old with someone while you were in
 13:29 21 custody, correct?
 13:29 22 A. Yes.
 13:29 23 Q. And that's something you pled guilty to, correct?
 13:29 24 A. Yes.
 13:29 25 Q. How about when you were 19 years old in April of 2012,

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- 13:29 1 were you arrested for possession of what New Jersey calls CDS
 13:29 2 or controlled dangerous substance; were you involved in that,
 13:29 3 possession of illegal drugs, and arrested for it in April of
 13:29 4 2012?
 13:29 5 A. Yes.
 13:29 6 Q. Okay. And did you -- were you convicted of that --
 13:29 7 A. Yes.
 13:29 8 Q. -- if you recall?
 13:29 9 A. Yes.
 13:29 10 Q. Did you plead guilty or go to trial; do you remember?
 13:29 11 A. Plead guilty.
 13:29 12 Q. Do you recall failing to appear on February the 15th,
 13:29 13 2013, in court for that offense?
 13:29 14 A. Yes.
 13:29 15 Q. And did you know at some point that the Court issued a
 13:30 16 bench warrant for your arrest?
 13:30 17 A. Yes.
 13:30 18 Q. Were you also arrested on or about January the 17th of
 13:30 19 2013 for possession of CDS in Atlantic County?
 13:30 20 A. Yes.
 13:30 21 Q. Okay. And was that a case -- was that a case that's
 13:30 22 still pending against you, if you know?
 13:30 23 A. Yes.
 13:30 24 Q. And these two arrests, January 17th, 2013, possession of
 13:30 25 CDS, and April 8th, 2012, possession of CDS, where did those

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- 13:30 1 arrests -- let's start with the first one, April of 2012.
- 13:30 2 Where did those arrests occur; do you remember? Or what area,
- 13:30 3 what city?
- 13:30 4 A. Atlantic City.
- 13:30 5 Q. Okay. And do you recall the one in April 2012, if you
- 13:31 6 remember, do you remember around where that one occurred, if
- 13:31 7 you know?
- 13:31 8 A. I don't remember.
- 13:31 9 Q. Okay. How about the one in January 17th of 2013, do you
- 13:31 10 know where you were arrested for that?
- 13:31 11 A. In Atlantic City.
- 13:31 12 Q. Okay. Do you remember the exact location?
- 13:31 13 A. No.
- 13:31 14 Q. In 2012, though, in those time frames, April of 2012 and
- 13:31 15 January of 2013, where in Atlantic City were you selling
- 13:31 16 drugs, what area generally?
- 13:31 17 A. Atlantic Avenue, Stanley Holmes Village, Schoolhouse
- 13:31 18 Apartments.
- 13:31 19 Q. Were you also arrested for shoplifting on January the
- 13:31 20 22nd of 2013?
- 13:31 21 A. Yes.
- 13:31 22 Q. Okay. And is that something that occurred in Atlantic
- 13:31 23 City?
- 13:31 24 A. Yes.
- 13:31 25 Q. And did you take items from a store without paying for

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- 13:31 1 them?
- 13:31 2 A. Yes.
- 13:32 3 Q. And is that case still pending?
- 13:32 4 A. Yes.
- 13:32 5 Q. To the best of your knowledge?
- 13:32 6 A. Yes.
- 13:32 7 Q. Okay. On February the 4th of 2013, were you charged with
- 13:32 8 possession of controlled dangerous substances, distribution of
- 13:32 9 controlled substances, possession with the intent to
- 13:32 10 distribute controlled substances within 500 feet of a public
- 13:32 11 housing complex, were you charged with those crimes on
- 13:32 12 February 4th of 2013 on the basis of a complaint that alleged
- 13:32 13 that on November 15th of 2012, you sold CDS within 1,000 feet
- 13:32 14 of a school?
- 13:32 15 A. Yes.
- 13:32 16 Q. Okay. Did that -- what drug were you selling there?
- 13:32 17 A. Heroin.
- 13:32 18 Q. Okay. And do you admit that back on November, November
- 13:32 19 2012, that you were engaged in the sale of heroin in Atlantic
- 13:33 20 City, New Jersey?
- 13:33 21 A. Yes.
- 13:33 22 Q. Okay. And from the allegations, do you agree that it's
- 13:33 23 alleged that you sold it to an undercover detective in
- 13:33 24 November of 2012? November 15th of 2012?
- 13:33 25 A. Yes.

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- 13:33 1 Q. Did you do that?
- 13:33 2 A. Yes.
- 13:33 3 Q. Was that case still pending in mid February of 2013?
- 13:33 4 A. Yes.
- 13:33 5 Q. In February of 2013 -- were you scheduled in mid February
- 13:33 6 of 2013 for sentencing in one or more of these cases in
- 13:33 7 Atlantic County?
- 13:33 8 A. Yes.
- 13:33 9 Q. And in mid February of 2013, did you show up in the
- 13:33 10 Superior Court of Atlantic County for that sentencing date?
- 13:34 11 A. No.
- 13:34 12 Q. Instead of showing up for the sentencing date, what did
- 13:34 13 you do?
- 13:34 14 A. I ran.
- 13:34 15 Q. And when you ran, did you leave the state?
- 13:34 16 A. Yes.
- 13:34 17 Q. Okay. And without telling us the specific location, did
- 13:34 18 you go to another state far away?
- 13:34 19 A. Yes.
- 13:34 20 Q. What state did you go to?
- 13:34 21 A. Florida.
- 13:34 22 Q. How did you get from New Jersey -- you were living in New
- 13:34 23 Jersey at the time, correct, in February of 2013, before you
- 13:34 24 left the state?
- 13:34 25 A. Yes.

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- 13:34 1 Q. How did you get from the State of New Jersey, the
- 13:34 2 Atlantic City area, down to -- don't give us the location --
- 13:34 3 in Florida?
- 13:34 4 A. A bus.
- 13:34 5 Q. Did you go on the bus by yourself?
- 13:34 6 A. Yes.
- 13:34 7 Q. When you got to Florida, did you reside down there for a
- 13:34 8 period of time?
- 13:34 9 A. Yes.
- 13:34 10 Q. Okay. With -- without giving us the specifics, with
- 13:34 11 individuals that you were close to, family or friends or
- 13:35 12 someone somewhere in Florida?
- 13:35 13 A. Family.
- 13:35 14 Q. Okay. And ultimately were you arrested in early April of
- 13:35 15 2013 in Florida?
- 13:35 16 A. Yes.
- 13:35 17 Q. Now, were you arrested in April of 2013 in Florida
- 13:35 18 because you turned yourself in to somebody, or did something
- 13:35 19 happen?
- 13:35 20 A. No, something happened.
- 13:35 21 Q. What happened?
- 13:35 22 A. The FBI came for me.
- 13:35 23 Q. And did FBI agents come looking for you in Florida and
- 13:35 24 place you under arrest in early April of 2013?
- 13:35 25 A. Yes.

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- 13:35 1 Q. And was that in relation to your -- a federal criminal
 13:35 2 complaint and federal arrest warrant that had been filed
 13:35 3 against you under seal?
 13:35 4 A. Yes.
 13:35 5 Q. Okay. Do you know what under seal means? In other
 13:35 6 words, it's not to the public, correct?
 13:35 7 A. Yes.
 13:35 8 Q. Now, since those documents were under seal, did you have
 13:35 9 any knowledge in early April of 2013 that you were wanted by
 13:36 10 the FBI or U.S. marshals?
 13:36 11 A. No.
 13:36 12 Q. That's something you found out after they arrested you,
 13:36 13 correct?
 13:36 14 A. Yes.
 13:36 15 Q. But if I understand your testimony, you fled or left the
 13:36 16 State of New Jersey for Florida, knowing that you were due to
 13:36 17 be in court and had a lawful obligation to appear in court for
 13:36 18 sentencing on criminal offenses in the State of New Jersey; is
 13:36 19 that right?
 13:36 20 A. Yes.
 13:36 21 Q. When you went to Florida, did your criminal activity
 13:36 22 stop, or did you continue to engage in some criminal activity
 13:36 23 while you were in Florida?
 13:36 24 A. I continued.
 13:36 25 Q. And what were you doing in Florida to support yourself in

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- 13:36 1 part while you were there from -- well, let me back up. I'll
 13:36 2 withdraw that question.
 13:36 3 Do you recall, as best you can recall today,
 13:36 4 approximately what date you arrived in Florida or what date
 13:36 5 the bus trip was?
 13:36 6 A. February 13th.
 13:37 7 Q. Okay. And I assume from somewhere in the Atlantic City
 13:37 8 area of New Jersey. Did you leave from the Atlantic City Bus
 13:37 9 Terminal?
 13:37 10 A. Yes.
 13:37 11 Q. Without revealing where you went in Florida, I'm assuming
 13:37 12 that's a long bus trip?
 13:37 13 A. Yes.
 13:37 14 Q. Okay. So, you left on February 13th. Did you arrive on
 13:37 15 the 13th or the 14th, if you remember?
 13:37 16 A. The 14th.
 13:37 17 Q. Okay. And you met with family down there?
 13:37 18 A. Yes.
 13:37 19 Q. Now, when you got down there, did you rather quickly
 13:37 20 become involved in criminal activity?
 13:37 21 A. Yes.
 13:37 22 Q. And what did you get involved with while you were in
 13:37 23 Florida?
 13:37 24 A. Selling weed.
 13:37 25 Q. And did you sell weed for a period of time between mid

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- 13:37 1 February of 2013 until you were arrested by the FBI in early
 13:37 2 April of 2013?
 13:37 3 A. Yes.
 13:38 4 Q. Okay. And you did that knowing that it was against the
 13:38 5 law and that also you were on the run for other offenses from
 13:38 6 the State of New Jersey, other drug offenses in the State of
 13:38 7 New Jersey, correct?
 13:38 8 A. Yes.
 13:38 9 Q. Did you leave the State of New Jersey because you
 13:38 10 expected that you were going to be sent to prison for those
 13:38 11 offenses when you got sentenced?
 13:38 12 A. Yes.
 13:38 13 Q. Were you charged with respect to this federal
 13:38 14 investigation with conspiracy to distribute heroin in the
 13:38 15 Atlantic City area?
 13:38 16 A. Yes.
 13:38 17 Q. And when you were charged, did you first go to a court
 13:39 18 hearing, we call it a removal hearing, in the state of
 13:39 19 Florida, in a federal court in the state of Florida?
 13:39 20 A. Yes.
 13:39 21 Q. Did they take you before a federal magistrate in the
 13:39 22 state of Florida for a hearing?
 13:39 23 A. Yes.
 13:39 24 Q. Okay. And did that judge, to the best of your knowledge,
 13:39 25 order you removed to the District of New Jersey, to this

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- 13:39 1 Court?
 13:39 2 A. Yes.
 13:39 3 Q. Okay. And were you allowed to just come up here on your
 13:39 4 own, or were you transported by the marshals?
 13:39 5 A. I was transported by the marshals.
 13:39 6 Q. On a plane or a bus? What happened? How did you get
 13:39 7 here?
 13:39 8 A. Plane.
 13:39 9 Q. With other people who were in federal custody?
 13:39 10 A. Yes.
 13:39 11 Q. Okay. And when you got to court here, do you recall
 13:39 12 whether or not there was a detention hearing?
 13:39 13 A. Yes.
 13:39 14 Q. Okay. If you recall, did you agree, essentially, to be
 13:39 15 detained, or was there an actual hearing? Do you understand
 13:39 16 my question?
 13:39 17 A. I believe there was a hearing.
 13:39 18 Q. Okay. Okay. Whether or not there was a hearing or you
 13:40 19 agreed -- let me ask this question if you don't remember.
 13:40 20 Were you, in fact, detained by a United States Magistrate
 13:40 21 Judge?
 13:40 22 A. Yes.
 13:40 23 Q. And ordered held without bail?
 13:40 24 A. Yes.
 13:40 25 Q. Have you been in federal custody at various locations,

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13:40 1 different locations since that time? Since you were taken
 13:40 2 into custody by the FBI agents and delivered to that Federal
 13:40 3 Court in early April of 2013, have you been in custody that
 13:40 4 whole time?
 13:40 5 A. Yes.
 13:40 6 Q. Approximately, if you recall, how many months have you
 13:40 7 been in custody on this federal offense?
 13:40 8 A. 27 months.
 13:40 9 Q. Now, when you were brought before the Federal Court, you
 13:40 10 initially went before a magistrate judge for an initial
 13:40 11 appearance and perhaps a detention hearing, correct?
 13:40 12 A. Yes.
 13:40 13 Q. And ultimately was your case assigned to a United States
 13:41 14 District Judge like Judge Hillman?
 13:41 15 A. Yes.
 13:41 16 Q. Okay. And which judge -- if you remember his name, which
 13:41 17 judge was it assigned to?
 13:41 18 A. Judge Irenas.
 13:41 19 Q. And while your case was before -- while your case was
 13:41 20 before the magistrate judge, was an attorney appointed to
 13:41 21 represent you?
 13:41 22 A. Yes.
 13:41 23 Q. And who was the attorney that was appointed to represent
 13:41 24 you?
 13:41 25 A. Peter Levin.

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13:41 1 Q. Has Peter Levin represented you throughout the pendency
 13:41 2 of your case?
 13:41 3 A. Yes.
 13:41 4 Q. From the time he was appointed, correct?
 13:41 5 A. Yes.
 13:41 6 Q. Does he continue to represent you?
 13:41 7 A. Yes.
 13:41 8 Q. Have you met with him at times throughout the process of
 13:41 9 this court proceeding, in other words, your case?
 13:41 10 A. Yes.
 13:41 11 Q. Okay. And without telling us what the advice is, you've
 13:41 12 met with him; he's provided advice to you?
 13:41 13 A. Yes.
 13:41 14 Q. Did you -- at some point during the pendency of this
 13:42 15 case, did you receive, or through Mr. Levin, did you receive
 13:42 16 certain discovery documents? Did you get some discovery in
 13:42 17 the case, in other words, access to some of the evidence
 13:42 18 against you or the documents where the Government was alleging
 13:42 19 certain things against you?
 13:42 20 A. Yes.
 13:42 21 Q. Okay. Let's start with the criminal complaint. Did you
 13:42 22 receive a criminal complaint in the beginning that listed the
 13:42 23 charges, a conspiracy to distribute heroin?
 13:42 24 A. Yes.
 13:42 25 Q. And with that criminal complaint, was there a thick

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13:42 1 affidavit of probable cause supporting that complaint?
 13:42 2 A. Yes.
 13:42 3 Q. Did you read that in whole or in part? Did you read
 13:42 4 parts of it or the whole thing?
 13:42 5 A. Read parts of it.
 13:42 6 Q. Okay. It was about, if I recall, about 100 pages long;
 13:42 7 is that right?
 13:42 8 A. Yes.
 13:42 9 Q. Okay. You didn't read the whole thing; you read parts of
 13:43 10 it?
 13:43 11 A. Yes.
 13:43 12 MR. MADDEN: Objection, your Honor. If I could have
 13:43 13 a sidebar.
 13:43 14 THE COURT: All right.
 13:43 15 (Sidebar.)
 13:43 16 MR. MADDEN: I may be overreacting or hypersensitive
 13:43 17 here, but I want to make sure we're not going into did you
 13:43 18 look at hundreds of pages of discovery. I don't want there to
 13:43 19 be some presentation about the overwhelming evidence and,
 13:43 20 therefore, he decided to plead guilty. I'm concerned we're
 13:44 21 going in that direction.
 13:44 22 MR. ASKIN: That's a good point, but that's not where
 13:44 23 I'm going.
 13:44 24 MR. MADDEN: Simply the implication could be given to
 13:44 25 the jury.

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13:44 1 MR. ASKIN: What I was going after, I'm trying to
 13:44 2 establish with him that he has some familiarity with some of
 13:44 3 the discovery, but that he's read limited amounts of
 13:44 4 discovery. He told us in the prep that he read parts of the
 13:44 5 criminal complaint. Your Honor, the complaint, and I
 13:44 6 misspoke, it was over 200 and some odd pages, it was written,
 13:44 7 the affidavit, by Special Agent Kopp.
 13:44 8 In the back of it for the benefit of counsel and the
 13:44 9 defendants, we had put an index, a name index that would have
 13:44 10 said by Kareem Young and certain pages, and I believe what he
 13:44 11 told me in the prep was he went to his pages, which a lot of
 13:44 12 the defendants did, and read those sections.
 13:44 13 I wasn't going to go into tremendous detail with this,
 13:44 14 but I anticipate, because this isn't my first rodeo, that
 13:44 15 eventually these guys are going to say that, oh, you know this
 13:44 16 stuff because you read it in the discovery. So, I sort of
 13:44 17 want to lay the groundwork for that, that what he -- that it's
 13:45 18 my understanding from talking to the witness, unless I
 13:45 19 understand him incorrectly, that he didn't engage in an
 13:45 20 extensive review of all this discovery, that he basically read
 13:45 21 these portions of the criminal complaint affidavit that
 13:45 22 applied to him, he was given line sheets, and I believe, if I
 13:45 23 understand him in the preps, that he read those line sheets or
 13:45 24 reviewed the line sheets and possibly the audio calls that
 13:45 25 went with those line sheets, and then he talked to his lawyer

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13:45 1 and he made a decision to plead guilty. He may have also
 13:45 2 looked at some surveillance photos.
 13:45 3 But down the line, and I don't want to hide the ball
 13:45 4 here, we're going to be able to show that there are all sorts
 13:45 5 of things he knows that he couldn't possibly know except for
 13:45 6 telling the truth, and that's sort of the groundwork I was
 13:45 7 going to lay.
 13:45 8 THE COURT: All right. Well, I would make that point
 13:45 9 and move on. I think you can do it in a limited number of
 13:45 10 questions.
 13:45 11 MR. ASKIN: Yes, your Honor.
 13:45 12 THE COURT: So, just try to increase the pace a
 13:45 13 little bit on this background.
 13:45 14 MR. ASKIN: Yes, your Honor.
 13:46 15 (End of sidebar.)
 13:46 16 MR. ASKIN: May I proceed, your Honor?
 13:46 17 THE COURT: You may, Mr. Askin. Thank you.
 13:46 18 BY MR. ASKIN:
 13:46 19 Q. Mr. Young, the affidavit of probable cause, I believe, is
 13:46 20 over 200 pages. Did you read the whole thing?
 13:46 21 A. No.
 13:46 22 Q. Okay. Did you read the portions that -- where you were
 13:46 23 mentioned?
 13:46 24 A. Yes.
 13:46 25 Q. Okay. And do you recall whether or not there was an

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13:46 1 index at the back of the document that had your name as one of
 13:46 2 the members of the index?
 13:46 3 A. Yes.
 13:46 4 Q. Okay. Did you go to those sections and read the sections
 13:46 5 that applied to you?
 13:46 6 A. Yes.
 13:46 7 Q. Did you also review what we would call line sheets, kind
 13:46 8 of like draft transcripts, of the calls on the wire?
 13:46 9 A. Yes.
 13:46 10 Q. The ones that involved you or all of them?
 13:46 11 A. The ones that involved me.
 13:46 12 Q. And were you given -- to the best of your recollection,
 13:46 13 were you given a packet of line sheets that were the calls,
 13:46 14 the calls where just -- just your calls where the Government
 13:46 15 was claiming you were on the phone?
 13:47 16 A. Yes.
 13:47 17 Q. And did you review those yourself and with your lawyer?
 13:47 18 A. Yes.
 13:47 19 Q. Okay. And did you -- do you recall reviewing a lot of
 13:47 20 other information, or were those the primary things you
 13:47 21 reviewed before talking to your lawyer about what you wanted
 13:47 22 to do?
 13:47 23 A. I reviewed a couple other informations.
 13:47 24 Q. A couple other things?
 13:47 25 A. Yeah.

