

No.____ - _____

In the Supreme Court of the United States

DONOVAN GRANT,

Petitioner,

v.

UNITED STATES,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

JOSHUA L. SOLOMON
CJA-Appointed Counsel of Record
POLLACK SOLOMON DUFFY LLP
101 Huntington Avenue, Suite 530
Boston, MA 02199
Telephone (617) 439-9800
E-mail jsolomon@psdfirm.com
Counsel for Petitioner

QUESTIONS PRESENTED

The questions presented are as follows:

The First Circuit affirmed a conviction for money laundering based on a financial transaction that was a different financial transaction from the one on which the government based the conviction before the District Court. In addition, the First Circuit held that an advance payment of the purchase price in an alleged drug transaction constituted a financial transaction involving the “proceeds of specified unlawful activity,” where that same drug transaction was also the underlying transaction that generated the “proceeds,” thereby putting the First Circuit in conflict with at least two other Circuit Courts that have read the “proceeds” element of money laundering as requiring a transaction in funds previously and separately derived from unlawful activity.

The questions presented by these holdings are:

1. Whether the plain-error doctrine permits an appeals court to affirm a conviction based on a potential crime that it identifies in the record that was different from the incident for which the defendant pled guilty and on which the trial court erroneously relied as the basis for the conviction.
2. Whether an advance payment for a drug transaction can constitute a transaction involving the “proceeds of specified unlawful activity” for purposes of the money-laundering statute, where the “specified unlawful activity” is that same drug transaction and not a prior offense from which the funds used were derived.

PARTIES TO THE PROCEEDINGS

Petitioner, who was the criminal defendant below, is Donovan Grant.

Respondent is the United States, which prosecuted Petitioner below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Donovan Grant respectfully petitions this Court for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS AND ORDERS BELOW

The decision of the First Circuit affirming Mr. Grant's conviction and sentence came in the form of a September 5, 2018 Judgment that is reproduced at Appendix A to this petition.

The district court's sentence appears in a September 27, 2017 Amended Judgment that is reproduced at Appendix B to this petition.

The transcript of the Rule 11 hearing, during which Mr. Grant pled guilty to money laundering, is reproduced at Appendix C to this petition.

JURISDICTION

The First Circuit affirmed Mr. Grant's conviction and sentence through a judgment entered on September 5, 2018. This Court has jurisdiction under 28 U.S.C. § 1254.

RELEVANT STATUTORY PROVISION

The relevant portions of 18 U.S.C. § 1956 read as follows:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

. . . .

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

. . . .

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

STATEMENT OF THE CASE

Mr. Grant engaged in three transactions with a co-defendant, Marvin Antoine. The third of those transactions involved Mr. Grant selling fake heroin, which was not a controlled substance, as confirmed by the government when the shipment was intercepted and tested. The District Court found that the government had not established that Mr. Grant believed that this third shipment contained actual heroin. A central issue in the case against Mr. Grant was whether he believed that the contents of the second shipment, which was never intercepted and tested, but which came from the same source as the third shipment, contained actual heroin or fake heroin.

Payment for the third shipment, which indisputably did not contain actual heroin, provided the sole factual basis that the government provided to the District Court for the money-laundering charge against Mr. Grant. Specifically, at Mr. Grant's Rule 11 hearing, the government offered the following:

On October 20th, Antoine was intercepted placing the [third] order for the heroin. In a subsequent call Antoine was intercepted giving Michelle Collins, who's also a co-defendant in this case, the name "Orlando Smith" and a routing number for a Bank of America bank account, and Antoine directed Collins to send \$6,200. In subsequent calls between defendant Grant and defendant Antoine, Grant called to inquire about the status of this money transport. During the calls Antoine confirmed that he had in fact sent the money to Grant and gave Grant an e-mail address and a code so that Grant could confirm that the money had actually been transferred to an account, which he provided, which was to pay for drugs that Grant was subsequently going to send to Antoine.

(Appendix C, at 62a-63a.) Immediately following this recitation of facts, the District Court asked the government, “And that’s the money laundering?” The government replied, “It is, your Honor.” (*Id.* at 63a.) When taking Mr. Grant’s plea, the District Court asked him, “And you did do the business – putting aside the quantity and the price, you did do the business about the money transfer and the deposit, is that correct?” Mr. Grant responded, “Yes, your Honor.” (*Id.* at 66a.) At no point during the Rule 11 hearing did the government offer any additional facts as the basis for the money-laundering charge. The Court made no further factual findings with respect to that charge

Mr. Grant pled guilty to both conspiracy to possess with intent to distribute and to distribute a controlled substance, and conspiracy to commit money laundering. The latter plea is at issue in this petition.

On appeal to the First Circuit, Mr. Grant challenged the adequacy of the factual basis for the District Court’s acceptance of his money-laundering plea. In doing so, he relied on the District Court’s having accepted his position with respect to the third shipment: that there was insufficient evidence that he believed the fake heroin was real, and thus could not be found to have engaged in an unlawful drug transaction or conspiracy on the basis of that third transaction. As quoted above, the District Court had nevertheless unambiguously relied on that third transaction as the sole basis for the money-laundering conviction.

Because money laundering requires a financial transaction involving “the proceeds of specified unlawful activity,” Mr. Grant also noted the lack of any factual

basis for concluding that the money used in the third transaction (or the second transaction, for that matter) had been derived from unlawful activity. Even the government conceded before the First Circuit that advance payment for an unlawful transaction would not be sufficient, as the statute's use of the term "proceeds" requires that the money have been derived from some *prior* unlawful activity.

The First Circuit accepted for purposes of its decision Mr. Grant's argument with respect to the inadequacy of the third shipment as the basis for the money-laundering charge: "We assume for purposes of this appeal, without deciding, that there was an insufficient factual basis to support Grant's plea to the conspiracy-to-commit-money-laundering charge based upon the facts proffered by the government at the change-of-plea hearing regarding the advance payment on October 20, 2015, for the third shipment." (Appendix A, at 3a.)

The First Circuit nevertheless affirmed the money-laundering conviction. Applying plain-error review, the court found that the record contained evidence that Mr. Grant engaged in a conspiracy to launder money during a *different* financial transaction, and thus that there was no reasonable probability that he would have gone to trial. Specifically, the First Circuit noted the District Court's finding that Mr. Grant believed the second shipment – a transaction that was not proffered as the factual basis for the money-laundering charge – contained real heroin:

The unobjected to portions of the PSR, together with the district court's determination, after an evidentiary hearing and beyond a reasonable doubt, that Grant believed that the second shipment contained heroin, support a finding that Grant knew that the October 15, 2015 transfer of funds, as an advance payment for the second shipment, represented proceeds of specified unlawful activity: the conspiracy to possess with

intent to distribute and distribute heroin, as charged in Count One.
(*Id.*)

The First Circuit also rejected Mr. Grant’s argument as to the meaning of the term “proceeds of specified unlawful activity,” invoking that court’s earlier decision in *United States v. Castellini*, 392 F.3d 35, 48 (1st Cir. 2004), which it described as “stating that ‘[i]t is not a requirement that the underlying crime must be fully completed before any money laundering can begin.’” (Appendix A, at 3a.)

REASONS FOR GRANTING THE PETITION

This petition raises two issues that warrant review by this Court.

The first issue carries the potential to alter significantly, and undermine, the protections that Federal Rule of Criminal Procedure 11 affords, including protections of constitutional significance that this Court has made paramount when defendants waive their rights to a trial and courts convict based on guilty pleas. Stated most simply, the First Circuit’s decision presents squarely the question whether a reviewing court can find that a guilty plea is valid based not on the conduct that was the actual basis for the plea before the trial court, but based on another, separate potential crime that the reviewing court is able to identify in the record.

The First Circuit’s decision threatens to undermine Rule 11 safeguards designed to protect the integrity of the criminal-justice system and to ensure that defendants truly understand the crimes to which they are pleading guilty. Particularly in light of the vast number of federal criminal cases that resolve through guilty pleas, threats to these protections are of exceptional importance. In addition, by using the plain-error doctrine to affirm a conviction based on a different crime, the

First Circuit has split with the Fifth Circuit, which has expressly declined to use that doctrine in the same way.

The second issue that this case presents involves a Circuit split over the breadth of the federal money-laundering statute. The First Circuit's view in this case as to the meaning of "proceeds of specified unlawful activity" conflicts with at least the Fifth and Seventh Circuits' interpretations of the same statutory language. Following the decision in this case, the First Circuit's view is that advance payment for criminal conduct can constitute a financial transaction involving the "proceeds of specified unlawful activity," even though that same criminal conduct is the "unlawful conduct" that generates the "proceeds" in the first place, as opposed to the funds having been derived from some prior or separate criminal conduct. In contrast, the Fifth and Seventh Circuits have rejected that very reasoning, with the Fifth Circuit explaining that "mere payment of the purchase price for drugs by whatever means (even by a financial transaction as defined in § 1956) does not constitute money laundering." *United States v. Harris*, 666 F.3d 905, 909 (5th Cir. 2012).

I. The First Circuit's Affirmance of a Conviction Based on a Different Alleged Crime Than the One to Which Mr. Grant Pled Undermines Protections Designed to Ensure the Legitimacy and Constitutionality of Convictions Through Guilty Pleas, and Puts the First Circuit in Conflict with the Fifth Circuit in its Application of the Plain-Error Standard of Review.

Both Federal Rule of Criminal Procedure 11 and the Constitution require that a District Court make a determination that there is a sufficient factual basis before it may accept a defendant's plea of guilty. As this Court has explained:

The judge must determine that *the conduct which the defendant admits* constitutes the offense charged in the indictment or information or an

offense included therein to which the defendant has pleaded guilty. Requiring this examination of the relation between the law and the acts the defendant admits having committed is designed to protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge.

McCarthy v. United States, 394 U.S. 459, 467 (1969) (internal quotation marks and footnotes omitted; emphasis added). While the specific procedures that Rule 11 mandates are not necessarily constitutionally required, the need for the trial court to find a proper factual basis is:

A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be an intentional relinquishment or abandonment of a known right or privilege. Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

Id. at 466 (internal citation, footnotes, and quotation marks omitted).

It was undisputed before the First Circuit that the District Court had based its acceptance of Mr. Grant's plea of guilty to the money-laundering charge on only the payment for the third transaction. Recognizing that the District Court had also concluded that there was insufficient evidence for finding that third transaction unlawful, the First Circuit assumed for purposes of its decision that the conviction could *not* be affirmed on the basis of that transaction: "We assume for purposes of this appeal, without deciding, that there was an insufficient factual basis to support Grant's plea to the conspiracy-to-commit-money-laundering charge based upon the

facts proffered by the government at the change-of-plea hearing regarding the advance payment on October 20, 2015, for the third shipment.” (Appendix A, at 3a.)

As a result, the First Circuit searched the District Court record and found a separate incident, and thus a separate alleged crime, on which it concluded the District Court could have based a money-laundering conviction:

The unobjected to portions of the PSR, together with the district court’s determination, after an evidentiary hearing and beyond a reasonable doubt, that Grant believed that the second shipment contained heroin, support a finding that Grant knew that the October 15, 2015 transfer of funds, as an advance payment for the second shipment, represented proceeds of specified unlawful activity: the conspiracy to possess with intent to distribute and distribute heroin, as charged in Count One.

(Id.)

The First Circuit’s assumption that the third transaction could not supply the factual basis for a money-laundering conviction, which accepted Mr. Grant’s position on appeal as to that issue, should have ended the inquiry and resulted in reversal of that conviction. Mr. Grant had not pled guilty to money laundering based on any other financial transaction. The District Court had been presented with no other purported “specified unlawful activity” from which the funds at issue had been derived. To the contrary, when the District Court asked the prosecutor whether her recitation of facts about the October 20 money transfer as payment for the third transaction was the basis for the money-laundering charge, the prosecutor responded, “It is, your Honor.” (Appendix C, at 63a.) Mr. Grant then admitted that he did what the prosecutor had set forth in that recitation. (*Id.* at 66a.)

The District Court unambiguously did not rely on the earlier wire transfer that the First Circuit ultimately used to justify its affirmance, or any other financial

transaction disclosed in the record. The availability of the full record in light of the plain-error standard of review, when assessing whether there was a factual basis for deeming the financial transaction at issue a criminal transaction, is not the same as using the full record to identify a *different* crime that may have been, but wasn't, the basis for the money-laundering conviction. Mr. Grant did not plead guilty to money laundering on the basis of some other financial transaction. The government, for whatever strategic or convenient reason, opted to seek a conviction for only the October 20, 2015 wire transfer. The District Court expressly confirmed with the government that it was the government's position that the October 20 transfer was what constituted the crime to which Mr. Grant was pleading guilty. Mr. Grant never pled guilty to other acts of potential money laundering. The First Circuit has thus essentially adjudicated Mr. Grant guilty on appeal of a different crime than the one to which he pled without a factual basis.

