

No.

In the Supreme Court of the United States

Akeen Ocean,

Petitioner,

v.

United States of America,

Respondent.

**On Petition for a Writ of Certiorari to the
Court of Appeals for the First Circuit**

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI**

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United States Court of Appeals For the First Circuit

Nos. 16-2468; 17-1183

UNITED STATES OF AMERICA,

Appellee,

v.

AKEEN OCEAN; JERMAINE MITCHELL,

Defendants, Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. John A. Woodcock, U.S. District Judge]

Before

Howard, Chief Judge,
Kayatta, Circuit Judge,
and Torresen,* Chief U.S. District Judge.

Merritt Schnipper, with whom Schnipper Hennessy was on brief,
for appellant Ocean.

Seth Kretzer, with whom Law Offices of Seth Kretzer was on
brief for appellant Mitchell.

Renee M. Bunker, Assistant United States Attorney, with whom
Halsey B. Frank, United States Attorney, was on brief, for
appellee.

September 11, 2018

* Of the District of Maine, sitting by designation.

TORRESEN, Chief District Judge. Following a joint jury trial, Akeen Ocean and Jermaine Mitchell were convicted of a conspiracy to distribute and possess with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 846 and 841(a)(1). The district court sentenced Ocean to 120 months imprisonment with three years of supervised release and Mitchell to 260 months imprisonment with five years of supervised release. On appeal, Ocean claims that: (1) there was insufficient evidence to convict him of the charged conspiracy; (2) the admission of recorded jailhouse conversations he had with a girlfriend who cooperated with the Government violated his Sixth Amendment right to counsel; and (3) the sentencing judge erred in calculating his drug quantity. Mitchell argues that allowing two law enforcement witnesses to testify that a particular substance was crack cocaine was both evidentiary error and a violation of his Sixth Amendment right to confrontation. Finding no merit in any of the appellants' claims of error, we affirm both convictions and Ocean's sentence.

I. Akeen Ocean

A. Sufficiency of the Evidence

Because Ocean raised his sufficiency objection in a Rule 29 motion, the standard of review is de novo. United States v. Ramírez-Rivera, 800 F.3d 1, 16 (1st Cir. 2015). In considering the totality of the direct and circumstantial evidence, we draw all inferences in favor of the government and consistent with the

verdict, and "we will reverse only if the verdict is irrational." Id. (quoting United States v. Brandao, 539 F.3d 44, 50 (1st Cir. 2008)). Here, we recount the facts against Ocean on the conspiracy count in the light most favorable to the verdict. United States v. Rodriguez, 162 F.3d 135, 140 (1st Cir. 1998). We address the facts pertinent to other claims later in the opinion.

Count One of the Indictment alleged that between January 1, 2010 and August 30, 2013 in the District of Maine, Defendants Mitchell and Ocean, along with Jeffrey Benton, Christian Turner, Willie Garvin, Torrence Benton, Jeremy Ingersoll-Meserve, Jacqueline Madore, David Chaisson, Burke Lamar, and Wendell White, conspired to distribute and possess with the intent to distribute 280 grams or more of cocaine base.

1. Factual Background

The evidence at trial established that Defendant Mitchell oversaw the distribution of crack cocaine that was being transported from New Haven, Connecticut to Bangor, Maine. Mitchell was assisted in the Bangor area by Christian Turner and a man named Rodrigo.

The distribution of the crack in and around Bangor depended on a network of local addicts, including Defendant Ocean, his girlfriend Christie, and others. For every four or five grams of crack sold, each addict would earn a gram of crack for personal use. The going rate to the addicts was about \$100 per gram of

crack. By selling the crack to their friends and acquaintances, the addicts provided the customer base for the operation and were able to support their own habits.

Mitchell operated out of Christie's apartment on Court Street in Bangor for two or three months in 2011. Mitchell then installed Rodrigo at the Court Street apartment so that Mitchell could tend to business elsewhere. Rodrigo assumed the role of doling out the crack to the addict-dealers and collecting the money from them. Mitchell came by frequently to collect the proceeds. During this period, Ocean was staying several nights a week at Christie's place.

Ocean was not pleased when Rodrigo moved into Christie's apartment because he thought it would attract the attention of law enforcement. Despite his displeasure with the arrangement, Ocean continued to purchase crack from Rodrigo. Rodrigo testified that Ocean was "high all the time, but he . . . also brought me a lot of . . . clientele. He helped me out a lot." Because Ocean did not like people coming to the residence, he conducted his sales away from the Court Street apartment. By Christie's estimate, during the five or six months that Rodrigo was at her residence, Ocean purchased about 100 grams of crack from him. Three witnesses testified that they purchased crack from Ocean, with one witness estimating that he purchased approximately 40-50 grams of crack from Ocean between 2010 and 2013.

Christie, who was not initially happy about Rodrigo living at her apartment, grew even more tired of him after he began to short her and deal directly to her customers. Rodrigo testified that at some point Christie stopped coming home because she owed him and other distributors money. Eventually, Rodrigo moved out of the apartment and set up shop at the homes of other conspirators. Ocean continued to help Rodrigo after he moved out. Rodrigo testified that Ocean also bought crack directly from Turner from time to time.¹

The New Haven police conducted a taped interview with Ocean in September of 2014. The recording was played at trial, and it corroborated much of the witnesses' testimony. In that interview, Ocean admitted that he had dealt with Rodrigo and Turner in Bangor for about eighteen months in 2010 and 2011. He told the detectives that his girlfriend introduced him to Rodrigo who was staying with her. He explained that he was a "middleman" "running to support my habit." He stated that the amounts he would buy from Rodrigo would vary anywhere from two to twenty grams in a day. Although he was not as familiar with Turner, Ocean acknowledged that he had met him and that he could call Turner if Rodrigo was out of product. Ocean described a falling-out with Rodrigo after Rodrigo stole

¹ The supply chain was not always static. One witness who regularly purchased crack from Ocean recalled a time when he obtained crack from Mitchell to sell to Ocean.

from him. He admitted that he knew others who were involved from Bangor, including Madore and a woman named Fern. He claimed that he was not "in the loop" with Rodrigo and Turner, and he denied ever traveling to Connecticut to reup with them. He summed up his involvement like this: "I bought drugs from them and kept it moving."

Finally, in recorded jailhouse conversations also admitted at trial, Ocean, apparently referring to his interview with the New Haven detectives, told Christie:

I said if that's what you call it, yeah I was a middleman. . . . I say yeah, I might have got some money out, I might have got a couple of dollars out of it, I might have got some crack, that's where I fucked up.

2. Analysis

In framing his sufficiency challenge, Ocean concedes that the evidence established a conspiracy to distribute cocaine base from New Haven to Bangor and that he participated in a branch of this venture. He claims that the government alleged a hub and spoke conspiracy around Mitchell and Benton and argues that because he had little interaction with either of them, there was insufficient evidence to support his conspiracy conviction. He argues that the evidence was insufficient to show that he joined the conspiracy or shared the conspirators' goals because he sold drugs only to feed his addiction, did not provide the type of support services that other coconspirators did, and was indifferent to the goals of the conspiracy and hostile to Rodrigo.

Although he never uses the term "variance," Ocean's opening brief reads like a variance argument, i.e., that Ocean's activities were not part of the broader charged conspiracy but some other conspiracy. Ocean follows the typical analysis for a variance claim, addressing the factors of commonality, overlap, and interdependence. See United States v. Ortiz-Islas, 829 F.3d 19, 24 (1st Cir. 2016) (in determining whether evidence is sufficient to show a single conspiracy, rather than several, courts look to "(1) the existence of a common goal, (2) overlap among the activities' participants, and (3) interdependence among the participants" (quoting United States v. Paz-Alvarez, 799 F.3d 12, 30 (1st Cir. 2015))).

Not surprisingly, the Government responds by arguing that there was no variance between the crime charged and the one proved at trial. The Government points out that the Indictment did not charge a broader "New Haven-to-Bangor" conspiracy but merely charged a conspiracy to distribute cocaine base in the District of Maine. Further, the Government counters, there was no allegation that this was a hub conspiracy centered on Mitchell and Benton, and in fact the charged conspiracy was either a hub with Rodrigo at its center or a chain conspiracy. Either way, the Government claims, it introduced sufficient evidence to convict Ocean of the charged conspiracy.

In his reply brief, Ocean clarifies something that he had hinted at in his opening brief. His claim is not just that the evidence was insufficient to establish that he participated in the broader conspiracy involving Mitchell and sources in Connecticut. His claim is that because he did not share the goals of any of the conspirators, he therefore could not have been convicted of either the broader "New Haven-to-Bangor" conspiracy or the narrower conspiracy in Bangor.

We agree with the Government that it was not required to prove that Ocean was a participant in a broader conspiracy to distribute drugs from Connecticut. That is not what the Indictment charged. Moreover, viewing the record in the light most favorable to the verdict, we find ample evidence that Ocean did participate in the charged conspiracy.

To prove a conspiracy, the evidence must show:

(1) the existence of a conspiracy, (2) the defendant's knowledge of the conspiracy, and (3) the defendant's knowing and voluntary participation in the conspiracy. "Under the third element, the evidence must establish that the defendant both intended to join the conspiracy and intended to effectuate the objects of the conspiracy."

United States v. Paz-Alvarez, 799 F.3d 12, 21 (1st Cir. 2015) (quoting United States v. Dellosantos, 649 F.3d 109, 116 (1st Cir. 2011) (internal citation omitted)). It is not necessary to "prove that each defendant knew all of the details and members, or participated in all of the objectives, of the conspiracy as long

as [the government] can show knowledge of the basic agreement." United States v. Brandon, 17 F.3d 409, 428 (1st Cir. 1994).

Defendant Ocean concedes that a conspiracy existed and that he knew of it. He contends, however, that the Government fell short on the third element. We address Ocean's contentions that he did not participate in the conspiracy because he sold crack only to feed his addiction, his role was limited to reselling crack, and he was indifferent to the goals of the conspiracy and hostile to Rodrigo and others.

The fact that Ocean sold largely to feed his addiction rather than to line his pocket does not mean that Ocean did not intend to distribute drugs to others. The fact that a conspirator prefers his spoils in product rather than cash provides no defense to a charge of a drug distribution conspiracy. The question is whether there was evidence that Ocean intended to distribute the drugs in Maine. This conspiracy depended on addict-dealers who agreed to sell four or five grams in order to obtain one gram for their personal use. The structure incentivized the addicts to sell as much as possible to increase the amount available for their own consumption. The evidence at trial showed that Ocean was more than a mere end-user. Ocean purchased and distributed drugs for a period of about a year and a half, and he purchased as much as 20 grams in a day. Although Ocean was on the lower rungs of the organization and he happened to be a user, the evidence established

that Ocean willingly helped out-of-state distributors move their product in the Bangor area. It has long been established in this circuit that individuals who seek to "further[] the distribution of cocaine" share a "common goal." United States v. Bedini, 861 F.3d 10, 14-15 (1st Cir. 2017); Ortiz-Islas, 829 F.3d at 25 ("existence of a common goal[] is broadly drawn and . . . satisfied by evidence of a shared interest in furthering the distribution of drugs" (internal quotation marks omitted)).

Ocean also claims that his limited role in the conspiracy and the fact that he did not engage in transporting or housing other conspirators shows that he was not a part of the conspiracy. Ocean concedes that he purchased crack from Rodrigo and Turner and sold it to his own customers. That conduct was his involvement, and through it he knowingly facilitated the conspiracy to distribute crack in Bangor. It is not "necessary that each coconspirator participate in every aspect of the conspiracy." United States v. Mangual-Santiago, 562 F.3d 411, 422 (1st Cir. 2009).

Ocean argues that he could not have shared the goals of Mitchell and Rodrigo because he was hostile to their tactics. Ocean highlights evidence of his displeasure with Rodrigo moving into Christie's apartment and poaching her clients. He notes that three individuals initially purchased cocaine base from him and then started buying directly from Rodrigo, suggesting that Rodrigo stole his clients too. But there was evidence that Ocean continued

to do business with Rodrigo even after Rodrigo moved out of Christie's apartment. Despite his misgivings about some of the tactics used by Rodrigo, Ocean was willing to stay connected to him. "It is not far-fetched to assume that shifting alliances and spouts of deception among members of [a drug trafficking conspiracy] would be par for the course and, importantly, would not necessarily undermine the overarching goals of the conspiracy." United States v. Belanger, 890 F.3d 13, 31 (1st Cir. 2018); see also United States v. Negrón-Sostre, 790 F.3d 295, 309-10 (1st Cir. 2015) (that individuals resolved their conflict in favor of continued drug distribution indicated interdependence).

Ocean admitted he purchased drugs from Rodrigo and Turner and described himself as a "middleman" who "bought drugs" and "kept it moving." Ocean's own words are likely the best evidence that he intended to join the conspiracy and shared its goals, but the testimony of his coconspirators corroborated his account. Christie estimated that in the course of about five to six months, Ocean purchased about 100 grams of crack from Rodrigo and that he sold the drugs to his own customers. Rodrigo testified that Ocean brought him a lot of clientele. At least three witnesses testified that they had purchased crack from Ocean, with one estimating that over the course of the conspiracy he purchased 40-50 grams of crack from Ocean.

The record contains sufficient evidence for a jury to conclude that Ocean intended to join the conspiracy and intended to effectuate its goals. Because the verdict is amply supported, the sufficiency challenge fails.

B. Massiah Claim

Ocean's second challenge to his conviction involves the admission of his recorded jailhouse conversations with Christie. On June 14, 2016, after jury selection but before the start of the trial, the prosecution learned that Christie had been meeting with Ocean at the Somerset County Jail. On June 17, 2016, the Government filed a supplemental trial brief stating it would introduce five of the intercepted conversations between Christie and Ocean at trial.

Ocean objected to the admission of this evidence on the grounds that it violated his Sixth Amendment rights under Massiah v. United States, 377 U.S. 201, 206 (1964). The trial court allowed the parties to conduct a voir dire of Christie to develop evidence of whether she had been acting at the Government's direction when she met and talked with Ocean in the months before the trial.

During voir dire, Christie testified that she participated in a proffer with a prosecutor at the United States Attorney's Office in Bangor on August 11, 2014. Based on her proffer, the Government extended use immunity to Christie on September 17, 2014, and she

testified before the grand jury that day. In June of 2016, the Government served Christie with a trial subpoena, and she met with federal prosecutors on June 15, 2016, shortly before the trial began. Between September 17, 2014 and June 15, 2016, Christie had no contact with any representative of the United States Attorney's Office. And, other than being served a trial subpoena, she had no contact with anybody from the investigating agency during that period.

At some point in early 2016, Christie was in the Somerset County Jail on a burglary charge and she realized that Ocean was also at the jail. Christie managed to give Ocean her phone number, and he began to call her after she got out of jail. Christie reached out to Ocean because he was a friend of hers: "We have past. I care about him. It didn't seem to be a problem to me." In a recorded call from April 15, 2016, Ocean told Christie to come see him at the jail on Sunday, and she agreed that she would. Christie stated that she did not go see Ocean because the Government asked her to see him, and she did not tell the Government that she had talked to Ocean.

After the voir dire, the trial judge found that there was no evidence that the Government instructed Christie to contact Ocean and no indication that she was acting on behalf of the Government. "There's no indication of any conversation with the police from which I could even begin to infer that she was acting as a

government agent." Based on these findings, the trial judge rejected Ocean's claim of a Massiah violation. We review the trial judge's findings of fact for clear error, and we find none. See United States v. Nascimento, 491 F.3d 25, 50 (1st Cir. 2007). We review de novo his constitutional conclusion based on the facts as the trial judge found them. Id.

The Sixth Amendment provides, in pertinent part, that "the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend. VI. The right to counsel attaches upon the start of criminal judicial proceedings. Brewer v. Williams, 430 U.S. 387, 398 (1977); Roberts v. Maine, 48 F.3d 1287, 1290 (1st Cir. 1995). Under the Massiah doctrine, the Sixth Amendment right to counsel is violated when "evidence of [the defendant's] own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel" are admitted during trial.² Massiah,

² Winston Massiah was indicted on a charge of possessing narcotics and released on bail. Massiah v. United States, 377 U.S. 201 (1964). Unbeknownst to Massiah, a co-defendant named Colson, also released on bail, began cooperating with the government. Law enforcement installed a radio transmitter under the front seat of Colson's car that allowed them to overhear conversations in the car from a distance. When Massiah had a conversation with Colson in his car, law enforcement overheard Massiah make several incriminating statements. At Massiah's trial, the law enforcement officer testified to the incriminating statements, and Massiah was convicted. The Supreme Court reversed, finding that the government's use of statements obtained by law enforcement under these circumstances violated the defendant's Sixth Amendment right to counsel.