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13:47 1 Q. Did you look at some surveillance photos?
 13:47 2 A. Yes.
 13:47 3 Q. Okay. Ultimately, though, after reviewing this
 13:47 4 discovery, did you make a decision to -- about what you wanted
 13:47 5 to do with the case after you spoke with your lawyer?
 13:47 6 A. Yes.
 13:47 7 Q. Okay. And what did you decide you wanted to do with
 13:47 8 respect to the Government's case against you?
 13:47 9 A. Plead out.
 13:47 10 Q. Okay. When you say plead out, you're referring to
 13:47 11 pleading guilty?
 13:47 12 A. Yes.
 13:47 13 MR. MADDEN: Objection, your Honor. Sidebar.
 13:47 14 (Sidebar.)
 13:48 15 MR. MADDEN: After reviewing the discovery, what did
 13:48 16 he decide to do? He decided to plead guilty. That's exactly
 13:48 17 what I was trying to avoid.
 13:48 18 THE COURT: He also said he only read to the part
 13:48 19 against him.
 13:48 20 MR. ASKIN: Right. That's all we're talking about.
 13:48 21 MR. MADDEN: I just wanted to put an objection on the
 13:48 22 record. I think it's prejudicial.
 13:48 23 MR. ASKIN: I think the Court can instruct him and I
 13:48 24 think the Court can instruct him a couple times if the Court
 13:48 25 thinks that it's necessary that the fact that he made a

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13:48 1 personal decision to plead guilty based on the evidence --
 13:48 2 THE COURT: That's part of my standard instructions.
 13:48 3 MR. ASKIN: Right. And that's why he's not making a
 13:48 4 comment on anybody -- on the evidence against anybody else,
 13:48 5 nor was he asked about it. In fact, I agree with the Court,
 13:49 6 he's not even saying he reviewed it against anybody else, just
 13:49 7 the stuff against him.
 13:49 8 MR. MADDEN: I just wanted to preserve it for the
 13:49 9 record.
 13:49 10 THE COURT: Fair enough. Very good.
 13:49 11 (End of sidebar.)
 13:49 12 MR. ASKIN: Your Honor, may we see back at sidebar
 13:49 13 for one other issue? I'm sorry. I'm sorry I didn't say this
 13:49 14 before we broke.
 13:49 15 (Sidebar.)
 13:49 16 MR. ASKIN: I'll try to move this along. Judge,
 13:49 17 there's, and I've seen other judges and different judges
 13:49 18 handle this differently, and I've discussed it with counsel
 13:49 19 because sometimes counsel has different views. My
 13:49 20 understanding is we're about to get into a bunch of Jencks
 13:49 21 documents in terms of maybe the proffer letter, but definitely
 13:49 22 the plea agreement, the cooperation agreement, other documents
 13:49 23 like that, the information filed against him, et cetera, a
 13:49 24 waiver of indictment.
 13:49 25 These documents, I'm not so sure they come in as

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13:49 **1** evidence in terms of exhibits and would go back to the jury.
 13:49 **2** I don't believe they probably should, and I think counsel
 13:50 **3** agrees with me on that. However, when we go into these
 13:50 **4** documents in some detail as to what his agreements with the
 13:50 **5** Government are, which we obviously under Third Circuit case
 13:50 **6** law have a right to do, I think both counsel for the
 13:50 **7** Government and counsel for the defense want to be able to
 13:50 **8** display the documents or the relevant portions of the
 13:50 **9** documents while we're talking about them, not necessarily that
 13:50 **10** they're going to go back to the jury, and my understanding
 13:50 **11** from talking to Mr. Madden and Mr. Markowitz is they don't
 13:50 **12** have any objection to that.
 13:50 **13** The reason I want to put it on the record is because
 13:50 **14** when I start doing it, I know the Court's practice is
 13:50 **15** generally nothing gets displayed to the jury unless it's in
 13:50 **16** evidence, but this I think is a little bit different and they
 13:50 **17** don't have any objection. I think that both sides want to do
 13:50 **18** it this way if the Court is okay with it, unless the Court
 13:50 **19** thinks that's improper.
 13:50 **20** THE COURT: Well, I think there's an evidentiary
 13:50 **21** foundation for them. I'd have to examine the rules, but I
 13:50 **22** guess I don't have any problem with it.
 13:50 **23** MR. MADDEN: We have no objection.
 13:50 **24** THE COURT: All right. Any objection, Mr. Markowitz?
 13:51 **25** MR. MARKOWITZ: No, your Honor.

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13:51 **1** THE COURT: All right. That's fine. We'll deal with
 13:51 **2** it that way. They won't go into evidence, but I'll allow you
 13:51 **3** to display the materials to the jury in explaining what the
 13:51 **4** terms of it are.
 13:51 **5** MR. ASKIN: Okay. Thank you, your Honor.
 13:51 **6** THE COURT: Very good. Thank you.
 13:51 **7** (End of sidebar.)
 13:52 **8** MR. ASKIN: Your Honor, we're having a little bit of
 13:52 **9** a technical difficulty, but I think it will be solved shortly,
 13:52 **10** but if I might approach the witness. I'm going to ask to show
 13:52 **11** the witness Government's Exhibit J -- it's been marked for
 13:52 **12** identification J-KY-1. It's the plea agreement. And I'm
 13:52 **13** going to ask to show it to the witness.
 13:52 **14** THE COURT: Very good. You may proceed.
 13:52 **15** (GOVERNMENT EXHIBIT J-KY-1 WAS MARKED FOR IDENTIFICATION.)
 13:52 **16** MR. ASKIN: You can maybe pull it up later.
 13:52 **17** May I approach the witness?
 13:52 **18** BY MR. ASKIN:
 13:52 **19** Q. Mr. Young, I'm showing you what's been marked, for
 13:52 **20** identification purposes, J-KY, your initials, -1, correct?
 13:52 **21** A. Yes.
 13:52 **22** Q. Keep your voice up. Sit closer to the mic or keep your
 13:52 **23** voice up. Okay? The jurors have to hear you.
 13:52 **24** This is entitled at the top. What's the title there?
 13:52 **25** A. **Plea Agreement with Kareem Young.**

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13:52 **1** Q. Okay. And there's a case number on there, correct?
 13:52 **2** A. Yes.
 13:52 **3** Q. Okay. And is this -- take a look at this and tell us by
 13:53 **4** looking at the back pages how many page document that is?
 13:53 **5** A. Six.
 13:53 **6** Q. Can I see it? Okay. Well, six-and-a-half, right?
 13:53 **7** There's a seventh page?
 13:53 **8** A. Right.
 13:53 **9** Q. Okay. So, it's a seven-page document really, the seventh
 13:53 **10** page just being about one third of the page; is that right?
 13:53 **11** A. Yes.
 13:53 **12** Q. Now, if you look at page 5 of the document, is the
 13:53 **13** document signed by anyone on page 5?
 13:53 **14** A. Signed by me.
 13:53 **15** Q. Okay. And is it signed by anyone else on page 5?
 13:53 **16** A. Yes.
 13:53 **17** Q. Who is it signed by?
 13:54 **18** A. Peter Levin.
 13:54 **19** Q. Okay. And that was your lawyer, correct?
 13:54 **20** A. Yes.
 13:54 **21** Q. He remains your lawyer?
 13:54 **22** A. Yes.
 13:54 **23** Q. Okay. Did you sign this document after reading it?
 13:54 **24** A. Yes.
 13:54 **25** Q. Going over it with your lawyer?

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13:54 **1** A. Yes.
 13:54 **2** Q. On page 4, does it also bear someone's signature?
 13:54 **3** A. Yes.
 13:54 **4** Q. And whose signature does it bear?
 13:54 **5** A. Patrick C. Askin.
 13:54 **6** Q. That's me, right?
 13:54 **7** A. Yes.
 13:54 **8** Q. Okay. Is this, in fact, Government's Exhibit J-KY-1, the
 13:54 **9** plea agreement that you signed in this case?
 13:54 **10** A. Yes.
 13:54 **11** Q. Okay.
 13:54 **12** MR. ASKIN: If I might have one moment?
 13:54 **13** THE COURT: Yes.
 13:54 **14** MR. ASKIN: It's working.
 13:54 **15** BY MR. ASKIN:
 13:54 **16** Q. Mr. Young, I'm going to refer you to certain pages of
 13:54 **17** this document, certain portions of the document. They should
 13:54 **18** come up on your monitor there. If they don't come up on the
 13:54 **19** monitor, please let us know, okay?
 13:54 **20** A. Yes.
 13:55 **21** Q. Okay. Are you able to see that in front of you, or are
 13:55 **22** you having trouble reading it?
 13:55 **23** A. I can see it.
 13:55 **24** Q. Okay. And this is, in fact, the first page of the plea
 13:55 **25** agreement entitled Plea Agreement with Kareem Young, correct?

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13:55 1 A. Yes.
 13:55 2 Q. And it's dated December 23rd, 2013?
 13:55 3 A. Yes.
 13:55 4 Q. Okay. And in this, you agreed to plead guilty to a one
 13:55 5 count information, correct?
 13:55 6 A. Yes.
 13:55 7 Q. Did your lawyer explain to you that, constitutionally,
 13:55 8 you have a right to being indicted by a federal grand jury
 13:55 9 unless that right is waived?
 13:55 10 A. Yes.
 13:55 11 Q. And only if that right is waived can the Government
 13:55 12 proceed by way of an information, correct?
 13:55 13 A. Yes.
 13:55 14 Q. Did you waive your right to indictment in this case?
 13:55 15 A. Yes.
 13:55 16 Q. After consulting with your lawyer?
 13:55 17 A. Yes.
 13:55 18 Q. Okay. And did you agree to plead guilty to a one count
 13:56 19 information, as the plea agreement says, charging you that you
 13:56 20 conspired with others to distribute and possess with the
 13:56 21 intent to distribute 100 grams or more of a mixture or
 13:56 22 substance containing a detectable amount of heroin, correct?
 13:56 23 A. Yes.
 13:56 24 Q. And that was in violation of Title 21 United States Code
 13:56 25 Section 846?

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13:56 1 A. Yes.
 13:56 2 Q. Okay. Have you been sentenced for this offense yet?
 13:56 3 A. No.
 13:56 4 Q. Are you awaiting -- did you enter this guilty plea?
 13:56 5 A. Yes.
 13:56 6 Q. In open court?
 13:56 7 A. Yes.
 13:56 8 Q. And judge -- did you do so before Judge Irenas?
 13:56 9 A. Yes.
 13:56 10 Q. And did Judge Irenas ask you a series of questions to
 13:56 11 make sure that you understood what you were doing by pleading
 13:56 12 guilty?
 13:56 13 A. Yes.
 13:56 14 Q. Did he also ask you questions about what we would call
 13:56 15 the factual basis for the plea, in other words, the facts
 13:56 16 surrounding your guilty plea?
 13:56 17 A. Yes.
 13:56 18 Q. Okay. And after that, did Judge Irenas agree to accept
 13:56 19 your guilty plea and enter a conviction for this offense
 13:56 20 against you?
 13:56 21 A. Yes.
 13:56 22 Q. Do you understand that the next step in the process for
 13:56 23 you is sentencing?
 13:57 24 A. Yes.
 13:57 25 Q. Has your sentencing been postponed in this case?

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13:57 1 A. Yes.
 13:57 2 Q. Now, at the time you entered this guilty plea, were you
 13:57 3 cooperating with the Government?
 13:57 4 A. No.
 13:57 5 Q. At some point after the guilty plea, did you make a
 13:57 6 decision to cooperate with the Government?
 13:57 7 A. Yes.
 13:57 8 Q. And was that after meeting with Special Agent Kopp,
 13:57 9 myself, and others, along with your lawyer, Mr. Levin?
 13:57 10 A. Yes.
 13:57 11 Q. But so the record is clear, if I understand your
 13:57 12 testimony, that occurred after you had already entered the
 13:57 13 guilty plea; is that right?
 13:57 14 A. Yes.
 13:57 15 Q. If we go page 2 --
 13:57 16 MR. ASKIN: Your Honor, I'm sorry. I would ask,
 13:57 17 while it's not in evidence, by agreement of all counsel, I
 13:57 18 would ask to display portions of J-KY-1, which is the plea
 13:57 19 agreement that I'm showing, to the witness and the jury
 13:58 20 without admitting it.
 13:58 21 THE COURT: All right. To aid in the examination.
 13:58 22 Any objection?
 13:58 23 MR. MADDEN: No, your Honor.
 13:58 24 MR. MARKOWITZ: No, your Honor.
 13:58 25 THE COURT: You may publish.

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13:58 1 The jury will understand this is for purposes of the
 13:58 2 witness's testimony. The document itself is not in evidence
 13:58 3 and will not be made part of the evidence. Please don't rely
 13:58 4 on the truth of anything that you may read on the screen.
 13:58 5 Focus instead on the testimony of the witness.
 13:58 6 (Document published to jury.)
 13:58 7 BY MR. ASKIN:
 13:58 8 Q. Okay. Now that we're displaying it, the plea agreement
 13:58 9 has -- it's written in sort of a letter form addressed to your
 13:58 10 lawyer, Mr. Peter Levin, correct?
 13:58 11 A. Yes.
 13:58 12 Q. Okay. And is it fair to say this isn't a document that
 13:58 13 you typed up, correct; it was typed up by someone in the U.S.
 13:58 14 Attorney's Office?
 13:58 15 A. Yes.
 13:58 16 Q. As far as you know?
 13:58 17 A. Yes.
 13:58 18 Q. Okay. And so here's the date up here, December 23rd,
 13:58 19 2013, correct?
 13:58 20 A. Yes.
 13:58 21 Q. And it's addressed to your lawyer, Peter Levin, here,
 13:59 22 correct?
 13:59 23 A. Yes.
 13:59 24 Q. Okay. And this talks about the charge that you're
 13:59 25 pleading guilty to, which is conspiracy to distribute heroin.

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13:59 1 under Title 21 United States Code Section 846, correct?
 13:59 2 A. Yes.
 13:59 3 Q. And that it was in violation of Sections 841(a)(1) and
 13:59 4 (b)(1)(B), correct, of Title 21 section 841, correct?
 13:59 5 A. Yes.
 13:59 6 Q. Now, if you go to page 2 of the plea agreement -- by the
 13:59 7 way, this is -- there's a case number at the top and it says
 13:59 8 filed, do you see that, 4/4/2014, correct?
 13:59 9 A. Yes.
 13:59 10 Q. Do you recall, was that approximately the time, was that
 13:59 11 the time frame, early April of 2014, when you entered the
 13:59 12 guilty plea before Judge Irenas in open court?
 13:59 13 A. Yes.
 14:00 14 Q. Okay. And again, this isn't something that you typed on
 14:00 15 the document, correct?
 14:00 16 A. Yes.
 14:00 17 Q. Okay. Sentencing, do you see the provisions here? I
 14:00 18 want you to look at this very closely. The sentencing
 14:00 19 provision, it lists here in the plea agreement the maximum
 14:00 20 penalties and the mandatory minimum penalties.
 14:00 21 MR. ASKIN: If you could zero in on that a little bit
 14:00 22 so the jurors can see it. Okay.
 14:00 23 BY MR. ASKIN:
 14:00 24 Q. Do you see this here, the violation that you pled guilty
 14:00 25 to, is there a mandatory minimum prison sentence for that

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14:00 1 offense?
 14:00 2 A. Yes.
 14:00 3 Q. And what is the mandatory minimum prison sentence of the
 14:00 4 offense that you pled guilty to?
 14:00 5 A. Five and 40.
 14:00 6 Q. Five and 40 are combining things. What is the mandatory
 14:00 7 minimum prison sentence? Just answer that question.
 14:00 8 A. Five years.
 14:00 9 Q. And did you understand that when you entered the guilty
 14:00 10 plea?
 14:00 11 A. Yes.
 14:00 12 Q. The maximum prison sentence that Judge Irenas imposed in
 14:00 13 terms of incarceration is what, up to how many years?
 14:01 14 A. 40 years.
 14:01 15 Q. And then it says here a maximum fine up to \$5 million or
 14:01 16 twice the gross profits to you, correct?
 14:01 17 A. Yes.
 14:01 18 Q. Did you understand that those were the maximum penalties
 14:01 19 when you pled guilty?
 14:01 20 A. Yes.
 14:01 21 Q. This paragraph here says that the sentence to be imposed
 14:01 22 on you is within the sole discretion of the sentencing judge,
 14:01 23 again, Judge Irenas, correct?
 14:01 24 A. Yes.
 14:01 25 Q. And that the United States Sentencing Guidelines, which

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14:01 1 we'll get to in a minute, are advisory, not mandatory. In
 14:01 2 other words, the Court considers the guidelines, but could
 14:01 3 sentence you below or above the guideline range for your plea;
 14:01 4 do you understand that?
 14:01 5 A. Yes.
 14:01 6 Q. Did you understand all that when you pled guilty?
 14:01 7 A. Yes.
 14:01 8 Q. This --
 14:01 9 MR. ASKIN: Page down, Mr. Darragh, a little bit.
 14:01 10 BY MR. ASKIN:
 14:01 11 Q. There's some other language in here about you have to pay
 14:01 12 a special assessment, that's mandatory, of \$100. You
 14:01 13 understood that, correct?
 14:01 14 A. Yes.
 14:01 15 Q. You have to pay an assessment to the Court of \$100 that's
 14:01 16 due at sentencing. You may be ordered to do certain other
 14:02 17 things, but I want you to focus on this, number 4. Pursuant
 14:02 18 to Title 21 United States Code -- U.S.C. stands for United
 14:02 19 States Code, right -- Section 841, the Court must require
 14:02 20 Kareem Young to serve a term of supervised release of at least
 14:02 21 four years, which will begin at the expiration of any term of
 14:02 22 imprisonment imposed. Do you see that?
 14:02 23 A. Yes.
 14:02 24 Q. Do you understand that -- did you understand when you
 14:02 25 entered the plea that Judge Irenas, if he sentences you to a

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14:02 1 period of imprisonment, must impose at least four years of
 14:02 2 supervision on you?
 14:02 3 A. Yes.
 14:02 4 Q. Did you understand that when you pled guilty?
 14:02 5 A. Yes.
 14:02 6 Q. And do you understand that's just a minimum, that he
 14:02 7 could impose up to a lifetime of supervised release on you?
 14:02 8 A. Yes.
 14:02 9 Q. Okay. Do you also understand this sentence here? Read
 14:02 10 this to yourself for a minute. Should Kareem Young be placed
 14:02 11 on a term of supervision and subsequently violate the
 14:02 12 conditions, just read that for a minute.
 14:03 13 Have you had a chance to read that?
 14:03 14 A. Yes.
 14:03 15 Q. Did you read it before you signed the plea?
 14:03 16 A. Yes.
 14:03 17 Q. You understood it at the time of the guilty plea?
 14:03 18 A. Yes.
 14:03 19 Q. If you violate -- when you're ultimately released from
 14:03 20 prison, if you violate the terms of your supervision under
 14:03 21 the -- supervision of the United States probation officer,
 14:03 22 what can Judge Irenas do to you while you're on supervision if
 14:03 23 you are found to have violated the terms of that conditions?
 14:03 24 A. I would be sentenced to no more than three years
 14:03 25 imprisonment.

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- 14:03 1 Q. All right. Do you understand that that no more than
 14:03 2 three years provision under the case law means that each time
 14:03 3 you commit or are found in violation, you could get another
 14:03 4 three years?
 14:03 5 A. Yes.
 14:03 6 Q. More than once, correct?
 14:03 7 A. Yes.
 14:03 8 Q. Did you understand that at the time you pled guilty?
 14:03 9 A. Yes.
 14:03 10 Q. Okay. The plea also has a waiver of appellate and
 14:04 11 post-sentencing rights in it. Do you see that? I'm pointing
 14:04 12 to it here. This is on page 3 of the agreement. Do you see
 14:04 13 that?
 14:04 14 A. Yes.
 14:04 15 Q. Did you agree to waive -- engage in a limited waiver, a
 14:04 16 waiver of certain appellate rights that you had as part of
 14:04 17 this guilty plea?
 14:04 18 A. Yes.
 14:04 19 Q. Did you -- without going into the detail, did you discuss
 14:04 20 that with the attorney before you entered into that agreement?
 14:04 21 A. Yes.
 14:04 22 Q. Now, if we could go to -- look at the other provisions
 14:04 23 section down here. It says, this agreement is limited to the
 14:04 24 U.S. Attorney's Office for the District of New Jersey and
 14:04 25 cannot bind other federal, state, or local authorities.

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- 14:05 1 A. Yes.
 14:05 2 Q. In other words, we agree to call them on the phone and
 14:05 3 tell them what's going on; is that right?
 14:05 4 A. Yes.
 14:05 5 Q. Any agreement beyond that to your understanding of this
 14:05 6 agreement and what you've been told?
 14:05 7 A. No.
 14:05 8 Q. In other words, the Atlantic County Prosecutor's Office
 14:06 9 will do what they deem appropriate, right?
 14:06 10 A. Yes.
 14:06 11 Q. Despite this agreement; is that right?
 14:06 12 A. Yes.
 14:06 13 Q. Look at this right above my signature, it says, no other
 14:06 14 promises. This agreement constitutes the plea agreement
 14:06 15 between Kareem Young and this office -- meaning the U.S.
 14:06 16 Attorney's Office for the District of New Jersey -- supercedes
 14:06 17 previous agreements. Look at this sentence, no additional
 14:06 18 promises, agreements, or conditions have been made or will be
 14:06 19 made unless set forth in writing and signed by the parties.
 14:06 20 Do you see that?
 14:06 21 A. Yes.
 14:06 22 Q. Now, later on -- we'll get to it in a minute -- you
 14:06 23 signed another agreement called a cooperation agreement,
 14:06 24 correct?
 14:06 25 A. Yes.

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- 14:04 1 However, this office will bring this agreement to the
 14:04 2 attention of other prosecuting offices if requested to do so.
 14:04 3 Do you understand that?
 14:04 4 A. Yes.
 14:04 5 Q. Now, you previously testified that you have cases pending
 14:05 6 in Atlantic County, correct? State cases?
 14:05 7 A. Yes.
 14:05 8 Q. For drug offenses or other offenses; is that right?
 14:05 9 A. Yes.
 14:05 10 Q. Did you write me a letter recently about those cases and
 14:05 11 what could be done about them?
 14:05 12 A. Yes.
 14:05 13 Q. Okay. And you sent that letter to me like, hey, Mr.
 14:05 14 Askin, or hey, Pat, you know, what can be done about these
 14:05 15 cases, something to that effect, correct?
 14:05 16 A. Yes.
 14:05 17 Q. Okay. Is there any agreement between you and the
 14:05 18 Government to dispose of those cases in a particular fashion,
 14:05 19 to get rid of those cases or to make sure that a certain
 14:05 20 outcome comes out with those state cases?
 14:05 21 A. No.
 14:05 22 Q. Okay. Do you see what this says, that we'll bring this
 14:05 23 agreement to the attention of other prosecutor's offices,
 14:05 24 including the Atlantic County Prosecutor's Office? Did we
 14:05 25 agree to do that?