Permitting a court of appeals to use a separate crime as a substitute basis for determining the sufficiency of the factual basis for a guilty plea would defy the very purpose of Rule 11 to safeguard fundamental constitutional protections. There could simply be no way to conclude that the defendant here "possesse[d] an understanding of the law in relation to the facts," *McCarthy v. United States*, 394 U.S. 459, 466 (1969), if upholding the conviction required converting the guilty plea into one based on a different crime altogether from the one the prosecution expressly set forth at the Rule 11 hearing.

In addition, the First Circuit's holding that plain-error review is what allows it to affirm a conviction on the basis of separate criminal conduct splits with the Fifth Circuit's application of the plain-error standard. In *United States v. Broussard*, 669 F.3d 537, 542 (5th Cir. 2012), the defendant had pled guilty to attempting to coerce a minor to engage in sexual acts, based on his communications with victims identified as TL and KH. During his plea colloquy, the defendant also admitted to sexually explicit communications with another victim, identified as KP. *Id.* at 542-43. His actions with respect to all three victims (and a fourth) were charged in the indictment. *Id.* at 542. On appeal, the defendant challenged the sufficiency of the factual basis for his plea, focusing on whether there was a basis for concluding that he took a substantial step toward actual sexual contact, which was necessary for the conviction on an attempt theory. *Id.* at 547. The Fifth Circuit reviewed for plain error, with its inquiry focused "on whether the record supports the allegation that [defendant] took a substantial step toward persuading TL and KH to engage in illegal sexual activity." *Id.* at 546, 548. Among its other arguments, the government "put[] forth as evidence of [defendant's] substantial steps toward criminal sexual activity his conduct with KP." *Id.* at 549 n.7. Despite application of the plain-error standard of review, and despite the government's express request that it do so, the Fifth Circuit refused to rely on the separate crime involving KP: "Notwithstanding the Government's protestations, we will not consider [defendant's] conduct with KP to determine if there is a sufficient factual basis to sustain his conviction for violating § 2422(b) with respect to his conduct toward TL and KH." *Id.*

The First Circuit's approach is directly contrary to the Fifth Circuit's application of the plain-error standing in *Broussard*. Not only did the First Circuit take into account the separate alleged crime involved in the second transaction with Mr. Antoine, but it expressly based its affirmance on that separate alleged crime, after assuming that the actual basis on which the District Court relied was insufficient.

II. The First Circuit Has Expanded the Scope of the Money-Laundering Statute in a Manner That Puts it in Conflict with the Fifth and Seventh Circuits' Interpretations of the Same Statutory Text.

Among the elements of a money-laundering conviction are that the transfer of funds “in fact involves the proceeds of specified unlawful activity.” 18 U.S.C. § 1956(a)(1). In looking to the second financial transaction between Messrs. Grant and Antoine as its basis for affirming the money-laundering conviction, the First Circuit found that the transaction was such that it satisfied the statutory elements of that crime. Because there was no evidence as to the source of the funds that were transferred as an advance payment for the second transaction – and thus no evidence that those funds were derived from some previous illegal activity – the First Circuit made clear that it viewed the second transaction itself as the “specified unlawful activity” from which the funds were “proceeds.” As the First Circuit explained its holding,

Grant believed that the second shipment contained heroin, [which] support[s] a finding that Grant knew that the October 15, 2015 transfer of funds, *as an advance payment for the second shipment*, represented proceeds of specified unlawful activity: the conspiracy to possess with intent to distribute and distribute heroin, as charged in Count One.

(Appendix A, at 3a (emphasis added).) The First Circuit’s decision went on to cite to its earlier decision in *United States v. Castellini*, 392 F.3d 35, 48 (2004), for the proposition that “it is not a requirement that the underlying crime must be fully completed before any money laundering can begin” – further making clear that the court viewed advance payment for an illegal transaction in progress as constituting simultaneously (1) the event that produces “proceeds of specified unlawful activity,” and (2) the financial transaction in those proceeds that makes the transfer a form of money laundering. In other words, according to the First Circuit’s reasoning, because Mr. Grant was involved in “unlawful activity,” the funds paid to him in the course of that transaction were “proceeds” of unlawful activity, such that their payment to him in the first place constituted a financial transaction that “involves the proceeds of specified unlawful activity.”¹

¹ The First Circuit appears to have misapplied its own precedent through its citation to *Castellini* for this point. That action involved a money-laundering scheme related to a conspiracy to hide assets from a bankruptcy court, with bankruptcy fraud as the underlying “specified unlawful activity.” The defendant received money from a person he believed to be the owner of a business who was seeking to hide the money from a bankruptcy court (but who was actually an undercover federal agent). After receiving the money, the defendant engaged in various financial transactions with that money, including some that resulted in a fee for the “service” being deducted, and ultimately leading to a transfer of funds back to the owner. The First Circuit held *not* that the payment of the money to the defendant in the first instance constituted money laundering, but that the *subsequent* transactions using that money to hide its true nature is what satisfied the requirement that there be a transaction in “proceeds” from an underlying crime:

Here, “proceeds” of bankruptcy fraud were created as of the time Castellini accepted the checks from the agent in order to hide them from the bankruptcy court. . . . Once the basic elements of the underlying crime are sufficiently far along to create proceeds, the logic goes, the money becomes proceeds of illegal activities and it can be laundered.

There may be a case in which the line between bankruptcy fraud and money laundering is so close that the element of showing that the funds are proceeds of an illegal activity or the element of representation is not met. Arguably, a case where a defendant merely received money to be hidden from the bankruptcy court in his account and *did nothing more* with it might be such a situation. That is not this case. Here the further activities Castellini

The Fifth Circuit, in contrast, has recognized the circularity in such reasoning. It thus reads the money-laundering statute in a far narrower way. In *United States v. Harris*, 666 F.3d 905, 909 (5th Cir. 2012), for example, the defendants had transferred money between them and their associates in payment for various illegal drug transactions. As the court described the transfers:

The fund transfers were made in two main ways—

1. Miller’s group made cash deposits into the accounts of Harris, Harris’s supplier and Harris’s friend at a Bank of America branch in Dallas, Texas, which were then withdrawn by Harris or others at Bank of America locations in the Los Angeles area.
2. Miller or other members in his group wired money to Harris or to Harris’s associates using MoneyGram.

Id. at 907. The Fifth Circuit framed the question before it as “whether the funds involved in those transactions were proceeds of unlawful activity.” *Id.* at 909. It held that they were not, as “mere payment of the purchase price for drugs by whatever means (even by a financial transaction as defined in § 1956) does not constitute money laundering.” *Id.* The court further explained that “[m]oney does not become proceeds of illegal activity until the unlawful activity is complete. The crime of money laundering is targeted at the activities that generally follow the unlawful activity in time.” *Id.* at 910.

discussed and engaged in after initially receiving the money were archetypal money laundering.

By using *Castellini* as a basis for holding here that the advance payment for the alleged drug transaction constituted a financial transaction involving “proceeds” from unlawful activity, the First Circuit has expanded the definition of “proceeds of specified unlawful activity” in a manner that puts it in conflict with the Fifth and Seventh Circuits, as discussed below.

The Eleventh Circuit has described *Harris* as standing “for the proposition that a mere payment in exchange for controlled substances cannot be considered money laundering.” *United States v. Gross*, 661 F. App’x 1007, 1022 (11th Cir. 2016). Apparently accepting *Harris*’s reasoning, the Eleventh Circuit expressly distinguished the case before it from *Harris* based on the fact that the funds transferred in the case before it had been derived from *previous* unlawful activity, and thus were “proceeds” of that prior crime:

[T]he payment in *Harris* did not involve proceeds because the drug transaction was not completed until after the money exchanged hands. Here, as we have already determined, the money previously deposited into ZenBio’s Bank of America account and used in the wire transactions in February and March for the purpose of purchasing more chemicals was proceeds from *prior* completed smuggling activity

Id. (emphasis in original).

At least one other Court of Appeals has likewise interpreted “proceeds of specified unlawful activity,” in contexts other than drug transactions, in a way that also conflicts with the First Circuit’s application of that term here. For example, in reviewing cases addressing money-laundering in the context of wire and bank frauds, the Seventh Circuit held that “[t]hese cases stand for the rule that the predicate offenses must produce proceeds before anyone can launder those proceeds.” *United States v. Mankarious*, 151 F.3d 694, 705 (1998). That court also referred to this principle as “the proceeds rule,” which it summarized as “a money laundering transaction must follow and must be separate from any transaction necessary for the predicate offense to generate proceeds.” *Id.* at 706.

These holdings cannot be reconciled with the First Circuit’s conclusion that advance payment for a drug transaction constitutes money-laundering because the drug transaction itself is “unlawful activity” that makes the money being paid “proceeds” from unlawful activity. The First Circuit’s decision in that regard thus creates a split with at least the Fifth and Seventh Circuits (and likely the Eleventh Circuit, based on its acceptance of *Harris*’s reasoning). This split gives rise to substantially different interpretations of the money-laundering statute, with the First Circuit taking a far broader view of its scope by allowing courts to treat payments for illegal conduct as money laundering, regardless of the source of the funds used in those payments, and regardless of whether those funds are then transferred further.

This Court should resolve this significant split over the statute’s breadth.

CONCLUSION

Accordingly, the Court should grant this petition.

Respectfully submitted,

/s/ Joshua L. Solomon

JOSHUA L. SOLOMON
Counsel of Record
POLLACK SOLOMON DUFFY LLP
101 Huntington Avenue, Suite 530
Boston, MA 02199
jsolomon@psdfirm.com
(617) 439-9800
Counsel for Petitioner

November 12, 2018

Appendix A

Judgment of the United States Court of Appeals for the First Circuit, No. 17-1621 (September 5, 2018)	1a
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United States Court of Appeals For the First Circuit

No. 17-1621

UNITED STATES,

Appellee,

v.

DONOVAN GRANT,

Defendant, Appellant.

Before

Torruella, Thompson and Barron,
Circuit Judges.

JUDGMENT

Entered: September 5, 2018

Defendant-appellant Donovan Grant pled guilty to conspiring to possess with intent to distribute heroin and cocaine, in violation of 21 U.S.C. § 846 (Count One) and conspiring to commit money laundering, in violation of 18 U.S.C. § 1956(h) (Count Ten). He appeals from the district court's drug quantity determination underlying his 51-month sentence on Count One. And he challenges for the first time on appeal the validity of his conviction on the money laundering charge, for which he received a concurrent 51-month sentence, on the ground that there was an inadequate factual basis for the plea, in violation of Fed.R.Crim.P. 11(b)(3).

An issue central to appellant's claims is whether Grant believed that two of the three shipments underlying the charge in Count One contained heroin. See United States v. Zhen Zhou Wu, 711 F.3d 1, 25 (1st Cir. 2013) (stating that it is black letter law that "a defendant can be convicted of conspiracy to distribute [controlled substances] even though, unbeknownst to him, the substances he was distributing turned out to be innocuous."). After Grant pled guilty, his presentence report (PSR) reported that the third shipment, which had been seized pursuant to a federal search warrant, had "field tested positive for heroin but laboratory results confirmed that the contents were actually noscapine, which is a derivative of opium but not a controlled substance." PSR, ¶ 20. It was uncontested that the first shipment contained heroin. The parties disputed whether the second shipment, which was neither seized nor tested, contained heroin or noscapine.

We grant the government's motion for summary affirmance.

I. Drug Quantity

"When making a drug quantity finding, the sentencing court's responsibility is to 'make reasonable estimates of drug quantities, provided they are supported by a preponderance of the evidence.'" United States v. Lee, 892 F.3d 488, 491 (1st Cir. 2018)(citation omitted). "We review the district court's factual decisions regarding drug quantity for clear error." United States v. Ramirez-Negron, 751 F.3d 42, 53 (1st Cir. 2014). "Absent a mistake of law[,] . . . we must honor such findings 'unless, on the whole of the record, we form a strong, unyielding belief that a mistake has been made.'" United States v. Platte, 577 F.3d 387, 392 (1st Cir. 2009).

A. Contents of Second Shipment

Grant argues here, as he did below, that the district court clearly erred in including any drug weight from the second shipment because there was no "evidence in the record that could support a conclusion that Mr. Grant actually believed the second shipment contained real heroin."

"The government need only prove drug amounts by a preponderance of the evidence." United States v. Kinsella, 622 F.3d 75, 86 (1st Cir. 2010). Having carefully reviewed the evidence that was before the sentencing court, including the transcripts of intercepted telephone calls between co-conspirators and the testimony of the DEA Task Force Officer who investigated the case and interpreted the phone calls, we conclude that Grant has failed to demonstrate clear error, and that a preponderance of the evidence supports the district court's determination that Grant believed that the second shipment contained heroin. See United States v. Santos, 357 F.3d 136, 141 (1st Cir. 2004) ("[I]f there are two plausible views of the record, the sentencing court's choice between them cannot be clearly erroneous.").