377 U.S. at 206. Deliberate elicitation occurs when the government "intentionally creat[es] a situation likely to induce [a defendant] to make incriminating statements without the assistance of counsel." United States v. Henry, 447 U.S. 264, 274 (1980).

"[A] successful Massiah objection requires a defendant to show, at a bare minimum, that the person with whom he conversed had previously been enlisted for that purpose by the authorities." United States v. Wallace, 71 F. App'x 868, 870 (1st Cir. 2003). Which party initiated the meeting at which the government obtained the statements is "not decisive or even important" to the Massiah analysis. Maine v. Moulton, 474 U.S. 159, 174 (1985). The government has an "affirmative obligation not to act in a manner that circumvents the protections accorded the accused." Id. at 176.

In Henry, relied on by the appellant, the Supreme Court found that the government can "deliberately elicit" statements by intentionally creating a situation likely to induce a defendant into making incriminating statements. There, a paid informant named Nichols was staying at the city jail where Henry had been lodged on charges of bank robbery. 447 U.S. at 266. Nichols told federal agents that he was sharing a cell with Henry, and the agents instructed Nichols to keep his ears open but not to question Henry about the robbery. Id. Ultimately, Henry made incriminating statements to Nichols about his involvement in the robbery, and

Nichols was allowed to testify about those statements at Henry's trial. Id. at 267. The Supreme Court found three factors important in its analysis of whether Henry's jailhouse statements were deliberately elicited. Id. at 270. First, the government had engaged Nichols as a paid informant for over a year and only paid him for useful information; second, Henry was unaware that Nichols was anything more than a fellow inmate; and third, Henry was in custody and under indictment when Nichols engaged him in conversation. Id. The Court concluded that the agents "intentionally creat[ed] a situation likely to induce Henry to make incriminating statements without the assistance of counsel," in violation of his Sixth Amendment rights. Id. at 274.

This case is a far cry from Henry, and it is distinguishable on two of the factors mentioned above. First, although Ocean contends on appeal that Christie was a government agent, the trial judge found otherwise, and that finding is supported by the record. The Government did not instruct Christie to visit Ocean or to report back what she learned from him. Christie had no contact with the Government between her testimony at the grand jury in September of 2014 and June of 2016, when she was served with a trial subpoena. Christie visited Ocean of her own volition because he was a friend. She did not advise the Government that she had visited him. Although Christie testified under a grant of

immunity,³ there was no evidence of any agreement by her to elicit information from Ocean or to work as a Government informant. "[T]he Sixth Amendment is not violated whenever -- by luck or happenstance -- the State obtains incriminating statements from the accused after the right to counsel has attached." Kuhlmann v. Wilson, 477 U.S. 436, 459 (1986) (quoting Moulton, 474 U.S. at 176).

Beyond his claim that Christie acted as a government agent, Ocean contends that the Government made him more susceptible to self-incrimination by detaining him pretrial, thus creating this situation and its consequences. Under this theory, however, any pretrial detainee who has made an incriminating statement that comes to the attention of authorities would be able to establish a Sixth Amendment violation. Further, it was the court, and not the Government, that made the decision to detain Ocean pending his trial, and the court's decision to detain Ocean had nothing to do with putting him in a position where he was more likely to incriminate himself.

As for the second Henry factor, Ocean knew that Christie had immunity and had been subpoenaed to testify in his trial. Neither of the defendants in Henry or Massiah knew that he was speaking to

³ Though Christie had a proffer agreement and testified under a grant of immunity by the Government, she did not enter a cooperation agreement with the Government and was not charged federally in connection with the case.

someone who had cooperated with the Government. See Henry, 447 U.S. at 272; Massiah, 377 U.S. at 206; see also United States v. Payton, 615 F.2d 922, 924 (1st Cir. 1980) ("unlike the situation in Massiah . . . [the defendant] knew his interrogator was a government agent"). Ironically, although Ocean complains that Christie and the Government set him up, the transcripts reveal that Ocean was attempting to convince Christie not to testify against him. If anyone had a nefarious motive for the meeting with Christie, it was Ocean, not the Government.

Where, as here, there is no evidence of an effort by the Government to get incriminating statements from Ocean, the Defendant has failed to make out a violation of his Sixth Amendment rights. See Henry, 447 U.S. at 273 (citing Massiah, 377 U.S. at 206); see also Wallace, 71 F. App'x at 871 (jailhouse informant had no "marching orders," and his testimony was therefore properly admitted); Creel v. Johnson, 162 F.3d 385, 394 (5th Cir. 1998) (informant who told officials the location of victim's body not an "agent of the state" where no evidence existed of benefit to her or of control or direction by government). Because we find no Sixth Amendment violation, there was no error in admitting these statements.

C. Sentencing

Finally, Ocean challenges the district court's drug-quantity calculations at sentencing. Appellate review of factual findings

at sentencing is for clear error and review of the application of the sentencing guidelines is de novo. United States v. Demers, 842 F.3d 8, 12 (1st Cir. 2016). The government has the burden of proving drug quantity by a preponderance of the evidence, and courts must make a "reasonable approximation" of drug quantity, which "need not be precise to the point of pedantry." Id. (quoting United States v. Platte, 577 F.3d 387, 392 (1st Cir. 2009)); United States v. Doe, 741 F.3d 217, 235 (1st Cir. 2013).

At sentencing, the judge set Ocean's base offense level at 30, accepting the probation office's conclusion that Ocean was responsible for five grams, three days per week, for one year, for a total of 780 grams. The probation office based its estimate on Ocean's statement to the New Haven police that he obtained on average 5-20 grams of crack daily for approximately twelve to eighteen months.

Ocean challenges this calculation for failure to deduct the cocaine base that he personally used from the total drug quantity. The Government claims that because he withdrew this argument from his sentencing memorandum, Ocean has waived it. See United States v. Sánchez-Berrios, 424 F.3d 65, 74 (1st Cir. 2005) ("A party waives a right when he intentionally relinquishes or abandons it."). In his sentencing memorandum, Ocean stated:

[t]he defendant has been provided with case law including the First Circuit Court of Appeals case of United States v. Innamarati, 996 F.2d. 456 (1993) and others and withdraws his assertion that those drugs

which would have been for personal use was [sic] not part of the conspiracy. As prior cases tend to show, because cocaine base is a scheduled I drug, excluding personal use portion of the drug quantity for guidelines sentence calculation does not seem to apply.

We agree that this constitutes waiver.

Finally, Ocean challenges the use of his statement to the New Haven police to calculate drug quantity because of the "context in which it was made." He argues that the New Haven officer's admonition not to "minimize" constitutes encouragement to overestimate. In addition, he argues that the broader record contradicts his own estimation, citing to Christie's estimate of the amount he received in a six-month period and his customers' estimates of how much they bought from him. "When faced with conflicting facts relating to drug quantity, a district court is at liberty to make judgments about credibility and reliability." Demers, 842 F.3d at 13. The court was at liberty to rely on Ocean's own estimate as the most accurate assessment of drug quantity. On this basis, we find no error.

II. Jermaine Mitchell

Ocean's co-Defendant Jermaine Mitchell raises two related arguments in his appeal. First, he contends the trial judge erred by allowing two law enforcement lay witnesses to testify that they believed a substance they seized was crack cocaine. Mitchell says that because the officers mentioned that laboratory reports were created but the reports were not entered into evidence and the

underlying chemists who wrote the report were not called as witnesses, the law enforcement lay witnesses "were bronzed with an impermissible expert-witness gloss." Second, Mitchell argues that this same testimony about the reports came in without an opportunity for him to examine the chemists who prepared the reports and thus amounted to a Sixth Amendment violation of his right to confront the witnesses against him. In order to address these arguments, it is necessary to provide some context.⁴

A. Background

1. Trooper Gacek

At the time of his testimony, Brian Gacek had been a New Hampshire State Police trooper for over ten years. He testified that on December 28, 2011, he stopped a car driven by Adam Brooks for a traffic violation. Mitchell was in the passenger seat and Fern Dowling was in the back seat. Trooper Gacek impounded the vehicle and obtained a search warrant for the car. Anticipating that Trooper Gacek was about to testify that he found crack cocaine in the car, Defendant Mitchell's attorney asked to approach sidebar and said,

the Government's never given us any sort of lab report . . . that did an analysis and found that it was crack cocaine.⁵ And I am not sure that this witness is

⁴ Mitchell also filed a pro se brief, raising four arguments not presented in his counseled brief. We have considered them, and find each to be without merit.

⁵ Mitchell does not argue on appeal that his non-receipt of the lab reports constitutes a discovery violation.

qualified to testify that the chemical compound is crack cocaine, so I object on that basis.⁶

The prosecutor responded that Trooper Gacek would be testifying based on his experience and training that the substance appeared to be crack cocaine. The trial judge overruled the objection citing the fact that there was already sufficient evidence that the substance was crack cocaine.⁷ The court indicated that if the prosecutor laid a proper foundation, Trooper Gacek could say what he thought the substance was. Trooper Gacek, after testifying that he found a bag that contained a yellowish off-white, rock-like substance, said that, based on his training and experience, he believed the substance was crack cocaine.⁸ Trooper Gacek also testified that he found a "crack pipe" in the vehicle.

On cross-examination, Ocean's attorney asked the trooper whether he had tested the crack pipe, and the trooper responded that he believed it was sent to the New Hampshire Police Forensic Lab along with the other evidence. On further questioning by

⁶ At this point, Defendant Ocean's attorney also spoke up and argued that a chemist at the Maine HETL lab had told him that "if it is merely a white powder or a crystallized form . . . that under no reasonable scientific level could that ever be determined that it's cocaine versus any other drug."

⁷ Fern Dowling had already testified that they were transporting crack cocaine when they were stopped by the police in New Hampshire.

⁸ When the prosecutor offered a photograph of the bag of the items seized from the car as Government Exhibit 36, both defense counsel again objected citing the "same objection at sidebar as to foundation and scientific."

Ocean's attorney, Trooper Gacek explained that all evidence in drug cases would be sent to the lab. He indicated that he could not recall what the results were, but that he knew that a lab report was generated in this case. Defendant Mitchell's attorney never raised an objection to any of this testimony.

2. Detective Quintero

Scott Quintero, a Maine State Police Detective, testified that on August 29, 2013, while on patrol at the Portland bus terminal, he approached and spoke with Mitchell. Mitchell volunteered that he had some marijuana and that he might have some other stuff in his pocket. Detective Quintero gave Miranda warnings and asked Mitchell if he could remove the marijuana from Mitchell's pocket. Mitchell consented. Detective Quintero reached into Mitchell's pocket and removed the marijuana and a small rock wrapped in cellophane. Detective Quintero, who had been with the Maine State Police for seven and a half years at the time of trial, testified that he recognized the rock as crack cocaine based on its unique appearance and how it was packaged.

At this point, at sidebar, Ocean's attorney stated:

I am not aware of any testing done on this crack cocaine. And I am not aware that the HETL lab has been listed as a witness in this case. And therefore, I am going to object under Rule . . . 701 with regard to whether or not this can be characterized and introduced as crack cocaine.

The prosecutor indicated that, like Trooper Gacek, Detective Quintero was able to recognize the substance based on his training

and years of experience as a drug agent. Ocean's counsel explained that because the substance had not been tested, it was prejudicial to allow the detective to testify as to what he believed it was. Defense counsel for Mitchell offered no objection or comment. The trial judge overruled the objection on the ground that defense counsel was free on cross-examination to inquire into any infirmities in the Detective's knowledge and experience, and he could also inquire as to whether any laboratory testing had been done on the substance.

After questioning resumed, Detective Quintero testified that Mitchell himself admitted that the substance was crack. Detective Quintero then told Mitchell that he was going to arrest him, and Mitchell volunteered that he had additional drugs by his ankle. Detective Quintero retrieved a much larger bag of a substance from the area of Mitchell's ankle. Detective Quintero testified that he recognized the substance in the larger bag as crack cocaine based on his training and experience, and that Mitchell again had confirmed that it was.

On cross-examination, Ocean's counsel asked Detective Quintero whether he sent the substance to a lab for testing. Detective Quintero confirmed that he did send the substance for testing, and he believed that results were received. Mitchell's counsel offered no objection. When Ocean's counsel began to ask

about a particular chemist at the state lab, the prosecutor objected on relevance grounds.

At sidebar, the prosecutor pointed out that Mitchell had already pleaded guilty to possessing this crack cocaine in state court. The trial judge then expressed concern about wasting the jury's time if in fact Mitchell had not only admitted that the substance was crack cocaine but had pleaded guilty to its possession. Mitchell's counsel commented that people plead guilty without necessarily having the scientific analysis of a substance. Ocean's counsel reiterated his position that without scientific testing it is impossible to tell whether a substance is crack cocaine. The prosecutor indicated that he did not plan to bring in the chemist who had conducted the test and pointed out that the Government did not have to prove that the substance was in fact crack cocaine because the defendants were charged with conspiracy rather than the substantive count of possession with the intent to distribute. The trial judge directed defense counsel to move along.

B. Evidentiary Objection

Mitchell contends that Trooper Gacek and Detective Quintero's opinions that the substance they each seized was crack cocaine were inadmissible because the officers referred to laboratory reports, but no corresponding reports were submitted into evidence and no expert chemist was called as a witness to verify the

reports' contents. While he does not cite the rule, this argument seems to be piggy-backing off the argument made at trial by Ocean's counsel that the testimony violated Rule 701. Rule 701 addresses opinion testimony by lay witnesses and requires that an opinion by a lay witness be "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of [the rule on testimony by expert witnesses]." Fed. R. Evid. 701.

Except for an initial objection that Trooper Gacek lacked the qualifications to testify that the compound seized was crack cocaine with no follow-up objection after the prosecutor laid a foundation, Mitchell's counsel raised no objections either to the law enforcement officers' identification of the substance as crack cocaine or to Ocean's counsel's questions about the existence of lab reports. Belanger, 890 F.3d at 27 (individual defendants are required to raise their own objections). And Mitchell's counsel never raised at trial the argument that the report bolstered the officers' testimony that he now presents on appeal. United States v. Mercado, 412 F.3d 243, 247 (1st Cir. 2005) (objection on one ground does not preserve appellate review of a different ground). Accordingly, review is for plain error. Plain error exists where "(1) 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." Mangual-Santiago, 562 F.3d at 427 (alteration in original). Plain error "is a difficult hurdle to vault," and Mitchell has not cleared it here. See United States v. Madsen, 809 F.3d 712, 717 (1st Cir. 2016).

Mitchell argues that because the officers testified that they had seen lab reports, the implication was that the lab reports confirmed the presence of cocaine base. This inference "bronzed" the testimony of the lay law enforcement witnesses with an impermissible expert-witness gloss, according to Mitchell.

There are two problems with this argument. First, as the Government points out, it was Ocean's counsel, not the Government, who brought up the lab reports. The lack of an objection by Mitchell's counsel may well have been because he did not believe that questions about missing lab reports were prejudicial to his client. The prosecution's decision not to enter the reports and the officers' inability to remember the results provided fertile ground for closing arguments. Defense counsel were free to claim that the Government would have introduced the lab reports if the labs had confirmed that the substances were cocaine base. To allow a defendant to raise a point on appeal that he may have strategically decided not to raise at trial would invite sandbagging by the defense. United States v. Taylor, 54 F.3d 967, 972 (1st Cir. 1995) (the raise-or-waive rule "precludes a party

from making a tactical decision to refrain from objecting, and subsequently, should the case turn sour, assigning error (or, even worse, planting an error and nurturing the seed as insurance against an infelicitous result)").

Second, as Mitchell concedes, the identification of a substance as a drug may be based upon the opinion of a knowledgeable lay person. United States v. Walters, 904 F.2d 765, 770 (1st Cir. 1990) ("Proof based on scientific analysis or expert testimony is not required to prove the illicit nature of a substance, and identification of a substance as a drug may be based on the opinion of a knowledgeable lay person."); United States v. Paiva, 892 F.2d 148, 155-57 (1st Cir. 1989) (finding a drug user competent to give a lay witness opinion that a particular substance perceived by her was a particular drug, based on her own experience or knowledge). Mitchell is not contending on appeal that allowing the officers to testify based on their experience and training that they believed the substance was crack cocaine was error, but rather that the references to lab reports -- invited, we note, by the defense -- inappropriately bolstered the testimony. There was ample evidence that the substance seized by each law enforcement witness was crack cocaine. A witness testified that they were carrying crack cocaine when they were stopped by Trooper Gacek in New Hampshire. And Detective Quintero testified that Mitchell himself admitted that the substance seized from him was crack

cocaine. In light of the significant evidence already in the record, the incremental effect of the references to laboratory reports (without even stating the results contained in the reports) did not affect Mitchell's substantial rights or seriously impair the fairness of the proceeding. Mitchell fails to demonstrate error, let alone plain error.