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- 14:06 1 Q. But that came after this; is that right?
 14:06 2 A. Yes.
 14:06 3 Q. So, is it fair to say that this was the entirety of your
 14:06 4 agreement with the Government before you signed the
 14:06 5 cooperation agreement, right?
 14:06 6 A. Yes.
 14:06 7 Q. And now you have two agreements with the Government that,
 14:07 8 put together, are your agreements or the promises made to you;
 14:07 9 is that right?
 14:07 10 A. Yes.
 14:07 11 Q. I'm just going to go to -- page 5 is the signature page
 14:07 12 where you, you've already testified -- this wasn't displayed
 14:07 13 to the jury -- but you signed this, it looks like, on January
 14:07 14 the 30th of 2014, correct?
 14:07 15 A. Yes.
 14:07 16 Q. And it looks like Mr. Levin, your lawyer, signed it the
 14:07 17 same day?
 14:07 18 A. Yes.
 14:07 19 Q. Go to the plea stipulations. This is what we call a
 14:07 20 schedule A, and it has certain stipulations in it. Do you see
 14:07 21 this? Just read the first paragraph to yourself.
 14:08 22 A. I read it.
 14:08 23 Q. Okay. The stipulation, was it explained to you by your
 14:08 24 lawyer that a stipulation was an agreement by the parties to
 14:08 25 certain facts?

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14:08 1 A. Yes.
 14:08 2 Q. Okay. So, this says, the parties, meaning you and Mr.
 14:08 3 Levin and the Government, represented by myself and Mr.
 14:08 4 Danilewitz and Mr. Mallqui-Burgos, are going to agree to
 14:08 5 certain facts in terms of the sentencing proceeding and in
 14:08 6 terms of your guilty plea. Do you understand that?
 14:08 7 A. Yes.
 14:08 8 Q. Did you understand that at the time you signed this?
 14:08 9 A. Yes.
 14:08 10 Q. Now, was it explained to you whether or not our
 14:08 11 stipulations are -- between you and your lawyer and the
 14:08 12 Government and its lawyers are binding upon the Court?
 14:08 13 A. Yes.
 14:08 14 Q. And are the stipulations between the parties binding upon
 14:08 15 the Court and the Probation Department?
 14:08 16 A. Yes.
 14:08 17 Q. You think they are?
 14:08 18 A. Oh, say it again.
 14:08 19 Q. Okay. Read this first line here. Do you see this? This
 14:09 20 office and Kareem Young recognize the United States Sentencing
 14:09 21 Guidelines are not binding upon the Court. Do you see that?
 14:09 22 A. Yes.
 14:09 23 Q. The office and Kareem Young nevertheless agree to the
 14:09 24 stipulations set forth herein and agree that the Court should
 14:09 25 sentence Kareem Young within the guideline range that results

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14:09 1 from the total guidelines offense level set forth below. Do
 14:09 2 you see that?
 14:09 3 A. Yes.
 14:09 4 Q. But did you understand when you agreed to this that this
 14:09 5 binds you and your lawyer from arguing something different
 14:09 6 than that's in the agreement. Do you understand that?
 14:09 7 A. Yes.
 14:09 8 Q. It binds the Government to stick by what it said the
 14:09 9 facts are in these stipulations. Do you understand that?
 14:09 10 A. Yes.
 14:09 11 Q. But the Court, was the Court a party to these
 14:09 12 stipulations? Was the Court part of this stipulation process?
 14:09 13 A. Yes.
 14:09 14 Q. Okay. If -- let me ask you it this way. If Judge
 14:09 15 Irenas --
 14:09 16 MR. MADDEN: Objection, asked and answered.
 14:10 17 MR. ASKIN: Well, Judge, I'm trying to --
 14:10 18 THE COURT: Overruled.
 14:10 19 BY MR. ASKIN:
 14:10 20 Q. If Judge Irenas looks at this, these stipulations here as
 14:10 21 to drug quantity and acceptance of responsibility and other
 14:10 22 things that we stipulated to, and Judge Irenas doesn't agree
 14:10 23 with it, he doesn't think it's accurate, does Judge Irenas
 14:10 24 have to live by this?
 14:10 25 A. No.

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14:10 1 Q. Okay. So, you understand that this is not binding on
 14:10 2 Judge Irenas. That's what I mean when I say the Court, I mean
 14:10 3 Judge Irenas.
 14:10 4 A. Yes.
 14:10 5 Q. Okay. In other words, Judge Irenas will make his own
 14:10 6 determination about what the guidelines in your case should
 14:10 7 be, correct?
 14:10 8 A. Yes.
 14:10 9 Q. Did you understand -- now that I asked you the questions
 14:10 10 this way, do you understand it?
 14:10 11 A. Yes, now I do.
 14:10 12 Q. Okay. And did you understand when you stipulated that,
 14:10 13 that was between you and your lawyer and the Government but
 14:10 14 not binding on Judge Irenas?
 14:10 15 A. Yes.
 14:10 16 Q. In other words, he may go along with it if he thinks it's
 14:10 17 accurate, but if he doesn't, the Judge is going to make his
 14:10 18 own determination based on the law and the facts. Do you
 14:11 19 understand that?
 14:11 20 A. Yes.
 14:11 21 Q. In making determinations that could affect your
 14:11 22 sentencing. Do you understand that?
 14:11 23 A. Yes.
 14:11 24 Q. In here there's a stipulation -- look at number 3. Was
 14:11 25 it explained to you that the base offense level for a drug

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14:11 1 offense is generally set by the quantity of drugs and the type
 14:11 2 of drugs that you are being held responsible for?
 14:11 3 A. Yes.
 14:11 4 Q. Okay. And the type of drug -- in stipulation number 3,
 14:11 5 what's the type of drug you're being held responsible for?
 14:11 6 What drug?
 14:11 7 A. Heroin.
 14:11 8 Q. Okay. And what is the quantity that you are being held
 14:11 9 responsible for, between what and what in terms of number of
 14:11 10 grams?
 14:11 11 A. 400 grams to 700 grams.
 14:11 12 Q. Is that what you agreed to be held jointly responsible
 14:11 13 for distributing in your plea agreement stipulations?
 14:12 14 A. Yes.
 14:12 15 Q. Now, had you not stipulated and entered this guilty plea,
 14:12 16 do you believe that this quantity could have been higher?
 14:12 17 A. Yes.
 14:12 18 Q. In other words, the quantity used at your sentencing
 14:12 19 could have been -- could have been higher than this, based on
 14:12 20 the evidence?
 14:12 21 A. Yes.
 14:12 22 Q. Okay. Was that one of the considerations as part of your
 14:12 23 negotiations in your guilty plea?
 14:12 24 A. Yes.
 14:12 25 Q. Did Mr. Levin -- on your behalf in consultation with you,

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- 14:12 1 did your lawyer negotiate the terms of this plea agreement
 14:12 2 with the Government, namely, with me?
 14:12 3 A. Yes.
 14:12 4 Q. Okay. Look at number 4. Read it to yourself, and then
 14:12 5 I'm going to ask you a question about it.
 14:13 6 Did you have a chance to read that?
 14:13 7 A. Yes.
 14:13 8 Q. Okay. And you read this before you signed the plea,
 14:13 9 correct?
 14:13 10 A. Yes.
 14:13 11 Q. It says, the specific offense characteristics relating to
 14:13 12 the possession of a dangerous weapon, including a firearm,
 14:13 13 applies because Kareem Young and other co-conspirators
 14:13 14 possessed firearms in furtherance of the drug trafficking
 14:13 15 crime. This resulted in an increase of two levels under -- it
 14:13 16 cites the guideline section. I'm not going to read the
 14:13 17 guideline section.
 14:13 18 Did you agree to that?
 14:13 19 A. Yes.
 14:13 20 Q. Did you, in fact, possess firearms in furtherance of the
 14:13 21 drug trafficking conspiracy?
 14:13 22 A. Yes.
 14:13 23 Q. Did, in fact, other co-conspirators in this case possess
 14:13 24 firearms in furtherance of the drug trafficking conspiracy, in
 14:13 25 your estimation, when you were considering pleading guilty?

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- 14:13 1 A. Yes.
 14:13 2 Q. Okay. Now, look at numbers 5 and 6. These are
 14:14 3 stipulations that we generally refer to as, lawyers generally
 14:14 4 refer to them as acceptance of responsibility stipulations.
 14:14 5 Just take a minute and look at that.
 14:14 6 Now, Mr. Young, was it explained to you by counsel that
 14:14 7 if you entered a guilty plea, the level of your sentencing
 14:14 8 guidelines could drop based on these stipulations for what we
 14:14 9 call acceptance of responsibility; in other words, for
 14:14 10 admitting your conduct and pleading guilty?
 14:14 11 A. Yes.
 14:14 12 Q. And did, in fact, you and the Government agree to a total
 14:14 13 between five and six -- I'm not going to go through the whole
 14:14 14 thing -- but three levels off your guideline range, your total
 14:15 15 offense level, lowering your guideline range, for your
 14:15 16 pleading guilty and accepting responsibility?
 14:15 17 A. Yes.
 14:15 18 Q. And you understand that that -- do you understand that to
 14:15 19 be commonly done, that when you plead guilty, you get these
 14:15 20 points off?
 14:15 21 A. Yes.
 14:15 22 Q. The second part of it, the one point off, talks about
 14:15 23 timely notifying authorities of your intention to enter a
 14:15 24 guilty plea. Do you see that?
 14:15 25 A. Yes.

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- 14:15 1 Q. Did you timely notify the Government through counsel or
 14:15 2 directly, assuming through counsel, that you intended to plead
 14:15 3 guilty?
 14:15 4 A. Yes.
 14:15 5 Q. And do you believe you are entitled to these three levels
 14:15 6 off?
 14:15 7 A. Yes.
 14:15 8 Q. The next paragraph talks about your total offense level
 14:15 9 being level 27. Do you see that? Look at number 7. It says,
 14:15 10 in accordance with the above, the parties agree that the total
 14:15 11 guidelines offense level applicable to Kareem Young is 27,
 14:16 12 subject to any applicable statutory mandatory minimum. Do you
 14:16 13 see that?
 14:16 14 A. Yes.
 14:16 15 Q. Okay. Did you ultimately receive a presentence report
 14:16 16 prepared by a probation officer and go over it with your
 14:16 17 lawyer?
 14:16 18 A. Yes.
 14:16 19 Q. Okay. And did you go over it with him in terms of this
 14:16 20 total offense level?
 14:16 21 A. Yes.
 14:16 22 Q. Okay. And the presentence report is -- you understand
 14:16 23 that that's used by the Court in part, prepared by the
 14:16 24 probation officer and used by the Court in part to determine
 14:16 25 where in the guidelines, where your sentence should be for

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- 14:16 1 Judge Irenas. Do you understand that?
 14:16 2 A. Yes.
 14:16 3 Q. Even though the guidelines are advisory, the Judge uses
 14:16 4 that, all the information contained in there, to help try to
 14:16 5 assess where you should be sentenced and how much time you
 14:16 6 should get. Do you understand that?
 14:16 7 A. Yes.
 14:16 8 Q. Assuming you should get time in a particular case. Do
 14:16 9 you understand that?
 14:16 10 A. Yes.
 14:16 11 Q. Now, do you understand this to be an important number,
 14:16 12 the total offense level, 27?
 14:16 13 A. Yes.
 14:16 14 Q. Okay. Do you recall subsequent to this whether -- when I
 14:17 15 say subsequent, I mean after this -- whether or not there were
 14:17 16 any changes made to the law of the sentencing guidelines?
 14:17 17 A. Yes.
 14:17 18 Q. And did that, in fact, lower all drug offense sentencing
 14:17 19 levels by two levels?
 14:17 20 A. Yes.
 14:17 21 Q. And do you believe you're going to get the benefit of
 14:17 22 that?
 14:17 23 A. Yes.
 14:17 24 Q. So, you may well be sentenced to a level of 25 if that's
 14:17 25 the case; is that right?

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- 14:17 1 **A. Yes.**
- 14:17 2 **Q.** Also, was it explained to you how your criminal history
- 14:17 3 affects your sentence in a particular case, like, for example,
- 14:17 4 this drug case?
- 14:17 5 **A. Yes.**
- 14:17 6 **Q.** Okay. If both of us are federal drug defendants and we
- 14:17 7 both have a sentencing range of 25 or 27 and I have no
- 14:17 8 criminal history, never been in trouble in my life, and you
- 14:17 9 have a lot of criminal history points, who is going to face a
- 14:17 10 higher sentencing guideline range?
- 14:17 11 **A. Me.**
- 14:17 12 **Q.** Because of that criminal history, correct?
- 14:17 13 **A. Yes.**
- 14:17 14 **Q.** And were you shown the chart at the back of the federal
- 14:17 15 sentencing guidelines book that shows on the one side the
- 14:18 16 offense levels and on the other side across the top the
- 14:18 17 different criminal history categories, I through VI?
- 14:18 18 **A. Yes.**
- 14:18 19 **Q.** If you recall, do you remember what criminal history
- 14:18 20 category you believe you're in? If you recall.
- 14:18 21 **A. V.**
- 14:18 22 **Q.** You think you're in V?
- 14:18 23 **A. Yes.**
- 14:18 24 **Q.** Okay. Do you remember, to the best of your recollection,
- 14:18 25 what your advisory resentencing guideline range is?

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- 14:18 1 **A. Yes.**
- 14:18 2 **Q.** And what is it?
- 14:18 3 **A. 120 months to 150 months.**
- 14:18 4 **Q.** Okay. Do you recall if that's before or after taking
- 14:18 5 into consideration that change in the law?
- 14:18 6 **A. Before.**
- 14:18 7 **Q.** Before. So, it was, before the change in the law, you
- 14:18 8 believe 120 to 150 months, right?
- 14:18 9 **A. Yes.**
- 14:18 10 **Q.** Now, 120 months, we can all, I'm not particularly good at
- 14:18 11 math, but we can all do the math. 120 months is 10 years,
- 14:18 12 right?
- 14:18 13 **A. Yes.**
- 14:18 14 **Q.** Add 24 months is 144 months. That's 12 years?
- 14:18 15 **A. Yes.**
- 14:18 16 **Q.** So, basically, we're talking about 10 to 12-and-a-half
- 14:18 17 years, correct?
- 14:18 18 **A. Yes.**
- 14:18 19 **Q.** That's the range. It might be somewhat, a little bit
- 14:19 20 lower than that because of the change in the sentencing law
- 14:19 21 that lowers the base offense level and thus the total offense
- 14:19 22 level, right?
- 14:19 23 **A. Yes.**
- 14:19 24 **Q.** But you know you're looking at maybe a little bit less
- 14:19 25 than 10 to 12 years in the guideline range, correct?

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- 14:19 1 **A. Yes.**
- 14:19 2 **Q.** And you know even without cooperation, I want you to
- 14:19 3 think about this, the guidelines are advisory? Before you
- 14:19 4 even sign a cooperation agreement, your maximum is 40 years.
- 14:19 5 Could Judge Irenas, forget about cooperation for a minute,
- 14:19 6 could Judge Irenas sentence you to lower than that sentencing
- 14:19 7 range of 10 to 12 years?
- 14:19 8 **A. Yes.**
- 14:19 9 **Q.** Even without cooperation, correct?
- 14:19 10 **A. Yes.**
- 14:19 11 **Q.** And you understood that because the guidelines are
- 14:19 12 advisory?
- 14:19 13 **A. Yes.**
- 14:19 14 **Q.** Now, without cooperation, could Judge Irenas sentence you
- 14:19 15 below the mandatory minimum sentence?
- 14:19 16 **A. No.**
- 14:19 17 **Q.** He would have no authority to do so unless we file a
- 14:19 18 motion, correct?
- 14:19 19 **A. Yes.**
- 14:19 20 **Q.** Could Judge Irenas, if he wanted to, and he had a good
- 14:19 21 reason, sentence you to more than the guideline range, since
- 14:19 22 either, A, he determined that there was a different guideline
- 14:20 23 range, not what we agreed to, right; he could do that, right?
- 14:20 24 **A. Yes.**
- 14:20 25 **Q.** Could he also determine the same guideline range and say,

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- 14:20 1 you know what, this guy Young I think deserves more time than
- 14:20 2 this for these good reasons, and sentence you to more than
- 14:20 3 that, up to the statutory maximum of 40 years; could he do
- 14:20 4 that?
- 14:20 5 **A. Yes.**
- 14:20 6 **Q.** And you understood that when you pled guilty?
- 14:20 7 **A. Yes.**
- 14:20 8 **Q.** Are those -- I'm sorry. Look at the bottom of page 9.
- 14:20 9 I'm going to do this real quickly. Bottom of page 9 and the
- 14:20 10 top of page 10 -- oh, I'm sorry, it's not displaying properly.
- 14:20 11 Is that, in fact, the appellate waiver paragraph?
- 14:20 12 **A. Yes.**
- 14:20 13 **Q.** It's actually number 9, okay. It starts at the bottom of
- 14:20 14 page -- bottom of page 6. Kareem Young knows and, except as
- 14:21 15 noted below, voluntarily waives the right to file an appeal,
- 14:21 16 collateral attack, any writ or motion, and then it names the
- 14:21 17 different statutes, right?
- 14:21 18 **A. Yes.**
- 14:21 19 **Q.** And basically says that if you are sentenced at a certain
- 14:21 20 level, level 27 or below, correct me if I'm wrong, you've
- 14:21 21 waived your appellate rights, right?
- 14:21 22 **A. Yes.**
- 14:21 23 **Q.** Did you agree, after consulting with your lawyer, to
- 14:21 24 plead guilty, waive those rights, and also to waive your
- 14:21 25 appellate rights as long as you're sentenced at that level 27

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14:21 1 or below?

14:21 2 A. Yes.

14:21 3 Q. Do you understand that if you change your mind later, if

14:21 4 you're sentenced at level 27 or below, you're not going to be

14:21 5 able to appeal; do you understand that?

14:21 6 A. Yes.

14:21 7 Q. And did you agree to do that as part of the guilty plea

14:21 8 in this case?

14:21 9 A. Yes.

14:21 10 Q. Are those the basic terms of your plea agreement with the

14:21 11 Government? I'm just talking about the plea agreement. We'll

14:21 12 get to the cooperation agreement in a minute, but have we

14:21 13 properly characterized, as you understand it, the basic terms

14:21 14 of your plea agreement?

14:21 15 A. Yes.

14:21 16 Q. And what you're facing?

14:21 17 A. Yes.

14:21 18 Q. Now, we referred to the waiver of indictment. This is

14:22 19 Government's Exhibit, which I'm displaying, J-K-10.

14:22 20 (GOVERNMENT EXHIBIT J-K-10 WAS MARKED FOR IDENTIFICATION.)

14:22 21 (Document published to jury.)

14:22 22 BY MR. ASKIN:

14:22 23 Q. Do you see that?

14:22 24 A. Yes.

14:22 25 Q. Did you -- it looks like the date -- I'm having a little

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14:22 1 trouble reading, but it looks like it's April 4th of 2014. Is

14:22 2 that the waiver of indictment that you signed?

14:22 3 A. Yes.

14:22 4 Q. Okay. And it's signed also by, it looks like by Peter

14:22 5 Levin, correct?

14:22 6 A. Yes.

14:22 7 Q. And it's also signed by Judge Irenas, right?

14:22 8 A. Yes.

14:22 9 Q. And that's what we talked about earlier, you waived

14:22 10 indictment and allowed the Government to proceed by filing an

14:22 11 information against you?

14:22 12 A. Yes.

14:22 13 MR. ASKIN: Okay. I'm going to put on Government's

14:22 14 Exhibit J-K, for the record, J-KY-11.

14:22 15 (GOVERNMENT EXHIBIT J-KY-11 WAS MARKED FOR IDENTIFICATION.)

14:22 16 (Document published to jury.)

14:22 17 BY MR. ASKIN:

14:22 18 Q. Again, at the top, this is, for the record, the

14:22 19 information that was filed. It has a filing date at the top,

14:23 20 Mr. Young, of 4/4/2014, correct?

14:23 21 A. Yes.

14:23 22 Q. Okay. Is this, in fact -- it has your name, Kareem

14:23 23 Young?

14:23 24 A. Yes.

14:23 25 Q. It also has an a/k/a, also known as. What does it list

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14:23 1 there?

14:23 2 A. Crash.

14:23 3 Q. Is that what you were known as on the street? Was that

14:23 4 your nickname on the street?

14:23 5 A. Yes.

14:23 6 Q. Did you receive a copy of this? This is the charging

14:23 7 document once you agree to proceed by way of an information

14:23 8 and waive indictment. This is the charging document that your

14:23 9 guilty plea refers to. This is the official charge. Did you

14:23 10 read this over with your lawyer before you entered a guilty

14:23 11 plea?

14:23 12 A. Yes.

14:23 13 Q. Did Judge Irenas go over it with you at your plea

14:23 14 hearing?

14:23 15 A. Yes.

14:23 16 Q. Okay. And it says that you knowingly and intentionally

14:23 17 conspired and agreed with others to distribute and possess

14:23 18 with the intent to distribute 100 grams or more of a mixture

14:24 19 or substance containing a detectable amount of heroin,

14:24 20 correct?

14:24 21 A. Yes.

14:24 22 Q. And did you understand that that 100 grams or more is

14:24 23 what triggered that five year mandatory minimum that you were

14:24 24 pleading guilty to?

14:24 25 A. Yes.

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14:24 1 Q. And it says, in violation of Title 21 United States Code

14:24 2 Section 846. Did you know that to be the conspiracy to

14:24 3 distribute statute?

14:24 4 A. Yes.

14:24 5 Q. At least at the time you entered this?

14:24 6 A. Yes.