B. Quantity of Second Shipment

As Grant acknowledges, defense counsel conceded at the sentencing hearing that the quantity of the second shipment, based upon the amount paid by Antoine, was 100 grams. He now claims, for the first time, that "the evidence before [the district court] required a finding of 57 grams from that shipment." Grant concedes that review of this claim is for plain error. See United States v. Bedini, 861 F.3d 10, 20 (1st Cir.), cert. denied, 138 S.Ct. 416 (2017). "To prevail under plain error review, the defendant must show '(1) that an error occurred (2) which was clear or obvious and which not only (3) affected the defendant's substantial rights, but also (4) seriously impaired the fairness, integrity, or public reputation of judicial proceedings.'" United States v. Vargas-Garcia, 794 F.3d 162, 166 (1st Cir. 2015)(citation omitted).

We have thoroughly and carefully reviewed the evidence before the sentencing court, including the transcripts of intercepted telephone calls between the co-conspirators. And, having carefully considered the arguments presented in the parties' briefs, we conclude that there is no clear or obvious error in the finding, at least by a preponderance of the evidence, that the quantity of the second shipment was 100 grams.

II. Money Laundering

"Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea." Fed.R.Crim.P. 11(b)(3). "[T]he factual predicate for the guilty plea must exist not only at the time that the court initially accepts the plea, but also when it imposes sentence." United States v. Ventura-Cruel, 356 F.3d 55, 60 (1st Cir. 2003).

Grant maintains that the district court erred in entering judgment of conviction on Count Ten, in view of his denial at sentencing that he believed that the third shipment contained heroin and the court's acceptance of that denial. We assume for purposes of this appeal, without deciding, that there was an insufficient factual basis to support Grant's plea to the conspiracy-to-commit-money-laundering charge based upon the facts proffered by the government at the change-of-plea hearing regarding the advance payment on October 20, 2015, for the third shipment.

Because this challenge to Grant's conviction on Count Ten is raised for the first time on appeal, plain error review applies, as Grant concedes. To prevail, Grant "must demonstrate that the district court committed clear error affecting his substantial rights that undermined the 'fairness, integrity, or public reputation of judicial proceedings.' To show his substantial rights were affected, [he] must 'show a reasonable probability that, but for the [Rule 11] error, he would not have entered the plea.'" United States v. Rosado-Perez, 605 F.3d 48, 56 (1st Cir. 2010).

"A claim that a guilty plea rests on an insufficient factual basis, raised for the first time on appeal, opens the entire record for appellate inspection." United States v. Torres-Vazquez, 731 F.3d 41, 45 (1st Cir. 2013); see also United States v. Hernandez-Maldonado, 793 F.3d 223, 226 (1st Cir. 2015)(stating that this court "look[s] to the full record" in assessing claim of plain error under Rule 11). This court must "consider[] whether it was reasonably probable that, but for the [alleged Rule 11 error], [defendant] would have exercised his right to go to trial. In answering that question, [the alleged error] should be assessed, not in isolation, but in light of the full record." United States v. Davila, 569 U.S. 597, 612 (2013); see also United States v. Dominguez Benitez, 542 U.S. 74, 80 (2004)(stating that "in assessing the effect of Rule 11 error, a reviewing court must look to the entire record, not to the plea proceedings alone").

The unobjected-to portions of the PSR, together with the district court's determination, after an evidentiary hearing and beyond a reasonable doubt, that Grant believed that the second shipment contained heroin, support a finding that Grant knew that the October 15, 2015 transfer of funds, as an advance payment for the second shipment, represented proceeds of specified unlawful activity: the conspiracy to possess with intent to distribute and distribute heroin, as charged in Count One. See United States v. Awad, 518 F.Supp.2d 577, 583 (S.D.N.Y. 2007)("A conspiracy to distribute or import a controlled substance can constitute specified unlawful activity" under 18 U.S.C. § 1956(a)(1).), *aff'd*, 369 Fed.Appx. 242 (2d Cir. 2010); see also United States v. Castellini, 392 F.3d 35, 48 (1st Cir. 2004) (stating that "[i]t is not a requirement that the underlying crime must be fully completed before any money laundering can begin").

In view of this factual basis for the offense charged in Count Ten, we are not persuaded that there is "a reasonable probability that, but for the [alleged Rule 11] error, [Grant] would not have entered the plea." Rosado-Perez, 605 F.3d at 56. Compare United States v. Wroblewski, 816

F.3d 1021, 1025 (8th Cir. 2016)(stating that where record showed that defendant's conduct did not meet all of the elements of the crime to which he pled guilty, the Rule 11 error "affected Wroblewski's substantial rights because there is a reasonable probability that he would not have pled guilty had he known there was no factual basis for the plea"); United States v. Garcia, 587 F.3d 509, 521 (2d Cir. 2009)(holding that Rule 11 "factual basis" error had seriously affected "the fairness integrity or public reputation of judicial proceedings" where Garcia had been convicted and sentenced "for an offense of which there is a substantial possibility he is not guilty."). Accordingly, Grant's Rule 11 claim cannot withstand plain error review.

Grant's conviction and sentence are affirmed. See 1st Cir. R. 27.0(c).

By the Court:

/s/ Margaret Carter, Clerk

cc: Joshua Louis Solomon
Donovan Grant
Mark T. Quinlivan
Cynthia A. Young
Leah Belaire Foley
Eric Rosen

Appendix B

Amended Judgment in a Criminal Case, United States District Court for the District of Massachusetts, No. 15-CR-10383-9-WGY (September 27, 2017)	5a
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UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA

v.

DONOVAN GRANT

AMENDED JUDGMENT IN A CRIMINAL CASECase Number: **1: 15 CR 10383 - 009 - WGY**

USM Number: 70500-112

Ingrid S. Martin

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 1s & 10s☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC § 846	Conspiracy to Possess with Intent to Distribute and to Distribute Heroin and Cocaine	11/22/15	1s
18 USC § 1956(h)	Conspiracy to Commit Money Laundering	11/22/15	10s

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 1 & 10 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/1/2017

Date of Imposition of Judgment

/s/ William G. Young

Signature of Judge

The Honorable William G. Young
Judge, U.S. District Court

Name and Title of Judge

9/27/2017

Date

DEFENDANT: DONOVAN GRANT

CASE NUMBER: **1: 15 CR 10383 - 009 - WGY****IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 51 month(s)

on each count; each count to run concurrently with each other.

The defendant shall receive credit for time served from 12/1/2015 to the present.

☒ The court makes the following recommendations to the Bureau of Prisons:

The defendant be designated in a facility closest to Los Angeles, CA.

The defendant participate in the BOP's Residential Drug Abuse Program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DONOVAN GRANT

CASE NUMBER: **1: 15 CR 10383 - 009 - WGY****SUPERVISED RELEASE**Upon release from imprisonment, the defendant shall be on supervised release for a term of : **36** month(s)

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DONOVAN GRANT

CASE NUMBER: **1: 15 CR 10383 - 009 - WGY**

SPECIAL CONDITIONS OF SUPERVISION

1. You are prohibited from drinking alcohol to the point of intoxication, as defined by Massachusetts State Law as a .10 blood alcohol level.
2. You must participate in a program for substance abuse counseling as directed by the Probation Office, which program may include testing, not to exceed 104 drug tests per year to determine whether you have reverted to the use of alcohol or drugs.
3. You must participate in an educational services program, as directed by the Probation Office. Such program may include GED preparation, English as a Second Language classes, and/or other classes designed to improve your proficiency in skills such as reading, writing, mathematics, and computer use.
4. If ordered deported, you must leave the United States and not to return without prior permission of the Secretary of the Department of Homeland Security.
5. You must use your true name and are prohibited from the use of any false identifying information which includes, but is not limited to, any aliases, false dates of birth, false social security numbers, and incorrect places of birth.
6. You shall be required to contribute to the costs of evaluation, treatment, programming, and/or monitoring (see Special Condition #2 and #3), based on the ability to pay or availability of third-party payment.

DEFENDANT: DONOVAN GRANT

CASE NUMBER: **1: 15 CR 10383 - 009 - WGY**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DONOVAN GRANT

CASE NUMBER: **1: 15 CR 10383 - 009 - WGY**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Appendix C

Transcript of Plea Change Hearing, United States District Court for the District of Massachusetts, No. 15-CR-10383-WGY (January 4, 2017)	11a
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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:15-cr-10383-WGY

4
5 UNITED STATES OF AMERICA

6
7 vs.

8
9 CHUKWUMA OBIORA, MARSHAWN POTTS, DONOVAN GRANT,
10 and ANTHONY HOLZWORTH

11 *****

12
13 For Hearing Before:
14 Judge William G. Young

15
16 Plea Change Hearing

17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Wednesday, January 4, 2017

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
bulldog@richromanow.com

A P P E A R A N C E S

LEAH B. FOLEY, ESQ.

United States Attorney's Office
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3144
E-mail: Leah.foley@usdoj.gov
For the United States of America

JOHN H. CUNHA, JR., ESQ.

Cunha & Holcomb, P.C.
One State Street, Suite 500
Boston, Massachusetts 02109-3507
(617) 523-4300
Email: Cunha@cunhaholcomb.com
For Chukwuma Obiora

ROBERTO M. BRACERAS, ESQ.

TIMOTHY KISTNER, ESQ.

Goodwin Procter, LLP
100 Northern Avenue
Boston, Massachusetts 02210
(617) 570-1895
Email: Rbraceras@goodwinprocter.com
For Marshawn Potts

DANIEL J. CLOHERTY, ESQ.

Collora, LLP
100 High Street, 20th Floor
Boston, Massachusetts 02110
(617) 371-1000
Email: Dcloherty@collorallp.com
For Donovan Grant

MICHAEL J. LISTON, ESQ.

25 Mt. Vernon Street
Cambridge, Massachusetts 02140
(857) 259-6040
Email: Michaeljliston@gmail.com
For Anthony Holzworth

1 P R O C E E D I N G S

2 (Begins, 2:00 p.m.)

3 THE CLERK: Criminal Matter 15-10383, the United
4 States of America versus Obiora, et al.

5 THE COURT: Good afternoon. Would counsel
6 identify themselves.

7 MS. FOLEY: Good afternoon, your Honor, Leah Foley
8 for the United States.

9 MR. LISTON: Good afternoon, your Honor, Michael
10 Liston for the defendant, Anthony Holzworth.

11 MR. BRACERAS: Good afternoon, your Honor, Roberto
12 Braceras on behalf of Marshawn Potts.

13 MR. KISTNER: Timothy Kistner on behalf of
14 Marshawn Potts as well, your Honor.

15 MR. CLOHERTY: Good afternoon, your Honor, Daniel
16 Cloherty on behalf of Donovan Grant.

17 MR. CUNHA: Good afternoon, your Honor, John Henry
18 Cunha on behalf of Mr. Obiora, Chukwuma Obiora, who is
19 seated the last to your right.

20 THE COURT: Thank you.

21 And do I understand that each of your defendants
22 desires to tender a plea of guilty?

23 MR. CUNHA: That's correct, your Honor.

24 MR. CLOHERTY: That's correct, your Honor.

25 MR. LISTON: Yes, your Honor.

1 THE COURT: All right. We'll swear them and we'll
2 proceed.

3 THE CLERK: Could you please all rise and raise
4 your right hand.

5 (Chukwuma Obiora, Potts, Holzworth, and Grant,
6 SWORN.)

7 (All defendants in jury box.)

8 MR. CUNHA: Judge, can we come down and stand?

9 THE COURT: You can. Why don't you do that. Some
10 of you come down here.

11 MR. CUNHA: Mr. Obiora is at the end. If it's
12 acceptable to you and the marshals, I could go right in
13 beside him?

14 THE COURT: That's fine, and the marshals are
15 fine.

16 MR. BRACERAS: Excuse me, your Honor.

17 THE COURT: Okay.

18 (All counsel stand in front of client in jury
19 box.)

20 THE COURT: Now, let me explain what we're doing
21 here.

22 My name is Bill Young, I'm the judge who presides
23 in this session of the court. Each one of you -- though
24 each one of your situations is different, each one of
25 you, when I asked your lawyers, said that you wanted to

1 plead guilty, and that's why the Clerk put you under
2 oath. She put you under oath because before I can let
3 you plead guilty, and it's up to me, I have to find out
4 certain things.

5 I have to find out -- each one of you, I have to
6 find out that you know what you're doing. I have to
7 find out that you know what rights you're giving away,
8 because if you plead guilty, you give away rights that
9 you have. I have to find out that you -- each one of
10 you, know what may happen to you, what may happen if you
11 plead guilty. I have to be sure that you want to plead
12 guilty, not that you're happy about pleading guilty, but
13 all things considered, you've decided -- not your
14 lawyers, though your lawyers are here to advise you, and
15 I'll let them talk to you at any time. You're in charge
16 here.

17 Now, if as we go along -- and you listen to me
18 because I'll be the one, if you plead guilty, who has
19 the obligation to pass sentence on you. If you decide
20 you'd just assume not plead guilty, that's fine by me.
21 I'm not angry. It doesn't mess up my afternoon. You
22 know I've got this case ready to go to trial on Monday
23 and I'm ready and we'll go to trial on Monday, and it
24 will be a fair and an impartial trial. If that's what
25 you want, then that's fine.

1 Let me say something to you. I'm never ever going
2 to punish you, not one day, because you went to trial.
3 Now if you go to trial and you're found guilty, then
4 there isn't any agreement, there's no plea deal, and I
5 have the obligation, fairly and impartially, to pass
6 sentence on you. But it's never going to be any worse
7 because you went to trial since that's one of those
8 constitutional rights you have.