C. Confrontation Clause

In addition to his evidentiary objection, Defendant Mitchell makes a one-paragraph argument that Mitchell's rights under the Confrontation Clause of the Sixth Amendment were violated when Trooper Gacek and Detective Quintero testified that they had seen lab reports.

It is now well established that the government cannot introduce a report created to serve as evidence for a criminal proceeding without making the author of the report available for cross examination. Melendez-Diaz v. Massachusetts, 557 U.S. 305, 310, 329 (2009) (finding a forensic lab report testimonial and so requiring testimony from a witness competent to testify to the truth of the report's statement to admit the report); see also Bullcoming v. New Mexico, 564 U.S. 647, 652 (2011) (under the Confrontation Clause, a lab report stating defendant's blood alcohol concentration could be admitted only with testimony from analyst who performed, observed, or certified report, unless that

person was unavailable and the defendant had the opportunity to cross-examine her before the trial).

But here the Government did nothing of the sort. The Government relied on the lay testimony of the officers, knowledgeable drug users, and an admission of the Defendant to identify the substance at issue. The Government never sought to admit the lab reports and never sought to question the witnesses about the existence of any such reports. Only Ocean's counsel questioned the officers about lab reports, and Mitchell's counsel offered no objection to this line of questioning. As above, review of objections not raised by the appellant at trial is for plain error.⁹ Here we find none.

III.

For the above stated reasons, we affirm Ocean's conviction and sentence and affirm Mitchell's conviction.

⁹ Mitchell argues that although the Sixth Amendment was not mentioned at trial, a Confrontation Clause objection was embedded in a comment made by Ocean's counsel that the lab was not listed as a witness in the case. Even assuming this comment can be interpreted as an objection under the Sixth Amendment, no objection was made by Mitchell's counsel. Belanger, 890 F.3d at 27 ("individual defendants in a joint criminal trial are required to raise their own objections unless the district court 'specifically states that an objection from one defendant will be considered an objection for all defendants'" (citation omitted)).

1 MR. CASEY: Nothing on the instructions or any other
2 issues from the government, Your Honor.

3 THE COURT: Okay. Anything from Defendant Mitchell?

4 MR. RODWAY: No, sir.

5 THE COURT: And anything from Defendant Ocean?

6 MR. BOURGET: There is. There's a new factor that I
7 have to make the court aware. Recently, within the last few
8 days, I think it was Thursday, maybe a little earlier, we've
9 become aware that there's been communication between the
10 government's informant witness and my client while at jail,
11 and Mr. Casey has done his best to prepare transcripts,
12 prepare proposed exhibits.

13 And the problem from my end is that Massiah and its
14 progeny ring itself to me -- there are other cases, as well --
15 but the concern I have is that allowing the government agent
16 to -- to interact with my client when he's supposed to be in a
17 safe haven, if you will, in custody in a jail, and it's not
18 just one interaction, but several over this period of time
19 from April through May -- April 15th-16th, May, and as late as
20 June, creates a situation where, as soon as my paralegal shows
21 up this morning, we're going to file a motion to suppress and
22 motion in limine, if you will, with regard to that type of
23 issue.

24 THE COURT: Okay. Did you -- do you plan to mention
25 that in your opening?

1 MR. CASEY: I do not, Your Honor.

2 THE COURT: Okay. Well, why don't we -- I'll wait
3 for whatever you have. Mr. Casey had informed the court that
4 this had occurred, and I'll just wait for it.

5 MR. BOURGET: I appreciate that. The -- the big --
6 the large problem I have is not only is it a discussion about
7 past activities, but, if you will, it's a discussion that
8 involves potentially some of my trial tactics that may or may
9 not -- I may or may not wanted to use depending on how you
10 believe the declarant, and it really makes my case very
11 problematic -- the disclosure of those.

12 I've prepared, Your Honor, to do an opening.

13 THE COURT: Right.

14 MR. BOURGET: Yeah, so for -- for timeliness. But I
15 do want to say this. There's something that I don't think a
16 lot of research gets done on with regard to defense counsel
17 with regard to how motions, under the rules, have to be filed.
18 I've -- I've looked at some of Mr. Rodway's motion practice,
19 and, quite frankly, I appreciate it. He does a fine job; so
20 does Mr. Casey.

21 But the problem I'm running into is that you have
22 sanitized numbers coming from the government with regard to
23 codes that have to be gotten through, and then when you get
24 through that, you get to the disk, and after you get through
25 the disk, then the local rule requires us to transform that

1 THE COURT: Well, you may well be able to resolve
2 it. I mean, it either did or didn't happen, and I'm -- I'm
3 sure that Agent Gardner would be truthful --

4 MR. RODWAY: Yes.

5 THE COURT: -- if, in fact, a contact was made with
6 him and he was able to do something for the witness.

7 MR. RODWAY: Right. All right. Thank you, Your
8 Honor.

9 THE COURT: Okay. Now, the other -- the other thing
10 that we need to discuss -- and this is your issue,
11 Mr. Bourget, is this Christie question that you had raised
12 earlier.

13 MR. BOURGET: Yes.

14 THE COURT: And I've done some preliminary research
15 on that while we're all sitting around, and you pointed out
16 the Massiah v. United States case, which is 377 U.S. 201, a
17 1964 case out of the United States Supreme Court, and the most
18 recent pronouncement I've found from the First Circuit that
19 may be relevant is Torres, T-o-r-r-e-s, v. Dennehy, which is
20 D-e-n-n-e-h-y, which is 615 F.3d 1, a 2010 case out of the
21 First Circuit. And what they say there is as follows, and
22 it's not -- the facts aren't really of concern here, it's
23 really the legal principle: The Sixth Amendment guarantees
24 criminal defendants the right to counsel once formal criminal
25 proceedings have begun. From that point forward, government

1 agents may not, quote, deliberately and designedly set out to
2 elicit information, unquote, from a defendant represented by
3 counsel. It goes on to say, however, the defendant may waive
4 the right whether or not he's already represented by counsel.
5 The decision to waive need not itself be counseled.

6 So the -- the way I've sort of put this together -- and
7 you can -- you can tell me where you want to go with it -- if
8 Christie, who I understand was at least one point Mr. Ocean's
9 girlfriend, and Mr. Ocean decide to have conversations, they
10 -- he has a right to talk to whoever he wants to talk to. He
11 can talk to his current or former girlfriend as he chooses.

12 What can't happen, however, is if Mr. Casey or
13 Mr. Gardner or anyone else involved with the government goes
14 to Christie and says, you go and talk to Akeen Ocean and find
15 out what Mr. Bourget, for example, has told him about the
16 case. That is what they -- you would refer to as deliberately
17 and designedly set out to elicit information.

18 Now, I mean, I don't know what you know about all of this
19 and I'm not foreclosing the possibility you can comply with
20 that standard, but, frankly, I would be flabbergasted if
21 Mr. Casey set out Ms. -- what's her last name --

22 MR. CASEY: It's pronounced Thetonia. It's
23 T-h-e-t-o-n-i-a.

24 THE COURT: -- right -- Ms. Thetonia, I just --
25 look, I've lived long enough to know that there are always

1 surprises, but I would be very surprised if Mr. Casey used
2 Ms. Thetonia as basically a spy to get information out of
3 Mr. Ocean while he was incarcerated and represented by
4 counsel.

5 MR. BOURGET: Right.

6 THE COURT: If that's the case, I'm happy to let you
7 ask Ms. Thetonia out of the presence of the jury how she came
8 to talk to your client, how she came to visit him in jail if,
9 in fact, she did, whether or not the government had set her up
10 to do this, or she thought she was doing something to
11 advantage herself or something like that, what the
12 interrelationship is between her and the government. But I
13 think there has to be a nexus under the case law between her
14 conversations with your client and the government itself and
15 not simply a conversation between two private individuals.

16 So the reason I raise it is, obviously, it's a pretty
17 significant issue and we need to get it resolved before
18 Ms. Thetonia takes the stand. I don't want to have to excuse
19 the jury either before or during her testimony to resolve this
20 issue.

21 MR. BOURGET: Right.

22 THE COURT: And is that what you -- is that the --
23 the issue that you had raised this morning that you -- you're
24 pressing?

25 MR. BOURGET: It is, it is, Your Honor, and I -- I

1 would appreciate a brief in limine inquiry of Ms. Thetonia to
2 satisfy the record so that that is -- is clean.

3 The -- the second area I have would be more content
4 specific, and I want to go through it because -- so -- so I am
5 asking, Your Honor, for a brief motion in limine with regard
6 to Thetonia in regard to this.

7 THE COURT: Sure. Well, what you're asking for is
8 the opportunity to voir dire --

9 MR. BOURGET: Voir dire I mean.

10 THE COURT: -- Ms. Thetonia outside the presence of
11 the jury before she testifies?

12 MR. BOURGET: Yes, briefly.

13 THE COURT: Okay. And, Mr. Casey, you had indicated
14 just late last week that you discovered this information. I
15 take it that -- has the -- have the contents of the
16 conversations actually been transcribed now?

17 MR. CASEY: Your Honor, in the -- the court's
18 exhibit book that was brought up on Friday -- and we've
19 provided a copy of these exhibits --

20 THE COURT: Right.

21 MR. CASEY: -- as well, we have identified -- bear
22 with me, Your Honor -- it would be Exhibits 39 through 43.

23 THE COURT: All right.

24 MR. CASEY: And there's a corresponding T exhibit.

25 So the -- the numeric exhibits are the actual individual disks

1 containing each of the calls or conversations that the
2 government proposes offering, and then the corresponding T
3 exhibit is a transcript that corresponds to that particular
4 disk.

5 We provided all 29 telephone conversations and the one in
6 person meeting to Mr. Bourget and Mr. Rodway, and then we've
7 -- we've selected these five recordings, and one of them --
8 the meeting itself is about, oh, I'd say probably close to an
9 hour long, and we're -- we've whittled that down to about 15
10 or 16 minutes. So we've created a -- a transcript and a
11 redacted recording of just the first 15 or 16 minutes of that
12 hour-long meeting and prepared a transcript for that.

13 THE COURT: And -- and when do you plan to call
14 Ms. Thetonia?

15 MR. CASEY: Your Honor, tomorrow morning I will have
16 Mr. Ramirez back. The government's next witness will be Fern
17 Dowling.

18 THE COURT: Right.

19 MR. CASEY: And then after Fern Dowling, we will
20 call Ms. Thetonia. My intention, Your Honor, is to, if
21 permitted, ask her some questions about these conversations,
22 but not actually play the conversations until later on in the
23 trial once we've had the chance to sort out any stipulation
24 with Mr. Bourget concerning, you know, how these recordings
25 were made and that they're authentic recordings from the

1 Somerset County Jail --

2 THE COURT: Right.

3 MR. CASEY: -- or call a witness from the Somerset
4 County Jail if it comes to that.

5 MR. BOURGET: I've only had -- I've had these
6 transcripts for a very, very short period of time, Your Honor,
7 and looking through -- I had a moment to look through some of
8 them again today, so I've had a second sweep, which I usually
9 need, and I may still have some evidentiary questions as to
10 whether or not there's prejudicial versus probative effect,
11 and so that would be a second type of --

12 THE COURT: Sure.

13 MR. BOURGET: -- objection if I -- and hopefully
14 tonight I can go through it and be more precise on that.

15 THE COURT: Right. Well, you know what -- because
16 they've got the exhibits right here, you know what they're
17 seeking to admit, correct?

18 MR. BOURGET: Right. The -- that's -- yes, I have
19 39-T through 43. I've had it, Your Honor, since Friday
20 evening.

21 THE COURT: Sure. And it isn't voluminous at least
22 what they want to introduce, at least I can see it right here,
23 right?

24 MR. BOURGET: It's a lot less than the -- the full
25 amount, that's true.

1 THE COURT: Right. So -- so how do you want to
2 proceed?

3 MR. BOURGET: I want to have a brief voir dire with
4 Ms. Thetonia prior -- outside the presence of the jury, and
5 tonight I want to review for -- if there are any prejudicial-
6 type evidentiary objections --

7 THE COURT: Sure.

8 MR. BOURGET: -- and present those to you.

9 THE COURT: Have I got the -- the standard that
10 you're referring to here correct, is that the -- the
11 government's agents may not deliberately and designedly set
12 out to elicit information from a defendant represented by
13 counsel? That's what I've got out of the First Circuit. Is
14 that what you understand the law is on this issue?

15 MR. BOURGET: It is, but I want -- I want a little
16 more time tonight to -- to review that, as well, if I could,
17 in case I find something different than what the court had.

18 THE COURT: Okay.

19 MR. BOURGET: I had U.S. v. Henry and Massiah, and I
20 had Fellers v. United States, which is a 2004 case, and that
21 talks, of course, about intentional postindictment
22 communication between the accused and agents of the
23 government.

24 And so -- then -- then the only other thing I want to
25 review is -- is -- well, that is clearly less than what --

1 less specific than what the court just said with regard to the
2 cite that you've cited for me, so I want a chance to review
3 that.

4 THE COURT: Sure, and I'm glad to give you that. In
5 terms of just practicality --

6 MR. BOURGET: Okay.

7 THE COURT: -- you just heard what he said. We're
8 going to finish Mr. Ramirez presumably sometime tomorrow.
9 Then Fern Dowling will be the next witness. But
10 Ms. Thetonia's the next witness.

11 MR. BOURGET: Right.

12 THE COURT: And what's your thought, are we going to
13 take a break and put -- I'm always reluctant to put the jury
14 on ice for a long time?

15 MR. BOURGET: I don't want to put the jury on ice,
16 but I'll tell you I really would like to resolve this before
17 Ms. Thetonia gets on.

18 THE COURT: Yes. Well, that's why I'm asking you.

19 MR. BOURGET: Yeah, yeah, rather than doing it
20 partly and then having the final decision at some other time.
21 So as far -- oh, as far as the amount of time I need with her
22 is not a long time. If I were to say a half-hour, that would
23 -- I would like to be within a half-hour, but I know there may
24 be cross and redirect.

25 THE COURT: Right. But the -- the narrow -- the

1 first question really is, did -- was she put up to this?

2 MR. BOURGET: Why did she go?

3 THE COURT: Yeah. Why did -- was she put up --
4 well, why she went could be a whole variety of things. But
5 the real issue here is, was she put up to having conversations
6 with Mr. Ocean by the government or by anyone associated with
7 the government? And if she says no, then that's really a
8 pretty short examination.

9 MR. BOURGET: Yes, it is.

10 THE COURT: The other -- if she says, oh, yes, you
11 know, Agent so-and-so told me to say -- to go see what they
12 could get, what I could find from Mr. Ocean, that's a whole
13 different can of worms.

14 MR. BOURGET: And I understand that, and the -- I'm
15 being directed by -- by the court with regard to the research
16 the court found. I want to review that because I'm still open
17 -- and I need the court to be open, although I don't have good
18 case law for you right now -- as to whether or not implicit
19 setup of him being in jail and her approaching the jail with
20 whatever deal she's worked through, whether or not those
21 dealings gave her so much of an impulse to go, and that's
22 short of what the court has said that the case law is, and if
23 I do not find something more, then I won't -- I won't bother
24 pursuing that further, but I just have my concerns.

25 THE COURT: Sure. No, you're perfectly legitimate

1 to bring it back to me if, in fact, that standard -- I just
2 did seat-of-the-pants kind of research here while the
3 testimony was going on, so I just looked at it --

4 MR. BOURGET: Yeah.

5 THE COURT: -- very quickly, and that's what I came
6 up, that's the last pronouncement --

7 MR. BOURGET: Right.

8 THE COURT: -- in which the First Circuit cited
9 Massiah.

10 MR. BOURGET: Right, and it's Torres v. Dennehy, and
11 I've got -- and I'm going to review that.

12 THE COURT: Right. So if -- that's the first
13 legitimate question.

14 The second question is a Rule 403 analysis, and I can
15 take this back and take a look at it --

16 MR. BOURGET: Right.

17 THE COURT: -- and make that analysis based on the
18 information that the government wishes to elicit.

19 MR. BOURGET: That certainly would swift -- swift in
20 our discussion and make it more specific, Your Honor.

21 THE COURT: Exactly. What do you think, Mr. Casey?

22 MR. CASEY: That's fine with the government, Your
23 Honor.

24 Just to -- to give a little more context to Mr. Bourget
25 and to the court, in the transcripts that we have prepared,

1 THE WITNESS: Thank you.

2 (The witness left the witness stand.)