14:24 7 Q. Is this the charging document for the charge that you

14:24 8 pled guilty to?

14:24 9 A. Yes.

14:24 10 Q. Okay. Now, after you pled guilty, you continued to be

14:24 11 held in custody at the Federal Detention Center; is that

14:24 12 right?

14:24 13 A. Yes.

14:24 14 Q. And is that where you were held for the first, just about

14:24 15 the first year until, at least until your guilty plea; is that

14:24 16 right?

14:24 17 A. Yes.

14:24 18 Q. Okay. And were you over at the Federal Detention Center

14:25 19 when you received a draft copy of the presentence report?

14:25 20 A. Yes.

14:25 21 Q. Okay. Now, having been through the federal process, are

14:25 22 you familiar with the fact that the probation officer draws up

14:25 23 a draft presentence report, and then comments are made to it,

14:25 24 revisions are made to it if necessary, and then a final

14:25 25 presentence report is prepared?

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14:25 1 A. Yes.
 14:25 2 Q. Okay. Do you recall being at the Federal Detention
 14:25 3 Center and going over your draft presentence report?
 14:25 4 A. Yes.
 14:25 5 Q. And did it list at the time an advisory guideline range
 14:25 6 that the probation officer, in his opinion, felt should apply
 14:25 7 to your offense?
 14:25 8 A. Yes.
 14:25 9 Q. Do you remember what it was, whether it was the same as
 14:25 10 in your plea or a different; do you remember what it was?
 14:25 11 A. It was the same.
 14:25 12 Q. Okay. 120 to 150?
 14:25 13 A. Yes.
 14:25 14 Q. Okay. Now, just so the jurors are clear, did you have an
 14:26 15 understanding of what 120 to 150 meant?
 14:26 16 A. Yes.
 14:26 17 Q. That's a number of months, correct?
 14:26 18 A. Yes.
 14:26 19 Q. In the federal system, is there -- and I believe Judge
 14:26 20 Irenas explained this to you. Is there any parole? I'm not
 14:26 21 talking about supervised release. Is there any parole where
 14:26 22 you can serve like half your sentence and then get out of half
 14:26 23 of it on like parole like you do in the state?
 14:26 24 A. No.
 14:26 25 Q. Okay. You have to serve essentially the full sentence

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14:26 1 other than earned time, good time; is that right?
 14:26 2 A. Yes.
 14:26 3 Q. Was it explained to you by Judge Irenas that that would
 14:26 4 be roughly somewhere a little shy of 15 percent that you could
 14:26 5 get if you behave yourself while you're in custody?
 14:26 6 A. Yes.
 14:26 7 Q. Off your sentence for earned time?
 14:26 8 A. Yes.
 14:26 9 Q. So, when you entered this guilty plea, did you understand
 14:26 10 that you were going to have to serve at least 85 percent of
 14:26 11 whatever sentence Judge Irenas handed down in your case?
 14:26 12 A. Yes.
 14:26 13 Q. And did you accept those terms that that's what you were
 14:26 14 looking at when you entered the guilty plea?
 14:26 15 A. Yes.
 14:26 16 Q. Okay. And 120 to 150, you understand, or did you
 14:26 17 understand that the judge would pick a particular number of
 14:27 18 months in that range or, if he thought it was appropriate,
 14:27 19 below or above that range? In other words, it's not an
 14:27 20 indeterminate sentence; you'll get a number, 120, 130, 150.
 14:27 21 Do you understand that?
 14:27 22 A. Yes.
 14:27 23 Q. And that's the amount of time you have to serve minus the
 14:27 24 time credit you have and minus any earned time, good time. Do
 14:27 25 you understand that?

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14:27 1 A. Yes.
 14:27 2 Q. Did you understand that at the time?
 14:27 3 A. Yes.
 14:27 4 Q. And you understand that today?
 14:27 5 A. Yes.
 14:27 6 Q. Did you -- do you know what a show and tell is? Did we
 14:27 7 discuss what a show and tell is, a show and tell meeting?
 14:27 8 A. Yes.
 14:27 9 Q. Okay. Did you -- do you recall having a show and tell in
 14:27 10 this case?
 14:27 11 A. Yes.
 14:27 12 Q. Did you, in fact, agree to do that, sit down with your
 14:27 13 lawyer with Special Agent Kopp, myself, and possibly Mr.
 14:27 14 Danilewitz?
 14:27 15 A. Yes.
 14:27 16 Q. And did we do that?
 14:27 17 A. Yes.
 14:27 18 Q. Okay. And did we go over some of the evidence in the
 14:27 19 case with you?
 14:27 20 A. Yes.
 14:28 21 Q. And did we go over certain options that you had for
 14:28 22 dealing with your case, correct?
 14:28 23 A. Yes.
 14:28 24 Q. I mean, every defendant has a constitutional right to go
 14:28 25 to trial, correct; you knew that?

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14:28 1 A. Yes.
 14:28 2 Q. And a defendant could plead guilty if that's personally
 14:28 3 what they feel they should do, correct?
 14:28 4 A. Yes.
 14:28 5 Q. And did we explain to you a third option?
 14:28 6 A. Yes.
 14:28 7 Q. And what was the third option?
 14:28 8 A. Cooperate.
 14:28 9 Q. Did we explain to you about pleading guilty and not just
 14:28 10 pleading guilty, but pleading guilty and cooperating?
 14:28 11 A. Yes.
 14:28 12 Q. And that was essentially, for lack of a better term, the
 14:28 13 third option that we offered you, correct?
 14:28 14 A. Yes.
 14:28 15 Q. At that point in that first show and tell meeting, did
 14:28 16 you agree to do it there, or did we just discuss you thinking
 14:28 17 about it?
 14:28 18 A. Discussed me thinking about it.
 14:28 19 Q. Okay. And did you say something to the effect that you
 14:28 20 would think about it or that you would, you know, get back to
 14:28 21 us?
 14:28 22 A. Yes.
 14:28 23 Q. Okay. At some point did you contact your lawyer after
 14:28 24 the show and tell and after the guilty plea and tell him that
 14:29 25 you had made a decision with respect to that?

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- 14:29 1 **A. Yes.**
- 14:29 2 **Q.** And what did -- what did you decide to do? In terms of
- 14:29 3 cooperation, what did you decide to do? Were you going to do
- 14:29 4 it or not do it?
- 14:29 5 **A. Not.**
- 14:29 6 **Q.** Okay. Initially you decided not to do it, correct?
- 14:29 7 **A. Yes.**
- 14:29 8 **Q.** And you entered the plea thinking that you would not
- 14:29 9 cooperate, you would just plead, get sentenced, try to get the
- 14:29 10 best sentence you could, and do your time, right?
- 14:29 11 **A. Yes.**
- 14:29 12 **Q.** Did you change your mind at some point?
- 14:29 13 **A. Yes.**
- 14:29 14 **Q.** Okay. And did you contact your lawyer and let him know?
- 14:29 15 **A. Yes.**
- 14:29 16 **Q.** Okay. Do you know what a proffer is?
- 14:29 17 **A. Yes.**
- 14:29 18 **Q.** Okay. Did you agree -- and this is a different kind of
- 14:29 19 meeting than a show and tell, correct?
- 14:29 20 **A. Yes.**
- 14:29 21 **Q.** Because, correct me if I'm wrong, your understanding of a
- 14:29 22 show and tell is we, Special Agent Kopp, myself, maybe Mr.
- 14:29 23 Danilewitz, explain to you our case and the different options,
- 14:29 24 correct?
- 14:30 25 **A. Yes.**

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- 14:30 1 **Q.** In a proffer, what happens in a proffer? Who does most
- 14:30 2 of the talking in a proffer?
- 14:30 3 **A. You.**
- 14:30 4 **Q.** Okay. Well, I did do a lot of talking, but...
- 14:30 5 (Laughter.)
- 14:30 6 **BY MR. ASKIN:**
- 14:30 7 **Q.** In a proffer, you ask questions?
- 14:30 8 **A. Yes.**
- 14:30 9 **Q.** Okay. Bad question.
- 14:30 10 In a proffer, you're asked questions and you're asked
- 14:30 11 to answer those questions, correct?
- 14:30 12 **A. Yes.**
- 14:30 13 **Q.** Did you engage in multiple proffers where we asked you
- 14:30 14 questions and you answered the questions?
- 14:30 15 **A. Right.**
- 14:30 16 **Q.** Okay. Did that happen on one occasion after you agreed
- 14:30 17 to cooperate or on multiple occasions?
- 14:30 18 **A. Multiple.**
- 14:30 19 **Q.** Okay.
- 14:30 20 **THE COURT:** Mr. Askin, I have 2:30. I'd like to get
- 14:30 21 back on schedule. You don't have to end this moment, but if
- 14:30 22 you could reach a point in the next five minutes or so when
- 14:30 23 you think it's good to take a break.
- 14:30 24 **MR. ASKIN:** That's fine, your Honor.
- 14:30 25 **BY MR. ASKIN:**

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- 14:30 1 **Q.** Do you recall signing a document called a proffer
- 14:30 2 agreement?
- 14:30 3 **A. Yes.**
- 14:30 4 **Q.** Okay. And you went over that document before the first
- 14:31 5 proffer and signed it with your lawyer?
- 14:31 6 **A. Yes.**
- 14:31 7 **Q.** Okay.
- 14:31 8 **MR. ASKIN:** Judge, I think this is an appropriate, a
- 14:31 9 good point for a break, and then we'll pick up with that.
- 14:31 10 **THE COURT:** All right. Ladies and gentlemen of the
- 14:31 11 jury, we'll now take our afternoon break.
- 14:31 12 **THE DEPUTY COURT CLERK:** All rise.
- 14:31 13 (Whereupon the jury exited the courtroom.)
- 14:31 14 **THE COURT:** All right. Thank you, please be seated.
- 14:31 15 I suppose Mr. Young should be taken out for a break? All
- 14:31 16 right.
- 14:31 17 Is there anything I need to address at this time, Mr.
- 14:32 18 Askin?
- 14:32 19 **MR. ASKIN:** I don't believe so, your Honor.
- 14:32 20 **THE COURT:** Mr. Markowitz?
- 14:32 21 **MR. MARKOWITZ:** I just have one thing, but I'm going
- 14:32 22 to wait until Mr. Young exits.
- 14:32 23 Your Honor, I don't think this is a particularly
- 14:32 24 important part of the direct examination, so I haven't been
- 14:32 25 objecting, but Mr. Askin is leading him, and I have the

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- 14:32 1 feeling that Mr. Young could not answer all of the questions
- 14:32 2 that he asks him as they are phrased. He just keeps answering
- 14:32 3 yes, yes, even though I know it -- they're almost not yes and
- 14:32 4 no answers. It just leads him into a direction. And I
- 14:32 5 understand, for this, I just, you know -- and if you've
- 14:32 6 noticed the jury, that when there are objections, they take
- 14:32 7 them to heart, and I watch their faces and stuff. So, I don't
- 14:32 8 want to object because I don't want to bring undue attention
- 14:32 9 to something that I understand if this would be okay to let's
- 14:32 10 get through it, but I'm just a little concerned because there
- 14:33 11 was a couple times he had no clue of what the question was.
- 14:33 12 **MR. ASKIN:** Well, I mean, Judge, that's definitely
- 14:33 13 true that we led him through some of this stuff, or at least I
- 14:33 14 did, and I think that's largely because I thought it was
- 14:33 15 background information that wasn't that controversial.
- 14:33 16 However, I think Mr. Markowitz makes the point, I mean,
- 14:33 17 there was, when I was asking him about the stipulations thing,
- 14:33 18 it became obvious that he didn't really fully understand.
- 14:33 19 Now, I don't know if that was the way the questions were put
- 14:33 20 to him and maybe they could have been phrased better, but then
- 14:33 21 I started backing off and trying to get his view of it. So, I
- 14:33 22 understand Mr. Markowitz's comment, and I think it is
- 14:33 23 appropriate, but I don't think it was inappropriate to a
- 14:33 24 certain extent to lead him in the background because I think a
- 14:33 25 lot of that stuff both sides want established, quite frankly.

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14:33 1 and it's not -- it's not that controversial.
 14:33 2 We -- I understand we're going to get to a point very
 14:33 3 quickly now that, you know, it really wouldn't be appropriate
 14:33 4 to lead him on certain other things, and then I should back
 14:33 5 off the leading and ask him the questions in a manner that's
 14:33 6 non-leading because I'm on direct examination, and I'm aware
 14:33 7 of that. And I'm not going to -- you know, I'm not going to
 14:34 8 try to get around that. If there are things that he doesn't
 14:34 9 understand, I'll have to come up with other ways to ask the
 14:34 10 question or things to refresh his recollection, et cetera, and
 14:34 11 I'm aware of that.
 14:34 12 MR. MARKOWITZ: I'm satisfied with that, your Honor.
 14:34 13 THE COURT: All right. I think you both identified
 14:34 14 the issue. Mr. Markowitz is not suggesting that the witness
 14:34 15 left a misleading impression where there was confusion. You
 14:34 16 fixed it, but when it starts to get into controverted or
 14:34 17 disputed facts, then that becomes more problematic, and you
 14:34 18 have to ask the questions in a way that avoids leading
 14:34 19 questions.
 14:34 20 MR. ASKIN: Yes, your Honor.
 14:34 21 THE COURT: Thank you both.
 14:34 22 Anything else, Mr. Madden?
 14:34 23 MR. MADDEN: No, your Honor.
 14:34 24 THE COURT: All right. We'll take our break and see
 14:34 25 you back in 10 minutes or so.

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14:34 1 (Recess at 2:34 p.m.)
 14:46 2 (OPEN COURT; 12:40 p.m.)
 14:46 3 THE COURT: All right. Everybody ready to proceed?
 14:47 4 MR. SPADE: Yes, Your Honor.
 14:47 5 MR. ASKIN: Yes, Your Honor.
 14:47 6 THE COURT: Okay. You ready? We'll need Mr. Young.
 14:47 7 All right. It doesn't appear that we need to address
 14:47 8 this -- we could wait to further discuss this legal issue
 14:47 9 until after 4 o'clock, correct?
 14:47 10 MR. ASKIN: I believe that's absolutely true, Your
 14:48 11 Honor.
 14:48 12 THE COURT: All right. Based on our research in
 14:48 13 chambers, it appears the most relevant cases are the *Dotson*
 14:48 14 opinion, the *Lang* opinion from the 2nd Circuit, as well as the
 14:48 15 *Basey* case from the 9th Circuit, I'm -- my staff is
 14:48 16 endeavoring to determine whether any of those three cases have
 14:48 17 been cited.
 14:48 18 THE DEPUTY CLERK: All rise.
 14:48 19 THE COURT: Wait one minute. With approval or
 14:48 20 disapproval by the Third Circuit and I'll let you know what
 14:48 21 I'm able to find.
 14:48 22 MR. ASKIN: Thank you, Your Honor.
 14:48 23 THE COURT: Otherwise, ready to proceed?
 14:48 24 MR. MADDEN: Yes, Your Honor.
 14:48 25 THE COURT: All right.

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14:48 1 THE DEPUTY CLERK: All rise. All rise.
 14:48 2 (JURY ENTERS; 2:48 p.m.)
 14:49 3 THE COURT: All right. Thank you, please be seated.
 14:49 4 Mr. Askin, you may proceed when you're ready.
 14:49 5 BY MR. ASKIN:
 14:49 6 Q. Mr. Young, before the break, I believe you testified that
 14:49 7 you -- prior to the first proffer you signed a -- or you were
 14:49 8 presented with a proffer agreement, correct?
 14:49 9 A. Yes.
 14:49 10 Q. Okay. Let me show you what's been marked --
 14:49 11 MR. ASKIN: And, Your Honor, I'd ask for permission
 14:49 12 under the agreement with counsel to publish the proffer
 14:49 13 agreement, Government's Exhibit J, for the record, dash KY
 14:49 14 dash 7.
 14:49 15 THE COURT: All right. No objection, correct?
 14:49 16 MR. MADDEN: Correct.
 14:49 17 MR. HOLLIDAY: No objection, Your Honor.
 14:49 18 THE COURT: All right. Again, this is not in
 14:49 19 evidence. It's for the aid of examining the witness.
 14:49 20 You may proceed.
 14:49 21 BY MR. ASKIN:
 14:49 22 Q. Okay. Mr. Young, I'm presenting to you a document. I'm
 14:50 23 just going to show the number at the bottom is J-KY-7,
 14:50 24 correct?
 14:50 25 A. Yes.

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14:50 1 Q. That's the Government Exhibit number.
 14:50 2 (GOVERNMENT EXHIBIT J-KY-7 WAS MARKED FOR IDENTIFICATION.)
 14:50 3 BY MR. ASKIN:
 14:50 4 Q. And it's a letter from the U.S. Attorney for the District
 14:50 5 of New Jersey.
 14:50 6 What's the date of the letter at the top?
 14:50 7 A. June 19, 2014.
 14:50 8 Q. And look to the left. Who is the letter addressed to?
 14:50 9 A. Peter Levin.
 14:50 10 Q. And it says, via hand delivery, correct?
 14:50 11 A. Yes.
 14:50 12 Q. Okay. And it says, regarding Kareem Young, correct?
 14:50 13 That's you?
 14:50 14 A. Yes.
 14:50 15 Q. Okay. And this is the letter, if you look at the second
 14:50 16 page for a minute, it's signed Patrick C. Askin, by myself,
 14:50 17 correct?
 14:50 18 A. Yes.
 14:50 19 Q. And look down there on the second page of the letter, who
 14:50 20 else is on the letter?
 14:50 21 A. My lawyer, Peter Levin.
 14:50 22 Q. Uh-huh.
 14:50 23 A. Oh, myself.
 14:50 24 Q. Right. And what date did you and Mr. Levin sign the
 14:50 25 letter, if you can read that?

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- 14:50 **1 A.** 6-19.
- 14:51 **2 Q.** Right.
- 14:51 **3 A.** 2014.
- 14:51 **4 Q.** The same day the letter was presented to you, it's dated
- 14:51 **5** at the top, June 19th, 2014, correct?
- 14:51 **6 A.** Yes.
- 14:51 **7 Q.** Okay. And did your lawyer generally go over the terms of
- 14:51 **8** a proffer agreement with you, the terms of this letter? Did
- 14:51 **9** you read it over with your lawyer privately before you signed
- 14:51 **10** it?
- 14:51 **11 A.** Yes.
- 14:51 **12 Q.** Okay. And was it explained to you -- let me back up.
- 14:51 **13** In a proffer, as you went into your first proffer, did
- 14:51 **14** you understand that Special Agent Kopp and I were going to ask
- 14:51 **15** you some questions about your own criminal activity?
- 14:51 **16 A.** Yes.
- 14:51 **17 Q.** You knew that, right?
- 14:51 **18 A.** Yes.
- 14:51 **19 Q.** Did you understand that we were going to ask you about
- 14:51 **20** the criminal activity of others that you knew about?
- 14:51 **21 A.** Yes.
- 14:51 **22 Q.** Did you understand that you were supposed to answer those
- 14:51 **23** questions truthfully?
- 14:51 **24 A.** Yes.
- 14:51 **25 Q.** Okay. What was your understanding about whether or not

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- 14:51 **1** we could take those statements and turn around and use them
- 14:52 **2** directly against you in terms of, for example, like your drug
- 14:52 **3** quantity and things like that, to enhance your sentence? Were
- 14:52 **4** we going to be allowed to do that under the terms of the
- 14:52 **5** agreement as far as you understood?
- 14:52 **6 A.** No.
- 14:52 **7 Q.** In other words, the statements were somewhat protected,
- 14:52 **8** right?
- 14:52 **9 A.** Yes.
- 14:52 **10 Q.** Okay. You were giving those statements to us as part of
- 14:52 **11** your cooperation and we agreed not to use the statements
- 14:52 **12** directly against you in that way to increase your sentence; is
- 14:52 **13** that right?
- 14:52 **14 A.** Yes.
- 14:52 **15 Q.** Now, if the look at Paragraph 2 -- by the way, this is
- 14:52 **16** June 19th, 2014, so this paragraph -- June 19th, you already
- 14:52 **17** pled guilty as of April of 2014, correct?
- 14:52 **18 A.** Yes.
- 14:52 **19 Q.** So this paragraph, what we could do and not do with the
- 14:52 **20** statements at trial was kind of a moot point, in other words,
- 14:53 **21** it didn't really matter because there was going to be no trial
- 14:53 **22** because you had already pled guilty. Is that fair to say?
- 14:53 **23 A.** Yes.
- 14:53 **24 Q.** Okay. But look at Paragraph 2. Do you see this,
- 14:53 **25** government may make -- make use of any statement made or

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- 14:53 **1** information provided to your client, or on your client's
- 14:53 **2** behalf in a prosecution for false statements, perjury or
- 14:53 **3** obstruction of justice, premised on statements or actions
- 14:53 **4** during or subsequent to the interview.
- 14:53 **5** Did you understand that?
- 14:53 **6 A.** Yes.
- 14:53 **7 Q.** And did you understand that when you signed the
- 14:53 **8** agreement?
- 14:53 **9 A.** Yes.
- 14:53 **10 Q.** Paragraph 3 deals with derivative use of the statements.
- 14:53 **11** Was that explained to you?
- 14:53 **12 A.** Yes.
- 14:53 **13 Q.** Do you remember now what we told you about derivative use
- 14:53 **14** and what that term means? If you don't, just say you don't.
- 14:53 **15 A.** No, I don't.
- 14:53 **16 Q.** Okay. If you don't understand something, please,
- 14:53 **17** whatever the truthful answer is, if you don't understand it,
- 14:53 **18** you don't understand it.
- 14:53 **19** I'm going to ask you the question this way. I usually
- 14:54 **20** give an example of derivative use in these proffers.
- 14:54 **21** Do you remember me telling you that your statement, if
- 14:54 **22** you tell me that you were involved in, let's say
- 14:54 **23** hypothetically, just as an example, you were involved in some
- 14:54 **24** act of violence where someone really got hurt, do you remember
- 14:54 **25** me telling you that under the terms of the proffer agreement,

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- 14:54 **1** our agreement would be -- under the terms of the proffer
- 14:54 **2** agreement, that we couldn't use that statement directly
- 14:54 **3** against you, but that derivative use meant you could tell
- 14:54 **4** Special Agent Kopp and Atlantic City detectives, hey,
- 14:54 **5** Mr. Young told us, X and Y, that he was involved in this
- 14:54 **6** incident, go investigate that and come up with some evidence.
- 14:54 **7 A.** Yes.
- 14:54 **8 Q.** That's derivative use, right?
- 14:54 **9 A.** Yes.
- 14:54 **10 Q.** Did I explain it to you with that kind of an example? Do
- 14:54 **11** you remember that?
- 14:54 **12 A.** Yes.
- 14:54 **13 Q.** Okay. Do you now remember what we were talking about
- 14:54 **14** when the letter talked about derivative use?
- 14:55 **15 A.** Yes.
- 14:55 **16 Q.** And did I explain that to you in the presence of your
- 14:55 **17** lawyer during -- or prior to the first proffer and prior to
- 14:55 **18** you signing this letter?
- 14:55 **19 A.** Yes.
- 14:55 **20 Q.** Do you understand to this day that your statements to us
- 14:55 **21** in those proffers are subject -- while we can't use those
- 14:55 **22** statements against you, are subject to that derivative use
- 14:55 **23** exception. Do you understand that?
- 14:55 **24 A.** Yes.
- 14:55 **25 Q.** And that was explained to you prior to you signing the

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14:55 1 agreement?