9 Now, you have the right to talk to your lawyer,
10 any -- we're not rushing here. The only reason I have
11 all four of you at once is I can explain things
12 together. Where it's individual, I'll talk to you
13 individually. Where I have things I can explain to all
14 of you, I'll do that.

15 If you want to talk to your lawyer, just say that.
16 You're in charge. I'll stop. You talk to your lawyer.
17 And like I said, if you want to stop, just tell me you
18 want to stop. It's fine, you'll be on for trial on
19 Monday, we'll go ahead.

20 So let me just get everyone lined up in my own
21 mind and I can go ahead.

22 Now, Mr. Cunha's client, Mr. Chukwuma Obiora.

23 MR. CHUKWUMA OBIORA: Yes.

24 THE COURT: All right. Why don't I ask you first
25 then.

1 Would you state your full name, sir?

2 MR. CHUKWUMA OBIORA: Chukwuma Obiora.

3 THE COURT: And you, sir?

4 MR. POTTS: Marshawn Potts.

5 THE COURT: All right.

6 And you?

7 MR. GRANT: Donovan Grant.

8 THE COURT: All right?

9 MR. HOLZWORTH: Anthony Holzworth.

10 THE COURT: All right.

11 Now, the first thing I need to do is find out that
12 each one of you knows what you're doing, so that's
13 individual, so I'm just going to ask the same questions
14 but we'll take each one of you individually. But before
15 I do that, let me start with Mr. Obiora.

16 Mr. Obiora, do you understand everything I've said
17 to you so far?

18 MR. CHUKWUMA OBIORA: Yes, your Honor.

19 THE COURT: Mr. Potts, do you understand
20 everything I've said so far?

21 MR. POTTS: Yes, your Honor.

22 THE COURT: Mr. Grant, do you understand it, so
23 far?

24 MR. GRANT: Yes, your Honor.

25 THE COURT: And, Mr. Holzworth, do you understand

1 what I've told you so far?

2 MR. HOLZWORTH: Yes, your Honor.

3 THE COURT: Very well.

4 All right. Mr. Obiora, how old are you, sir?

5 MR. CHUKWUMA OBIORA: 26, your Honor.

6 THE COURT: How far did you go in school?

7 MR. CHUKWUMA OBIORA: I obtained my GED and I took
8 one course in college.

9 THE COURT: Have you ever been treated for a
10 mental condition of any sort?

11 MR. CHUKWUMA OBIORA: No.

12 THE COURT: Are you aware of any mental condition
13 that you may have?

14 MR. CHUKWUMA OBIORA: No.

15 THE COURT: Um, excuse me.

16 Are you taking any medication today?

17 MR. CHUKWUMA OBIORA: No. No.

18 THE COURT: Under the influence of any drug?

19 MR. CHUKWUMA OBIORA: No.

20 THE COURT: Under the influence of alcohol?

21 MR. CHUKWUMA OBIORA: No.

22 THE COURT: Do you know what you're willing to
23 plead guilty to here, what the charges are that you're
24 pleading guilty to here?

25 MR. CHUKWUMA OBIORA: Yes, your Honor.

1 THE COURT: Tell me.

2 MR. CHUKWUMA OBIORA: Um --

3 THE COURT: And it's not a test, but what do you
4 think the charges are in your case?

5 (Talks to counsel.)

6 MR. CHUKWUMA OBIORA: Um, conspiracy and a couple
7 of other substantive offenses.

8 THE COURT: Again it's not a test, but that's
9 right. There's a conspiracy charge I'm going to
10 explain, in this case conspiracy to possess with intent
11 to distribute and to distribute heroin, and then there's
12 two substantive charges, which mean two doing-it
13 charges, actually doing something, one is being a felon
14 in possession of ammunition, and the other is possession
15 with intent to distribute heroin and cocaine. Now those
16 are the charges that you say you're willing to plead
17 guilty to.

18 Do you understand that?

19 MR. CHUKWUMA OBIORA: Yes, your Honor.

20 THE COURT: Okay.

21 Mr. Potts, how old are you, sir?

22 MR. POTTS: 23.

23 THE COURT: How far did you go in school?

24 MR. POTTS: The 10th grade.

25 THE COURT: Have you ever been treated for a

1 mental condition of any sort?

2 MR. POTTS: No, your Honor.

3 THE COURT: Are you aware of any mental condition
4 or illness that you may have today?

5 MR. POTTS: No, your Honor.

6 THE COURT: Are you taking any medication today?

7 MR. POTTS: No, your Honor.

8 THE COURT: Under the influence of any drug?

9 MR. POTTS: No, your Honor.

10 THE COURT: Do you know what you're charged with
11 to which you're willing to plead guilty?

12 MR. POTTS: Yes.

13 THE COURT: Tell me.

14 MR. POTTS: Conspiracy to distribute heroin and
15 cocaine?

16 THE COURT: Again it's not a test, but in your
17 case it's only the conspiracy charge. So that's the
18 charge against you.

19 MR. POTTS: Yes, your Honor.

20 THE COURT: Now, Mr. Grant, um, how old are you,
21 sir?

22 MR. GRANT: 21.

23 THE COURT: How far did you go in school?

24 MR. GRANT: 11th grade.

25 THE COURT: Have you ever been treated for a

1 mental condition of any sort?

2 MR. GRANT: No, sir.

3 THE COURT: Are you aware of any mental illness or
4 condition you may have?

5 MR. GRANT: No, sir.

6 THE COURT: Are you taking any medication today?

7 MR. GRANT: No, sir.

8 THE COURT: Under the influence of any drug?

9 MR. GRANT: No, sir.

10 THE COURT: Under the influence of alcohol?

11 MR. GRANT: No, sir.

12 THE COURT: Do you know what you're charged with?

13 MR. GRANT: Yes.

14 THE COURT: You tell me.

15 MR. GRANT: Conspiracy to possess with intent to
16 distribute heroin.

17 THE COURT: Um, this one I'm not sure of. I have
18 to check.

19 Is he pleading just to conspiracy?

20 MR. CLOHERTY: There's also the money laundering,
21 the intent.

22 THE COURT: A conspiracy to engage in money
23 laundering?

24 MR. CLOHERTY: I believe --

25 Is it a conspiracy charge?

1 MS. FOLEY: Yes, your Honor.

2 THE COURT: So there's two conspiracy charges,
3 one, possession with intent to distribute heroin and the
4 other money laundering, both conspiracies?

5 MS. FOLEY: Yes, your Honor.

6 THE COURT: Well, I need their help to tell me,
7 but that's the charges to which you say you're willing
8 to plead guilty.

9 Do you understand that?

10 MR. GRANT: Yes, sir, I do.

11 THE COURT: Okay. Excuse me.

12 Now, Mr. Holzworth, how old are you, sir?

13 MR. HOLZWORTH: 28 years old.

14 THE COURT: How far did you go in school?

15 MR. HOLZWORTH: I have my GED and I attended
16 Bunker Hill Community College for one year and a half.

17 THE COURT: All right.

18 Have you ever been treated for a mental condition
19 of any sort?

20 MR. HOLZWORTH: No, I have not.

21 THE COURT: Are you aware of any mental condition
22 or illness that you may have?

23 MR. HOLZWORTH: Not at this time.

24 THE COURT: Not that you --

25 MR. HOLZWORTH: Not that I know of.

1 THE COURT: Not that you know of.

2 Okay. Are you taking any medication today?

3 MR. HOLZWORTH: No, your Honor.

4 THE COURT: Under the influence of any drug?

5 MR. HOLZWORTH: No, your Honor.

6 THE COURT: Under the influence of alcohol?

7 MR. HOLZWORTH: No, your Honor.

8 THE COURT: Do you know what you're charged with
9 to which you're willing to plead guilty?

10 MR. HOLZWORTH: Um, conspiracy to distribute
11 heroin.

12 THE COURT: All right.

13 Let me explain these charges and I'm going to
14 start, um, Mr. Obiora, with the two doing-it charges,
15 the substantive charges.

16 In order -- before you could ever be found guilty
17 of possession with intent to distribute heroin and
18 cocaine, the government's going to have to prove that
19 you, or others in a conspiracy of which you were a part,
20 actually possessed, and you had some say in it, the
21 contraband substance which people are not permitted to
22 have, heroin or cocaine. It says "heroin and cocaine."
23 But you could be found guilty if they prove either one.

24 Now "possession" means to have it, to control it,
25 I "possess" my little black book where I take my notes,

1 but it also means to stash it, to have it where you can
2 get at it, you can control it. Here in the courthouse I
3 have an office. In my office I have a briefcase. Now
4 that's mine, I possess it, even though I'm here in the
5 courtroom and it's somewhere else. But it's what you
6 expect, it's yours to control, to move, to pass on to
7 other people. That's what "possession" is.

8 Heroin, cocaine, a contraband substance, the
9 government has to prove that even though the substance
10 may have been cut with other agents, it's actually the
11 chemical substance that the law forbids a person to
12 have.

13 Now the possession of heroin or cocaine has to be
14 knowing possession. To use my briefcase example, not
15 someone gave you a briefcase and you were carrying it
16 across town and honestly you didn't know what was in it.
17 You may have control over the briefcase. But if you
18 truly didn't know what was in it, you don't possess it.
19 The law, because it's crime, is knowing possession of
20 cocaine or heroin.

21 The government also has to prove to this, not that
22 you had it to take it yourself and use it somehow, but
23 with intent to distribute it, which means that in your
24 mind you were going to pass it on to someone else. Now
25 usually that means sell it, make money with it, but it

1 doesn't have to. Under the law it's enough if you just
2 passed it on or intended to pass it on to someone else.
3 Now that -- you're charged with a count or counts of
4 knowing possession of heroin and cocaine with intent to
5 distribute it. That's one charge.

6 Now another charge is being a felon in possession
7 of ammunition. Now for that charge the government has
8 to prove that you already are a felon, that's a person
9 who, at some time in the past, was, um, convicted of a
10 crime that carried a potential sentence of more than a
11 year. Not that you did more than a year, but it carried
12 a potential sentence of more than a year. State or
13 federal, once you're convicted of such a crime, you're a
14 felon, and the law says you can never again have a
15 firearm or ammunition. So the government has to prove
16 (1) you're a felon, (2) you possessed, that same knowing
17 possession, and in this case ammunition.

18 Now "ammunition" means the projectile that is
19 intended to be shot out of a gun that shoots
20 projectiles, so it can be a small round, it could be a
21 pistol round, and usually ammunition is comprised of the
22 slug itself plus the cartridge, the jacket which has the
23 propellant that shoots the bullet, the slug out of the
24 barrel. It could be some huge, large round,
25 theoretically under the law. That's ammunition. The

1 government has to prove those things beyond a reasonable
2 doubt.

3 Now the other charges, and they differ, but
4 they're all conspiracy charges. Now let me talk about
5 conspiracy charges generally.

6 "Conspiracy" means entering into an agreement with
7 one or more other conspirators to do something that the
8 law forbids, and it's got to be a knowing agreement.
9 So -- I know we've got four of you here and I know there
10 are more people who are indicted on this indictment, but
11 that doesn't count for anything, that's
12 government paper, that's the charge, that brings us
13 together, but it doesn't prove anything.

14 So to prove conspiracy, first the government --
15 and they have to take each one of you individually, has
16 to prove that you engaged in a knowing agreement to do
17 something the law forbids. You are not guilty of
18 conspiracy because you hung around with the wrong
19 people. You're not guilty of conspiracy if some of your
20 buddies, and people you hung around with, if they were
21 dealing drugs or engaging in money laundering and you
22 knew it, that doesn't make you guilty of conspiracy.
23 You're not guilty of conspiracy unless you got in on a
24 deal and you, knowing what you were doing, were in on
25 the agreement, the deal, the conspiracy to do something

1 that the law prohibits.

2 The conspiracy, the deal, has to be known, but it
3 doesn't have to be in writing. I mean I've got these
4 plea agreements, they're agreements I'm going to show
5 you, the ones of you who have written agreements, I'll
6 show you your agreement, and I'm going to ask you, "Is
7 that your signature on it?" because that's a written
8 stated agreement. But a conspiracy doesn't have to be
9 that at all, it doesn't have to be a handshake, it
10 doesn't have to be a wink or a nod, but it's got to be
11 real, a real deal that you knew you were part of it.
12 And at least one -- it takes two -- in this case they're
13 charging more than two, but it takes at least two, and
14 the two -- one of them can't be an undercover cop,
15 because he's not in on the conspiracy, he's just
16 pretending, it's got to be another conspirator. So
17 that's the first thing, that there was this knowing
18 actual agreement.

19 And the second thing they have to prove is what is
20 it? They have to prove the specific intent to violate
21 the law in a specific way. You're not charged with some
22 conspiracy to receive stolen refrigerators, you're all
23 of you charged with conspiracy to possess heroin,
24 cocaine -- or to possess anyway, with intent to
25 distribute it. So the idea has to be, among the

1 conspirators, in the language I've already been using,
2 to possess the contraband substance, the heroin, and get
3 it in your possession with an idea that you're going to
4 pass it on to other people, probably several, but you do
5 not have to prove several.