3 THE COURT: All right. Ladies and gentlemen, we're
4 going to take our second break. Again, don't discuss the
5 case. I think I may have some matters I need to deal with
6 counsel about, and I'll bring you back as soon as I can. Let
7 me be sure that she -- yeah. All set?

8 THE OFFICER: All rise.

9 THE COURT: You may leave.

10 (Jury exited at 12:46 p.m.)

11 THE COURT: So the next witness is Ms. Thetonia?

12 MR. CASEY: That's correct, Your Honor.

13 THE COURT: Why don't we all take a break, and we
14 can then proceed. I take it that there'll be some testimony
15 out of the presence of the jury?

16 MR. CASEY: I think that's what Mr. Bourget would
17 like to do, Your Honor. The government has no objection to
18 that.

19 MR. BOURGET: Yes, Your Honor, I'm still pressing
20 the voir dire with regard to the issue that I raised before.

21 THE COURT: The question of whether or not the --
22 Ms. Thetonia was acting for the government at the time that
23 she spoke with your client?

24 MR. BOURGET: That's correct, Your Honor.

25 THE COURT: All right. Thank you. Court will stand

1 in recess.

2 (Court recessed from 12:48 p.m. to 1:12 p.m.)

3 THE COURT: All right. I have reviewed the case law
4 that both parties have submitted, and perhaps it would be
5 helpful to review that case law to make sure we're all on the
6 same page, or no?

7 MR. CASEY: That would be helpful, Your Honor. I
8 just want to make the court aware that the witness is in the
9 courtroom. So if this is something that you'd like to discuss
10 outside of her presence, I could certainly ask her to leave.

11 THE COURT: I think that's probably appropriate.
12 Thank you.

13 The seminal case in this matter is the Massiah case that
14 the United States Supreme Court issued, and we reviewed that
15 and the general principles of -- of that case the other day.
16 I just want to review the additional authority that counsel
17 have submitted to the court.

18 One is United States v. LaBare, which is L-a-B-a-r-e,
19 191 F.3d 60, a First Circuit case in 1999, and then the
20 government also made reference to United States v. Wallace,
21 which is 71 Fed. App'x which is at 868, a 2003 First Circuit
22 case. I made reference the other day to Torres v. Dennehy,
23 615 F.3d 1, a 2010 First Circuit case, and I think,
24 Mr. Bourget, you referred me to a case out of the Sixth
25 Circuit called Ayers v. Hudson, which is 623 F.3d 301, a 2010

1 Sixth Circuit case.

2 I don't think that there is really much dispute about the
3 legal standards that are applicable, but to be sure we're all
4 on the same page, I'm going to review what I understand the
5 case of United States v. LaBare, the 1999 First Circuit case,
6 which was authored by Circuit Judge Boudin, discusses a
7 difference of view between the Eighth and Second Circuit view
8 of the standard and the Third and Fifth Circuit view of the
9 standard.

10 The Eighth Circuit view was cited through the case of
11 Moore v. United States, at 178 F.3d 994, a case decided in
12 1999 by the Eighth Circuit by Judge Arnold, and in that case,
13 the Eighth Circuit described the test as follows: An
14 informant becomes a government agent for purposes of Massiah
15 only when the informant has been instructed by the police to
16 get information about the particular defendant.

17 Then reference was made, as well, to the Second Circuit
18 case of United States v. Birbal, B-i-r-b-a-l, 113 F.3d 342, a
19 1997 Second Circuit case that basically makes the same
20 statement.

21 And the LaBare case describes the Third Circuit and Fifth
22 Circuit as considering multiple factors. The LaBare case
23 chooses to follow the guide -- the guidepost set by the Eighth
24 and Second Circuit and declines to adopt the Third and Fifth
25 Circuit views.

1 Then in United States v. Wallace, which is a 2003 First
2 Circuit case, there is a suggestion that in order to fit
3 within the Massiah case, there must be some prearrangement by
4 the government to obtain the information.

5 In Torres, which I mentioned the other day, once -- the
6 First Circuit said that once a formal -- once formal criminal
7 proceedings have begun, from that point onward, government
8 agents may not deliberately and designedly set out to elicit
9 information from a defendant represented by counsel. So that
10 sets forth, at least as far as the court has been able to
11 determine, the current standard that is applicable in the
12 First Circuit.

13 The Sixth Circuit formulation is almost identical from
14 what I can see, and maybe, Mr. Bourget, you can tell me, after
15 I'm done, if you think it's different. The Sixth Circuit case
16 of Ayers v. Hudson, they say that if federal agents had
17 deliberately elicited information from a defendant after the
18 defendant had been indicted and represented by counsel, then
19 Massiah would apply. It does say that it includes, quote,
20 indirect and surreptitious interrogations by covert government
21 agents and informants, but the issue, as described in the
22 Sixth Circuit, is whether the interrogation was essentially
23 equivalent to a police interrogation.

24 So those are the general standards. My -- my view of the
25 standard, basically, to put it in sort of commonsense terms,

1 is whether the government put the informant up to the
2 conversation that is being elicited from the represented
3 defendant. If it was the informant's own decision to engage
4 in the conversation, then that's not, I don't think, within
5 the scope of the Massiah as it has been interpreted -- the
6 Massiah rule as it has been interpreted by the First Circuit
7 and others.

8 So what we need to do is find out from Ms. Thetonia
9 whether her conversations with Mr. Ocean that are reflected in
10 the government exhibits were precipitated by something that
11 the government told her to do. Am I -- have I characterized
12 that correctly from the government's viewpoint?

13 MR. CASEY: Yes, Your Honor.

14 THE COURT: And from the defendants' viewpoint?

15 MR. BOURGET: For the most part, Your Honor.

16 First, I would like to thank the court for directing me
17 into these cases and that was much -- helpful in regard to
18 what I believe may have been a wider scope. But following the
19 lines of what you just said, I think those cases that you've
20 recited are a good representation of where we are at.

21 But I do not -- I disagree with the court as far as that
22 it is just whether or not the government -- whether or not it
23 was solely the informant's free will to do it on the one side.
24 If it is solely the witness' free will all by herself, then
25 clearly that would be one where we would not be able to

1 suppress the statement.

2 On the other hand, the court's looking at the
3 deliberately and designedly factor, which involves the
4 government. My reading of indirect and surreptitious
5 interrogation, which was outlined in that Sixth Circuit case,
6 is that there is also potentially a middle ground, where there
7 is enough interaction between the government and an individual
8 that it does rise to the level of the -- to fit under the
9 design, if you will. So I do follow the court's lead on much
10 of what it is saying.

11 It clearly has changed what I believe needs to be a very
12 short presentation, but I ask the court to allow me to ask
13 these questions in that way, and I -- and I'm concerned --
14 given the late date that I was able to receive the material
15 and process it, I have concerns about the interactions with
16 this witness with government officials, significantly to the
17 degree that it could even rise to deliberately and designedly
18 standard, but more so, it's possible it could barely fall
19 short of the deliberately and designedly and still I would be
20 asking the court to -- to exclude, that there may be
21 sufficient indirect and surreptitious interrogations by
22 various agents, government officials, and such with this
23 individual, and I intend to ferret that out rather quickly and
24 determine if that's the case.

25 THE COURT: All right. Well, I'm not going to

1 restrict you. I do think that it -- my reading of Ayers seems
2 to be consistent with the Third and Fifth Circuit view that
3 the First Circuit has rejected, and that's my concern. It
4 says, we agree with those courts that do not limit agency in
5 the Massiah context to cases where the state gave the
6 informant instructions to obtain evidence from a defendant.
7 It goes on to say, a court must analyze the facts and
8 circumstances of a particular case to determine whether there
9 exists an express or implied agreement between the state and
10 the informant at the time the elicitation took place that
11 supports a finding of agency.

12 The -- the problem that I see -- and it -- I've done my
13 best to understand the way Judge Boudin has set it forth in
14 the LaBare case in 1999, that he says Moore v. United States,
15 general agency insufficient, and United States v. Birbal,
16 same, and then he says, compare that with the United States v.
17 Brink, the Third Circuit case, appearing to consider multiple
18 factors, and it sounds like the Sixth Circuit in saying that
19 the court must analyze the facts and circumstances of a
20 particular case to determine whether there exists an express
21 or implied agreement, etc., etc., seems to be following the
22 lead of the Third and Fifth Circuit, but we don't need to
23 resolve that.

24 What we do need to do is find out what she's going to
25 say, and then it may be it's not necessary to reach these --

1 the subtleties between these two lines of authority. But, of
2 course, we happen to be in the First Circuit, and not in the
3 Sixth Circuit, which is the particular flag that we salute in
4 this court right now.

5 MR. BOURGET: I'm concerned that one of the cases --
6 I -- I thought it was the LaBare case, but perhaps I'm -- I'm
7 misreading -- was a case where a sufficient amount of
8 groundwork wasn't done at the trial level and that was of
9 concern.

10 THE COURT: Sure, no, and that's why I'm allowing
11 you to proceed.

12 MR. BOURGET: Okay.

13 THE COURT: Yeah.

14 MR. BOURGET: That's great, great.

15 THE COURT: I'm not restricting you. Go right
16 ahead. Do you want to get Ms. Thetonia?

17 MR. BOURGET: Yes. I'll call Ms. Christine (sic)
18 Thetonia.

19 THE CLERK: Please raise your right hand. Do you
20 solemnly swear that the testimony you shall give in the matter
21 now in hearing shall be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 THE WITNESS: Yes.

24 THE CLERK: Please be seated. Please state your
25 name and spell your last name for the record.

1 THE WITNESS: Christie Thetonia, T-h-e-t-o-n-i-a.
2 CHRISTIE THETONIA, having been duly sworn, was examined and
3 testified as follows:

4 VOIR DIRE EXAMINATION

5 BY MR. BOURGET:

6 Q Ms. Thetonia, you've indicated your name is Christie
7 Thetonia, correct?

8 A Correct.

9 Q C-h-r-i-s-t-i-e?

10 A Correct.

11 Q You also go by Christine Thetonia?

12 A No.

13 Q Have you ever gone by Christine L. Thetonia?

14 A Nope.

15 Q Have you ever been convicted of a crime in which the
16 name on the charge was Christine L. Thetonia?

17 A They're -- for some reason, Christine shows up in
18 paperwork and that has never been my name, I have never used
19 it, and I have corrected it numerous times.

20 Q Okay. So --

21 A So --

22 Q So some -- so your -- your real name is Christie, like I
23 said, C-h-r-i-s-t-i-e.

24 A Correct.

25 Q Middle name?

1 A Lee.

2 Q Starts with an L?

3 A L-e-e.

4 Q And Thetonia, T-h-e-t-o-n-i-a?

5 A Yes.

6 Q And your date of birth?

7 A November 25th, 1980.

8 Q And so you're the same Christie Thetonia that sometimes

9 appears as Christine Thetonia on court documents.

10 A Correct.

11 Q Okay. And, let's see, were you granted immunity with

12 regard to your testimony surrounding this case here that we're

13 here today?

14 A Yes.

15 Q And, just briefly, how long ago was that that you were

16 granted immunity?

17 A Two years.

18 Q How were you granted immunity two years ago?

19 A I went to the -- I was -- I had to go to the grand jury.

20 Q All right. Let me -- let me -- so you had to go to

21 grand jury at that time. And is that because you were

22 cooperating with the government two years ago?

23 A Correct.

24 Q So you know Mr. Joel Casey, correct?

25 A Correct.

1 Q Do you see him in the courtroom?

2 A Yes.

3 Q And -- and he's seated at the U.S. Attorney's Office
4 (sic)?

5 A Yes.

6 Q Okay. Throughout those two years, did you deal with
7 him?

8 A Um, the last time I talked to him was two years ago. I
9 haven't dealt with him until last Wednesday, I believe, or
10 Thursday it was.

11 Q So you dealt with him two years ago.

12 A Correct.

13 Q And you also dealt with him last Wednesday.

14 A Correct.

15 Q Have you ever been a confidential informant?

16 A No.

17 Q Do you know Officer -- Detective Gardner?

18 A I do.

19 Q And do you see him in the courtroom?

20 A Yes.

21 Q Can you identify him for us?

22 A He's sitting right there with the red tie and the blue
23 jacket.

24 Q So he's next to the U.S. Attorneys here, Mr. Ruge,
25 right?

1 A Yes.

2 Q Do you know Mr. Ruge?

3 A I don't.

4 Q You know --

5 A I've seen him once, but I don't -- I've never really
6 conversated or anything with him.

7 Q He's the gentleman that's in-between, if I were to tell
8 you that.

9 A Correct.

10 Q Yeah. But -- and so you know all those three men,
11 right?

12 A I do.

13 Q Isn't it true -- okay. Let me ask this. Isn't it true
14 that you've worked with Maine Drug Enforcement Agency with
15 regard to issues surrounding drug sales?

16 A No.

17 Q Have you ever been a confidential informant?

18 A No.

19 Q Are you familiar with Wade Betters of the Maine Drug
20 Enforcement Agency?

21 A Wade Betters, Wade Betters. I do know the name.

22 Q You know the name Wade Betters because in October 2011,
23 you were arrested by Wade Betters of the Maine Drug
24 Enforcement Agency, correct?

25 A Correct.

1 Q And at that time, you were charged by state court,
2 right?

3 A Correct.

4 Q And back in October 2011, is that when you began
5 cooperating with the Maine Drug Enforcement Agency?

6 A I was arrested November 2nd of 2011 for trafficking. I
7 was never a confidential informant.

8 Q When you were arrested, it was as a result of conduct
9 that occurred back in October 14, 2011, in Bangor, correct?

10 A Correct.

11 Q And the investigating agency -- agent was Wade Betters
12 of the Maine Drug Enforcement Agency.

13 A As far as I know, there was -- yes, there was a wire --
14 there were two wire buys on me, that's why I got the charges
15 and was arrested.

16 Q And then you were arrested. And when you were arrested,
17 you were able to -- how did you get out of jail?

18 A I went to a rehab. At one point, I was bailed out. At
19 another point, I went to a rehab.

20 Q And were -- getting out on rehab, was that part of a
21 deal that you made with the Maine Drug Enforcement Agency?

22 A No.

23 Q Are you familiar with Lori Renzullo?

24 A I -- yes, she's a police officer, I believe.

25 Q And you believe she's a police officer from Old Town?

1 A As -- yes.

2 Q Are you -- and are you aware that she sometimes
3 affiliates with the Maine Drug Enforcement Agency?

4 A I -- I guess, yeah.

5 Q And have you ever been questioned by Lori Renzullo?

6 A I was.

7 Q And did you ever make a deal with Lori Renzullo?

8 A No, there was never any deals made.

9 Q And why were you being questioned by Lori Renzullo?

10 A Because I was arrested for violating my bail conditions.

11 Q And is that the same bail conditions that were put in
12 place back in October 2011?

13 A I -- October 2011, no, because I wasn't arrested until
14 November 2nd, 2011.

15 Q All right. Well, let -- let me ask this. You said you
16 knew Lori Renzullo, an Old Town cop, Maine Drug Enforcement
17 Agency, and that you were arrested by her.

18 A I wasn't arrested by her.

19 Q No. How --

20 A I was arrested by a police officer on Ohio Street for
21 violating my bail conditions. I was under the influence, and
22 I believe I had some pills on me. They brought me to the
23 police department. They drug-tested me, and I was -- I was
24 pretty much arrested.

25 Q How do you know Lori Renzullo?

1 A She came to the police department to -- she was the
2 female that had to come there and drug-test me.

3 Q And did you talk with her with regard to your
4 interactions with the Dominicans?

5 A Yes.

6 Q Did you talk to her at that time?

7 A Yes.

8 Q And at that time, did she ask you to be a confidential
9 informant?

10 A No.

11 Q When was it that you talked to Lori Renzullo with regard
12 to the action with regard to the Dominicans?

13 A That day at the police department.

14 Q What day was that?

15 A I don't -- I can't remember the exact date. I want to
16 say it was in July.

17 Q July of what year?

18 A 2012.

19 Q So in July of 2012, you're interacting with Lori
20 Renzullo with regard to information that surrounds Ohio
21 Street.

22 A I believe so, yes.

23 Q And that --

24 A I might be off on the dates. I'm not quite -- it was a
25 while ago.

1 Q And at that point, did you become a confidential
2 informant?

3 A I was never a confidential informant.

4 Q You were not charged with that offense -- any offenses
5 involving Ohio Street with regard to the Dominicans?

6 A I got a trafficking charge.

7 Q State charge?

8 A Yes.

9 Q So you were charged. Okay. You were aware that several
10 people were charged federally with regard to the Ohio Street
11 house, correct?

12 A I did find out after, yeah. There was many people that
13 were arrested, and some people were charged federally, some
14 weren't.