14:55 2 **A. Yes.**

14:55 3 **Q.** This Paragraph 7, I believe is what I was referring to

14:55 4 earlier. The government agreed -- look at Paragraph 7, no

14:55 5 statements made by your client, that's you, the client, during

14:55 6 the interview should be used directly to determine the

14:55 7 applicable sentencing guideline range except as set forth in

14:55 8 the final sentence of this paragraph, which the final sentence

14:55 9 of the paragraph, if you read down is, the government may

14:56 10 disclose to the probation officer and the Court any statements

14:56 11 made and information provided, and may use such statements and

14:56 12 information to determine where within a given guideline range

14:56 13 your client should be sentenced, and to oppose any downward

14:56 14 departure or downward adjustment. Do you see that?

14:56 15 **A. Yes.**

14:56 16 **Q.** Did I give you examples -- do you recall me giving you

14:56 17 examples of that, too, of how that would work?

14:56 18 **A. Yes.**

14:56 19 **Q.** Okay. In other words, I explained to you, like, if you

14:56 20 come into the proffer and tell us that, yeah, Askin, I know

14:56 21 that we had -- you had evidence that I was moving, you know,

14:56 22 bricks, 50-packet bricks, but I was also moving -- I'm giving

14:56 23 a crazy hypothetical. I was also moving truckloads of

14:56 24 cocaine, you understand that we couldn't use those statements

14:56 25 under this paragraph directly against you. Do you understand

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14:56 1 that? To say to the Judge, oh, he should be held responsible

14:56 2 for all that cocaine. Do you understand that?

14:56 3 **A. Yes.**

14:56 4 **Q.** But do you understand that we could disclose those

14:56 5 statements to the probation officer -- and probation office,

14:57 6 the probation officer and the Court in order for the Court to

14:57 7 determine whether or not they should be used as to where to

14:57 8 sentence you in terms of the guideline range, and also could

14:57 9 be used by the government to oppose any downward departure or

14:57 10 adjustment. Do you understand that?

14:57 11 **A. Yes.**

14:57 12 **Q.** Do you remember those discussions?

14:57 13 **A. Yes.**

14:57 14 **Q.** And was that explained to you, Paragraph 7, before you

14:57 15 entered into this proffer agreement?

14:57 16 **A. Yes.**

14:57 17 **Q.** Now, do you remember when the government started

14:57 18 interviewing you in these proffers with respect to the date

14:57 19 you signed the proffer letter? Was it around that time or was

14:57 20 it sometime after that? Do you remember?

14:57 21 **A. No, I don't remember.**

14:57 22 **Q.** Okay. Do you remember approximately when you started

14:57 23 being interviewed with respect to -- was it around the summer

14:57 24 of 2014?

14:57 25 **A. Yes.**

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14:57 1 **Q.** Okay. And was there more than one proffer session?

14:58 2 **A. Yes.**

14:58 3 **Q.** And were you interviewed by Special Agent Kopp and myself

14:58 4 several different times?

14:58 5 **A. Yes.**

14:58 6 **Q.** At some point, were you asked to testify before a federal

14:58 7 grand jury?

14:58 8 **A. Yes.**

14:58 9 **Q.** And did you, in fact, testify about your own criminal

14:58 10 conduct and the criminal conduct of others under oath before a

14:58 11 federal grand jury?

14:58 12 **A. Yes.**

14:58 13 **Q.** And that was done as part of your cooperation agreement?

14:58 14 **A. Yes.**

14:58 15 **Q.** Okay. Now, did you begin to cooperate with the

14:58 16 government to the best of your recollection by providing

14:58 17 information in these interviews during the summer of 2014?

14:58 18 **A. Yes.**

14:58 19 **Q.** And you had agreed to cooperate at that point, correct?

14:58 20 **A. Yes.**

14:58 21 **Q.** And do you recall the date that you testified before the

14:59 22 federal grand jury? Do you recall the actual date?

14:59 23 **A. No.**

14:59 24 **MR. ASKIN:** Your honor, with the permission of

14:59 25 counsel and the Court, I would like to approach the witness.

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14:59 1 **MR. MADDEN:** We will stipulate to the date.

14:59 2 **MR. ASKIN:** Okay. Your Honor, that's probably

14:59 3 easier. They're going to stipulate that the date of the grand

14:59 4 jury testimony was Wednesday, September the 10th of 2014.

14:59 5 With that stipulation, I don't need to ask the witness. We

14:59 6 can just assume that fact. Okay?

14:59 7 **THE COURT:** Okay.

14:59 8 **BY MR. ASKIN:**

14:59 9 **Q.** Mr. Young, do you remember, now that there's been a

14:59 10 stipulation, you don't need to remember the date, but do you

14:59 11 recall that at approximately in September of 2014, the exact

14:59 12 date was September 10th of 2014, do you recall me calling you

14:59 13 before a federal grand jury?

14:59 14 **A. Yes.**

14:59 15 **Q.** And you testifying under oath before a federal grand

14:59 16 jury?

14:59 17 **A. Yes.**

14:59 18 **Q.** And did you answer my questions under oath about your own

14:59 19 criminal activity and the criminal activity of others?

14:59 20 **A. Yes.**

14:59 21 **Q.** Okay. At that point, do you remember whether or not you

15:00 22 had -- even though you had agreed to cooperate, whether or not

15:00 23 you had actually been presented with and signed a formal

15:00 24 cooperation agreement?

15:00 25 **A. No, I haven't. No, I haven't.**

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15:00 1 Q. You didn't or you don't remember?
 15:00 2 A. I don't remember.
 15:00 3 Q. Okay.
 15:00 4 MR. ASKIN: May I approach the witness, Your Honor?
 15:00 5 THE COURT: Yes.
 15:00 6 (GOVERNMENT EXHIBIT J-KY-9 WAS MARKED FOR IDENTIFICATION.)
 15:00 7 BY MR. ASKIN:
 15:00 8 Q. I'm showing you a document that's been marked for the
 15:00 9 record, Government's Exhibit J-KY-9, and can you take a look
 15:00 10 at that?
 15:00 11 And what is it entitled right here?
 15:00 12 A. Cooperation Agreement.
 15:00 13 Q. Okay. And what is the date at the top?
 15:00 14 A. December 5th, 2014.
 15:00 15 Q. And is it addressed on our letterhead, the heading at the
 15:00 16 top, United States Attorney for the District of New Jersey?
 15:01 17 A. Yes.
 15:01 18 Q. And is it addressed in a letter format to Peter Levin,
 15:01 19 your lawyer?
 15:01 20 A. Yes.
 15:01 21 Q. Okay. Could I have it back for a sec?
 15:01 22 It's four pages, correct?
 15:01 23 A. Yes.
 15:01 24 Q. Okay. And is this the agreement, the cooperation
 15:01 25 agreement that you signed?

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15:01 1 A. Yes.
 15:01 2 Q. Okay.
 15:01 3 MR. ASKIN: Your Honor, by the agreement of counsel,
 15:01 4 I'm going to display it, it's not in evidence, but we're going
 15:01 5 to display it for the purposes of going over it.
 15:01 6 THE COURT: All right.
 15:01 7 (The exhibit was published to the jury.)
 15:01 8 BY MR. ASKIN:
 15:01 9 Q. This is a document referring to -- on our letterhead,
 15:01 10 December the 5th of 2014, correct, addressed to Mr. Levin
 15:01 11 entitled, regarding cooperation agreement with Kareem Young,
 15:01 12 correct?
 15:01 13 A. Yes.
 15:01 14 Q. Dear Mr. Levin, and then it sets forth the paragraphs
 15:01 15 that are the agreement, is that right?
 15:01 16 A. Yes.
 15:01 17 Q. Okay. It's marked at the bottom, Government's Exhibit
 15:02 18 J-KY-9.
 15:02 19 Okay. And do you see in the first paragraph, it says
 15:02 20 that it sets forth the understanding between you, Kareem
 15:02 21 Young, and the U.S. Attorney's Office of the District of New
 15:02 22 Jersey, concerning cooperation with this office, meaning the
 15:02 23 U.S. Attorney?
 15:02 24 A. Yes.
 15:02 25 Q. Read the next sentence to yourself.

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15:02 1 Okay. Do you see what it says there, that the
 15:02 2 agreement supplements a plea agreement dated December 23rd,
 15:02 3 2013?
 15:02 4 A. Yes.
 15:02 5 Q. You understand what it -- do you understand what the
 15:02 6 word, "supplements" means there?
 15:02 7 A. No.
 15:02 8 Q. Okay. I understand you don't understand what that word
 15:03 9 means, but at the time, was it explained to you by either
 15:03 10 Mr. Levin, myself or both of us, that -- well, let me back up
 15:03 11 a second. I'm sorry.
 15:03 12 This is December of 2014, correct?
 15:03 13 A. Yes.
 15:03 14 Q. By your testimony, you've already met with the government
 15:03 15 in several proffer sessions, correct?
 15:03 16 A. Yes.
 15:03 17 Q. Do you remember a discussion where we talked about --
 15:03 18 that there was an oversight and you hadn't actually signed a
 15:03 19 cooperation agreement? Do you remember that discussion?
 15:03 20 A. Yes.
 15:03 21 Q. Do you remember your lawyer being somewhere at the time,
 15:03 22 we wanted you to sign it?
 15:03 23 A. He was on vacation.
 15:03 24 Q. Right. When he came back from vacation, is that when you
 15:03 25 were presented with the agreement?

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15:03 1 A. Yes.
 15:03 2 Q. And at the time you were presented with the agreement, if
 15:03 3 I understand your testimony, you had already -- you had
 15:03 4 already had been proffering with us in these interviews,
 15:03 5 correct?
 15:03 6 A. Yes.
 15:03 7 Q. For several months, right?
 15:03 8 A. Yes.
 15:03 9 Q. And according to the stipulation, you already testified
 15:03 10 before a federal grand jury before this was even signed, is
 15:03 11 that right?
 15:03 12 A. Yes.
 15:03 13 Q. Okay. Nevertheless, December 5th, 2014, when your lawyer
 15:03 14 got back from vacation, was this agreement presented to you?
 15:04 15 A. Yes.
 15:04 16 Q. Okay. And did -- we're just going to turn to the
 15:04 17 signature page now for a minute. For the record, the
 15:04 18 signature page is Page 4, and did you sign the agreement at
 15:04 19 the end after you read it?
 15:04 20 A. Yes.
 15:04 21 Q. Mr. Levin signed it the same day, correct?
 15:04 22 A. Yes.
 15:04 23 Q. And if I understand the date, it looks like 12-10,
 15:04 24 December the 10th of 2014?
 15:04 25 A. Yes.

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15:04 1 Q. Okay. The date on the front of the document is
 15:04 2 December the 5th of 2014, correct?
 15:04 3 A. Yes.
 15:04 4 Q. Did Mr. Levin explain the terms of this agreement to you
 15:04 5 before you signed it?
 15:04 6 A. Yes.
 15:04 7 Q. Did I also explain the terms of the agreement to you, at
 15:04 8 least in part, before you signed the agreement?
 15:04 9 A. Yes.
 15:04 10 Q. Let's go to the first page. I want to go over this
 15:05 11 agreement with you carefully.
 15:05 12 We're going to go back to this word, "supplements" the
 15:05 13 plea agreement. At the time of this cooperation agreement,
 15:05 14 you had already signed a plea agreement, correct?
 15:05 15 A. Yes.
 15:05 16 Q. Okay. What was your understanding of what this
 15:05 17 cooperation agreement did to the plea agreement? In other
 15:05 18 words -- do you understand my question?
 15:05 19 A. No.
 15:05 20 Q. Okay. Probably wasn't very good. I'll ask it a
 15:05 21 different way.
 15:05 22 The -- you had a plea agreement in place, correct?
 15:05 23 A. Yes.
 15:05 24 Q. You had gone before -- you had a plea agreement, a
 15:05 25 written plea agreement and you went before a Court, Judge

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15:05 1 Irenas, and you entered a guilty plea, correct?
 15:05 2 A. Yes.
 15:05 3 Q. When you signed this cooperation agreement, did you
 15:05 4 understand that you were still bound by the terms of the plea
 15:05 5 agreement? In other words, the plea agreement was still in
 15:05 6 effect at the time you signed this cooperation agreement,
 15:06 7 correct?
 15:06 8 A. Yes.
 15:06 9 Q. And you knew that, right?
 15:06 10 A. Yes.
 15:06 11 Q. So this -- did you understand this to be a second
 15:06 12 agreement that you were signing?
 15:06 13 A. Yes.
 15:06 14 Q. Did you understand that this agreement, the cooperation
 15:06 15 agreement and the plea agreement were basically your two
 15:06 16 agreements with the Federal Government, correct?
 15:06 17 A. Yes.
 15:06 18 Q. With the U.S. Attorney, correct?
 15:06 19 A. Yes.
 15:06 20 Q. The one other thing you signed was this, that I'm aware
 15:06 21 of, is this proffer letter, right?
 15:06 22 A. Yes.
 15:06 23 Q. Okay. But did you understand that these were the two
 15:06 24 agreements together that would determine some of your rights
 15:06 25 and some of what would happen to you in terms of the federal

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15:06 1 process, your plea agreement and the cooperation agreement in
 15:06 2 terms of your federal sentencing?
 15:06 3 A. Yes.
 15:06 4 Q. And did you understand them both to be important
 15:06 5 agreements that would be read together?
 15:06 6 A. Yes.
 15:06 7 Q. Okay. Okay. You see up here, it says confidential, not
 15:07 8 to be filed with the clerk's office. Do you see that?
 15:07 9 A. Yes.
 15:07 10 Q. Your plea agreement -- plea agreements are filed in this
 15:07 11 district on the electronic filing. Did you -- was there a
 15:07 12 discussion where you were told and assured that this would not
 15:07 13 be filed on the public docket?
 15:07 14 A. Yes.
 15:07 15 Q. Okay. So that you knew that this would be kept private.
 15:07 16 In other words, the Court could be given a copy of it,
 15:07 17 probation could be given a copy of it, your lawyer had a copy
 15:07 18 of it, but did you know that we were not going to make this a
 15:07 19 public document?
 15:07 20 A. Yes.
 15:07 21 Q. I mean, other than you testifying in open court today,
 15:07 22 right?
 15:07 23 A. Yes.
 15:07 24 Q. Okay. Okay. The third paragraph here says, the
 15:07 25 agreement is further -- is contingent upon or based upon you

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15:07 1 entering a guilty plea. At the time of this, I think the
 15:07 2 record's already clear, December 2014, you had already entered
 15:07 3 a guilty plea, correct?
 15:07 4 A. Yes.
 15:07 5 Q. Okay. Look at the scope of cooperation. You see that
 15:08 6 down there? Read this paragraph to yourself, the last
 15:08 7 paragraph on Page 1.
 15:08 8 A. I read it.
 15:08 9 Q. Okay. This document says that you will fully cooperate
 15:08 10 with this office, being the U.S. Attorney's Office, correct?
 15:08 11 A. Yes.
 15:08 12 Q. In terms of investigations that you have knowledge of
 15:08 13 that we ask you about?
 15:08 14 A. Yes.
 15:08 15 Q. And questions about criminal activity that you know of
 15:08 16 and that we ask you about, correct?
 15:08 17 A. Right.
 15:08 18 Q. And it says that you'll truthfully disclose all
 15:08 19 information to the U.S. Attorney and other government agencies
 15:08 20 and you shall not commit or attempt to commit any additional
 15:08 21 crimes.
 15:08 22 Did you understand that to be your obligation under
 15:08 23 this agreement, like what you had to do under this agreement?
 15:08 24 A. Yes.
 15:09 25 Q. Look at the next sentence, it says Kareem Young also

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- 15:09 1 agrees to be available at all reasonable times requested by
 15:09 2 representatives of the government and shall truthfully testify
 15:09 3 in all proceedings, including the grand jury, and on to
 15:09 4 Page 2, and trial proceedings, as to any subject about which
 15:09 5 it -- it says "she," it really should say he there -- about
 15:09 6 which you're questioned, correct?
 15:09 7 **A. Yes.**
 15:09 8 **Q.** My mistake.
 15:09 9 Further, Kareem Young agrees to provide this office
 15:09 10 documents or materials related to matters about which this
 15:09 11 office inquires. Do you understand that?
 15:09 12 **A. Yes.**
 15:09 13 **Q.** Okay. And then it goes into full cooperation and what it
 15:09 14 means that we could ask you to do investigative techniques
 15:09 15 like making recordings against people and stuff like that,
 15:09 16 correct?
 15:09 17 **A. Yes.**
 15:09 18 **Q.** Now, were you ever released from custody during your
 15:09 19 cooperation?
 15:10 20 **A. No.**
 15:10 21 **Q.** Okay. So by definition -- well, I shouldn't say "by
 15:10 22 definition." Were you ever asked to make recordings or
 15:10 23 conduct any kind of undercover operations or assist us with
 15:10 24 anything like that?
 15:10 25 **A. No.**

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- 15:10 1 **Q.** The government just asks you to provide information in
 15:10 2 these proffer sessions, correct?
 15:10 3 **A. Yes.**
 15:10 4 **Q.** And to testify before a grand jury, correct?
 15:10 5 **A. Yes.**
 15:10 6 **Q.** And be available to testify in any trial or hearing
 15:10 7 proceedings that we needed you to testify in under oath,
 15:10 8 correct?
 15:10 9 **A. Yes.**
 15:10 10 **Q.** And have you agreed to do that?
 15:10 11 **A. Yes.**
 15:10 12 **Q.** Okay. And is that your understanding of what you're
 15:10 13 required to do today? In other words, that this agreement
 15:10 14 requires you to testify truthfully today?
 15:10 15 **A. Yes.**
 15:10 16 **Q.** Do you understand that?
 15:10 17 **A. Yes.**
 15:10 18 **Q.** The oath that you took, or the affirmation, you affirmed
 15:10 19 also requires you to testify truthfully today. You understand
 15:10 20 that?
 15:10 21 **A. Yes.**
 15:10 22 **Q.** So really, you're under two obligations to testify
 15:10 23 truthfully. The oath that you took and also this cooperation
 15:10 24 agreement. Do you understand that?
 15:10 25 **A. Yes.**

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- 15:11 1 **Q.** You also took an oath or affirmed when you went before
 15:11 2 the federal grand jury in September of 2014, correct?
 15:11 3 **A. Yes.**
 15:11 4 **Q.** And you understood, even though you hadn't formally
 15:11 5 signed the agreement, did you understand that you had to
 15:11 6 testify truthfully before that federal grand jury?
 15:11 7 **A. Yes.**
 15:11 8 **Q.** In order to get the benefit of your cooperation
 15:11 9 agreement?
 15:11 10 **A. Yes.**
 15:11 11 **Q.** Have you testified truthfully in the past at the grand
 15:11 12 jury and in other court proceedings?
 15:11 13 **A. Yes.**
 15:11 14 **Q.** Okay. Now, are you cooperating with the government in
 15:11 15 the hopes of getting a lower sentence?
 15:11 16 **A. Yes.**
 15:11 17 **Q.** If you fully cooperate with the government under the
 15:11 18 terms of this agreement, is the government obligated to do
 15:11 19 certain things?
 15:11 20 **A. Yes.**
 15:11 21 **Q.** Okay. Did the government tell you that if you cooperated
 15:11 22 with the government, that we would -- fully cooperated with
 15:12 23 the government, in our determination, in other words, in our
 15:12 24 judgment, that we would file a motion with Judge Irenas under
 15:12 25 section -- Guideline Section 5K1.1?