6 Now, Mr. Grant, in your case you're also, I'm
7 told, willing to plead guilty to conspiracy to commit
8 money laundering, so I have to explain what the specific
9 intent is.

10 They can be -- it's possible they could be part of
11 the same conspiracy but the government has prove
12 separate things because there are separate counts and I
13 count them separately and that makes a difference to
14 you. So, one, you say you're willing to plead guilty to
15 this conspiracy to possess the heroin with the intent to
16 distribute it, but you're also willing to plead guilty
17 to a conspiracy to commit money laundering. So it has
18 to be a conspiracy, it has to be a deal, you have to be
19 a knowing part of it, you have to knowingly agree, and
20 then the deal, what's different here is to commit money
21 laundering.

22 Now again, both with the drug conspiracy and some
23 money-laundering conspiracy, what's different about
24 conspiracy is they don't have to prove you did it, they
25 just have to prove you conspired to do it. Now in money

1 laundering they've got to prove the idea, the specific
2 intent in your mind has got to be to take dirty money,
3 apparently the drug money, and then engage in some
4 financial transaction, any financial transaction -- put
5 it in a savings account, invest it improperly,
6 something, it's got to be something more than just
7 splurging it, just going out and having a night out on
8 the town, but put it in some sort of, um, ostensibly
9 legitimate account with the idea that it would then,
10 when you withdraw it to use it, that it would be clean
11 because it comes out of a legitimate account or it comes
12 out of selling property that you -- lawful property, not
13 drugs, but lawful property in which you purchased and
14 you purchased as an investment and you sold it. That's
15 why they call it "money laundering," taking the dirty
16 money, the drug money, and making it look like it's
17 legitimate.

18 Now with the money laundering they have to prove a
19 third thing. They have to prove that one of the
20 conspirators, not necessarily you, but one of the
21 conspirators did something to make that come about.
22 They don't have to prove that you did it, you succeeded,
23 you laundered this or that amount of money, but they've
24 got to prove that you, um, that one of the conspirators
25 did something to make that come about. So we'll ask

1 each one of you.

2 As I've explained the various crimes, do you
3 understand the ones that I've explained with respect to
4 you?

5 And we'll start with Mr. Obiora, do you
6 understand?

7 MR. CHUKWUMA OBIORA: Yes, your Honor.

8 THE COURT: And, Mr. Potts, do you understand?

9 MR. POTTS: Yes, I do, your Honor.

10 THE COURT: Mr. Grant, do you understand?

11 MR. GRANT: Yes, your Honor.

12 THE COURT: And, Mr. Holzworth, do you understand?

13 MR. HOLZWORTH: Yes, I do, your Honor.

14 THE COURT: All right.

15 Now in this session of the court, the way I read
16 the Constitution of the United States you've got another
17 right, and, Mr. Grant, this we may have to talk about
18 with respect to you because you don't have a plea
19 agreement, but you all have this right before you plead
20 guilty, so I will tell you it.

21 Under the so-called "sentencing guidelines," which
22 I -- the law requires me to follow, they're advisory,
23 the law requires me to follow the calculation of the
24 advice from the guidelines, but I'm responsible for the
25 sentence, but, um, I will tell you that the way I

1 understand the Constitution of the United States, the
2 highest I could sentence you to is the top of the
3 appropriate guideline calculation. Now, that's what I
4 think the Constitution requires from decisions of the
5 nation's highest court.

6 The reason that this makes a difference to you is
7 that various things could count against you if we go to
8 trial that I am expected to take into consideration.
9 Specifically and with respect to each one of you, the
10 way I understand it from the legal papers, if they prove
11 that you were into this conspiracy, that you reasonably
12 understood that this conspiracy -- and as you were a
13 part of it, was moving this quantity of drugs, then that
14 counts against you, and I take that quantity of drugs --
15 that doesn't mean you moved it, but the conspiracy was
16 moving it and you understood that, I count that quantity
17 of drugs against you when it comes time to sentence you.

18 Now, if we go to trial, I'll make the government
19 prove that quantity in each of your cases, and it could
20 be different for each one of you. That's a right that I
21 will give you. They can't just say it, I'll make them
22 prove it. And I -- actually I've looked at these
23 proposed agreements.

24 There's no other enhancements like organizer-
25 leader, it's just quantity, isn't it?

1 MS. FOLEY: Not for these defendants, your Honor.

2 THE COURT: Fine. So that's what we're talking
3 about. But I want to you know I'll -- if it's a trial,
4 the trial -- you've got to have some way where some
5 independent person, the jury or me, on evidence finds as
6 a fact what the drug quantity is.

7 Now let's talk about what rights you have. Well,
8 let's see if you understand that. Again we'll go
9 through.

10 Mr. Obiora, do you understand I give you that
11 right?

12 MR. CHUKWUMA OBIORA: Yes, your Honor.

13 THE COURT: Mr. Potts, do you understand what I've
14 explained and you have that right if we go to trial?

15 MR. POTTS: Yes, your Honor.

16 THE COURT: Mr. Grant, you understand that?

17 MR. GRANT: Yes, your Honor.

18 THE COURT: And, Mr. Holzworth, do you understand?

19 MR. HOLZWORTH: Yes, your Honor.

20 MR. CLOHERTY: And, your Honor, with respect to
21 Mr. Grant, maybe this is a good time for us to mention
22 that there actually is not an agreement as to drug
23 quantity.

24 THE COURT: I understand, I'm going to come back.

25 MR. CLOHERTY: Okay, so we'll come back to that.

1 THE COURT: I understand that.

2 MR. CLOHERTY: Yes, your Honor.

3 THE COURT: The others are C-pleas and we'll get
4 to that.

5 MR. CLOHERTY: All right, your Honor.

6 THE COURT: Okay. Now let's talk about -- I'm at
7 the stage -- if you plead guilty you're going to give
8 away stuff that really is important to you, so let's
9 talk about what those things are.

10 First of all, each one of you has a right to a
11 fair and an impartial trial where a jury -- and the jury
12 sits right where we've put you, where the jury is going
13 to decide -- not me, nobody else, the jury is going to
14 decide whether you're not guilty or guilty. Before they
15 could find you guilty, all 12 of them have to agree
16 unanimously. And the government has to prove each
17 essential element of these various charges that I
18 mention to you, they have to prove those elements beyond
19 a reasonable doubt.

20 At that trial you have the right to be right here
21 in this courtroom and you can look -- the witnesses
22 testify there, you can look those witnesses in the eye,
23 but far more important than just looking at them, your
24 attorneys can question them, can cross-examine them, can
25 bring out inconsistencies in their testimony, the

1 attorneys can make arguments on your behalf, the
2 attorneys can call witnesses on your behalf.

3 The attorneys -- um, you can testify on your own
4 behalf, but that's another right you have. You don't
5 have to testify. You don't have to do anything. You
6 don't have to say a word. And to the extent that you're
7 silent, insofar as I can tell, persuade, instruct, order
8 the jury, insofar as words will do it, I'm going to tell
9 these jurors that you're innocent people, "innocent,"
10 that's the word I use, you're innocent, you start the
11 trial innocent, and the only way the government can find
12 anyone guilty -- the government doesn't find -- the only
13 way the jury can find anyone guilty is if the government
14 proves they're guilty beyond a reasonable doubt. And I
15 make as strong a statement of that as possible and
16 that's how I run the trial.

17 And that's not just talk, these are your
18 constitutional rights. Yours. I follow it. I don't
19 know you people. I don't make up my mind today, I'm not
20 thinking about sentences, I'm not thinking about people
21 being guilty, I'm explaining what might happen, but I
22 don't know any of the evidence in this case. Certainly
23 I see we've got you in custody, but that's so you'll
24 show up for the trial. But in my mind you're innocent
25 people.

1 Now, if you plead guilty here this afternoon, all
2 of that's gone, all of it. There's never going to be a
3 trial for you four. You're never going to get to see
4 any of this evidence against you. The closest we'll
5 come is when we get to the end here, I'm going to ask
6 Ms. Foley, having in mind the specific elements of these
7 crimes, to tell us what she hopes she can prove.

8 Now, on your point, Mr. Grant, your lawyer
9 properly points out you dispute something, so I'm not
10 going to ask you to admit it, but we'll listen to her
11 tell us what she thinks she can prove, but I'm not going
12 to ask you to admit it because that's still going to be
13 disputed and we'll talk about how we'll take care of
14 that. But understand, for the rest of you, that's as
15 close to evidence as we're going to come, once she's
16 done I'll look at you and I'll say do you agree with
17 that, is that true? And Mr. Grant I'll say, "Is it true
18 except for the quantity?" And if you tell me "Yes,"
19 then that's it, no trial, you never get to see the
20 witnesses against you. You still have that right to be
21 silent, you still don't have to -- you still don't have
22 to tell anybody anything, you don't have to say
23 anything, and that doesn't count against you, until I
24 sentence you.

25 Now, I've split this trial up for good and

1 sufficient reason, not everybody's going to trial at the
2 same time, some people are going to trial in a couple of
3 months. If I sentence you before those trials occur --
4 and they're supposed to be conspirators with you, you
5 can be asked about what you did on these crimes and
6 you've got to tell. It's not a question of having a
7 cooperation agreement or something, you're guilty.
8 There's no more Fifth Amendment right to be silent,
9 you've got to tell, and if you don't I hold you in
10 contempt and that counts against your sentence, because
11 you've given up of the right. And not the least
12 important, if you plead guilty here this afternoon, you
13 go from really being innocent in my mind to being
14 guilty. You're guilty of the counts here which you say
15 you're guilty to and all that remains for me -- we're
16 going to have to sort out drug quantity for you,
17 Mr. Grant, but all that remains is what sentence I'm
18 going to impose upon you, not today, but at an
19 appropriate time.

20 Now, do you understand you have these rights,
21 Mr. Obiora, and that you give them up if you plead
22 guilty?

23 MR. CHUKWUMA OBIORA: Yes, your Honor.

24 THE COURT: Mr. Potts, do you understand you have
25 these rights and you give them up if you plead guilty?

1 MR. POTTS: Yes, your Honor.

2 THE COURT: Now putting aside drug quantity,
3 Mr. Grant, you understand you have these rights and
4 you're giving them all up but for this dispute about
5 drug quantity, do you understand that?

6 MR. GRANT: Yes, sir.

7 THE COURT: And, Mr. Holzworth, you understand you
8 have these rights and you give them up but for, um --
9 you give them up if you plead guilty, do you understand
10 that?

11 MR. HOLZWORTH: Yes, your Honor.

12 THE COURT: Now, Mr. Obiora, Mr. Potts,
13 Mr. Holzworth, you and your lawyers have negotiated on
14 your behalf what's known as a type of plea agreement
15 called a "C-plea" and this is what a C-plea is. A
16 C-plea is a binding deal and it binds you -- except you
17 don't have to go through with it even though you've
18 signed this, it binds the government, they have to do
19 what they say they're going to do, and it narrows down
20 what I can do on sentencing, and it narrows down -- it's
21 what I call a "take it or leave it plea."

22 I'm going to go over what's going to happen to you
23 on these C-pleas because it's right here in this
24 document, I know what it is, and if I go for that, if I
25 decide that's fair and just, that's the sentence you're

1 going to get. I'll need a presentence report, I'll have
2 to calculate the sentencing guidelines, but if I go for
3 that, then you'll get the sentence that is negotiated
4 here and, um, then as far as this Court does, we're at
5 an end.

6 In your respect, Mr. Grant, what we're going to do
7 is I'm going to need some more information from
8 Ms. Foley and you're going to listen to it while you're
9 still innocent and then we'll see where we go from
10 there. But let me pause now with the ones who have
11 executed plea agreements. And we'll start with you,
12 Mr. Obiora.

13 Look at it, I just want you to -- is that your
14 signature there on the last page?

15 MR. CHUKWUMA OBIORA: Yes, your Honor.

16 THE COURT: Look and make sure that really is your
17 plea agreement.

18 MR. CHUKWUMA OBIORA: (Looks at document.)

19 THE COURT: Did you read all of that before you
20 signed it?

21 MR. CHUKWUMA OBIORA: Yes, your Honor.

22 THE COURT: Have you talked it all over with
23 Mr. Cunha?

24 MR. CHUKWUMA OBIORA: Yes, sir.

25 THE COURT: Do you think you understand it?

1 MR. CHUKWUMA OBIORA: Yes, your Honor.

2 THE COURT: You think you understand it?

3 MR. CHUKWUMA OBIORA: Oh, yes, your Honor.

4 THE COURT: All right.

5 So in this one this sentence that if I go for this
6 what I'm going to do is I'm going to sentence you
7 somewhere between 41 and 51 months in prison, no fine,
8 36 months of supervised release, a mandatory special
9 assessment of \$300, no restitution, and forfeiture of
10 the instrumentalities of the crime.