15 Q For instance, did you know the name Manuel
16 Trinidad-Acosta?

17 A I --

18 THE COURT: Where are we going with this?

19 MR. BOURGET: I am trying to get to an area where I
20 can determine her interaction with Lori Renzullo and then
21 bring it forward. This is only foundational, Your Honor, only
22 foundational.

23 THE COURT: Right. But --

24 MR. BOURGET: You think it's too far afield, I -- I
25 sense.

1 THE COURT: Well, I mean, she's now repeated a
2 number of times she's never been a confidential informant. I
3 think we do need to get to the -- at some point,
4 Mr. Bourget -- we've got the jury in the other room -- we need
5 to get to the question of her interaction that is the issue
6 before us today and not something that may have happened in
7 another case at another time.

8 MR. BOURGET: Right, I under -- and I understand,
9 Your Honor, your caution, and I ask that you allow me just to
10 proceed a little bit further on this.

11 THE COURT: Move it -- move it right along.

12 MR. BOURGET: Thank you.

13 BY MR. BOURGET:

14 Q With regard -- you had a charge of aggravated
15 trafficking of Schedule W drug out of state court and that
16 conduct was alleged to occur around October of 2011, right?

17 A Correct.

18 Q And the arresting officer was Officer Wade Betters of
19 the Maine Drug Enforcement Agency, and you were questioned by
20 Lori Renzullo, correct?

21 A Correct.

22 Q And the bail conditions were set in the state court, so
23 you couldn't have contact with several of those members, and
24 as a result, not until September of 2012 were you able to get
25 a favorable plea agreement, correct? You ended up getting

1 sentenced to 27 months in the state court.

2 A Correct.

3 Q And at -- during any of that time, were you engaged --
4 did you engage in either proffer sessions or discussions with
5 the government with regard to your knowledge of drug activity?

6 A During that time -- when I got arrested on November --
7 when I got arrested on bail, Officer Renzullo questioned me
8 about my activity. That was the only conversation I ever had.
9 I never was a confidential informant. That was it.

10 Q You're --

11 A I went to county. I waited out until I was tried --
12 I've been bailed out twice, so I ended up getting bail
13 revocation, and I went back, and then I went to prison when I
14 got sentenced.

15 Q You -- you were familiar with Bangor police officers at
16 that time, for instance, Tim Shaw, right?

17 A I do know Tim Shaw.

18 Q All right. Let me continue on. Did you -- you were
19 aware of James Slauenwhite of the Old Town police, tall --

20 A I don't know that name, no.

21 Q Was your reduction of your criminal charges as a result
22 of your interaction with any of these MDEA officials that I've
23 just named?

24 A Absolutely not.

25 Q And after that, you were granted an immunity with regard

1 to the case that we're here on now, correct?

2 A Yes, completely different case, completely different
3 year.

4 Q How did -- how did you get immunity?

5 A Because they had me come in, discuss whatever my
6 involvement was, and they offered me immunity.

7 Q And you cooperated at that point?

8 A I did.

9 Q Just like you had cooperated before.

10 A Nope.

11 Q Different than the way you cooperated before?

12 A I didn't cooperate nothing before.

13 Q But you did this time?

14 A This time I did, yes.

15 Q Okay. Let's draw your attention now ahead. Was there a
16 time when you went to the Skowhegan jail where Akeen Ocean
17 was?

18 A Yes.

19 Q And did you -- before doing that, did you interact with
20 government officials?

21 A Years before that, correct.

22 Q Who?

23 A Um, Joel Casey and Chris Gardner. That was years ago.
24 It had nothing to do with this. Well, I mean, it was years
25 ago. It wasn't even on my mind. It wasn't even something

1 that I thought was even coming up.

2 Q You were aware that if you had communication with Akeen
3 -- were -- you were aware if you had a communication with
4 Akeen Ocean, that that could be information that you would
5 have to give to the government?

6 A I was never told not to have communication with him, and
7 there was never any -- never any discussion about the
8 communication between me and him until last week --

9 Q Is it --

10 A -- when it was brought to my attention.

11 Q Is it true that you are the one that went to the
12 Skowhegan jail around March of this -- of this year to have
13 contact with Akeen Ocean?

14 A I visited Akeen Ocean a couple times in Skowhegan jail,
15 yes, I did.

16 Q And that was out of the blue?

17 A I was in Skowhegan jail for a separate char -- a
18 burglary charge. Akeen was there -- I had seen him there. I
19 don't remember what the -- I don't know if I wrote him a
20 letter or what the initial contact was, um, but I did give him
21 my number. At some point, he began calling me. I went and
22 visited him a couple times. It's -- it didn't -- I wasn't
23 told not to have contact with him.

24 Q So you were in the jail, and at the time you were in the
25 jail, you had already been granted immunity by Mr. Casey; is

1 that true?

2 A Yes.

3 Q And at that time, you knew that the -- the phones at the
4 Somerset County Jail, that they would be recorded, you knew
5 that, correct?

6 A I'm aware that they're recorded.

7 Q You are aware of that.

8 A I'm aware they're recorded, yes, I was there.

9 Q And even so, you had communication with Akeen Ocean on
10 recorded phones, correct?

11 A Yes.

12 Q And why did you do that?

13 A Because he's a friend of mine. We have past. I care
14 about him. It didn't seem to be a problem to me.

15 Q Before you had your communication with him on the phone,
16 a phone that you knew would be recorded, had you had
17 discussions with either Joel Casey or any of the MDEA agents
18 that I've mentioned, including Officer Gardner --

19 A No.

20 Q -- with -- let me finish my question -- with regard to
21 the fact that the phones are tape-recorded?

22 A No.

23 Q Did you at any time make the government aware that the
24 phones were tape-recorded and that you had talked to Akeen
25 Ocean?

1 A No, I never made them aware that I was even in contact
2 with him. I didn't --

3 Q Is it a fair statement to say that it was you that
4 approached Akeen Ocean, not -- not him approaching you,
5 correct?

6 A I honestly can't -- I -- I don't recall -- I don't
7 recall, but at some point -- I guess, yes, I did, actually,
8 because he was there. He couldn't have contacted me unless I
9 went to him for him to contact me.

10 Q Is it your testimony today that -- two or three things.
11 First, that you were not a confidential informant in regard to
12 the Dominican case.

13 A Correct.

14 Q And that you did not seek out government assistance of
15 any sort with regard to your approaching Akeen Ocean.

16 A Correct.

17 MR. BOURGET: Your Honor, that's all I have.

18 THE COURT: Mr. Casey?

19 MR. CASEY: Thank you, Your Honor.

20 FURTHER VOIR DIRE EXAMINATION

21 BY MR. CASEY:

22 Q Ms. Thetonia, you first spoke to Lori Renzullo from the
23 Maine Drug Enforcement Agency on July 17, 2012, correct?

24 A Correct.

25 Q And during that conversation, it was immediately

1 following an arrest for violating your bail conditions?

2 A Correct.

3 Q During that conversation, did you tell her about JT?

4 A Correct.

5 Q Did you tell her about Melo?

6 A Correct.

7 Q Did you tell her about Rico?

8 A Correct.

9 Q Did you tell her about P?

10 A Correct.

11 Q And did you tell her about the Dominicans?

12 A Correct.

13 Q After that conversation, were you sentenced in state
14 court in September of 2012 for all the cases you had pending
15 at that time?

16 A Correct.

17 Q Now, what was your sentence?

18 A 27 and a half months.

19 Q Okay. When you got out of jail after 27 and a half
20 months, were you served with a federal grand jury subpoena?

21 A I was.

22 Q All right. And when you were serve -- after being
23 served that federal grand jury subpoena, did the court appoint
24 a lawyer to represent you?

25 A Yes.

1 Q All right. And on August 11, 2014, did you come to the
2 offices of the United States Attorney here in Bangor and
3 participate in a proffer session with your attorney, James
4 Lawley?

5 A Yes.

6 Q All right.

7 MR. CASEY: Your Honor, I'd like to show the witness
8 Government in Limine Exhibit 1. This is the proffer
9 agreement.

10 MR. BOURGET: Okay.

11 MR. CASEY: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. CASEY:

14 Q Ms. Thetonia, please take a look at Government in Limine
15 Exhibit 1. Do you recognize that document? Turn to the
16 second page.

17 A (Nodding head up and down.)

18 Q How -- how do you recognize that document?

19 A I signed that document.

20 Q And what is that document?

21 A It's a proffer agreement.

22 MR. CASEY: Your Honor, the government offers
23 Government in Limine Exhibit No. 1.

24 THE COURT: Any objection?

25 MR. BOURGET: If I could just view it very quickly.

1 I'm sorry. I don't have mine right there. No objection.

2 THE COURT: It's admitted.

3 BY MR. CASEY:

4 Q Ms. Thetonia, what's the date that you entered into this
5 proffer agreement with the government? Look on your screen
6 right there, ma'am.

7 A Okay. August 11th, 2014.

8 Q Okay. After that -- as a result of that proffer
9 session, were you scheduled to testify before the federal
10 grand jury?

11 A I was.

12 Q All right. And did that testimony occur on
13 September 17, 2014?

14 A Yes.

15 Q All right. And in connection with your appearance
16 before the grand jury, did you enter into an immunity
17 agreement with the government?

18 A Yes.

19 Q Okay.

20 MR. CASEY: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 BY MR. CASEY:

23 Q Ms. Thetonia, I'm showing you what's been marked as
24 Government in Limine Exhibit No. 2. Please take a couple of
25 moments to take a look at that document.

1 A (Witness complying.)

2 Q Do you recognize that document?

3 A I do.

4 Q How do you recognize it?

5 A It was the subpoena to go to the grand jury.

6 Q Well, is that your immunity agreement? Is that your
7 immunity agreement, Government in Limine Exhibit No. 2?

8 MR. BOURGET: We'll stipulate, Your Honor, stipulate
9 it is.

10 MR. CASEY: All right. Fair enough.

11 BY MR. CASEY:

12 Q All right. So this is your immunity agreement, correct?

13 MR. BOURGET: We'll stipulate again.

14 BY MR. CASEY:

15 Q What's the date on this agreement?

16 A This is September 17th.

17 Q Okay.

18 A That's the date of my grand jury testimony.

19 Q Okay. So you testified in the grand jury on
20 September 17th, 2014.

21 A Yes.

22 Q You had an immunity agreement with the government on
23 September 17th, 2014.

24 A Yes.

25 Q When you walked out of the federal building that day,

1 when is the next time that you had any contact with any
2 government official with the United States Attorney's Office
3 or the Maine Drug Enforcement Agency on the face of the earth?
4 When's the next time you spoke to any of those people?

5 A That would be the 19th of this month. I believe it was
6 -- it was last week.

7 Q Well, were you served with a trial subpoena in this
8 case?

9 A I was.

10 Q All right. And who served you with that trial subpoena?

11 A You did.

12 Q I served it?

13 A Sorry. Chris Gardner did.

14 Q Okay. I wouldn't know the first thing --

15 A No, yeah.

16 Q -- about serving subpoenas.

17 So after being served with that subpoena, did the court
18 appoint a new lawyer for you?

19 A Yes.

20 Q Okay. And what about your old lawyer, Mr. Lawley?

21 A He doesn't practice in Maine anymore.

22 Q Okay. Who's your new lawyer?

23 A Matthew Morgan.

24 Q Okay. And is Mr. Morgan here today?

25 A Yes.

1 Q Okay. So after being subpoenaed and after being
2 appointed to -- Mr. Morgan to represent you, did you come in
3 to have another meeting with the United States Attorney's
4 Office?

5 A I did.

6 Q And was that meeting on September 17, 2014 -- I'm sorry
7 -- on -- I apologize, Your Honor -- on June 15th, 2016?

8 A Yes.

9 Q So it was last week.

10 A Yes.

11 Q And who was at that meeting?

12 A You were, the gentleman in the middle --

13 Q Attorney Ruge?

14 A -- Attorney Ruge, and Chris Gardner.

15 Q Okay. Now, between September 17, 2014, and June 15th,
16 2016, have you had any conversations whatsoever with anybody
17 from the United States Attorney's Office for the District of
18 Maine?

19 A No.

20 Q Okay. And other than being served with a trial subpoena
21 by Mr. Gardner, between September 17, 2014, and June 15th,
22 2016, have you had any contact with anybody from the Maine
23 Drug Enforcement Agency?

24 A No.

25 Q Okay. Now, in April and May and June, you've been

1 having telephone conversations with Mr. Akeen Ocean, haven't
2 you?

3 A I have.

4 Q Okay. And do you place those calls to Akeen Ocean?

5 A Akeen calls me.

6 Q Okay. Do you have the ability to call Mr. Ocean?

7 A I don't.

8 Q Okay. So he calls you, and you accept the calls.

9 A Correct.

10 Q You understand those calls are recorded?

11 A Yeah.

12 Q Are there warnings on the calls that it's a recorded
13 call?

14 A Yes.

15 Q Okay. And during those conversations, have you talked
16 about your case -- I mean, about his case?

17 A Yes.

18 Q All right. Has -- during those conversations, has
19 Mr. Ocean asked you if you have heard from his attorney,
20 Mr. Bourget?

21 A There was a couple instances.

22 Q Okay. So Akeen let you know that he had told his
23 attorney about you.

24 A Yes.

25 Q Okay. And Akeen was interested whether or not his

1 attorney had called you.

2 A Yes.

3 Q Okay. Did Mr. Bourget ever call you?

4 A No.

5 Q Okay. During one of these conversations in April of
6 this year, did Akeen ask you to come and visit him at the
7 Somerset County Jail?

8 A I'm sorry. When was the date?

9 Q Sure. In -- in April of this year, April 15th, 2016, to
10 be exact, did Akeen ask you to come to the Somerset County
11 Jail to speak with him?

12 A There have been discussions about me going to visit him
13 because I have.

14 Q All right.

15 A Um, but I actually just moved, so the visit -- the
16 visiting has pretty much stopped. I don't recall whether or
17 not on that day if he did ask me.

18 MR. CASEY: Your Honor, I'm going to show
19 Ms. Thetonia Government Exhibit 41-T --

20 THE COURT: All right.

21 MR. CASEY: -- which has been provided to counsel.

22 MR. BOURGET: Yeah, I got it.

23 MR. CASEY: It's a transcript of an audio recording
24 that occurred on April 15th, 2016.

25 BY MR. CASEY:

1 Q Ms. Thetonia, I want you to direct your attention to
2 Government Exhibit 41-T at the bottom of page 2 to the
3 carryover onto page 3. Read that quietly to yourself.

4 A (Witness complying.)

5 Q Ms. Thetonia, do you remember having a conversation with
6 Mr. Ocean over the telephone, during which he asked you if you
7 were going to come see him on Sunday?

8 A Yes.

9 Q Is that why you went to see him on Sunday because he
10 wanted to talk to you?

11 A I wanted to see him because he wanted me to come see him
12 and I wanted to go see him.

13 Q All right. Did you go see him on that Sunday,
14 April 17th, because the government asked you to go see him?

15 A No, no.

16 Q Okay.

17 MR. CASEY: Your Honor, the government has nothing
18 further. Thank you.

19 THE COURT: Anything further, Mr. Bourget?

20 MR. BOURGET: No, Your Honor.

21 THE COURT: You may stand down, ma'am. Thank you.

22 (The witness left the witness stand.)

23 THE COURT: Mr. Bourget?

24 MR. BOURGET: That's all I have, Your Honor, in this
25 matter. I have nothing further to show, no further argument.

1 THE COURT: All right. Well, I'd first note that
2 the Ayers v. Hudson case, actually, as I have been rereviewing
3 it, states as follows: Although not dispositive to the issue,
4 the parties devote much argument to the question of whether
5 Hutchinson acted as a government agent after he returned to
6 Ayers' jail pod. In this regard, we note that although the
7 Supreme Court has not formally defined the term government
8 agent for Sixth Amendment purposes, several of our sister
9 circuits have developed standards to apply when determining
10 the agency inquiry. Some of these circuits employ a
11 bright-line rule, depend -- deciding that an informant becomes
12 a government agent only when the informant has been instructed
13 by the police to get information from a particular defendant.
14 Included in the citations that they use for that proposition
15 is United States v. LaBare, 191 F.3d 60, the First Circuit
16 case which I mentioned earlier in 1999. Other circuits,
17 however, flatly reject this approach, holding that there is,
18 by necessity, no bright-line rule for determining whether an
19 individual is a government agent for purposes of the Sixth
20 Amendment right to counsel. The answer depends upon the facts
21 and circumstances of each case. And then they cite the
22 Eleventh Circuit and the Fourth Circuit.

23 They say, we agree with those courts that do not limit
24 agency in the Massiah context to cases where the state gave
25 the informant instructions to obtain evidence from the

1 defendant, and they go on to talk about the standard in the
2 Sixth Circuit.