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- 15:12 1 **A. Yes.**
 15:12 2 **Q.** A lot of times, guys refer to it as a 5K motion, right?
 15:12 3 **A. Yes.**
 15:12 4 **Q.** Are you familiar with that term, 5K motion?
 15:12 5 **A. Yes.**
 15:12 6 **Q.** Was that a term that was sometimes discussed in the
 15:12 7 Federal Detention Center?
 15:12 8 **A. Yes.**
 15:12 9 **Q.** Okay. And are you hoping that the government is going to
 15:12 10 file one of these 5K motions on your behalf, which is a motion
 15:12 11 for downward departure, which would give Judge Irenas
 15:12 12 potentially a reason to give you a lower sentence?
 15:12 13 **A. Yes.**
 15:12 14 **Q.** And that's what you're hoping that we'll do if you fully
 15:12 15 cooperate, correct?
 15:12 16 **A. Yes.**
 15:12 17 **Q.** Did I discuss with you, which is also mentioned in the
 15:12 18 agreement, section --
 15:12 19 **MR. ASKIN:** If you could zoom in on this,
 15:12 20 **Mr. Darragh,** this paragraph.
 15:12 21 **BY MR. ASKIN:**
 15:12 22 **Q.** Did I explain to you that 5K motions, 5K1.1 motions allow
 15:13 23 the Court to depart from the advisory guidelines, gives the
 15:13 24 Court a reason if the Court deems it appropriate, based on
 15:13 25 your cooperation?

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15:13 1 **A. Yes.**
 15:13 2 **Q.** Who determines, once we file a motion for downward
 15:13 3 departure under 5K1.1, because we feel you've fully and
 15:13 4 truthfully cooperated, who ultimately decides, though, whether
 15:13 5 or not that motion is granted?
 15:13 6 **A. Judge Irenas.**
 15:13 7 **Q.** Right. And who decides ultimately what sentence you get?
 15:13 8 **A. Judge Irenas.**
 15:13 9 **Q.** Does the government get to determine what sentence you
 15:13 10 get?
 15:13 11 **A. No.**
 15:13 12 **Q.** Does the government get to make a recommendation about
 15:13 13 sentence?
 15:13 14 **A. Yes.**
 15:13 15 **Q.** But ultimately, Judge Irenas will decide what sentence
 15:13 16 you get, correct?
 15:13 17 **A. Yes.**
 15:13 18 **Q.** And you knew that when you agreed to cooperate with us?
 15:13 19 **A. Yes.**
 15:13 20 **Q.** Now, you have -- did you ever hear of the term "safety
 15:13 21 valve"?
 15:13 22 **A. Yes.**
 15:13 23 **Q.** Okay. Do you know when you have a criminal record like
 15:13 24 yours and when guns are involved in the offense, safety valve
 15:13 25 is not available, right?

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15:14 1 **A. Yes.**
 15:14 2 **Q.** Okay. The -- do you know this term that's used in the
 15:14 3 middle of this paragraph, the motion under 18 U.S. Code
 15:14 4 Section 3553(e). Did I discuss that with you?
 15:14 5 **A. Yes.**
 15:14 6 **Q.** Do you remember what 3553(e) means right there, without
 15:14 7 me telling you about it? If you remember?
 15:14 8 **A. I believe that's the motion to go under my guidelines.**
 15:14 9 **Q.** Okay. No, the motion to go under your guidelines is
 15:14 10 5K1.1, right? We just discussed that. Remember I told you
 15:14 11 that to get out from under the mandatory minimum, we had to
 15:14 12 file a second motion if we decide to do so?
 15:14 13 **A. Yeah, that's what I meant to say.**
 15:14 14 **Q.** Okay. So as a federal drug defendant, did your lawyer
 15:14 15 and myself explain to you that you have really two things to
 15:14 16 worry about in a federal drug case, right?
 15:14 17 **A. Yes.**
 15:14 18 **Q.** Potentially, depending on the quantities and the type.
 15:14 19 You've got the sentencing guidelines, which are advisory,
 15:14 20 right?
 15:14 21 **A. Yes.**
 15:14 22 **Q.** And what else do you have to worry about?
 15:14 23 **A. A mandatory minimum.**
 15:15 24 **Q.** Right. So those -- you understand that those are the two
 15:15 25 things to worry about, in other words, what is my sentencing

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15:15 1 guideline range, which is advisory, and what is my mandatory
 15:15 2 minimum, right?
 15:15 3 **A. Yes.**
 15:15 4 **Q.** Mandatory minimums, did you understand them to be what
 15:15 5 they say they are? In other words, that's a mandatory
 15:15 6 sentence except for certain rare exceptions, right?
 15:15 7 **A. Yes.**
 15:15 8 **Q.** You're not eligible for safety valve, which you've
 15:15 9 already said you know you're not eligible for safety valve.
 15:15 10 Was it explained to you by myself in the presence of Mr. Levin
 15:15 11 that the only other way out from under that mandatory minimum
 15:15 12 sentence is Section 3553(e) for cooperation?
 15:15 13 **A. Yes.**
 15:15 14 **Q.** You knew that?
 15:15 15 **A. Yes.**
 15:15 16 **Q.** Okay. Now, look what the agreement says about 3553(e).
 15:15 17 I want you to start at -- where it says No. 2.
 15:15 18 First, you start, if you fully cooperate, fully comply
 15:16 19 with the terms of this, provide substantial assistance in the
 15:16 20 investigation or prosecution of one or more persons, then this
 15:16 21 office will, one, move the sentencing judge pursuant to 5K1.1
 15:16 22 to depart from the guideline range, right? Do you see that?
 15:16 23 **A. Yes.**
 15:16 24 **Q.** That's what we've agreed to do. But it says, and, two,
 15:16 25 may move the sentencing judge pursuant to Section 3553(e) to

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15:16 1 depart from any applicable mandatory minimum sentence. Do you
 15:16 2 see that?
 15:16 3 **A. Yes.**
 15:16 4 **Q.** Now, the determination of whether or not we filed this
 15:16 5 motion to allow Judge Irenas to sentence you below the five
 15:16 6 years, it says in the agreement is solely in our discretion.
 15:16 7 Do you understand that?
 15:16 8 **A. Yes.**
 15:16 9 **Q.** So who determines whether or not to file the motion that
 15:16 10 would potentially, if you fully and truthfully cooperate, get
 15:16 11 you out from under that five-year mandatory. Who has to file
 15:16 12 that motion in order for the judge to have that authority?
 15:16 13 **A. Your office.**
 15:17 14 **Q.** Right. And if we don't file the motion, would Judge
 15:17 15 Irenas, by law, be allowed to sentence you to below five
 15:17 16 years?
 15:17 17 **A. Yes. No. Can you say that again?**
 15:17 18 **Q.** Let me repeat the question. Did you understand that
 15:17 19 generally, mandatory minimum penalties mean what they say,
 15:17 20 they are mandatory minimums. They are mandatory. Do you
 15:17 21 understand that?
 15:17 22 **A. Yes.**
 15:17 23 **Q.** We talked about two ways that defendants can get out from
 15:17 24 under a mandatory minimum safety valve, which only applies to
 15:17 25 defendants basically who have almost no record, right?

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- 15:17 **1 A. Yes.**
- 15:17 **2 Q.** That would -- you would be excluded from that, right?
- 15:17 **3 A. Yes.**
- 15:17 **4 Q.** Okay. And then the other way is cooperation and the
- 15:17 **5** filing of a motion under Section 3553(e) for Title 18, right?
- 15:17 **6 A. Yes.**
- 15:17 **7 Q.** Did I discuss this with you?
- 15:17 **8 A. Yes.**
- 15:17 **9 Q.** Even if you fully and truthfully cooperate, under the
- 15:17 **10** terms of this agreement, where it says we may file it, are we
- 15:17 **11** bound, do we have to file -- our office, a motion to get under
- 15:18 **12** that mandatory minimum?
- 15:18 **13 A. No.**
- 15:18 **14 Q.** Okay. In other words, we could decide not to, correct?
- 15:18 **15 A. Yes.**
- 15:18 **16 Q.** Even if you fully and truthfully cooperate with us, we
- 15:18 **17** would decide it's not appropriate, we're not doing it. Do you
- 15:18 **18** understand that?
- 15:18 **19 A. Yes.**
- 15:18 **20 Q.** Do you understand that we can make that decision based on
- 15:18 **21** factors beyond your cooperation? In other words, we could
- 15:18 **22** decide under the sentencing factors, we think you should get
- 15:18 **23** more than five years, we're not filing. Do you understand
- 15:18 **24** that?
- 15:18 **25 A. Yes.**

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- 15:18 **1 Q.** Was it also explained to you that based on your
- 15:18 **2** cooperation and what's in the presentence report and other
- 15:18 **3** factors that are relevant to sentencing, that our office could
- 15:18 **4** decide that we are going to file that motion and allow the
- 15:18 **5** judge to sentence you below five years if the judge wants to.
- 15:18 **6** Do you understand that?
- 15:18 **7 A. Yes.**
- 15:18 **8 Q.** At this point, as you sit here, have you been told
- 15:18 **9** whether or not we're going to file that motion when we get to
- 15:18 **10** the sentencing date?
- 15:18 **11 A. No.**
- 15:18 **12 Q.** Okay. Even if you fully cooperate, was it explained to
- 15:18 **13** you that you may not have that motion filed and you may have
- 15:18 **14** to get at least five years?
- 15:18 **15 A. Yes.**
- 15:18 **16 Q.** And that's your understanding?
- 15:19 **17 A. Yes.**
- 15:19 **18 Q.** And did you agree to cooperate even knowing those terms?
- 15:19 **19 A. Yes.**
- 15:19 **20 Q.** Okay. What does the document, these -- the cooperation
- 15:19 **21** agreement required you to do with respect to trial testimony,
- 15:19 **22** grand jury testimony, in terms of truthfulness. What does it
- 15:19 **23** require you to do?
- 15:19 **24 A. Testify truthfully.**
- 15:19 **25 Q.** Right. Mostly truthfully, half the time truthfully, or

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- 15:19 **1** what?
- 15:19 **2 A. All the way truthfully.**
- 15:19 **3 Q.** Did I explain to you on a number of occasions what the
- 15:19 **4** consequences would be of not testifying truthfully in any
- 15:19 **5** respect?
- 15:19 **6 A. Yes.**
- 15:19 **7 Q.** What would be the consequences?
- 15:19 **8 A. Be charged with perjury.**
- 15:19 **9 Q.** Right. You might be charged with perjury. What would
- 15:20 **10** happen with respect to our -- whether or not we would honor
- 15:20 **11** this agreement if you testify untruthfully?
- 15:20 **12 A. My cooperation would get ripped up.**
- 15:20 **13 Q.** Right. And then we would be able to tell the Court that
- 15:20 **14** you didn't cooperate, you were untruthful, correct?
- 15:20 **15 A. Yes.**
- 15:20 **16 Q.** And then in that sense, do you believe you would get a
- 15:20 **17** lower sentence based on your attempt to cooperate with us?
- 15:20 **18 A. No.**
- 15:20 **19 Q.** Okay. Would you -- is it -- in your mind, would you wind
- 15:20 **20** up facing your full sentence?
- 15:20 **21 A. Yes.**
- 15:20 **22 Q.** Is that what you want to happen here?
- 15:20 **23 A. No.**
- 15:20 **24 Q.** Do you understand that any benefit you can get,
- 15:20 **25** potentially out of these agreements, requires you to testify

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- 15:20 **1** truthfully?
- 15:20 **2 A. Yes.**
- 15:20 **3 Q.** Now, in terms of who determines whether or not you're
- 15:20 **4** truthful, in terms of filing -- listen to my question very
- 15:20 **5** carefully.
- 15:20 **6** In terms of who determines whether or not you've been
- 15:20 **7** truthful and fully forthcoming, in terms of filing the motion,
- 15:20 **8** who makes that first determination of whether or not you're
- 15:21 **9** truthful?
- 15:21 **10 A. Judge Irenas.**
- 15:21 **11 Q.** No. Listen to the question.
- 15:21 **12** Ultimately, Judge Irenas is going to make a
- 15:21 **13** determination about whether or not you earned the cooperation
- 15:21 **14** agreement, right?
- 15:21 **15 A. Yes.**
- 15:21 **16 Q.** And that was discussed with you, right?
- 15:21 **17 A. Yes.**
- 15:21 **18 Q.** If we filed a motion saying you've been fully
- 15:21 **19** cooperative, does Judge Irenas have to grant the motion if he
- 15:21 **20** doesn't agree with us?
- 15:21 **21 A. No.**
- 15:21 **22 Q.** In other words, he could decide that we're wrong and not
- 15:21 **23** grant the motion, is that right?
- 15:21 **24 A. Yes.**
- 15:21 **25 Q.** But if we filed the motion, do you hope he's going to

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15:21 1 listen to us and grant the motion?

15:21 2 A. Yes.

15:21 3 Q. Okay. Who decides first, though, whether you've been

15:21 4 fully cooperative?

15:21 5 A. Your office.

15:21 6 Q. Right. Who decides first whether to file any of these

15:21 7 motions?

15:21 8 A. Your office.

15:21 9 Q. Right. Do you understand that part of that decision,

15:21 10 whether to file these motions, is whether or not we believe

15:21 11 you've been truthful with us?

15:21 12 A. Can you say that again.

15:21 13 Q. Do you understand that our decision to file those motions

15:22 14 is based in large part as to whether or not you've testified

15:22 15 truthfully? In other words, we're requiring you to testify

15:22 16 truthfully or we're not filing the motion. Do you understand

15:22 17 that?

15:22 18 A. Yes.

15:22 19 Q. Did I explain to you whether it matters -- if you say

15:22 20 something untruthful, whether it matters whether you were

15:22 21 trying to help us or hurt us, in terms of the prosecution

15:22 22 team?

15:22 23 A. Yes.

15:22 24 Q. Does it matter?

15:22 25 A. No.

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15:22 1 Q. Right. In other words, if you think we would want you to

15:22 2 say something because you think it might help our case, but

15:22 3 the answer is false, would that matter to us, in terms of

15:22 4 ripping up these agreements?

15:22 5 A. No.

15:22 6 Q. Right. In other words, doesn't matter if you're trying

15:22 7 to help us, hurt us or somewhere in between, if you testify

15:22 8 falsely as to anything, in our view, are we going to file

15:22 9 those motions on your behalf?

15:22 10 A. No.

15:22 11 Q. Knowing that, are you testifying truthfully today?

15:23 12 A. Yes.

15:23 13 Q. Are you prepared to continue to testify truthfully?

15:23 14 A. Yes.

15:23 15 Q. Did you testify truthfully before the grand jury under

15:23 16 oath?

15:23 17 A. Yes.

15:23 18 Q. Okay. You want to go home earlier, right?

15:23 19 A. Yes.

15:23 20 Q. You don't want to do any more time than you have to.

15:23 21 A. No.

15:23 22 Q. What do you need to do to go home earlier in terms of

15:23 23 truthfulness?

15:23 24 A. Tell the truth.

15:23 25 Q. Is that why you're doing this?

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15:23 1 A. Yes.

15:23 2 Q. Okay. And the agreement -- on the bottom of Page 2 and

15:23 3 the top of Page 3, and I don't want to draw this out or

15:23 4 belabor it any more, but the agreement talks about the fact

15:23 5 that if you're not truthful and fully forthcoming, we're not

15:23 6 obligated to file these motions, which is just what I just

15:23 7 covered with you, right?

15:23 8 A. Yes.

15:23 9 Q. Okay. Does it also talk about the fact that you could be

15:24 10 subject to additional penalties and charged with different

15:24 11 offenses, including perjury and obstruction of justice. Do

15:24 12 you understand that?

15:24 13 A. Yes.

15:24 14 Q. In other words, if you're not truthful with us, not only

15:24 15 does our office don't have to file these -- doesn't have to

15:24 16 file these motions to lower your sentence with Judge Irenas,

15:24 17 you're potentially facing perjury and obstruction of justice

15:24 18 charges if you're untruthful. Do you understand that?

15:24 19 A. Yes.

15:24 20 Q. Did you understand that before you took the stand today?

15:24 21 A. Yes.

15:24 22 Q. Okay. Now, Mr. Young, you've gone -- we've gone through

15:25 23 some of your criminal record, not in every detail, but in some

15:25 24 detail, of some of the things you've been involved with.

15:25 25 I'm going to go through some other stuff. Have there

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15:25 1 been times before you were placed under oath when you were out

15:25 2 on the street and even after you were in custody, when you

15:25 3 haven't always been truthful? I'm not talking about under

15:25 4 oath, but other times when you weren't under oath, have there

15:25 5 been times where you haven't been truthful?

15:25 6 A. Yes.

15:25 7 Q. Several, right?

15:25 8 A. Yes.

15:25 9 Q. Okay. Let me go through some of that with you.

15:25 10 When you were in Florida in April of 2013, did you tell

15:25 11 us that you were stopped by a police officer down there while

15:25 12 you were traveling in a vehicle?

15:25 13 A. Yes. Yes.

15:25 14 Q. Okay. And when you were stopped by that police officer,

15:25 15 if you recall, did you give the police officer your real name?

15:25 16 A. No.

15:25 17 Q. And you lied to the police officer, right?

15:26 18 A. Yes.

15:26 19 Q. You told him a fake name or somebody else's name?

15:26 20 A. Yes.

15:26 21 Q. Why did you do that?

15:26 22 A. Cause I know I had warrants in New Jersey.

15:26 23 Q. Right. So it was in your interest because you didn't

15:26 24 want to be arrested, you knew you had a warrant in New Jersey,

15:26 25 so you lied to the police officer?

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- 15:26 1 A. Yes.
- 15:26 2 Q. And you're admitting that you did that, right?
- 15:26 3 A. Yes.
- 15:26 4 Q. Did you tell us about that in your -- one of your proffer
- 15:26 5 meetings with us?
- 15:26 6 A. Yes.
- 15:26 7 Q. At some point, do you recall that we went over your
- 15:26 8 presentence report with you a little bit, in preparation for
- 15:26 9 testimony and went over with you some of the things that were
- 15:26 10 in your presentence report?
- 15:26 11 A. Yes.
- 15:26 12 Q. Did the presentence investigator talk to you about your
- 15:26 13 drug use?
- 15:26 14 A. Yes.
- 15:26 15 Q. And this -- when I say "presentence investigator," this
- 15:26 16 is a U.S. probation officer, correct?
- 15:26 17 A. Yes.
- 15:26 18 Q. As far as you knew, right?
- 15:27 19 A. Yes.
- 15:27 20 Q. He met with you, where, at the FDC?
- 15:27 21 A. Yes.
- 15:27 22 Q. Was your lawyer present, if you remember?
- 15:27 23 A. Yes.
- 15:27 24 Q. Okay. And did you tell the probation officer, who was
- 15:27 25 preparing your presentence report, that you used certain drugs

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- 15:27 1 in terms of, like, marijuana. Did you tell him you used
- 15:27 2 marijuana?
- 15:27 3 A. Yes.
- 15:27 4 Q. And you used marijuana a lot when you were on the street,
- 15:27 5 right?
- 15:27 6 A. Yes.
- 15:27 7 Q. I mean, not once in awhile. A lot, right?
- 15:27 8 A. Yes.
- 15:27 9 Q. Over a period of how many years? Since you were --
- 15:27 10 A. Since I was about --
- 15:27 11 Q. Since you were a teenager?
- 15:27 12 A. Yes.
- 15:27 13 Q. Several years, right?
- 15:27 14 A. Yes.
- 15:27 15 Q. Up until the time of your arrest, you were smoking pot?
- 15:27 16 A. Yes.
- 15:27 17 Q. So when you told him that you were a marijuana user, was
- 15:27 18 that true?
- 15:27 19 A. Yes.
- 15:27 20 Q. Did you use -- for the last couple of years before you
- 15:27 21 were arrested in April of 2013, did you also use the drug
- 15:27 22 Percocet?
- 15:27 23 A. Yes.
- 15:27 24 Q. Now, Percocet is a prescription drug. You're aware of
- 15:27 25 that, correct?

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- 15:27 1 A. Yes.
- 15:27 2 Q. Okay. Some people get a prescription from their doctor
- 15:28 3 and they take it, it's a painkiller. When you were using it
- 15:28 4 for a period of time, were you using it under prescription or
- 15:28 5 buying it on the street?
- 15:28 6 A. Buying it on the street.
- 15:28 7 Q. You were using it illegally, correct, right?
- 15:28 8 A. Yes.
- 15:28 9 Q. Okay. And did you take Percocet regularly, buying it
- 15:28 10 illegally on the street for a period of time?
- 15:28 11 A. Yes.
- 15:28 12 Q. Okay. Knowing it was illegal, correct?
- 15:28 13 A. Yes.
- 15:28 14 Q. And how often were you using those Percocets in the last,
- 15:28 15 like, year or two before your arrest?
- 15:28 16 A. Like a year and a half, maybe two.
- 15:28 17 Q. Did you use them every day or roughly every day?
- 15:28 18 A. Mostly every day.
- 15:28 19 Q. Okay. Now, did you tell the probation officer -- as far
- 15:28 20 as you remember, did you tell the probation officer about
- 15:28 21 that?
- 15:28 22 A. Yes.
- 15:28 23 Q. Okay. And so when you told the probation officer that
- 15:28 24 you were using Percocet when you were on the street, that was
- 15:28 25 true, right?