11 Now you understand that if I go for this, that is
12 what's going to happen to you. You're clear on that?

13 MR. CHUKWUMA OBIORA: Yes, your Honor.

14 THE COURT: Mr. Potts, take a look at this. Is
15 that your signature there on this document?

16 MR. POTTS: Yes, it is, your Honor.

17 THE COURT: And look at the first page. Is that
18 your plea agreement?

19 MR. POTTS: Yes, your Honor.

20 THE COURT: And have you read that?

21 MR. POTTS: Yes, your Honor.

22 THE COURT: You talked it all over with your
23 attorney?

24 MR. POTTS: Yes, your Honor.

25 THE COURT: Do you think you understand it?

1 MR. POTTS: Yes, your Honor.

2 THE COURT: Now, in your case if you plead guilty
3 or you tender a plea of guilty --

4 (Looks through document.)

5 THE COURT: -- then I am going to sentence you to
6 somewhere between 37 and 46 months in prison, a fine of
7 \$100, 36 months of supervised release, a special
8 assessment of \$100, no restitution, and forfeiture.

9 You understand that, that is what's going to
10 happen to you if I go for this?

11 MR. POTTS: Yes, your Honor.

12 THE COURT: And, Mr. Holzworth, take a look at
13 this. Is that your signature?

14 MR. HOLZWORTH: Yes, it is, your Honor.

15 THE COURT: And is that your plea agreement?

16 MR. HOLZWORTH: Yes, it is, your Honor.

17 THE COURT: Have you talked this all over with
18 your attorney before you signed it?

19 MR. HOLZWORTH: Yes, I have, your Honor.

20 THE COURT: You think you understand it?

21 MR. HOLZWORTH: Yes.

22 THE COURT: Now this is also a C-plea and so if I
23 go for this I'm going to send you to prison for
24 somewhere between 46 and 57 months, no fine, 36 months
25 of supervised release, a mandatory special assessment of

1 \$100, no restitution, and forfeiture of the
2 instrumentalities of the crime.

3 Do you understand that?

4 MR. HOLZWORTH: Yes, your Honor.

5 THE COURT: Now still talking about these C-pleas,
6 and so I'm not talking to Mr. Grant, that if I don't go
7 for this in any of your cases, then you get back your
8 plea, it's the same thing as if what we did this
9 afternoon doesn't count, you're back innocent but you're
10 facing trial because I don't go for this.

11 Do you understand that, Mr. Obiora?

12 MR. CHUKWUMA OBIORA: Yes, your Honor.

13 THE COURT: You understand that, Mr. Potts?

14 MR. POTTS: Yes, your Honor.

15 THE COURT: You understand that, Mr. Holzworth?

16 MR. HOLZWORTH: Yes, I do, your Honor.

17 THE COURT: Now, in your case, Mr. Grant, you
18 don't have a plea agreement --

19 MR. GRANT: No, sir.

20 THE COURT: -- so while you're still innocent we
21 need to talk about -- I know what -- if I go for it,
22 what will happen, and I know that if I don't go for it
23 with the others, they're back innocent and we'll have to
24 see where we go from there.

25 In your case, the way I'm viewing it, you're

1 offering what we call a "straight-up plea," a plea
2 without an agreement, without knowing what they're going
3 to recommend. So what I -- what I want you to know is,
4 I want you to know the worst I can do to you -- not that
5 I would do anything, but the worst as I understand the
6 Constitution, and then I want to know what the
7 sentencing guidelines are. Not that I have to follow
8 them, but they're serious, they're what the appropriate
9 government authority advises me what the sentence is.
10 You need to know that before we go forward.

11 And for these purposes we're going to assume --
12 don't think I believe it, in my mind you're innocent,
13 but we're going to assume things the government's way,
14 that is we're going to assume a drug quantity that you
15 don't agree with, we're just going to assume it because
16 it could be that that will be found against you and then
17 you could get a sentence that follows from that.

18 Do you understand those things?

19 MR. GRANT: Yes, your Honor.

20 THE COURT: Now at this stage I'm going to ask
21 Ms. Foley, the prosecutor, to tell me this information.
22 It doesn't mean I'm not going to talk to your attorney,
23 come to sentencing I am going to talk to your attorney,
24 and now we've got to work out how we are going to
25 address this issue of drug quantity and we'll see. But

1 first let's see what the worst is that can happen to
2 you.

3 So, Ms. Foley, you know my practice, I want the
4 top of the guideline without any discount for sparing
5 you the burden and expense of a trial, and then I want
6 the guideline if he gets the discount for sparing you
7 the burden and expense of a trial.

8 MS. FOLEY: Yes, your Honor.

9 With regard to Mr. Grant, the government's
10 evidence -- if we were to proceed to trial the
11 government would expect to prove that the defendant sold
12 between 100 and 400 grams -- I'm sorry, the defendant
13 conspired to sell between 100 and 400 grams of heroin to
14 --

15 THE COURT: Well, what does that translate to,
16 we're talking about --

17 MS. FOLEY: That's a Level 24, your Honor, and I
18 don't have a copy of my guidelines with me, but with the
19 Level 24, plus 2 for the money laundering, the defendant
20 was facing between 57 and 71 months after a plea, which
21 is 71 to 87 months.

22 THE COURT: Okay. No discount for sparing you a
23 trial, 81 months, right?

24 MS. FOLEY: 87 months, your Honor.

25 THE COURT: 87 months.

1 So you understand the way I read the Constitution,
2 that the highest sentence I could impose upon him,
3 right?

4 MS. FOLEY: Yes, your Honor.

5 THE COURT: All right.

6 So the worst I could do to you, if everything go
7 the government's way, we go to trial, everything goes
8 against you, if she wins on every point, I could go up
9 to 87 months in prison.

10 You understand that?

11 MR. GRANT: Yes, your Honor.

12 THE COURT: Now, with the discount for sparing you
13 the burden and expense of the trial, the guideline is
14 what?

15 MS. FOLEY: 71 to 87 months. I'm sorry, um, it's
16 51 to 67 months.

17 MR. CLOHERTY: There's a separate dispute, your
18 Honor, frankly about the defendant's criminal history,
19 but that's something I don't think we're going to have
20 to try, but it is something --

21 THE COURT: Because that does -- even under my
22 reading of the Constitution, that's -- but we'll assume
23 it her way now, but, thank you, you're reserving your
24 rights as to that?

25 MR. CLOHERTY: Correct.

1 THE COURT: All right. So she tells me -- and I'm
2 only listening to her now, she says, "Well, if he pleads
3 guilty the range that I'm going to be advised is 51 to
4 67 months."

5 Do you understand that?

6 MR. GRANT: Yes, your Honor.

7 THE COURT: And now you understand that, um, I'm
8 not -- this is not like a C-plea, these guidelines are
9 advisory. Your lawyer can argue for less than 51
10 months. The government can argue for more than 57
11 months.

12 You understand that?

13 MR. GRANT: Yes, your Honor.

14 THE COURT: And I could go the government's way up
15 to 87 months.

16 Are you clear?

17 MR. GRANT: Yes, your Honor.

18 THE COURT: Now let's get to the drug quantity.
19 How do we propose to deal with it?

20 MR. CLOHERTY: The parties have discussed a
21 proposed bench trial related to that issue. I don't
22 think it would be terribly long, I think it's a matter
23 of -- and they may -- during the process of sentencing I
24 suspect we can work with the government to streamline
25 that as much as possible.

1 THE COURT: That's okay with the government?

2 MS. FOLEY: Yes, your Honor.

3 THE COURT: You're giving him the discount even
4 so?

5 MS. FOLEY: Yes, your Honor.

6 THE COURT: That's fine.

7 All right. Now here's what they tell me. I'll
8 give you a jury trial and let the jury decide the drug
9 quantity. Your lawyer says he's willing to let me
10 decide it. If that's okay with you, then I'm fine with
11 that, but I'm telling you I'll give you a jury. Either
12 way the government's going to have to prove it on actual
13 evidence beyond a reasonable doubt.

14 Now do you understand that you have that right,
15 you're going to make them prove drug quantity on
16 evidence, proof beyond a reasonable doubt?

17 MR. GRANT: Yes, your Honor.

18 THE COURT: Are you okay with me doing it?

19 MR. GRANT: Yes, your Honor.

20 THE COURT: You understand you're giving up now
21 your right to have a jury do it?

22 MR. GRANT: Yes, your Honor.

23 THE COURT: Very well.

24 MR. LISTON: Your Honor, with respect to
25 Mr. Holzworth, the second superseding indictment alleges

1 a conspiracy commencing in January -- on or about
2 January of 2015 and going until I think it's June.
3 Mr. Holzworth was in custody until March 15th and not
4 involved in the conspiracy during that period of time.
5 This affects only a guideline, um -- he pleads only to a
6 conspiracy, you know after March 15th, but within the
7 range. And with this the government agrees.

8 THE COURT: And --

9 MS. FOLEY: Your Honor, I understand that.

10 THE COURT: Fine. All right.

11 Now -- again now I'm going to go, again taking
12 each one of you individually, with a few individual
13 questions, um, and now I'm at the stage of wanting to
14 know that you really want to do this, we've talked about
15 it all, now I need to know that this is what you really
16 want to do, and you don't have to go along with any
17 signed agreements or anything you've said thus far. And
18 we'll go in the same order starting with you,
19 Mr. Obiora.

20 Other than this signed plea agreement I have, has
21 anyone made you any promise, any reward, anything to get
22 you to plead guilty other than this agreement, your deal
23 here?

24 MR. CHUKWUMA OBIORA: No, your Honor.

25 THE COURT: Has anyone threatened you with

1 anything to get you to plead guilty?

2 MR. CHUKWUMA OBIORA: No, your Honor.

3 THE COURT: This is a conspiracy -- some of this
4 is a conspiracy. Are you covering up for someone else
5 by pleading guilty yourself?

6 MR. CHUKWUMA OBIORA: No, your Honor.

7 THE COURT: You know that if you're not a citizen
8 of the United States, conviction of these crimes may
9 have the consequence of your being deported from the
10 United States, denied admission to the United States,
11 denied naturalization under the laws of the United
12 States. Do you understand that?

13 MR. CHUKWUMA OBIORA: Yes, your Honor.

14 THE COURT: Have you had enough time to talk all
15 of this over with Mr. Cunha?

16 MR. CHUKWUMA OBIORA: Yes, your Honor.

17 THE COURT: You think he's been a good lawyer for
18 you, gotten for you those things that are your rights
19 under the law?

20 MR. CHUKWUMA OBIORA: Yes, your Honor.

21 THE COURT: Are you satisfied with his
22 representation of you?

23 MR. CHUKWUMA OBIORA: Yes, your Honor.

24 THE COURT: Let me mention something specifically
25 now.

1 Mr. Cunha asked that your case be continued and
2 put on with the cases that I am going to try in a couple
3 of months. He had valid -- they're personal to him, but
4 personal reasons. While I respect his personal reasons,
5 I wouldn't do that, I said, "No, you've got to be here
6 and you've got to go to trial."

7 Now you're satisfied that none of the -- you're
8 not telling me you're wanting to plead guilty is driven
9 so that he can make his other proper engagements, you
10 understand what I'm saying?

11 MR. CHUKWUMA OBIORA: (Silence.)

12 MR. CUNHA: He doesn't even know about that,
13 Judge.

14 (Laughter.)

15 THE COURT: Well, look, one of the things lawyers
16 do is they teach other lawyers and Mr. Cunha is very
17 well respected and he has a teaching engagement, he
18 wants to go to his teaching engagement. So quite
19 properly he said to me -- and it doesn't offend me and
20 it doesn't mean he's selling you short in any way, but
21 back when you were going to go to trial on the 9th, he
22 said, Judge, "Let me go to my teaching engagement and
23 I'll be here to try Mr. Obiora's case in a couple of
24 months." I said, "No, you can't, that's a good thing,
25 but trying cases is a good thing too."

1 Now I feel I have to ask you, you don't think --
2 I'm asking you, do you think he's selling you short at
3 all by pleading you out today or -- you know I don't
4 want to know what he advised you or what happened
5 between you, but is this your choice, I guess I'm asking
6 you?

7 MR. CHUKWUMA OBIORA: Yes, your Honor.

8 THE COURT: And you're satisfied with his
9 representation of you here?

10 MR. CHUKWUMA OBIORA: Yes, your Honor.

11 THE COURT: Very well.

12 Mr. Potts, other than this plea agreement we've
13 talked about, has anyone made you any promise, any
14 promise at all to get you to plead guilty?

15 MR. POTTS: No, your Honor.

16 THE COURT: Anyone threatened you with anything to
17 get you to plead guilty?

18 MR. POTTS: No, your Honor.

19 THE COURT: Are you covering up for anyone else by
20 pleading guilty yourself?

21 MR. POTTS: No, your Honor.

22 THE COURT: Do you know that if you're not a
23 citizen of the United States, conviction of these crimes
24 may have the consequence of your being deported from the
25 United States, denied admission under the laws of the

1 United States, denied naturalization under the laws of
2 the United States, do you know that?

3 MR. POTTS: Yes, your Honor.

4 THE COURT: All right. Now, you've talked this
5 all over with Mr. Braceras, do you think he's been a
6 good lawyer for you?