3 It seems to me that they have clearly adopted a rule that
4 is broader in scope in the Sixth Circuit than the one which
5 they characterize as a bright-line rule that is applicable in
6 the First Circuit, and we happen to be in the First Circuit.

7 Based on her testimony, I find that there is no evidence
8 whatsoever that the government, under First Circuit authority,
9 instructed Ms. Thetonia to contact Mr. Ocean. The test as
10 described by LaBare and Moore -- and through the citation of
11 Moore was an informant becomes a government agent -- agent for
12 purposes of Massiah only when the informant has been
13 instructed by the police to get information about the
14 particular defendant. I don't see any evidence whatsoever
15 that there was such an instruction.

16 And applying the Torres v. Dennehy -- Dennehy standard,
17 which is government agents may not deliberately and designedly
18 set out to elicit information from a defendant represented by
19 counsel, again, I see no indication at all that she was acting
20 on behalf of the government, that the government instructed
21 her to go see Mr. Ocean. She said that Mr. Ocean is a friend
22 of hers, and he likes her, and she likes him, and they wanted
23 to talk, and she gave him her number, he called it, he asked
24 her to come visit him. There's no indication of any
25 conversation with the police from which I could even begin to

1 infer that she was acting as a government agent.

2 So I think the Massiah argument does not apply, and to
3 the extent there has been objection -- an objection based on
4 Massiah, I overrule it.

5 MR. BOURGET: Hm-hmm. I understand the ruling. I
6 -- I just want the court to know with regard to that, at some
7 point between now and the time that the government's going to
8 offer, that there are some redactions that I'd like to -- the
9 court to consider, other than the issue that we just raised.

10 THE COURT: Right. No, you had raised a 403 issue,
11 but that's -- the one we're dealing with now --

12 MR. BOURGET: Right.

13 THE COURT: -- is the issue as to whether or not
14 Massiah applies.

15 MR. BOURGET: Correct.

16 THE COURT: And that's why we held this hearing
17 outside the presence of the jury.

18 MR. BOURGET: Right.

19 THE COURT: And I'm overruling your Massiah
20 objection.

21 MR. BOURGET: I understand that, Your Honor.

22 MR. CASEY: Your Honor, the government anticipates
23 calling Ms. Thetonia next. We don't plan on playing these
24 calls for her. But I would like to be able to ask her about
25 recent conversations that she's had and recent meetings that

Christie Thetonia visit with Akeen Ocean
Somerset County Jail
Date: 4/17/16

Christina Thetonia – CT
Akeen Ocean – AO

(OPERATOR: THIS CALL MAY BE MONITORED OR RECORDED)

CT: What are you doing?

AO: What's goin on?

CT: Nothing.

AO: How you doin'?

CT: I'm alright.

AO: I'm alright now, I had an anxiety attack the other night though.

CT: I know.

AO: Yo, two day, I went crazy yesterday, yo, I forgot that she went out with her brother and then to play ghost. So, cursed her out last night, I felt bad. My child should already know how I get when I'm frustrated.

CT: Right.

AO: Yeah, man, yeah, they all threw me under the bus, though.

CT: It's all bullshit, like I have, I been sitting there thinking, all right, how did I meet this one, and how did I meet that one, cause I know I met them motherfuckers way before you did. You met them through me.

AO: Me. Me, exactly, but it's like Jeremy, both Jeremys, like, but I can see like they all roped into it, dude, they all set up the same thing, so I think it's gonna be kinda easy, it's hard, and it's easy, you know what I'm saying. More likely more, people probably won't even show up, you know what I'm saying.

CT: Right, but if they in jail, they're gonna bring 'em anyway.

AO: Yeah, but that don't mean you gotta do it.

CT: Right.

AO: You know what I'm saying.

CT: Right, right.

AO: But, if they gonna do it, but it's like, my story against theirs. You know what I'm saying.

CT: Right.

AO: And, all of them niggas got pleas and shit for it, man. Brynn was like oh I'm gonna eat her up, I already decided how I'm gonna.

CT: Yo, and that bitch swore to me she didn't say nothing about nobody.

AO: Well, she lied. She lie, but it ain't nothing. I ain't even wanna keep talking like that.

CT: Mm.

AO: (talking, but not into the phone, inaudible)

AO: I told you, I got this though. I got this. Trust me what I'm saying. Hold on. (talking, but not into the phone – inaudible – “you got guns, but you never dealt with ‘em – I tell you, I gotch you.)

AO: But, anyway, yeah.

CT: All right, man.

AO: But my lawyer gonna call you, I don't know how this shit gonna play out, man, cause if you haven't heard nothing from him yet, right?

CT: Huh ha, no

AO: All right.

CT: But you called me at like three.

AO: No, no, no.

CT: On Friday.

AO: No, I'm talking about.

CT: Huh ah. No, nothing, but they gotta go through my lawyer, anyway, like, they, I'd be hearing from my lawyer. You know what I mean?

AO: Yeah.

CT: Cause I had a lawyer in that shit when I had to go and talk to them.

AO: Yeah, they go, how you got 'em, you ain't even in all that, yo like Rico said, you were his biggest person and like you, I got, all of that, listen, let me tell you, my lawyer, I got everything. I got everything.

CT: Are you fucking kiddin' me?

AO: Let me tell you something, I got everything, Jeremy Hunter was like he didn't deal with 'em niggas, he only dealt with me, I use to be high at my customers from Rico outside, and.

CT: What?

AO: Jeremy Ing, Gimpy was like, he bought a hundred from you, the magic number is a hundred, everybody got a hundred from me, Rico was like I was doing a hundred a week for him, yeah, for like twenty weeks, or two hun, some shit, yeah, they told.

CT: What?

AO: Yeah.

CT: That some bullshit, dude.

AO: Yeah.

CT: Oh my God.

AO: Yeah, man, like, everybody shitted on me, and I'm the.

CT: That's bullshit too, man, oh my God, cause ah.

AO: Everybody said it's me, dude, that shit is crazy, _____ Rico, Perkin, everybody under the bus went down, everybody in Connecticut, P girl. Everybody, everybody, listen.

CT: Wow.

AO: I say, yo, _____ threw everybody. Everybody, they was like me, _____, he said it was my crib, all kind, oh yeah, I got it. Yeah.

CT: They know it wasn't your crib. That's the whole thing. They know it wasn't your crib, they know it was my crib. You know what I mean.

AO: Yeah, they trying to hit me with a plus two residence for that shit, that's like like another four years.

CT: What?

AO: I ain't worried about that.

CT: Wow.

AO: You all, listen.

CT: All that shit can be proven anyway, whatever.

AO: Yeah, why you think like, that's my thing like honestly, man, I know I can't win, but I'm not just rolling over.

CT: Right.

AO: Playing guilty, pleading guilty and then charge me with all that shit.

CT: Right.

AO: You gonna have to prove that shit, man.

CT: Yup.

AO: And then it's still my word against theirs cause I know half of 'em lying, dude, or half of, or most of _____ she's like, _____ if they got on some reasonable shit, yeah, no, man, I'm not holding that like I didn't have nothing to do with that.

CT: Uh uh.

AO: All that I come from, me being at your crib, me thinking, I'm black, they think I'm affiliated with them.

CT: Right.

AO: Like I came up here, they're a lot of people don't know I was up here before 'em.

CT: Right.

AO: They think I'm up here with them dudes, and I'm not.

CT: No.

AO: And I'm getting _____, but see, when they come to Brynn, Jeremy, and all of them, they thinking well let's fuck that _____ towing that nigga, fuck.

CT: Right.

AO: We ain't gonna tell on the rest of 'em cause the rest of 'em dudes might see us, or AP might see us, and jumped on us.

CT: Right.

AO: They was telling that nigga, but they don't even know what I'm working with, they.

CT: Right.

AO: They don't even know. You still, yo, use _____ fuck that, you still don't even know what you just did, dude cause you think mines gonna let you walk around me and _____ na.

CT: Na.

AO: No. First think I told 'em, yo, _____ he was like who? I tell you about it later. That's the first thing he said. I think it's tight. He was like mad. But it is what it is. It is what it is.

CT: Wow.

AO: Yeah, you gotta send me a picture of my baby.

CT: I'm gonna. I told you I ain't even left the house in like two weeks.

AO: You owe me, how you walking on a cane?

CT: Na, fuck that, dude, they gave me a boot cast, but I ain't wearing that shit, fuck that.

AO: What your hus?

CT: It fucks up my back. Like my back's killing me cause I'm walking different. I'm walking on the inside of my foot.

AO: You better not let that old man fuck you in the behind.

CT: Na. Uh ha, no, no.

AO: I know he be fucking you in the ass, that's why you walking funny.

CT: No way, man.

AO: There's nothing wrong with that butt, he's fucking it.

CT: You tripping.

AO: That's what that is.

CT: Well then I was even thinking about all that shit.

AO: Yo, honestly, the one person I thought it was it ain't, I thought it was Gema, she ain't even in this shit.

CT: Uh ha.

AO: Unless she in the other part I didn't get yet.

CT: Right.

AO: I only got some of it, you know what I'm saying, but as of for that, but I think that's mostly over.

CT: Right.

AO: My lawyer said how he deal with that, he gonna let me know cause they ain't gonna throw me to the wolves like that, me say, even if, we go and I lose, he still ain't letting me get that much time, he fighting for.

CT: Right.

AO: Like, you can't give my client the max.

CT: Mm. Mm.

AO: For asking for his due process.

CT: Right.

AO: You know what I'm saying, and that what they been trying to do to scarin you into yo if you go to trial, I'm giving you all of this time.

CT: Right.

AO: No, but this is my given right as a person.

CT: Right.

AO: So that's what I'm, , I'm good, it's just like, I'm more like, damn it's like, these motherfuckers, there's a lot of shit on me, dude.

CT: That's bullshit.

AO: Word up, they just lie to shit it on me, like going some real other shit.

CT: Wow.

AO: Yeah.

CT: Like all that shit is going through my head and I'm thinking, wow, how am, like, I dealt with these motherfuckers, and I dealt with these motherfuckers and I, I did time for fucking with them for fucking with the Dominicans, like, half that shit ain't even got nothing to do.

AO: Yo.

CT: None of this.

AO: Yo, listen, that's the same thing Jackie said when they got me, they, she was like what are you doing here? Everybody know. Everybody know I had nothing to do with it, but this is the easy way out for people. People know I was hanging with you.

CT: Mm.

AO: They just know they gonna throw it on you, they threw it on, so honestly, it's like they didn't volunteer my name, the police came they go what what, oh yeah, I did this with him, and I did that with him.

CT: Right.

AO: That's how that shit went.

CT: Right. Cause once they say the name, they all oh they already know so.

AO: Yeah, yeah. Let me go ahead and.

CT: Right.

AO: Get myself out of this, that's how that works, my name, and I know who, I know who told 'em where my crib was at. I know Crystal, what-her-name sister, Ashley's sister.

CT: Oh my God, I didn't, wow.

AO: Cause that's where Rico was staying at.

CT: Right.

AO: He was staying with her and the minute, and the night he got caught, she called me like, yo, they just got Rico out of my house, I don't know what to do, hey, I don't, what about Rico, I don't care what you do to Ric.

CT: Right.

AO: I don't care, I don't fuck with that nigga and I hung up. And I hung up.

CT: Like I give a fuck, right?

AO: I hung up, but then it took me awhile like they had her and made her call me.

CT: Right.

AO: Didn't assume what my response would be.

CT: Right.

AO: And then the next day they pop up, two days later they pop up at my house.

CT: Uh ha. Yeah, no.

AO: I already knew what it was. But it is what it is, man. I can't believe Brynn did like that, that bullshit, like Scott, Scott and Brynn say, they said that you were staying with 'em, and all that, yeah.

CT: That was when I was on bail for that fucking for the for the other shit I got into.

AO: Yeah.

CT: And I did, I stayed with them, but Rico was also staying at their crib.

AO: Yo, did she say, she said they never, they said her and her and Jeremy said they never yo, never bought nothing from you. No, they said, no they said never got nothing from them, they always got it from me. Yeah. I was like, wow.

CT: Wow.

AO: Ah, yeah, that shit crazy, that's how they got me, dude. So, I don't even know.

CT: Oh my word.

AO: I don't even know and I ain't got nothing to do with this shit, dude, that's my, that's the shit that frustrate me more is like yo I ain't even got nothing to do with that shit.

CT: Wow, that blows me the fuck away, dude.

AO: All right.

CT: They da, they met them through me, but then they dealt with them on their own.

AO: You said, you even, you said what you said, they got that like a honey. I said a honey, you said a hundred, and that's what they had. That what you say, so, it was your hundred, Jeremy hundred, Jeremy Hunter hundred, and then Rico shit.

CT: So, they added all that shit up?

AO: Like I had like a thousand grams then he put Tom's twenty on something, we don't even know what they were talking about with that, so they basically, they trying to say I moved a brick, I was like.

CT: What?

AO: My God, yeah.

CT: What, what? Wow.

AO: That's my gram amount right now. So, I don't even know.

CT: Wow.

AO: Yeah.

CT: Wow.

AO: Mm. I don't even know how that shit gonna play out.

CT: But, that on you that's just fucking stupid. I can see, I can see what I said and what you said coincided, that was by me when he was at my house whatever, I did this.

AO: But I.

CT: So.

AO: I said, yo, I ain't had nothing to do it, that's what I said. It didn't, I say yo boy shit to get hot.

CT: Right.

AO: I didn't, I say yo, I didn't sell, when Dan, I cut myself up in the interview, they was like, well when. I said if somebody wanted something and they wanted get something.

CT: That's what I said.

AO: I said, I'd go get it from them dudes, but I didn't, I wasn't like I have a deal actually something.

CT: Right.

AO: Well we just trying to see, this was fucking was you trying to be like a middleman or something. I said if that's what you call it, yeah I was a middleman. I might, but I when I fuck, I say yeah, I might have got some money out, I might have got a couple of dollars out of it, I might have got some crack, that's where I fucked up.

CT: That's what, yup, that's what I said too. I do it to get high. Whatever.

AO: Yeah, that's where I fucked up at so now it's all about fighting all that and proving that I'm an addict which that's gonna be easy.

CT: Right.

AO: Motherfucking do that, I just gotta get my numbers down, man, I'm not, I'm not copping out so all that work.

CT: Mm mm.

AO: I ain't had nothing to do.

CT: Hell, no.

AO: That's my thing about me not pleading guilty, everybody like I'm stupid, you need to plead guilty, how the _____.

CT: Fuck that.

AO: Yo, listen, Christie, this what I tell, you go through my record anytime I was caught, that _____

CT: With a pipe.

AO: _____

CT: Listen, anytime you were caught in Bangor, you were caught with a pipe. That proves that you were an addict. Fuck.

AO: Yeah, listen, but look, this is some real shit, like, even when you catch me dead wrong, I plead guilty.

CT: Right.

AO: If they had me, and it was true, I would plead guilty, you go me, fuck it.

CT: Right.

AO: I'm not pleading to this shit, dude.

CT: Right.

AO: Cause that ain't no.

CT: Yup.

AO: No, man, that shit killing me right now. I don't even know no more, man, like, I get frustrated like damn, man, I can't even see my kids, some bitches are playing with my kids, that's whay frustratin, I think about my parents, they getting old, and I don't even be trying to even let them even know, I just be like, yeah, I'm getting out sooner or later. My father kinda understand what it is, and he know I got, it's my mom, man.

CT: Yeah.

AO: I don't even be let her know, and my son, my oldest son, I think, is more hurt like he be trying to play tough like he knows what's going on like he really don't know but I know when I telling, he be sad too, like me and him kicking but he always let me know like though he knew what my affairs are about them, he says I gotta to keep care of them and even when they gone, you still got me, that shit made me feel good.

CT: Yeah.

AO: I gotta clip my nails though, I hate when my nails get like this. I hate this shit. Boy, so what's going on?

CT: Nothing.

AO: I'm full of shit, I just got off work and all I think I ate was macaroni salad.

CT: Uh.

AO: I'm tired, I gotta start yo I been eating like, oh my, I had a whole bunch of shit, remember I ain't shop last week.

CT: Mm.

AO: I gotta a bag of coffee, so I could save the twenty dollars, which I'm gonna have to spend like I got a little change, and if you give me like ten dollars I'll get all that, I'm good, cause I ain't letting 'em.

CT: Yeah.

AO: I got my haircut today.

CT: Right. Right.

AO: They gonna want their money, I ain't gonna let them take the change I gotta, I don't get nothing. Fuck that.

CT: Na.

AO: I gotta get some lotion too, and some hydrocortisone cream, water be man, I don't know. It's like the water be biting me, man. Fuck, it does. It's like this shit be biting me, you know. Get up and shower and that shit be biting the nigga, what the fuck going on.