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- 15:28 1 A. Yes.
- 15:28 2 Q. Now, was there also something in the PSR, the -- I'm
- 15:29 3 sorry, the presentence report, that indicated, and I quote,
- 15:29 4 "the defendant stated that he used or inhaled heroin on two
- 15:29 5 occasions in 2011 and 2012."
- 15:29 6 Did you make -- is that accurate, that -- is it
- 15:29 7 accurate that you told the probation officer that? Did you
- 15:29 8 tell the probation officer that?
- 15:29 9 A. Yes.
- 15:29 10 Q. In one of these meetings before you were going to
- 15:29 11 testify, after I read that, did I question you about that?
- 15:29 12 A. Yes.
- 15:29 13 Q. And what did you tell me about that statement to the
- 15:29 14 probation officer?
- 15:29 15 A. That I lied.
- 15:29 16 Q. So you admitted it, when I asked you about it, that you
- 15:29 17 had lied to the probation officer?
- 15:29 18 A. Yes.
- 15:29 19 Q. And did you lie to the probation officer because you
- 15:29 20 wanted some benefit of that, potentially in terms of BOP
- 15:29 21 programs?
- 15:29 22 A. Yes.
- 15:29 23 Q. Okay. Did you admit that?
- 15:29 24 A. Yes.
- 15:29 25 Q. That that was the reason?

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15:29 1 **A. Yes.**
 15:29 2 **Q.** And did you think that that BOP program -- it was a drug
 15:30 3 program, right?
 15:30 4 **A. Yes.**
 15:30 5 **Q.** Did you want to get in a federal drug program?
 15:30 6 **A. Yes.**
 15:30 7 **Q.** What did you think completion of that federal drug
 15:30 8 program could do for you in terms of your actual amount of
 15:30 9 time that you had to serve?
 15:30 10 **A. Cut my time in half.**
 15:30 11 **Q.** Right. In half?
 15:30 12 **A. Well, yeah.**
 15:30 13 **Q.** That was what you thought?
 15:30 14 **A. Yeah.**
 15:30 15 **Q.** Okay. All right. Well, whether that's accurate or not,
 15:30 16 you thought it would reduce --
 15:30 17 **MR. MARKOWITZ:** Objection, Your Honor.
 15:30 18 **THE COURT:** What --
 15:30 19 **MR. MADDEN:** He's testifying.
 15:30 20 **MR. ASKIN:** Okay.
 15:30 21 **BY MR. ASKIN:**
 15:30 22 **Q.** It's -- you thought there would be some benefit that that
 15:30 23 could -- if you completed that federal drug program, if you
 15:30 24 were admitted to it and completed it, that it would reduce
 15:30 25 your time?

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15:30 1 **A. Yes.**
 15:30 2 **Q.** And you wanted to get in the federal drug program?
 15:30 3 **A. Yes.**
 15:30 4 **Q.** So you told the probation officer about your true drug
 15:30 5 use, marijuana and Percocet, right?
 15:30 6 **A. Yes.**
 15:30 7 **Q.** But you also added in that you used heroin, correct?
 15:30 8 **A. Yes.**
 15:30 9 **Q.** Had you ever used heroin?
 15:30 10 **A. No.**
 15:30 11 **Q.** Had you been selling heroin for a period of years?
 15:31 12 **A. Yes.**
 15:31 13 **Q.** And you never used it?
 15:31 14 **A. No.**
 15:31 15 **Q.** So when you told the probation officer that you used it
 15:31 16 two times so that you could maybe enhance your ability to get
 15:31 17 in that federal drug program, that was not truthful.
 15:31 18 **A. Right.**
 15:28 19 **Q.** Did you fail to appear in court on several occasions when
 15:31 20 you knew that you were supposed to appear in court?
 15:31 21 **A. Yes.**
 15:31 22 **Q.** And that led to bench warrants being issued for your
 15:31 23 arrest?
 15:31 24 **A. Yes.**
 15:31 25 **Q.** Now, some bench warrants, did you know that some bench

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15:31 1 warrants were issued for your arrest after you were in custody
 15:31 2 in April of 2013?
 15:31 3 **A. Yes.**
 15:31 4 **Q.** Okay. But those were issued because -- well, those
 15:31 5 weren't intentional failures to appear on your part, right?
 15:31 6 **MR. MADDEN:** Objection.
 15:31 7 **MR. ASKIN:** Well, I mean, come on.
 15:31 8 **THE COURT:** I'm sorry?
 15:31 9 **MR. MADDEN:** I'm sorry, Judge. He's leading and he's
 15:31 10 testifying.
 15:31 11 **BY MR. ASKIN:**
 15:31 12 **Q.** After April the 3rd of 2013, Mr. Young, after April of
 15:31 13 2013, after April 3rd, 2013, where were you?
 15:31 14 **A. I was in federal custody.**
 15:32 15 **Q.** And have you been in federal custody between April 3rd of
 15:32 16 2013 and today?
 15:32 17 **A. Yes.**
 15:32 18 **Q.** All right. In the first couple proffers with the
 15:32 19 Government in June and July of 2014, you were asked a series
 15:32 20 of questions about certain individuals in Atlantic City who
 15:32 21 were believed to be involved in selling drugs, correct?
 15:32 22 **A. Yes.**
 15:32 23 **Q.** And who were charged and were in federal custody?
 15:32 24 **A. Yes.**
 15:32 25 **Q.** Okay. Were these individuals in some respects that you

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15:32 1 had been friends with for years?
 15:32 2 **A. Yes.**
 15:32 3 **Q.** Okay. In those first couple of proffers, did you
 15:32 4 truthfully disclose everything you knew about those
 15:32 5 individuals to the Government in those first couple proffers?
 15:32 6 **A. No.**
 15:32 7 **MR. MADDEN:** Objection, leading.
 15:32 8 **THE COURT:** Overruled.
 15:33 9 **BY MR. ASKIN:**
 15:33 10 **Q.** The first couple proffers, did you truthfully disclose
 15:33 11 all the evidence, all the information you had about those
 15:33 12 individuals and their drug activity?
 15:33 13 **A. No.**
 15:33 14 **Q.** Why not?
 15:33 15 **A. Because I wasn't really trying to hurt them.**
 15:33 16 **Q.** And were these guys you knew for a short period of time
 15:33 17 or guys you had known a large period of your life?
 15:33 18 **A. A large period of my life.**
 15:33 19 **Q.** Did you consider yourself, before you started cooperating
 15:33 20 against them, friends with some of those guys?
 15:33 21 **A. Yes.**
 15:33 22 **Q.** Was that a difficult decision to make? Was that a
 15:33 23 difficult thing to do, to testify against guys you had been
 15:33 24 buddies with for a long time?
 15:33 25 **A. Yes.**

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- 15:33 1 Q. Ultimately, though, were you questioned further about
 15:33 2 some of these individuals that you weren't completely truthful
 15:33 3 and forthcoming about in the first couple proffers?
 15:33 4 A. Yes.
 15:33 5 Q. And did you, in your mind, did you eventually admit the
 15:34 6 true scope of what they were involved in and what they were
 15:34 7 doing and who they were doing it with?
 15:34 8 A. Yes.
 15:34 9 Q. Okay. And what made you decide to do that?
 15:34 10 A. I wanted to be truthful.
 15:34 11 Q. You what?
 15:34 12 A. I said I wanted to be truthful.
 15:34 13 Q. Now, before you pled guilty in April of 2014 -- first of
 15:34 14 all, were there a number of other individuals that you knew
 15:34 15 from Atlantic City that were part of this in custody over at
 15:34 16 the Federal Detention Center?
 15:34 17 A. Yes.
 15:34 18 Q. Okay. And did you have discussions with some of those
 15:34 19 individuals about the case against you guys and what some of
 15:35 20 the evidence would be and who some of the people that might
 15:35 21 testify might be?
 15:35 22 A. Yes.
 15:35 23 Q. Were there discussions about confidential informants?
 15:35 24 A. Yes.
 15:35 25 Q. Were there discussions about who might cooperate?

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- 15:35 1 A. Yes.
 15:35 2 Q. Who did you have those discussions with?
 15:35 3 A. Everybody except for Malik Derry and Lamar Macon.
 15:35 4 Q. Okay. Well, you said everybody except for Malik Derry
 15:35 5 and Lamar Macon; is that right?
 15:35 6 A. Yes.
 15:35 7 Q. So, who were some of the people that you had the
 15:35 8 discussion with, if you remember?
 15:35 9 A. Mykal Derry, Baby Boy, Poppi-what-you-need, Erk, Saeed
 15:35 10 Zaffa, Laquay Spence.
 15:35 11 Q. What were you guys talking about?
 15:35 12 MR. MADDEN: Objection, hearsay.
 15:35 13 MR. ASKIN: It is not hearsay. These are
 15:35 14 co-conspirator statements.
 15:35 15 MR. MADDEN: Well --
 15:35 16 THE COURT: Let me see you at sidebar.
 15:36 17 (Sidebar.)
 15:36 18 MR. ASKIN: Your Honor, in the first trial, I don't
 15:36 19 remember if he testified to this in the grand jury or not, but
 15:36 20 in the first trial, he testified, and he's been consistent in
 15:36 21 his statements, that Mykal Derry engaged in a pattern of
 15:36 22 essentially trying to get -- make sure the guys didn't, not
 15:36 23 only didn't cooperate with the Government, that they didn't
 15:36 24 even plead guilty. He cites to a point where Laquay Spence,
 15:37 25 another co-defendant of the 34 defendants, had signed a plea

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- 15:37 1 agreement and was pressured by Mykal Derry not to enter the
 15:37 2 plea agreement and ripped up the plea agreement in front of
 15:37 3 him. Later Spence did enter that plea, but there were
 15:37 4 discussions about not pleading guilty and that Mykal Derry
 15:37 5 wanted everyone to go to trial, which was, in the Government's
 15:37 6 view, obstructionist.
 15:37 7 Number two, though, more importantly, there were
 15:37 8 discussions about who the informants were, discussions about
 15:37 9 concerns that Ramir Bethea, who wasn't actually an informant,
 15:37 10 was an informant, and there were discussions about who was
 15:37 11 cooperating with the Government and trying to prevent people
 15:37 12 from cooperating.
 15:37 13 Then Mr. Mykal Derry made the statement to this witness
 15:37 14 that, well, whoever cooperates against me is going to have to
 15:37 15 take the stand at some point and testify at trial, and at some
 15:37 16 point they got to come back to Atlantic City, and Griff, he
 15:38 17 mentions the nickname Griff, G-R-I-F-F, Grouch, G-R-O-U-C-H,
 15:38 18 and Zay-moo, which I don't know how to spell, but I would say
 15:38 19 phonetically Z-A-Y hyphen M-O-O. I have no idea how to spell
 15:38 20 that. That these guys were going to be getting out of custody
 15:38 21 and they would be home and they would have to deal with them.
 15:38 22 When Mr. Young was asked at least on a follow-up
 15:38 23 question by the Government in these proffer sessions, he
 15:38 24 described that Griff, Grouch and Zay-moo were former drug
 15:38 25 associates, drug dealers associated with Mykal Derry,

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- 15:38 1 associates of Mykal Derry in the drug business and criminal
 15:38 2 activity in Atlantic City, that they were older guys, and he
 15:38 3 described them as old heads, is the term they use, and that
 15:38 4 they would be coming home and they had a reputation for
 15:38 5 carrying guns and shooting people and being enforcers.
 15:38 6 The witness's view was that this was designed to send a
 15:38 7 message, and their collective trying to determine who the
 15:38 8 cooperators were and intimidate people was a continuation of
 15:38 9 the conspiracy, which is clear in the case law, and he ought
 15:39 10 to be permitted to testify about it.
 15:39 11 MR. MADDEN: If I may.
 15:39 12 THE COURT: Yes, Mr. Madden.
 15:39 13 MR. MADDEN: Germane to my objection, not all
 15:39 14 statements that are made by the co-conspirators come in under
 15:39 15 an exception, but more specifically, he just asked a general
 15:39 16 question, what did people say. We don't know who they're
 15:39 17 talking about. I would agree, if my client made statements,
 15:39 18 that they may come in, but depending on who we're talking
 15:39 19 about who made statements or what the statements are made,
 15:39 20 they may or may not come in.
 15:39 21 Certainly a lot of the things that the Government is
 15:39 22 referring to, these supposed statements, first of all, we
 15:39 23 don't know who they're made by, it has to be identified who is
 15:39 24 making these statements and who we're talking about before
 15:39 25 these statements are just vaguely let in by unidentified

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15:39 1 speakers, but second of all, second of all, depending on the
 15:39 2 statements, they certainly may be entirely too prejudicial.
 15:40 3 And the last point I just want to make is in my
 15:40 4 opinion, having read the transcripts from the first trial,
 15:40 5 there was a lot of inadmissible evidence that was never
 15:40 6 objected to, and, therefore, was let in, but that's not our
 15:40 7 standard here. Just because they came in and no one objected
 15:40 8 to it doesn't mean it comes in this time.

15:40 9 MR. ASKIN: I'm not suggesting that if something
 15:40 10 wasn't objected to, that it necessarily comes in. That's not
 15:40 11 my point, but number one, it was largely the statement of
 15:40 12 Mykal Derry that we're trying to get to.

15:40 13 MR. MADDEN: That's different.

15:40 14 MR. ASKIN: And also there was a statement I believe
 15:40 15 by Kamal Allen to the extent that he wanted to figure out if
 15:40 16 Bethea or one of these guys was cooperating, but those guys
 15:40 17 are both co-conspirators and Mykal Derry's statement is an
 15:40 18 admission. In one respect, I was trying to not to lead him to
 15:40 19 who made -- you know, darned if you do, darned if you don't.

15:40 20 THE COURT: I think here Mr. Madden is correct in his
 15:40 21 general survey of the law, although I'm uncertain of the
 15:40 22 status of the Third Circuit law on post conspiracy obstructive
 15:40 23 conduct and whether that's in furtherance, because there's
 15:40 24 certainly a large body of law that says such conduct, after
 15:41 25 the termination of the conspiracy is -- or after the arrest is

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15:41 1 not part of the conspiracy. I need to see a Third Circuit
 15:41 2 case to see how broad it is here in this circuit. So, I don't
 15:41 3 know if you can cite me one soon.

15:41 4 But the notion that some of the statements made to him
 15:41 5 by a defendant is an admission would make those statements
 15:41 6 admissible on those grounds alone. So, I think you have, here
 15:41 7 you're going to -- I'm going to note Mr. Madden's objection, I
 15:41 8 think it has some merit. I think he's going to have to
 15:41 9 forgive a little bit of leading here so that you can establish
 15:41 10 a foundation for individual statements before they come in so
 15:41 11 that if it is going to be an admission, then lay the
 15:41 12 foundation of who is saying it and that he has personal
 15:41 13 knowledge of the statement.

15:41 14 If it's post-arrest cover-up conduct, then I'm going to
 15:41 15 have to see some case law to support that, because I haven't
 15:42 16 looked at this issue in terms of the Third Circuit for a
 15:42 17 while. You said it was clearly the law, but my immediate
 15:42 18 reaction is there's a large body of law that says post-arrest
 15:42 19 attempts at conspiracy were not in furtherance of the
 15:42 20 conspiracy.

15:42 21 MR. ASKIN: Okay. I thought the law was -- I'm
 15:42 22 sorry, Mr. Madden.

15:42 23 MR. MADDEN: Go ahead.

15:42 24 MR. ASKIN: I thought the law was that if efforts to
 15:42 25 cover up the conspiracy, which I would take this as an effort

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15:42 1 to cover up the conspiracy by trying to make sure that guys
 15:42 2 are silenced, that they don't go to the Government to proffer,
 15:42 3 they don't cooperate.

15:42 4 THE COURT: The problem with that argument is that
 15:42 5 until there's an abandonment, affirmative abandonment, then
 15:42 6 they remain in the same conspiracy as long as they continue to
 15:42 7 cover up and then the conspiracy never ends, and that's the
 15:42 8 problem with that law. Some of it is statute of limitations
 15:42 9 law that said continuing cover-up conduct doesn't extend the
 15:42 10 conspiracy for purposes of the statute of limitations. So,
 15:42 11 you need to -- as I sit here now, I don't accept the broad
 15:43 12 proposition that any conduct in an effort to cover up or
 15:43 13 obstruct necessarily continues the conspiracy. You've got to
 15:43 14 show me a Third Circuit law that says that before I'll allow
 15:43 15 you to make that as a sole basis for admission of the
 15:43 16 statement.

15:43 17 MR. ASKIN: Okay. But if I understand the Court
 15:43 18 correctly, are you saying that with respect to, and I'm just
 15:43 19 trying to understand the Court's ruling, not argue with you,
 15:43 20 are you saying that with respect to specifically Mykal Derry's
 15:43 21 statements --

15:43 22 THE COURT: That doesn't have to have a conspiracy
 15:43 23 foundation.

15:43 24 MR. ASKIN: Right, because it is an admission. So, I
 15:43 25 will at this point just steer him to the -- I'm going to lead

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15:43 1 him to the Mykal Derry stuff, stay away from the other stuff
 15:43 2 until we get a look at the Third Circuit case law.

15:43 3 THE COURT: All right. Anything else?

15:43 4 MR. MARKOWITZ: No.

15:43 5 MR. ASKIN: That's fine.

15:43 6 (End of sidebar.)

15:43 7 THE COURT: The record should reflect that a juror
 15:43 8 took the sidebar, with the permission of the Court, as an
 15:43 9 opportunity to leave the courtroom, and has been present
 15:43 10 during all of the testimony.

15:44 11 MR. ASKIN: Yes, your Honor.

15:44 12 THE COURT: Mr. Askin, with the understanding reached
 15:44 13 at sidebar, you may proceed.

15:44 14 MR. ASKIN: Thank you, your Honor.

15:44 15 BY MR. ASKIN:

15:44 16 Q. Mr. Young, before the sidebar break, we were talking
 15:44 17 about the fact that you were in custody at the Federal
 15:44 18 Detention Center for a period of time after your arrest,
 15:44 19 correct?

15:44 20 A. Yes.

15:44 21 Q. And were you in custody with other individuals that had
 15:44 22 been charged, with several other individuals that have been
 15:44 23 charged in this case as part of this federal indictment?

15:44 24 A. Yes.

15:44 25 Q. Okay. Was one of those individuals Mykal Derry?

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15:44 1 A. Yes.

15:44 2 Q. Okay. With respect to the topic of cooperation, do you

15:44 3 recall any statements that Mykal Derry made to you with

15:44 4 respect to guys cooperating in the case?

15:44 5 A. Yes.

15:44 6 Q. Okay. And what did he say to you with respect to guys

15:45 7 cooperating against him?

15:45 8 MR. MADDEN: Objection to the relevance, for the

15:45 9 record.

15:45 10 THE COURT: Overruled.

15:45 11 BY MR. ASKIN:

15:45 12 Q. What did Mykal Derry say with respect to guys cooperating

15:45 13 against him?

15:45 14 A. He said if anybody cooperate against him, they'll take

15:45 15 the stand, that they going to have to go home eventually, and

15:45 16 he said his friends that supposed to be coming home from

15:45 17 prison, which he's referring to Griff, Grouch, and Zay-moo,

15:45 18 and them, was going to do something to us.

15:45 19 Q. Okay. Now, did he mention the names Griff, Grouch, and

15:45 20 Zay-moo?

15:45 21 A. Yes.

15:45 22 Q. When he mentioned -- are these nicknames for guys?

15:45 23 A. Yes.

15:45 24 Q. Okay. They weren't, you know -- that wasn't their name

15:45 25 when they were born, Griff, Grouch, or Zay-moo?

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15:45 1 A. No.

15:45 2 Q. Okay. When he said Griff, Grouch, and Zay-moo, these are

15:45 3 three different individuals, correct?

15:45 4 A. Yes.

15:45 5 Q. Did you know those individuals from Atlantic City at one

15:45 6 point?

15:45 7 A. Yes.

15:45 8 Q. Were they your age or older?

15:45 9 A. Older.

15:46 10 Q. Were they closer to Mykal Derry's age?

15:46 11 A. Yes.

15:46 12 Q. Okay. And did you know them, prior to your being in

15:46 13 custody at the Federal Detention Center -- prior to them being

15:46 14 in custody, did you know them to be involved in criminal

15:46 15 activity in Atlantic --

15:46 16 MR. MADDEN: Objection leading.

15:46 17 MR. ASKIN: I'm just asking if he knew that they were

15:46 18 involved in criminal --

15:46 19 THE COURT: I'll overrule the objection.

15:46 20 BY MR. ASKIN:

15:46 21 Q. Did you know Griff, Grouch, and Zay-moo to be involved in

15:46 22 criminal activity when they were on the streets in Atlantic

15:46 23 City?

15:46 24 A. Yes.

15:46 25 Q. What were they doing?

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15:46 1 A. Selling drugs, carrying guns.

15:46 2 Q. And did they have a particular reputation with respect to

15:46 3 carrying guns?

15:46 4 MR. MADDEN: Objection, hearsay and -- well, hearsay.

15:46 5 MR. ASKIN: It's for the effect on the hearer, in

15:46 6 other words, what he perceived the statement to mean.

15:46 7 MR. MADDEN: That's not reputation.

15:46 8 THE COURT: Yes, rephrase the question. I'll

15:46 9 overrule the objection if you rephrase.

15:46 10 BY MR. ASKIN:

15:46 11 Q. Okay. When Mykal Derry said to you that anyone who

15:46 12 testifies against him is going to have to go home eventually

15:47 13 to Atlantic City, correct?

15:47 14 A. Yes.

15:47 15 Q. And then that Griff, Grouch, and Zay-moo were going to be

15:47 16 home and they would do something, right? Do you remember that

15:47 17 statement?