7 MR. POTTS: Yes.

8 THE COURT: Are you satisfied with his
9 representation of you?

10 MR. POTTS: Yes, sir.

11 THE COURT: Do you think he's done everything
12 proper that a lawyer can do to represent you in these
13 circumstances?

14 MR. POTTS: Yes, your Honor.

15 THE COURT: All right.

16 Now, Mr. Grant, in your case I character this as a
17 "straight-up plea," but I want to ask you, are there any
18 promises made to you that I don't know about here, any
19 agreement, deal that I don't know about?

20 MR. GRANT: No, your Honor.

21 THE COURT: Well, let me ask -- and I'm not
22 suggesting anything, but have you said at all what your
23 recommendation would be in Mr. Grant's case or do you
24 wish to say, and I'm not requiring it?

25 MS. FOLEY: No, your Honor.

1 THE COURT: Very well. Okay, so she's not making
2 any recommendations.

3 Has anyone threatened you with anything to get you
4 to plead guilty?

5 MR. GRANT: No, your Honor.

6 THE COURT: Are you covering up for anyone else by
7 pleading guilty yourself?

8 MR. GRANT: (Pause.) No, your Honor.

9 THE COURT: You hesitated on that?

10 MR. GRANT: Oh, no, your Honor.

11 THE COURT: All right.

12 Do you know that if you're not a citizen of the
13 United States, conviction of these crimes may have the
14 consequence of your being deported from the United
15 States, denied admission under the laws of the United
16 States, denied naturalization under the laws of the
17 United States?

18 MR. GRANT: Yes, your Honor.

19 THE COURT: Have you had enough time to talk all
20 of this over with Mr. Cloherty?

21 MR. GRANT: Yes, your Honor.

22 THE COURT: Do you think he's been a good lawyer
23 for you, gotten for you those things that are your
24 rights here?

25 MR. GRANT: Yes, your Honor.

1 THE COURT: Are you satisfied with his
2 representation of you?

3 MR. GRANT: Mostly satisfied.

4 THE COURT: In what respect aren't you satisfied?

5 MR. GRANT: Um, this is just -- it's just hard,
6 you know? Because I know what I did. But this is just
7 hard.

8 THE COURT: Here's what I hear you say. It's hard
9 to plead guilty because the government has made charges
10 and while you may agree with part or most of them, you
11 certainly don't agree with all of them. Now he's
12 attempted to protect your rights as to that, but you are
13 recognizing that you're giving most of it away if you
14 plead guilty, for you there's no taking it back, there's
15 no chance of going back to being innocent, if you plead
16 guilty here today, you're guilty, no taking it back, the
17 only question is how am I going to come out on this drug
18 quantity.

19 You recognize those things?

20 MR. GRANT: Yes, sir.

21 THE COURT: And I recognize that this is hard.
22 Well, let me ask it this way.

23 Is there anything at all you think he could have
24 done for you that, under the law, that he hasn't done?

25 MR. GRANT: I'm not sure, your Honor.

1 THE COURT: Well, what do you think? I mean what
2 are you thinking of? Anything?

3 MR. GRANT: (Pause.) Um, I guess not.

4 THE COURT: Do you want to plead guilty?

5 MR. GRANT: Yes, Judge.

6 THE COURT: All right.

7 Mr. Holzworth, other than the plea agreement that
8 we've talked about in your case, has anyone made you any
9 promise at all to get you to plead guilty?

10 MR. HOLZWORTH: No, your Honor, they have not.

11 THE COURT: Has anyone threatened you with
12 anything to get you to plead guilty?

13 MR. HOLZWORTH: No, they have not, your Honor.

14 THE COURT: Are you covering up for someone else
15 by pleading guilty yourself?

16 MR. HOLZWORTH: No, I'm not, your Honor.

17 THE COURT: You know that if you're not a citizen
18 of the United States, conviction of these crimes may
19 have the consequence of your being deported from the
20 United States, denied admission under the laws of the
21 United States, denied naturalization under the laws of
22 the United States, do you know that?

23 MR. HOLZWORTH: Yes, I do, your Honor.

24 THE COURT: Have you talked all of this over with
25 Mr. Liston?

1 MR. HOLZWORTH: Yes, I have.

2 THE COURT: Are you satisfied with him as an
3 attorney?

4 MR. HOLZWORTH: Greatly.

5 THE COURT: Do you think he's been a good attorney
6 for you, gotten for you those things that are your
7 rights under the law?

8 MR. HOLZWORTH: Yes, I do, your Honor.

9 THE COURT: Do you still want to plead guilty?

10 MR. HOLZWORTH: Yes, I do, your Honor.

11 THE COURT: Why?

12 MR. HOLZWORTH: Because I'm guilty.

13 THE COURT: All right.

14 Mr. Grant, I'm coming close to the end, do you
15 still want to plead guilty?

16 MR. GRANT: Yes, your Honor.

17 THE COURT: Why?

18 MR. GRANT: Because I'm guilty. The government
19 says I'm guilty. That's obviously it.

20 THE COURT: Well, that's what it means, but I have
21 in mind that you're not agreeing to drug quantity, and
22 you're not, is that right?

23 MR. GRANT: Absolutely not.

24 THE COURT: Absolutely not.

25 But for the rest of it, you've decided that you're

1 guilty, is that right?

2 MR. GRANT: Yes, your Honor.

3 THE COURT: Mr. Potts, do you still want to plead
4 guilty?

5 MR. POTTS: Yes, your Honor.

6 THE COURT: Why?

7 MR. POTTS: Because I'm guilty, your Honor.

8 THE COURT: There isn't a particular right answer,
9 but, um, if you're guilty, that's a reason for pleading
10 guilty.

11 Now, Mr. Obiora, do you still want to plead
12 guilty?

13 MR. CHUKWUMA OBIORA: Yes, your Honor.

14 THE COURT: Why?

15 MR. CHUKWUMA OBIORA: I'd like to get back to my
16 family.

17 THE COURT: I'm sure you would and I can accept a
18 plea even from someone who says they're not guilty in
19 the circumstances that they think the deal is a better
20 deal than might happen if they went to trial and the
21 like, but I've got to be cautious in those
22 circumstances, so I'm not fishing for your saying that
23 you're guilty but --

24 MR. CHUKWUMA OBIORA: I'm guilty, your Honor.

25 THE COURT: Very well.

1 All right. Now what we're going to do, and I'm
2 going to sit down, um, Ms. Foley is going to recite what
3 she hopes she could prove briefly, she's going to touch
4 on each of the essential elements in each case and I'm
5 going to ask you if you understand it and where it
6 pertains to you if it's true.

7 She -- Mr. Grant, in your specific case she can
8 say what she wants as to drug quantity, but when I ask
9 you I'm going to say "other than drug quantity," because
10 you're not admitting to that and we're making that clear
11 on the record. But I need to know that she's got enough
12 evidence that if we go to trial you could be found
13 guilty of the various charges that you say you are
14 willing to plead to.

15 Ms. Foley.

16 MS. FOLEY: Yes, your Honor.

17 If the government were to proceed to trial it
18 would prove beyond a reasonable doubt with competent
19 evidence that beginning in January of 2015 the Drug
20 Enforcement Administration began an investigation into a
21 drug trafficking organization led by Marvin Antoine.
22 After an extensive investigation, which spanned from
23 approximately January 2015 through December 2015,
24 investigators used physical surveillance, electronic
25 surveillance, phone warrants, GPS warrants, wiretaps

1 over phones used by various members of the organization,
2 to identify the members of the organization and where
3 the drugs were coming from that the organization was
4 selling. Investigators identified a number of these
5 members through these investigative techniques including
6 suppliers of heroin and cocaine to the organization,
7 customers who were purchasing heroin and cocaine from
8 the organization, and customers who were purchasing
9 quantities of heroin which were in amounts that were
10 consistent only with distribution of heroin.

11 Investigators also identified two different locations
12 where the Antoine organization was storing its drugs,
13 one of which was 1745 Menlo Street in Brockton,
14 Massachusetts and the other one was 17 Foster Street.
15 And I'll go through briefly some of the evidence against
16 each of these defendants that the government would prove
17 at trial.

18 The defendant Chukwuma Obiora was identified after
19 DEA intercepted calls between Chukwuma Obiora and Marvin
20 Antoine. Chukwuma Obiora was identified by the number
21 he was using and by self-identifying information that he
22 gave up during these calls.

23 During early October of 2015, Marvin Antoine
24 called Chukwuma Obiora and asked to purchase a kilogram
25 quantity of heroin. Chukwuma Obiora quoted \$70,000 as

1 the purchase price for the kilo of heroin and told
2 Antoine that he had to call his supplier and his person
3 to figure out if the person actually had the amount of
4 heroin that Antoine was searching for.

5 In a subsequent call Chukwuma Obiora called
6 Antoine back and said that his brother, um -- the person
7 who was supplying him, who was later identified as his
8 brother, Obinna Obiora, only had 400 grams. Antoine
9 agreed to purchase those 400 grams and told Chukwuma
10 Obiora to go to 175 Menlo Street. Agents set up
11 surveillance outside of 175 Menlo Street and observed a
12 car arrive, which was registered to co-defendant Obinna
13 Obiora, and in which another person was also in the
14 vehicle who was believed to be Chukwuma Obiora. After a
15 brief interaction at 175 Menlo Street, officers
16 surveilled the car back to the defendant Chukwuma
17 Obiora's house, which was G-3 Franklin Square in
18 Randolph. During the surveillance back to the house and
19 subsequent to the transaction that took place at 175
20 Menlo Street, the defendant Chukwuma Obiora called
21 Antoine and then put on his brother, Obinna Obiora, who
22 complained that Antoine had shorted him on the money
23 that they had agreed to was the purchase price for the
24 400 grams of heroin.

25 In December of 2015 federal agents executed a

1 search warrant at the defendant Chukwuma Obiora's house,
2 which was G-3 Franklin Square in Randolph, they
3 discovered heroin, cocaine, drug packaging materials,
4 and 40 rounds of 30-caliber ammunition, and the
5 defendant had a prior felony conviction and was
6 prohibited from purchasing or owning or possessing that
7 ammunition.

8 During the same investigation the investigators
9 identified Marshawn Potts through physical surveillance
10 and through information that was given to agents by
11 cooperating witnesses and confidential sources. After
12 Mr. Potts was identified, um, investigators working with
13 cooperating witnesses and confidential sources placed
14 calls to Marvin Antoine to purchase varying amounts of
15 heroin from Antoine. During these calls, which were
16 recorded and monitored by law enforcement, Antoine
17 agreed to sell either 10-gram finger quantities or
18 various other quantities to the customers whom he
19 believed were legitimate customers.

20 On two occasions, or at least two occasions, on
21 February 12th and again on February 5th, 2015, on both
22 occasions the amount of heroin that the customers had
23 ordered from Antoine, Potts is the person who delivered
24 those quantities of heroin to these cooperating
25 witnesses. The cooperating witnesses turned over the

1 heroin to the investigation -- to the investigators on
2 both occasions and the drugs were tested and determined
3 to actually be heroin.

4 With regard to Mr. Grant, Grant was identified
5 also through intercepted calls over Marvin Antoine's
6 phone. In October of 2015, Antoine was introduced to
7 Grant during a phone call by Grant's cousin. In the
8 call Antoine and Grant discussed entering into a
9 business relationship in which Grant would supply heroin
10 to Antoine. At the time Grant was living in California.
11 During the conversation they reached agreements on
12 purchase prices and amounts and Grant agreed to send a
13 sample of heroin to Antoine so Antoine could test it and
14 determine whether he wanted to purchase more heroin from
15 Grant.

16 After -- during the call in which Antoine agreed
17 to purchase the heroin, Grant asked Antoine for an
18 address where to send the drugs and Antoine sent him the
19 address of 175 Menlo Street in Brockton, which was the
20 same location where Antoine and other members of the
21 organization had been seen on a daily basis and where
22 they were storing their drugs.

23 During -- after the call in which they agreed --
24 Mr. Grant agreed to send Antoine the quantity of heroin,
25 later Grant called Antoine and gave him a tracking

1 number too so that Antoine could track the package
2 containing the heroin that he had purchased from
3 Antoine. Agents contacted the UPS business and
4 confirmed that a package, containing the same tracking
5 number that Grant had given to Antoine, had been sent
6 from Los Angeles, California to 175 Menlo Street, which
7 again was Antoine's residence and drug-stash location.

8 In a subsequent intercepted call, Antoine called
9 Grant again to purchase additional quantities of heroin.
10 During that call Grant told Antoine that he would have
11 to wire him the money prior to Mr. Grant sending him the
12 heroin.

13 On October 20th, Antoine was intercepted placing
14 the order for the heroin. In a subsequent call Antoine
15 was intercepted giving Michelle Collins, who's also a
16 co-defendant in this case, the name "Orlando Smith" and
17 a routing number for a Bank of America bank account, and
18 Antoine directed Collins to send \$6,200. In subsequent
19 calls between defendant Grant and defendant Antoine,
20 Grant called to inquire about the status of this money
21 transport. During the calls Antoine confirmed that he
22 had in fact sent the money to Grant and gave Grant an
23 e-mail address and a code so that Grant could confirm
24 that the money had actually been transferred to an
25 account, which he provided, which was to pay for drugs

1 that Grant was subsequently going to send to Antoine.