CT: Fuck, man. I'm suppose to go see my kids next Friday.

AO: You going?

CT: Yeah. Fuck that.

AO: Where, they up in Orono, right?

CT: Yup.

AO: He driving you?

CT: No, I'm taking the car, man.

AO: Oh Lord, there you go.

CT: I helped him get the ah the blazer's tires fixed yesterday.

AO: Oh, you got two cars?

CT: Yeah, he's got a blazer and a prius, so I'm taking the prius, he can keep his blazer. Fuck that.

AO: All right.

CT: But. Fuck that. I'm going.

AO: I hear ya, just don't to fucking around in Bangor.

CT: No, man, I staying with, I might stay over, I'm going Friday, I might stay over Friday night at my kid's house and then spend the day with them Saturday, come home Saturday night.

AO: That's the best thing to do, shit, I ain't shit, you all listen, man.

CT: Yup.

AO: That is not the place to be. When I go back, I'm getting a job. Oh, I heard Tiffany is a, Tiffany be writing me and I don't, I don't even be know what to say with her and Fern writing me, man, I be like, this shit ain't right. Anyway, she wrote me the last letter and I was just like I'm not responding to this, this is like, it's like you, you egging me to say something about old boy that you use to fuck with.

CT: Ah.

AO: So you can get them to _____ together.

CT: No. I don't know who you're talking about, what are you talking, who?

AO: Yeah, you know, and I then I already know Fern told on everybody. Yeah, she, she, even though she chiming through some, cause she was working with 'em and got caught again.

CT: Mm.

AO: So that make, they, that jeopardize all her cases that she's gonna testify on.

CT: Right.

AO: Jeopardize all.

CT: Yup.

AO: Oh, she's no good as a witness.

CT: uh ha.

AO: So they ain't even gonna use her.

CT: They can't use her, there's no fucking way.

AO: Yeah, but she like I already know how they gonna hit everybody if you don't testify, we gonna hit you with contempt, we gonna hit with perjury, and that's the will, some people gonna be scared, but then a lot of people are gonna be like damn my name about to get out there too.

CT: Mm.

AO: My name is about to get out there. I can't walk around with my name out there. So, it's all in a catch 22.

CT: Perjury, is perjury a felony? It is, right?

AO: Perjury, but they don't hold much. It depends how they hit you with it. Contempt or perjury, that shit don't hold more than four or five years, but they ain't gonna give you that.

CT: No.

AO: Yeah, right, it ain't like you perjured, perjured the whole government and you just lied. Matter fact, it ain't even perjury, you just like, I ain't testifying.

CT: Right.

AO: That's not perjury, you ain't saying nothing, I'm not doing it.

Ct: Yup.

AO: That's what people finally realize. If you don't do it, we doing this, and these people's cases goin be, if you don't do it, we taking your plea back. Too late for you.

CT: Right.

AO: Too late for you.

CT: Well, that's what I thinking too.

AO: They can't take that shit back. They already gave it to you.

CT: No.

AO: They can't, they can't, it's already given to you, you done it.

CT: Right.

AO: You did, you got your immunity when you testified at the grand jury.

CT: Yup.

AO: Yeah, but then again all you gotta do is say man, I'm not coming, or I'll be there and then don't come, but my lawyer is going to explain that shit to you when you.

CT: Yeah.

AO: I don't know, but they gonna try to feed you some bullshit.

CT: The whole thing is I know so much of this shit's bullshit.

AO: Oh yeah.

CT: Like, really.

AO: All you gotta do is tell 'em that shit bullshit, he ain't got nothing to do with it. I told him it was all on me. That's it.

CT: Right. Wow, your crib and all that, what?

AO: Yeah, man. And then he said it ain't got nothing about you in there, but that what you said everything else about you is they even took out. Yeah, Rico though, this Rico who kind like, Rico is just the worst.

CT: I can't.

AO: Yo, my lawyer say I'm surprised he ain't somewhere dead yo. Yeah, he said, I won't plea over this motherfucker talking.

CT: He just rolled like a fucking dead dog.

AO: Yo, and guess what, it was cause yo he got caught up in some shit down there, that's why they brung him up here.

CT: Right, with the bullet wound in his leg.

AO: Yeah.

CT: That I didn't know about until month after he was there.

AO: Yeah, that's when all that shit started. It ain't, he just told on everybody, and he told, and he still ain't getting out.

CT: Right.

AO: This motherfucker looking at like forty or fifty years.

CT: Right, right. So, what good does it do him?

AO: I don't know.

CT: He, he's gonna come across somebody and fucking in prison watch.

AO: Yeah, of course.

CT: He gonna come across a lot of people that ain't gonna be happy.

AO: Yo, that's what I need you to do too, when you go home, you go on BOP, you know what that is, right? Bureau of Prisons, BOP.

CT: Mm.

AO: Federal BOP. Look up Jeremy Hunter and see where he at and see what his sentence is.

CT: He's in federal prison? What the fuck did he get hit with?

AO: Guns, a gun.

CT: Jeremy Hunter?

AO: Yeah.

CT: So he and Jeremy, Jeremy Ingersoll got caught up.

AO: With guns.

CT: With guns in the pawn shop trying to buy guns for them.

AO: Both of them dudes same way.

CT: And they got, okay, how can they say that they didn't deal with the motherfuckers when you done seen 'em in a pawn shop with these niggas? What?

AO: See, the thing was this is, all right, let me show you what's going down. They ain't, they thought I was goin' to plea out, they thought I was gonna get scared, _____ and plea out, and never know about none of this shit.

CT: Right.

AO: So, now I'm about to fight it, so, trust me.

CT: Right.

AO: I got this.

CT: Wow.

AO: The lies are about to be exposed.

CT: Wow.

AO: The lies are about to be exposed. Yeah, they ain't see, once they found out where his gun, his gun is on this case too.

CT: Mm.

AO: That's why, I mean, you gotta a gun in this case and you don't know these dudes, you.

CT: Right.

AO: See what I'm saying, so.

CT: Right.

AO: I got this, trust me.

CT: Yeah.

Telephone recording
Somerset County Jail
Akeen Ocean/Christie Thetonia
Date: 4/15/16 (Call 1)
2 minutes, 35 seconds

AO = Akeen Ocean
CT = Christie Thetonia

(OPERATOR: YOU HAVE A PREPAID CALL FROM AKEEN AT THE SOMERSET COUNTY JAIL. THIS CALL MAY BE MONITORED OR RECORDED. TO ACCEPT THIS CALL, PRESS ONE, TO REFUSE THIS CALL)

AO: Yeah.

CT: What up?

AO: Had an anxiety attack just went crazy. Yeah.

CT: You what?

AO: I had an anxiety attack. I don't know what just happened. Thinking too hard, that's all.

CT: Why?

AO: Thinking too hard, that's all.

CT: Baby, listen, everything, listen I been fucking thinking since you call me earlier, listen, fuck this shit, dude, they all met you through me. I've already been going through it in my head.

AO: Yeah, but.

CT: This shits fucking with me, dude.

AO: No, just make sure when you, make sure you come here Sunday, all right? Cause I don't wanna talk.

CT: No, I'm I'll be there Sunday at two o'clock I promise you.

AO: All right cause.

CT: Cause really this shits fucking with me like, I'm even going through how I met.

AO: Hold on, hold on, hold on.



CT: How I met this one, that one, and the other, and I'm like.

AO: Yo, but shit ex.

CT: They all met 'em through me.

AO: I can't even talk on the phone like that because but me and you gonna talk when you get here, all right?

CT: It don't matter, it pisses me off. Why did you have an anxiety attack?

AO: I don't know.

CT: You're freaking out.

AO: I'm freaking out.

CT: Chill out.

AO: I'm good, I'm good, I'm good.

CT: Chill out.

AO: I'm good, I'm good, I'm good. I got until tomorrow to shape.

CT: Chill out, chill out.

AO: I'm good, I'm good, I'm good. Just when you get here I tell you what it is, all right?

CT: Man, you're killing me.

AO: No, I'm good, I'm good, I'm good.

CT: What the hell.

AO: Even A can have an anxiety attack sometime God damn it.

CT: Yo, no. No, no, no you can't, you're not allowed.

AO: All right, all right, all right. I won't have any more _____, but I'm all right.

CT: For real, man.

AO: I'm good, I'm good, I'm good now, I'm gonna run around and act crazy like I always do now, I tell you Sunday.

CT: Cut it out.

AO: _____

CT: Is Tamara coming on Saturday?

AO: No, she ain't coming, she gonna come next week cause her brother is all other bunch of shit, I already knew she weren't coming anyway, I don't even, I told you I don't hold my breath for that shit no more.

CT: All right, I'll, I'm, yeah, on fucking Sunday whatever.

AO: Yeah, same thing I said, I ain't even get mad, I'm past that. All right. I talk to you Sunday. All right?

CT: All right, listen, calm down, you're good.

AO: All right, what happened to my pictures?

CT: Listen, I I haven't even gone to Walmart, listen, I haven't even left the house in like two weeks because of my foot.

AO: All right, all right, all right, all right, all right, all right. But, I'll see you Sunday.

CT: Bunch of real shit.

AO: I believe it. All right, I'll see you Sunday.

CT: All right.

AO: All right, love you, bye.

CT: Love you.

AO: Bye.

THE END

Telephone recording
Somerset County Jail
Akeen Ocean/Christie Thetonia
Date: 4/15/16 (Call 2)
2 minutes, 50 seconds

AO = Akeen Ocean
CT = Christie Thetonia

(OPERATOR: YOU HAVE A PREPAID CALL FROM AKEEN AT THE SOMERSET COUNTY JAIL. THIS CALL MAY BE MONITORED OR RECORDED. TO ACCEPT THIS CALL, PRESS ONE, TO REFUSE THIS CALL)

AO: Hello.

CT: Hello.

AO: Yo, my lawyer gonna call you.

CT: He's gonna call me?

AO: Yeah.

CT: Okay.

AO: Yo.

CT: You gave him my new number?

AO: Yeah. Yeah, everybody.

CT: What?

AO: Everybody you hung with or hook me up with slay me. Jeremy Hunter slay me. Jeremy Ingersoll slay me. Brynn slay me. Word up, that Rico, we already knew, but all three of them said I, they got it from me. They didn't say nothing about you. All from me.

CT: But, what?

AO: Yeah, they met me. They didn't.

CT: What happened, no I didn't even hear you.

AO: Brynn said she got that crack from me.

CT: From me or from you?

Government
Exhibit

41T

15-CR-00040-JAW

AO: From me. I ain't even deal.

CT: From you?

AO: Yup. Jeremy Hunter said the same thing. I met him through you, I met all these people through you, and they puttin' it on me, dude.

CT: What?

AO: Yeah. Like, like so far for the count is like they trying to hold me for a brick like a thousand grams or some shit.

CT: You gotta be fucking kidding me, dude.

AO: Yeah, I'm done. The only one that can get me out of that shit is you, that you already got immunity, so you good.

CT: Right.

AO: The only one give me to tell the truth is you. You gotta tell the truth, dude.

CT: Yeah, that's the whole fucking thing though, they are, when I went and talked to them motherfuckers, they know that anybody that you met was through me.

AO: Yeah, they trying to say, they trying to say it was my crib. Rico said it was you staying with me. I told 'em that I told my lawyer like I stay with her, I stay here, but I use to go stay with Christie and yeah, yeah, they got it fucked up, dude.

CT: What?

AO: And they know it ain't me. They know. They make it so bad the district attorney know it ain't me, know that it's you, know it ain't me though, still trying to burn me though.

CT: Wow.

AO: But yeah, I was just calling to let you know that. I'm gonna come, when you come back up Sunday, cause I ain't got that much money, man, I gotta, I gotta call and try to get me some more money. I'm still living off that twenty dollars you sent me. And I ain't got nothing but like eleven dollars left and just in case somebody don't send me no money, I gotta get me some coffee.

CT: All right.

AO: Are you.

CT: Well I'll be there Sunday, I'll be there Sunday at two, so.

AO: All right.

CT: All right.

AO: All right, all right, all right, we talk, we'll finish talking then.

CT: All right.

AO: All right, bye.

CT: Love you.

AO: Love you too, bye.

CT: Bye.

THE END.

Telephone recording
Somerset County Jail
Akeen Ocean/Christie Thetonia
Date: 5/19/16
5 minutes, 15 seconds

AO = Akeen Ocean
CT = Christie Thetonia

(OPERATOR: YOU HAVE A PREPAID CALL FROM AKEEN AT THE SOMERSET COUNTY JAIL. THIS CALL MAY BE MONITORED OR RECORDED. TO ACCEPT THIS CALL, PRESS ONE, TO REFUSE THIS CALL)

AO: What's going on?

CT: _____ up.

AO: Hello.

CT: Hello.

AO: Everything all right?

CT: Yeah.

AO: Did they subpoena you for my case yet?

CT: Yeah, man.

AO: That's.

CT: Like, not even an hour after I got off the phone with you the other day, fucking I think it's Chris Gardner, is that his name?

AO: Yeah.

CT: He came and served me with a subpoena for fucking ah fellow, some Mitchell or some shit.

AO: Yeah, Jermaine Mitchell.

CT: Yeah.

AO: How the fuck he knew where you were at?

CT: Yo, probation probably.

AO: Oh, you changed your probation.

CT: Yeah, yeah.

AO: That's crazy.

CT: It's fucked up too because like I, I don't even know. I don't even know. I just, it just fucking threw me off because I just got off the phone with you like, maybe a half hour before that, and I'm sitting.

AO: Yeah, I seen that. Yeah, I seen that motherfucker in court yesterday, dude.

CT: Yeah,

AO: Yeah, they trying, they really goin to try to smack me up, I already see it, he mad, the nigga Joel Casey mad cause I won't talk to him, I don't want to talk to you. Damn yo.

CT: Right.

AO: The police got up there, then those from Connecticut told so many fuck, all of 'em got caught up in lies, dude, so this all on what Woodcock say. He reviewing that shit now, you know what I'm saying.

CT: Yeah.

AO: It's all on what he saying, man. I don't know how that shit going to play out. You know what I'm saying, so. This shit looking ugly, dude. You know what I'm saying.

CT: I don't fucking.

AO: Huh?

CT: This is fucking bullshit, man.

AO: Yeah, right, like. I don't even know, like, I pick my jury the seventh, you know what I'm saying, like I think if they if I get this motion suppress, they probably gonna call you then. If they don't, they probably just gonna try to use my own words against me, I don't know. All you just.

CT: Right.

AO: Just, _____ just say yo. He didn't have nothing to do with it. That's all you gotta say.

CT: Right.

AO: You know what I'm saying.

CT: Right.

AO: And I work on the rest.

CT: Oh man, bud, do you even know when you're suppose to go to trial?

AO: Yeah, the twentieth.

CT: See, okay. But I don't, how come they wouldn't fucking, they wouldn't subpoena me for both of you at the same time?

AO: They probably, they know some bullshit, I think he trying to get.

CT: No, see that's, that's the other thing too, I don't even, honestly, I don't know. I don't even know which they would use me against you because when they questioned me, it was, if you could guess, you know, what he got from them, what would it be, I said probably the same as me. I said but we we were getting high. You know what I mean.

AO: Yeah, so we gonna see how it play out. They got to, they got you in the grand jury testimony, but we gonna see though. You just know what to do going forward, you know what to say forward all that's. We don't need to talk about that.

CT: No, no.

AO: We ain't gotta talk about that no more. And like, if anything like I'm gonna go through you to show that bitch Brynn lying basically, you'll see how it go down.

CT: Ah huh. No doubt.

AO: You know what I'm talking about now, like how, they would just, it was just me. You just like nah, you know what I'm saying. You know what.

CT: Yeah, no, no no doubt, no doubt, no fucking doubt.

AO: When you hear them questions from my lawyer, you'll know what it is.

CT: Yup.

AO: All right, but everything I, I can't talk long with you.

CT: No, no, _____

AO: All right, plus my money getting, my money's low and I still ain't got my haircut, I get my haircut this week so.

CT: Oh, fuck.

AO: And once I get my haircut, then I'm broke.

CT: Oh.

AO: But you'll be able to look out for me on the first, right?

CT: Yeah, yeah.

AO: Well, yo.

CT: No, catch you on the first.

AO: All right, I know, um, you got a letter in the mail. It ain't nothing though.

CT: Okay.

AO: Just telling you telling you I miss you and whatever, whatever. Yo.

CT: Yup.

AO: I don't know what's up with Gema's shit, but they keep rejecting her shit on a visit like, check the info. It's Regema Condon, 5267 Bennoch Road, right?

CT: 5267 Bennoch Road.

AO: Bennoch?