15:47 18 A. Yes.

15:47 19 Q. That's what he said to you when you were in FDC, correct?

15:47 20 A. Correct.

15:47 21 Q. Okay. When Mykal Derry said that to you, did you have an

15:47 22 understanding of what he was trying to tell you?

15:47 23 A. Yeah, one of us going -- whoever cooperate on him, when

15:47 24 we go home, we was either going to be murdered or shot.

15:47 25 Q. That's what you understood him to mean?

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15:47 1 A. Yes.

15:47 2 Q. And is part of that that you understood who Griff,

15:47 3 Grouch, and Zay-moo were?

15:47 4 A. Yes.

15:47 5 Q. Were other guys present when Mr. Mykal Derry made those

15:47 6 statements to you?

15:47 7 A. Yes.

15:47 8 Q. Who else was there?

15:47 9 A. Laquay Spence, Dominique Venable, and --

15:47 10 Q. If you recall.

15:47 11 A. Myself and, I believe, Erk.

15:47 12 Q. Erk, do you know his real name?

15:48 13 A. Kasan Hayes.

15:48 14 Q. Okay. We'll get to that later.

15:48 15 Were you concerned about cooperating with us after that

15:48 16 was said to you?

15:48 17 A. Yes.

15:48 18 Q. At some point, after you began meeting with us -- well,

15:48 19 strike that. Let me back up.

15:48 20 Were you still -- were you still at the Federal

15:48 21 Detention Center when you began meeting with myself and

15:48 22 Special Agent Kopp in these proffer sessions?

15:48 23 A. I believe -- I believe I was.

15:48 24 Q. So, you were at the Federal Detention Center, and for the

15:48 25 proffer sessions, would you stay in the Federal Detention

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15:49 **1** Center, or did you come over to this building or one of these
 15:49 **2** buildings here at the federal courthouse to be interviewed?
 15:49 **3** **A. Came to this building.**
 15:49 **4** **Q.** Okay. When you came out of the building, generally,
 15:49 **5** would you be over here sometimes for a period of a few hours?
 15:49 **6** **A. Yes.**
 15:49 **7** **Q.** Okay. And did we do this several times?
 15:49 **8** **A. Yes.**
 15:49 **9** **Q.** Generally, from being a defendant at the Federal
 15:49 **10** Detention Center, when you went out for several meetings that
 15:49 **11** lasted several hours and would come back, does that -- did
 15:49 **12** that, in your mind, raise any red flags with other inmates?
 15:49 **13** **A. Yes.**
 15:49 **14** **Q.** Okay. Would people ask you about it or be concerned
 15:49 **15** about it at times?
 15:49 **16** **A. Yes.**
 15:49 **17** **Q.** Okay. Did any individuals in this case -- without going
 15:49 **18** into the details, did any individuals in this case, other than
 15:49 **19** your statements about Mykal Derry, did any individuals in this
 15:49 **20** case that were involved in the case, arrested in the case, try
 15:50 **21** to inquire with you whether you were cooperating?
 15:50 **22** MR. MADDEN: Objection, leading, assumes the answer
 15:50 **23** in the question.
 15:50 **24** MR. ASKIN: Yes or no.
 15:50 **25** THE COURT: Overruled.

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15:51 **1** some point reported that back to me?
 15:51 **2** **A. Yes.**
 15:51 **3** **Q.** After your lawyer reported that back to me, without
 15:51 **4** saying where you went, what happened to you?
 15:51 **5** **A. I was removed.**
 15:51 **6** **Q.** Removed from the FDC?
 15:51 **7** **A. Yes.**
 15:51 **8** **Q.** Did you get to go home?
 15:51 **9** **A. No.**
 15:51 **10** **Q.** Okay. Did you -- were you sent to a different
 15:51 **11** institution by the marshals?
 15:51 **12** **A. Yes.**
 15:51 **13** **Q.** And you remained in federal custody at a different
 15:51 **14** institution, right?
 15:51 **15** **A. Yes.**
 15:51 **16** **Q.** After that, did your lawyer come down and meet with you
 15:51 **17** at that other institution?
 15:51 **18** **A. Yes.**
 15:51 **19** **Q.** Did you tell him at that point what your intentions were?
 15:51 **20** **A. Yes.**
 15:51 **21** **Q.** And what did you tell him?
 15:51 **22** **A. I told him that I wanted to cooperate.**
 15:51 **23** **Q.** So, after you were removed from the Federal Detention
 15:51 **24** Center, you felt comfortable cooperating again?
 15:52 **25** **A. Yes.**

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15:50 **1** BY MR. ASKIN:
 15:50 **2** **Q.** Do you understand my question? Do you remember the
 15:50 **3** question?
 15:50 **4** **A. Can you say it again?**
 15:50 **5** **Q.** Sure. While you were at the Federal Detention Center --
 15:50 **6** other than the statements you already told us about with Mykal
 15:50 **7** Derry, you don't have to repeat those, did anyone attempt
 15:50 **8** to -- any of the other defendants charged in this case attempt
 15:50 **9** to find out whether you were cooperating?
 15:50 **10** **A. Yes.**
 15:50 **11** **Q.** Did they ask you about it?
 15:50 **12** **A. Yes.**
 15:50 **13** **Q.** As a result of that, at some point did you tell your
 15:50 **14** lawyer something about whether or not you wanted to continue
 15:50 **15** to meet with us?
 15:50 **16** **A. Yes.**
 15:50 **17** **Q.** What did you tell him?
 15:50 **18** **A. I didn't want to meet with them no more.**
 15:51 **19** **Q.** Meet with who anymore?
 15:51 **20** **A. The Government.**
 15:51 **21** **Q.** So, you told your lawyer that?
 15:51 **22** **A. Yes.**
 15:51 **23** **Q.** And what did you tell him you wanted to do?
 15:51 **24** **A. I just wanted to get sentenced.**
 15:51 **25** **Q.** Okay. Were you aware of the fact that your lawyer at

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15:52 **1** **Q.** You were removed from the company of Mykal Derry and some
 15:52 **2** of the others in this case, correct?
 15:52 **3** **A. Yes.**
 15:52 **4** **Q.** And that's when you felt comfortable?
 15:52 **5** **A. Yes.**
 15:52 **6** **Q.** In 2010 and the earlier part of -- the first half of
 15:52 **7** 2011, do you recall where you were, whether you were in
 15:52 **8** custody or whether you were on the street? 2010 and the early
 15:52 **9** part of 2011?
 15:52 **10** **A. I was on the street most time. But I was in and out**
 15:52 **11** **though.**
 15:52 **12** **Q.** Okay. Did you serve a sentence at around that time in
 15:53 **13** either county custody or state custody?
 15:53 **14** **A. Yes.**
 15:53 **15** **Q.** Okay. And where were you serving that sentence?
 15:53 **16** **A. In JMSF.**
 15:53 **17** **Q.** Okay. Which stands for what again?
 15:53 **18** **A. Juvenile medium security.**
 15:53 **19** **Q.** Okay. September 2009 through August of -- mid August of
 15:53 **20** 2010, were you in custody at that time, if you recall?
 15:53 **21** **A. Yes.**
 15:53 **22** **Q.** Okay. And that was in New Jersey Department of
 15:53 **23** Corrections custody, correct?
 15:53 **24** **A. Yes.**
 15:53 **25** **Q.** And after you did that time in August of 2010, were you

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15:54 1 released or did you go into additional custody for parole
 15:54 2 violations?
 15:54 3 **A. I was released and then I went back.**
 15:54 4 **Q.** Okay. And you went back -- you were released in August
 15:54 5 of 2010? If you recall.
 15:54 6 **A. No, I was actually released September 2010.**
 15:54 7 **Q.** Okay. So, you were released in September of 2010, as you
 15:54 8 recall. And as you recall, when did you -- if you recall,
 15:54 9 when did you have to go back into custody for the parole
 15:54 10 violation? Was it --
 15:54 11 **A. I believe like a month later.**
 15:54 12 **Q.** Okay. And did you remain in custody for several months
 15:54 13 from the fall of 2010 to the spring or summer of 2011 for
 15:54 14 those parole violations?
 15:54 15 **A. Yes.**
 15:54 16 **Q.** Okay. So, is it fair to say that, with the exception of
 15:54 17 a couple of months, you were in custody from the end of
 15:54 18 September of 2009 until sometime in July of 2011?
 15:55 19 **A. Yes.**
 15:55 20 **Q.** When you came home in July of 2011 after doing that time,
 15:55 21 where did you live?
 15:55 22 **A. With my mother.**
 15:55 23 **Q.** And was she still living in Stanley Holmes?
 15:55 24 **A. Yes.**
 15:55 25 **Q.** In the second village?

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15:55 1 **A. Yes.**
 15:55 2 **Q.** And when you got home, if you recall, were you still on
 15:55 3 state parole, or had you maxed out of your sentence?
 15:55 4 **A. I was on post-incarceration, a post-incarceration.**
 15:55 5 **Q.** Okay. Is that a form of supervision where you have a
 15:55 6 probation or parole officer?
 15:55 7 **A. Yes.**
 15:55 8 **Q.** Okay. And you came home under those terms, under some
 15:55 9 kind of supervision by a probation or parole officer, in July
 15:55 10 of 2011, correct?
 15:55 11 **A. Yes.**
 15:55 12 **Q.** You moved back into your mother's house in the second
 15:55 13 village of Stanley Holmes, right?
 15:55 14 **A. Yes.**
 15:55 15 **Q.** Did you go about getting a job and straightening your
 15:55 16 life out?
 15:55 17 **A. No.**
 15:55 18 **Q.** Okay. What did you go back to, if anything?
 15:56 19 **A. Selling drugs.**
 15:56 20 **Q.** And where were you selling drugs when you came home in
 15:56 21 July of 2011 or thereabouts?
 15:56 22 **A. From Atlantic Avenue to Stanley Holmes.**
 15:56 23 **Q.** And what drugs were you selling when you came home on
 15:56 24 supervision in the summer of 2011?
 15:56 25 **A. Crack and heroin.**

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15:56 1 **Q.** And part of that was in Stanley Holmes Village?
 15:56 2 **A. Yes.**
 15:56 3 **MR. ASKIN:** Your Honor, I'm wondering if this might
 15:56 4 be -- I know it's a few minutes early, but I'm wondering if
 15:56 5 this might be a good place to break.
 15:56 6 **THE COURT:** All right. Very good. All right.
 15:56 7 Ladies and gentlemen of the jury, we finished the testimony
 15:56 8 for today, and we will resume tomorrow with a full day of
 15:56 9 testimony, and as I indicated, I'll give you some information
 15:56 10 tomorrow after consulting with counsel about our schedule for
 15:56 11 next week.
 15:56 12 Please don't discuss the case among yourselves. Please
 15:56 13 don't discuss it with anyone else. Don't do any independent
 15:57 14 research. You have not heard all the evidence in the case.
 15:57 15 Please keep an open mind.
 15:57 16 We wish you a good evening, and we'll see you back here
 15:57 17 tomorrow morning.
 15:57 18 **Ms. Novoa.**
 15:57 19 **THE DEPUTY COURT CLERK:** All rise.
 15:57 20 (Whereupon the jury exited the courtroom.)
 15:57 21 **THE COURT:** All right. Thank you. Please be seated.
 15:57 22 Mr. Young, please follow the directions of the marshal.
 15:57 23 All right. So, I can go and see now. Is there any --
 15:57 24 does the United States Attorney have anymore research or cases
 15:57 25 to cite on this issue of the application of 805 to

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15:57 1 801(d)(2)(E)?
 15:58 2 **MR. ASKIN:** Not yet, your Honor. We were -- I was
 15:58 3 talking to Mr. Danilewitz. We were trying to get the
 15:58 4 documents that the Court gave us to Mr. Gross, who we had a
 15:58 5 conversation with at the break. And we asked Mr. Gross --
 15:58 6 we're going to consult with Mr. Gross this evening. We're
 15:58 7 going to look into it, ask Mr. Gross to help us with that, and
 15:58 8 I think we can report back to the Court, but we haven't had an
 15:58 9 opportunity to do so yet.
 15:58 10 **THE COURT:** Any additional thoughts or cases from the
 15:58 11 defense on this issue?
 15:58 12 **MR. MARKOWITZ:** Not yet, your Honor. I'll try to
 15:58 13 cull something for the Court if there are some.
 15:58 14 **THE COURT:** Very good, Mr. Markowitz.
 15:58 15 Mr. Madden, anything additional on that?
 15:58 16 **MR. MADDEN:** No, your Honor.
 15:58 17 **THE COURT:** Anything else either of you wish me to
 15:58 18 address at this time?
 15:58 19 **MR. MADDEN:** No, your Honor.
 15:58 20 **MR. MARKOWITZ:** No, your Honor.
 15:58 21 **THE COURT:** Mr. Askin?
 15:58 22 **MR. ASKIN:** Your Honor, just, with respect, I think
 15:58 23 the Court cited a Second Circuit case, a Ninth Circuit case,
 15:58 24 and a Fifth Circuit case.
 15:58 25 **THE COURT:** Yes. Do you want the cited

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15:58 1 MR. ASKIN: That would be great.
 15:58 2 THE COURT: I think it was in the handout, but let me
 15:58 3 give you the cites.
 15:59 4 The statement from -- this is from, it's actually
 15:59 5 Graham, which is part of the Federal Practice and Procedure
 15:59 6 series, which I refer generically to as Wright and Miller, but
 15:59 7 it's actually Michael Graham who edits the -- a professor of
 15:59 8 law at the University of Miami who edits the evidence section
 15:59 9 of that volume, of that treatise. He says, similarly -- he's
 15:59 10 talking about multiple layer hearsay under 805.
 15:59 11 He says, similarly, if either the original statement or
 15:59 12 the statement within which the second level statement appears
 15:59 13 is admissible as not hearsay as defined by 801(d), the
 15:59 14 remaining -- the second level statement appears is admissible
 16:00 15 as non-hearsay as defined by Rule 801(d), provided that the
 16:00 16 remaining statement is so defined or qualifies as a hearsay
 16:00 17 exception, then the two statements are admissible.
 16:00 18 Now, here you're not really seeking -- you know, to be
 16:00 19 fair, I'm making certain assumptions here, and that is, in the
 16:00 20 absence of evidence that Saeed Zaffa viewed the incident in
 16:00 21 question, that his knowledge is derived from someone saying
 16:00 22 something to him. So, I'm assuming that there's another layer
 16:00 23 of hearsay there, absent any evidence to the contrary. You're
 16:00 24 not really offering both statements as much as you're merely
 16:00 25 offering Saeed Zaffa's, but I think it is appropriate to note

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16:00 1 that there's reason to believe that his statement is based on
 16:00 2 something someone told him.
 16:00 3 MR. ASKIN: Right.
 16:01 4 THE COURT: So, I think that this treatise is
 16:01 5 consistent with the other one I cited, which says even though
 16:01 6 801(d) -- or 805 talks about exceptions in analyzing
 16:01 7 multilevel hearsay, that it's been interpreted to mean both
 16:01 8 exceptions and exclusions, so that the mere fact that
 16:01 9 something qualifies as an 801(d) exclusion, here a (d)(2)(E)
 16:01 10 co-conspirator statement exclusion, does not mean that it's
 16:01 11 admissible if it could be fairly said to contain another layer
 16:01 12 of hearsay within.
 16:01 13 And the cases cited are *U.S. v. Dotson* from the Fifth
 16:01 14 Circuit, 821 F.2d 1034, and the quote is, "That is, the mere
 16:01 15 fact that one level of a multilevel statement qualifies as
 16:02 16 non-hearsay does not excuse the other levels from Rule 805's
 16:02 17 mandate that each level satisfy an exception to the hearsay
 16:02 18 rule for the statement to be admissible." And actually it --
 16:02 19 that really answers the question. The mere fact that one of
 16:02 20 them is non-hearsay doesn't mean that you shouldn't analyze it
 16:02 21 under 805.
 16:02 22 *U.S. v. Lang*, Second Circuit, 1978, 589 F.2d 92, and
 16:02 23 the jump cite is 92, note 2, and this really addresses
 16:02 24 expressly the issue I opined on out loud, and that is the
 16:02 25 literal language of 805 which talks about exceptions. It

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16:02 1 says, quote, "It might well be argued that Rule 805 literally
 16:03 2 does not apply here at all since a statement by a
 16:03 3 co-conspirator of a party during the course and in the
 16:03 4 furtherance of the conspiracy is classified by Rule 801(d) as
 16:03 5 a statement which is not hearsay. The statement is admissible
 16:03 6 not as an exception to the hearsay rule, but rather as an
 16:03 7 admission by an agent of the party against whom it is to be
 16:03 8 used." And then there's an ellipse, and then it says,
 16:03 9 "However, whatever logic supports 805 would seemingly apply to
 16:03 10 the vicarious admission sought to be introduced here."
 16:03 11 So, they are applying 805 to require not only that the
 16:03 12 application of 801(d) to the first level of hearsay, but some
 16:03 13 separate exemption or exclusion or exception to the underlying
 16:03 14 statement referred to here as a vicarious admission.
 16:03 15 Now, there does appear to be contrary authority from
 16:03 16 the Ninth Circuit, *U.S. versus Basey*, 613 F.2d 198, the jump
 16:04 17 cite being 201.
 16:04 18 MR. MARKOWITZ: What was that last one, 631 F.2d,
 16:04 19 your Honor?
 16:04 20 THE COURT: 198, 201-202, note 1. It says, "No
 16:04 21 double hearsay problem arises, therefore, as admissions and
 16:04 22 adopted admissions are not hearsay under Federal Rule of
 16:04 23 Evidence 801(d)(2)." That suggests that once you satisfy the
 16:04 24 requirements of -- any one of the requirements of 801(d), then
 16:04 25 you don't need to address the double hearsay problem.

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16:04 1 And what we are endeavoring to do is to see whether
 16:04 2 *Dotson*, *Lang*, or *Basey* have ever been cited in the Third
 16:04 3 Circuit either with approval or otherwise. You can argue
 16:04 4 either way. You could say that if the drafters intended 805
 16:04 5 to encompass both exceptions and exclusions, they could have
 16:05 6 simply said that. On the other hand, you can also argue that
 16:05 7 801(d), in defining non-hearsay, could say that the
 16:05 8 provisions -- a statement deemed admissible under 801(d) is
 16:05 9 not subject to the rule in 805, and it doesn't say that
 16:05 10 either.
 16:05 11 So, it's clearly something that needs to be clarified
 16:05 12 in the rules. So, after this trial and in our spare time,
 16:05 13 we'll write a joint letter to the Supreme Court.
 16:05 14 MR. ASKIN: I don't know if I'll do that, your Honor,
 16:05 15 to be honest.
 16:05 16 THE COURT: But in any event -- and it's interesting
 16:05 17 because -- it's funny, in the *Dotson* case -- I said, you know,
 16:05 18 this issue is not likely to come up very often, and sure
 16:05 19 enough, although they actually reach the issue, they also go
 16:05 20 on to say, "On this record, however, we can only consider the
 16:05 21 erroneously admitted evidence as whispers in a hailstorm. The
 16:05 22 evidence indicating guilt is so strong we can have no
 16:05 23 reasonable doubt that the report viewed in conjunction with
 16:06 24 the other evidence from the search of the car did not
 16:06 25 contribute to the verdict."

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16:06 1 So, the potential for harmless error, I suppose, is
 16:06 2 there, but I think the wiser course is to follow what I
 16:06 3 discern to be the weight of the law on this issue. And my
 16:06 4 thought is, my general thought is that the structure of the
 16:06 5 rules, of the case law, is sensitive to the issue of
 16:06 6 multilayered hearsay.

16:06 7 So, you know, I was going to go back and look through
 16:06 8 these transcripts. I don't know what communications were had
 16:06 9 between Saeed Zaffa and the other members of the conspiracy
 16:06 10 after the incident at Red Klotz. If there's something in
 16:06 11 there that suggests Saeed Zaffa learned this from someone with
 16:06 12 personal knowledge or from another co-conspirator, then it may
 16:06 13 very well be that there's evidence in the record to support
 16:06 14 some evidentiary finding on that other layer of hearsay.

16:07 15 But that's for the Government to do. You'll have to
 16:07 16 demonstrate to me either the Third Circuit would excuse that
 16:07 17 layer or that there's some evidence in the record to suggest
 16:07 18 an evidentiary support for that other layer. Otherwise, my
 16:07 19 present view is to exclude it.

16:07 20 MR. ASKIN: I understand, your Honor. That's a fair
 16:07 21 view. So, I think we'll take a look at it tonight, and if we
 16:07 22 think that we have something that might persuade the Court,
 16:07 23 then we'll come to you. And if we don't, I think we may take
 16:07 24 the position, after looking at it again, to just concede the
 16:07 25 issue, but we just want to take a look at it tonight.

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16:07 1 THE COURT: Sure. I understand. All right. I
 16:07 2 invite any additional argument or thoughts or case citation
 16:07 3 tomorrow, and at some point I'll have to rule on it before --
 16:07 4 if the Government continues to wish that testimony to be
 16:07 5 elicited from Mr. Young.

16:07 6 MR. ASKIN: Yes, your Honor.

16:07 7 THE COURT: Anything else I should address?

16:07 8 MR. ASKIN: No, your Honor.

16:07 9 MR. MADDEN: No, your Honor.

16:07 10 MR. MARKOWITZ: No, your Honor.

16:07 11 THE COURT: All right. Have a good evening.

16:07 12 (Proceedings concluded at 4:07 p.m.)

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