2 THE COURT: And that's the money laundering?

3 MS. FOLEY: It is, your Honor.

4 THE COURT: Go ahead.

5 MS. FOLEY: With regard to Mr. Holzworth, he was
6 identified during the investigation through physical
7 surveillance, he was known to be a customer, a heroin
8 customer of Lutherson Bonheur. He was also intercepted
9 on a number of occasions over Lutherson Bonheur's phone
10 ordering drugs.

11 Specifically on -- for example on November 19th,
12 agents intercepted a series of calls between Lutherson
13 Bonheur and Anthony Holzworth. During the call Bonheur
14 told Holzworth that someone would be delivering heroin
15 to him. Agents later observed a man who's identified as
16 Curtis Manchuk arrive at 175 Menlo Street.

17 Investigators saw Bonheur meet with Manchuk, which is on
18 a block, a couple of blocks away from 175 Menlo.

19 Officers follow Manchuk, they stopped him pursuant to a
20 motor vehicle stop, and recovered 50 grams of heroin
21 from Manchuk. In subsequent calls Bonheur and Holzworth
22 talked about what had happened to Manchuk and whether he
23 had been arrested for the heroin that was found on him.
24 Based on the calls and the information learned through
25 the investigation, investigators believed that Manchuk

1 was going to be delivering the heroin to Holzworth that
2 Holzworth had ordered from him.

3 THE COURT: How much?

4 MS. FOLEY: On that occasion it was 50 grams, your
5 Honor.

6 On at least one other occasion, Anthony Holzworth
7 had ordered another quantity of drugs. For example, on
8 November 14th, 2015, Holzworth called Bonheur and said
9 that he was "hitting a play," which is a code term for
10 selling drugs to a customer. Holzworth told Bonheur,
11 "Just bring me the full amount that you were going to
12 bring me." Bonheur asked how much and Holzworth
13 replied, "Bring me the full 5-0 when you come to see
14 me." Bonheur asked, "Do you got a band?" And Holzworth
15 said he would have at least five when Bonheur arrived.
16 Agents believe that, based on the conversations prior to
17 this intercepted call, that Holzworth had ordered 50
18 grams of heroin, which was 5-0, 50 grams, and that he
19 was going to pay Bonheur \$500 in advance for the
20 purchase price of the heroin and pay him the additional
21 \$500 at a later date.

22 THE COURT: Thank you.

23 Mr. Obiora, as it pertains to you, did you hear
24 what Ms. Foley had to say?

25 MR. CHUKWUMA OBIORA: Yes, your Honor.

1 THE COURT: And as it pertains to you, are those
2 things true?

3 MR. CHUKWUMA OBIORA: Yes, your Honor.

4 THE COURT: And as I understand it, you're
5 pleading guilty to get back to your family, but also
6 because, as to the recital she's made, you recognize
7 that you are guilty?

8 MR. CHUKWUMA OBIORA: Yes, your Honor.

9 THE COURT: I find that Mr. Chukwuma Obiora
10 knowingly, intelligently, and voluntarily exercises his
11 right to tender a plea of guilty.

12 Mr. Potts, as it pertains to you, did you hear
13 what Ms. Foley had to say?

14 MR. POTTS: Yes, your Honor.

15 THE COURT: Do you understand it as it pertains to
16 you?

17 MR. POTTS: Yes, your Honor.

18 THE COURT: And, um, as I understand it, you're
19 recognizing that evidence, you plead guilty because you
20 are guilty of these particular crimes, is that correct?

21 MR. POTTS: Yes, your Honor.

22 THE COURT: I find that Mr. Marshawn Potts
23 knowingly, intelligently, and voluntarily exercises his
24 right to tender a plea of guilty under this C-plea.

25 Mr. Grant, um, putting aside anything that bears

1 on drug quantity, did you hear what Ms. Foley had to say
2 as it pertains to you?

3 MR. GRANT: Yes, your Honor.

4 THE COURT: Do you understand it?

5 MR. GRANT: Yes, your Honor.

6 THE COURT: Putting aside anything that pertains
7 to drug quantity, are those things true?

8 MR. GRANT: Not all of it, your Honor.

9 THE COURT: What's not true?

10 MR. GRANT: The amount of purchase.

11 THE COURT: Well, the amount. So the price, you
12 don't agree with that?

13 MR. GRANT: Yes, your Honor.

14 THE COURT: All right, putting aside that, is the
15 remainder true?

16 MR. GRANT: Yes, your Honor.

17 THE COURT: That it was drugs, you understand
18 that?

19 MR. GRANT: Yes, your Honor.

20 THE COURT: And you did do the business -- putting
21 aside the quantity and price, you did do the business
22 about the money transfer and the deposit, is that
23 correct?

24 MR. GRANT: Yes, your Honor.

25 THE COURT: All right. I find that Mr. Grant --

1 Mr. Donovan Grant knowingly, intelligently, and
2 voluntarily exercises his right to plead guilty to the
3 essential elements of the crimes with which he's
4 charged.

5 Mr. Holzworth, as it pertains to you, sir, did you
6 hear what Ms. Foley had to say?

7 MR. HOLZWORTH: Yes, I did, your Honor.

8 THE COURT: Do you understand it?

9 MR. HOLZWORTH: Yes, I do, your Honor.

10 THE COURT: And as it pertains to you now, are
11 those things true?

12 MR. HOLZWORTH: Yes, they are, your Honor.

13 THE COURT: So as I understand it, you're prepared
14 to plead guilty in light of that evidence because you
15 recognize you are guilty?

16 MR. HOLZWORTH: Yes, your Honor.

17 THE COURT: I find that Mr. Anthony Holzworth
18 knowingly, intelligently, and voluntarily exercises his
19 right to tender a plea of guilty pursuant to this
20 C-plea.

21 Now the Clerk may accept the pleas. Understand
22 that, Mr. Obiora and Mr. Potts and Mr. Holzworth, what
23 you're doing is you are offering your -- you're
24 tendering your plea, you're giving me your plea, and
25 here's what's going to happen, I'll either take it --

1 well, not today, but at the time of sentencing. If I
2 take it, you know what the sentence is going to be, at
3 least you know the range, and you know everything else
4 about it. If I don't take it, you'll have your plea
5 back, you'll be innocent people awaiting trial.

6 Mr. Donovan Grant, in your case if you plead
7 guilty, then you're guilty, there's no taking it back or
8 starting over, though of course we will have the
9 proceeding before me as to drug quantity. And as to
10 that I have no opinion at all, the government's going to
11 have to prove it.

12 Do you understand that?

13 MR. GRANT: Yes, your Honor.

14 THE COURT: All right, the Clerk may accept the
15 pleas.

16 Now she's going to go one by one for each one of
17 you. This is the most important part of the whole
18 proceeding. If you plead or tender a plea when the
19 Clerk asks you, then for the three of you who have these
20 C-plea agreements, you are tendering your plea, the only
21 way you can get it back is if I don't accept it. And
22 for Mr. Grant, if you plead guilty when the Clerk asks
23 you, you're guilty, no taking it back or starting over.
24 The Clerk may accept the pleas -- or may accept the
25 tenders and the plea.

1 THE CLERK: Mr. Chukwuma Obiora, you have
2 previously pled not guilty to a three-count indictment
3 charging you with, in Count 1, conspiracy to possess
4 with intent to distribute and to distribute heroin and
5 cocaine in violation of Title 21, United States Code,
6 Section 846. In Count 11, felon in possession of
7 ammunition in violation of Title 18, United States Code,
8 Section 922(g)(1). In Count 12, possession with intent
9 to distribute heroin and cocaine, in violation of Title
10 21, United States Code Section 841(a)(1). Do you now
11 wish to change your plea, "Yes" or "No"?

12 MR. CHUKWUMA OBIORA: Yes.

13 THE CLERK: How do you now plead to Counts 1, 11,
14 and 12, guilty or not guilty?

15 MR. CHUKWUMA OBIORA: Guilty.

16 THE CLERK: Mr. Marshawn Potts, you have
17 previously pled not guilty to a one-count second
18 superseding indictment charging you with conspiracy to
19 possess with intent to distribute and to distribute
20 heroin and cocaine in violation of Title 21, United
21 States Code, Section 846. Do you now wish to change
22 your plea "Yes" or "No"?

23 MR. POTTS: Yes.

24 THE CLERK: How do you now plead to Count 1(ss),
25 guilty or not guilty?

1 MR. POTTS: Guilty.

2 THE CLERK: Mr. Donovan Grant, you have previously
3 pled not guilty to a two-count superseding indictment
4 charging you with, in Count 1, conspiracy to possess
5 with intent to distribute and to distribute heroin and
6 cocaine in violation of Title 21, United States Code,
7 Section 846. In Count 10, conspiracy to commit money
8 laundering in violation of Title 18 United States Code,
9 Section 1956(h). How do you now plead -- do you now
10 wish to change your plea, "Yes" or "No"?

11 MR. GRANT: No.

12 THE COURT: You don't? You want to go to trial?

13 MR. GRANT: No, I don't want to go to trial.

14 THE COURT: So you want to change your plea?

15 MR. GRANT: Yes.

16 THE CLERK: How do you now plead to Count 1(s) and
17 10(s), guilty or not guilty?

18 MR. GRANT: Guilty.

19 THE CLERK: Mr. Anthony Holzworth, you have
20 previously pled not guilty to a second superseding
21 indictment charging you with conspiracy to possess with
22 intent to distribute and to distribute heroin and
23 cocaine in violation of Title 21, United States Code,
24 Section 846. Do you now wish to change your plea, "Yes"
25 or "No"?

1 MR. HOLZWORTH: Yes, I do.

2 THE CLERK: How do you now plead to Count 1(ss),
3 guilty or not guilty?

4 MR. HOLZWORTH: I plead guilty.

5 MR. LISTON: Your Honor I'd like to make a point
6 that his plea agreement is limited to the conspiracy
7 with respect to heroin and not with respect to cocaine.

8 THE COURT: Does the government so understand?

9 MS. FOLEY: Yes, your Honor.

10 THE COURT: Very well, he's pled guilty and we
11 note that point.

12 I propose the following dates for sentencing.
13 Mr. Chukwuma Obiora, March 27th, 2017 at 2:00 p.m.
14 Marshawn Potts, March 28th, 2017 at 2:00 p.m. Donovan
15 Grant, March 30th, 2017 at 2:00 p.m. And Anthony
16 Holzworth, March 31st, 2017 at 2:00 p.m.

17 Are those dates satisfactory to the government?

18 MS. FOLEY: Yes, your Honor.

19 THE COURT: And to the defense, Mr. Cunha?

20 MR. CUNHA: Um, yes, Judge. I have a -- in theory
21 there's a trial scheduled for that time. It's my
22 anticipation in the case that it's going to be resolved
23 short of a trial.

24 THE COURT: I will be happy to do it later in the
25 afternoon if that's --

1 MR. CUNHA: I think it's going to be fine, Judge.
2 If there's an issue I'm going to know within a week.

3 THE COURT: Thank you.

4 Mr. Braceras?

5 MR. BRACERAS: Your Honor, I'm sorry, was it March
6 28th at 2:00 p.m.?

7 THE COURT: It was.

8 MR. BRACERAS: Yes, your Honor, that's fine.

9 THE COURT: And Mr. Cloherty?

10 MR. CLOHERTY: I'm concerned I may be away that
11 week, your Honor, but I'm -- I'm just trying to confirm
12 it. If you give me a minute.

13 (Pause.)

14 MR. CLOHERTY: Nope, actually March 30th will work
15 for me, your Honor.

16 THE COURT: All right.

17 MR. CLOHERTY: We have a separate issue that we
18 have to schedule, but March 30th for now is fine.

19 THE COURT: Very well.

20 And, excuse me, Mr. Liston?

21 MR. LISTON: March 31st is fine, your Honor.

22 THE COURT: Very well.

23 Those are the dates. They're remanded to the
24 custody of the marshals. Oh, let me not be too quick.
25 Now, given the situation and with everybody here I would

1 appreciate it, and I speak to counsel, to defense
2 counsel, that to the extent you can set up interviews
3 with the probation department, that will be helpful to
4 get the presentence reports underway. So if you would
5 check with, um, probation while your clients are here, I
6 would appreciate it.

7 They're remanded. We'll recess.

8 MR. CLOHERTY: Your Honor -- we can talk.

9 THE CLERK: All rise.

10 (Ends, 3:30 p.m.)

11
12 C E R T I F I C A T E
13

14 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do
15 hereby certify that the forgoing transcript of the
16 record is a true and accurate transcription of my
17 stenographic notes, before Judge William G. Young, on
18 Wednesday, January 4, 2017, to the best of my skill and
19 ability.

20
21
22 /s/ Richard H. Romanow 08-07-17

23 _____
RICHARD H. ROMANOW Date
24
25