CT: Lot 2.

AO: How you spell Bennoch B-e-n.

CT: B-e-n-n-o-c-k.

AO: Yeah, I spelled it right. Lagrange, Maine 04453.

CT: Yup.

AO: Lot 2, I put all that.

CT: They keep rejecting it?

AO: They keep saying check the information. I'm gonna put another one in tonight. I put another one in tonight and see what happen.

CT: All right.

AO: All right.

CT: That don't make no sense.

AO: I don't know, I ain't gonna keep holding you up. When I get, I should be out of here in another week, so, when I get out, I should be able to call.

CT: All right.

AO: At least, I got another week and a half basically. Another ten days or some shit like that.

CT: Well, suck it up, suck it up and enjoy it while you ain't got nothing.

AO: Hell yeah, trust me. All right, but I'm gonna call you back. I'll call you back in a couple of days.

CT: All right, babe.

AO: All right, bye.

CT: Bye.

THE END.

Telephone recording
Somerset County Jail
Akeen Ocean/Christie Thetonia
Date: 6/11/16
9 minutes, 17 seconds

AO = Akeen Ocean
CT = Christie Thetonia

(OPERATOR: YOU HAVE A PREPAID CALL FROM AKEEN AT THE SOMERSET COUNTY JAIL. THIS CALL MAY BE MONITORED OR RECORDED. TO ACCEPT THIS CALL, PRESS ONE, TO REFUSE THIS CALL)

AO: What the hell, you all right?

CT: No, I got fucking pneumonia.

AO: What?

CT: Yeah, bad.

AO: Wow, you sound horrible, yo.

CT: I can't fucking talk.

AO: Yeah, you been to the doctor?

CT: Yeah, I went fucking five nights ago, they put me on meds and the shits getting worse.

AO: Yo, you might be really infected, dude. You need to go back like now. That shit'll kill ya.

CT: They found, they found three _____ in my lungs too.

AO: Yeah, no, you need to go back, man. Yeah, you can't die on me now, man, I'm already gone through too much shit as it is, yo, the only reason.

CT: That's why.

AO: Yup, the only reason I kept calling you is I had to hear somebody's voice, man. Worried, I'm going through some stuff, man.

CT: What, you, I talked to you earlier, you called twice.

AO: Yeah.



CT: Some fucking I was up instead of down.

AO: Yeah, all right. But yo, you be all right, I hope you feel better, but I just had to hear somebody voice, man, I starting to worry about, this bitch running around with my baby, yeah, getting high, man. That shit fucking with me, I try to like to take my mind off it then like I call my mother worry about it cause she ain't heard from her cause you know she usually call my mother, my mother call her to make sure the baby and shit all right.

CT: Okay.

AO: My mother hasn't heard nothing, my mother starting to worry, I'm like, man. There she did the bullshit and went and got twenty dollars from cous, and I had to tell him like yo watch it, she, she just like the worse, man.

CT: She don't wanna fucking _____ cause we'll lose it.

AO: Yeah, that's what I'm trying to tell you. She don't, yo, he, she didn't seen him flip, but she don't know, now that I'm, it's, it already fucks with now that I'm locked up, but then you gonna fuck around with the baby and it's like, or his watch, he gonna bug out, dude, he going, he goin catch her and wild out on her, and that's the bad part. I don't want.

CT: Right.

AO: Wild, wild on her if she running the other way from him, you know what I'm saying.

CT: Right.

AO: But his patience is short, but like me, I'm like I'm more worried about my baby, I'm mad. This is what I'm mad about, Christie, I don't give a fuck if you go other way, or I don't give a fuck if you be with someone, just be real with it, don't, the one thing I actually don't do, don't let me wake up one morning and you just ain't there, you just _____ I got assume and worry, what's going on, and she exactly did that shit.

CT: Right.

AO: And then you wait for that shit.

CT: She did exactly what you said don't do.

AO: Exactly. You know what I'm saying, and I kept telling yo it ain't gonna be if you go with some other man, I'm locked up, I been locked up sixteen months, you go your other way, that's cool, just keep it with me and you can be friends, dude. I can do that. And then you fuck.

CT: Mm.

AO: And then you do the bullshit just like wow. Oh, and that nigga Rico up here too.

CT: Huh?

AO: Rico up here.

CT: He's here?

AO: Here, he, no, he in Dover.

CT: Oh.

AO: Yeah, Tiff wrote, Tiff wrote P and let me and so he goin to testify. I got to shoot his shit down. I know how, just, just show. Just when my lawyer ask the questions, you know what the answer, you know what to say. Trust me.

CT: I know. I know.

AO: I'm gonna line up the questions real good for you trust me when I tell you, it's real simple. All right?

CT: Yeah.

AO: All right.

CT: I know _____ I ain't scared now you know what I mean.

AO: Yeah, but no, the way I'm trying to do it with they can't get at you either. You know what I'm saying, when they can't say well what about, trust me, I got this. I know you ain't got nothing.

CT: _____ acknowledge, it's gonna come down to _____

AO: Yeah.

CT: You know what I'm say, it is what it is. You know what I mean.

AO: Yeah, but na, but what I'm gonna do, if I can get him jammed up, so his shit is full lies, then I'm good.

CT: Yup.

AO: I can, I can shoot them, all I gotta do, all you gotta do when he ask them questions about Jeremy Hunter, I didn't know, I didn't deal with them like that, that's all you gotta say. That's it, that I didn't deal with 'em. You.

CT: You didn't deal with them, you use to come home, and you use to be madder than a motherfucker cause I had 'em there.

AO: Exactly, and that was the truth though.

CT: Yeah it was real fucking honest to God shit.

AO: Yeah. But yo, you gotta go to the doctor, man, you can't be getting sick, man.

CT: I know what I'm suppose to go fucking see, fucking Joel Casey on Thursday.

AO: Yeah.

CT: You know, Thursday at 9:00 a.m. I don't even know how I'm getting there, but.

AO: All right, well you just deal with him like you deal with him, just to get deal with him, you know what I'm saying.

CT: R_____, right.

AO: You know what I'm saying. Um, but yo man, you gotta, you sound horrible. You gotta go.

CT: Oh, you don't even know what I feel so that's like my ribcage, my joints.

AO: Yeah, I know, yo.

CT: My chest.

AO: I, I had that before, I had the like, I had the little map, I was, did you are you coughing up blood yet?

CT: Yeah, I was this morning, it was like something like there was blood mixed in it.

AO: Yeah, that's how mine was, yo, you gotta get the antibiotics, dude.

CT: I got 'em, I'm on it, I been on 'em for five days.

AO: You ain't, you can't, you know you can't drink with the shit, right?

CT: I ain't been drinking.

AO: Yeah, all right.

CT: I know that, I, I know that you can't drink on antibiotics, they won't work.

AO: All right. But yeah man I been going through it today since I found out yesterday he was here that I'm still trying to find where this bitch at with my baby and Matt, my little cou, my little cousin's mad too, dude. He's like you I caught onto that bitch since she came and got that money like she was bringing the kids back to Ma, and she never showed up. He said, I _____ yo, he, they don't, this is my thing. Them dudes know how I do, I'm locked up, I don't ask for nothing, all I be worrying about.

CT: Right.

AO: Is my kids, dude. Yo, it's a slim chance I can't, I won't get out of the this motherfucker no time soon, I accepted that part of this shit, you know what I'm saying. But.

CT: Right.

AO: Don't play with my intelligence, dude, don't, dat just like, I wouldn't do it to that motherfucker dude. If I'm ah.

CT: Right.

AO: If I'm a bullshit's ya, I'm gonna stay the fuck away from you. I'm gonna tell you straight up what it is, you know what I'm saying.

CT: Right.

AO: And I think part of her is like she know she bullshitting me, and she don't wanna, she, she don't wanna hear the truth, you know what I'm saying, you know how they say the brutal truth is the truth, and she know.

CT: Right.

AO: You know that some bull, so I think that's part of it too so I ain't even mad I don't even care no more, like I told ya, I'm just worried about my daughter now, dude.

CT: Right.

AO: That's my daughter running around with no diapers on, you got my daughter from this house to that house in these dirty motherfucker houses and shit like that. That's the shit I'm worried about.

CT: Right, right.

AO: What kind of.

CT: Right, right, that's that's exactly what you.

AO: What kind of dudes you got my baby around? Who the fuck is you leaving my baby with when you running around trying to get high, man? That's my shit. That's my shit, dude. But.

CT: Well.

AO: It will all come out, and yo, like I said, I can't, we can't even be cool, you left me in a fucked up spot, dude. You wanna fuck with my Momma, the only thing I suppose to be worrying about if my angle in getting out, now I gotta worry about this shit, get the fuck out of here, you almost.

CT: Right.

AO: You don't care about nobody. That shit got me mad. But you know what, that shit will come back on her cause I'm gonna.

CT: God, don't _____

AO: And when I get out, I'm gonna kill you with kindness. No, we can be cool, but no we can't be together, we can be friends and me and you being friends and me seeing my kid, you see me with, you want to see what you lost, dude. Cause she already can't stand, take the fact that I, I hang with girls anyway, but me with another woman, na, she ain't gonna be able to deal with that. Knowing that she has something, knowing that especially if it's you, but knowing that, she had one of the best things, knowing she had one of the best niggas she ever had, like I ain't treat her like them niggas treated her, when she was a smut bucket, I still took care of her when I ain't even had to deal with it, I saw my cousin get mad.

CT: Mm.

AO: My cousin like yo you really fucking with her like that, you know, after she did what she did, yo. Everybody need ah, my slogan was everybody need love sometime, dude.

CT: Motherfucker, listen, you treated her better than me and I ain't, I ain't did half the shit that that bitch did to you.

AO: Exactly.

CT: And you treated me like fucking smut, you really did at some points.

AO: Yeah, so you know. You already know, but yo, I'm trying to save these minutes, I'm just had to hear your voice, that shit ease me down for the rest of the night. I'm gonna

call you back, I'm gonna call you back Monday afternoon, get your ass to the doctor, man. Make Gema take you to the hospital, man. Make him take you.

CT: All right, I'm gonna try, the bitch, she don't wanna do nothing. She's fucking, I'm telling ya, I can't _____ her.

AO: You already know how that shit was going be, you.

CT: If I gotta, I'll call a fucking ambulance.

AO: Yeah.

CT: I got MaineCare.

AO: Yeah, that's what you do. That's what you do, all right, I don't want you to, to stop breathing on me, trust me, like I got too much going.

CT: _____

AO: And I'm scared you gonna leave me low stranded too, dude. It ain't even about the money.

CT: Never.

AO: I just need somebody to talk to, man. Word up.

CT: Never. I would never leave you stranded. I would never ever.

AO: I appreciate.

CT: You should know that by now, motherfucker.

AO: Yeah, you right, I should know that, but you know.

CT: Come on.

AO: I'm scared right now, Christie, I ain't gonna go.

CT: I know.

AO: All right.

CT: I know.

AO: All right, see ya.

CT: I am too, baby. I am feeling feeling.

AO: So, yo, I'm gonna call you back um Monday sometime all right cause I got like, I got like, you see I just shit out this money, I got like thirty dollars left.

CT: Yeah.

AO: Cause somebody else, my cousin sent me a little twenty dollars or shit, twenty-five dollars, but so I'm been stretching this shit, chewing it, tipping off of this shit, so I call you back Monday, all right?

CT: Okay then.

AO: All right, I love you.

CT: I love you too.

AO: All right, bye.

CT: Bye.

THE END

PROFFER AGREEMENT

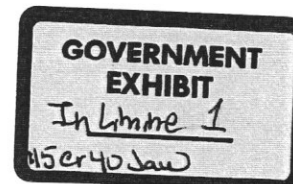
This Agreement sets forth the terms that will govern the meeting between Christie Thetonia ("Client"), who is represented by James Lawley, Esq., and an Assistant United States Attorney for the District of Maine ("the meeting"). The meeting will be held at the Office of the United States Attorney on August 11, 2014:

(1) **THIS IS NOT A COOPERATION AGREEMENT.** The Client has agreed to provide the Government with information, and to respond to questions, so that the Government may evaluate Client's information and responses in making prosecutive decisions. By receiving Client's proffer, the Government does not agree to make a motion on the Client's behalf or to enter into a cooperation agreement, plea agreement, immunity, or non-prosecution agreement. The Government makes no representation about the likelihood that any such agreement will be reached in connection with this proffer. The parties understand that the purpose of this agreement is to provide the Government with an opportunity to assess the information which the Client can provide so that the Government can make appropriate prosecutive decisions with respect to her.

(2) In any prosecution brought against Client by this Office, except as provided below, the Government will not offer in evidence in its case-in-chief, or in connection with any sentencing proceeding for the purpose of determining an appropriate sentence, any statements made by Client at the meeting, except in a prosecution for false statements, obstruction of justice or perjury with respect to any acts committed or statements made during or after the meeting or testimony given after the meeting. The parties understand, however, that in the event of a prosecution of Client, the Government will provide to the Court the information which Client provides pursuant to this Agreement. The parties understand that, while the Government will not introduce Client's statements in evidence except as permitted in this agreement, the Government cannot bind the Court as to its appropriate use of such information and that the Court will use such information to the extent permitted by law.

(3) Notwithstanding item (2) above: (a) the Government may use information derived directly or indirectly from the meeting for the purpose of obtaining leads to other evidence, which evidence may be used in any prosecution of Client by the Government; (b) in any prosecution brought against Client, the Government may use statements made by Client at the meeting and all evidence obtained directly or indirectly therefrom for the purpose of cross-examination should Client testify; and (c) the Government may also use statements made by Client at the meeting to rebut any evidence or arguments offered by or on behalf of Client (including arguments made or issues raised sua sponte by the District Court) at any stage of the criminal prosecution (including bail, all phases of trial, and sentencing) in any prosecution brought against Client.

(4) The Client understands and agrees that in the event of a criminal prosecution in which Client seeks to qualify for a reduction in sentence under Title 18, United States Code, Section 3553(f) or United States Sentencing Guidelines, Sections 2D1.1(b) (16) or 5C1.2, the



Government may offer in evidence, in connection with the sentencing, statements made by the Client at the meeting and all evidence obtained directly or indirectly therefrom.

(5) Client waives the application of Fed. R. Evid. 410, and Fed. R. Crim. P. 11(f), as to any statement that she makes pursuant to this agreement and which the government is otherwise entitled under this agreement to introduce in evidence.


(6) It is further understood that this Agreement is limited to the statements made by Client at the meeting and does not apply to any oral, written or recorded statements made by Client at any other time. No understandings, promises, agreements and/or conditions have been entered into with respect to the meeting other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

(7) The understandings set forth in paragraphs 1 through 6 above will remain in effect during any additional sessions of the meeting. However, in the event that the parties should enter into a cooperation agreement, the provisions of such cooperation agreement will supersede the provisions of this Proffer Agreement and will govern the subsequent dealings between the Government and Client. Further, in the event that the parties should enter into a cooperation agreement, and such cooperation agreement is thereafter deemed not binding on Client, the terms of this Proffer Agreement shall nevertheless remain binding on Client.

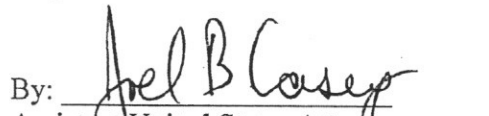
(8) Client and Attorney acknowledge that they have fully discussed and understand every paragraph and clause in this Agreement and the consequences thereof. Client's decision to enter into this Proffer Agreement is voluntary.

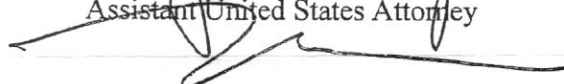
Dated: 8/11/14


Client


Attorney for Client

Thomas E. Delahanty II
UNITED STATES ATTORNEY

By: 
Assistant United States Attorney


Supervisory Assistant U.S. Attorney

Dates of Continuation

Initials of counsel, Client, AUSA,



U.S. Department of Justice

United States Attorney
District of Maine

Margaret Chase Smith Federal Building
202 Harlow Street, Room 111
Bangor, ME 04401

(207) 945-0373
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Fax (207) 945-0319
www.usdoj.gov/usao/me

September 17, 2014

Mr. James T. Lawley Esq.
Lipman & Katz
227 Water Street,
Augusta, ME 04330

Re: Christie Thetonia

Dear Attorney Lawley:

Your client, Christie Thetonia, is scheduled to testify before the federal grand jury. This letter will set forth the terms and conditions of such appearance. Ms. Thetonia has been interviewed concerning the information that she has regarding the subject matter of the grand jury's investigation.

It appears from that interview that by giving truthful answers to our questions, Ms. Thetonia would be required to incriminate herself. Accordingly, in order that Ms. Thetonia can truthfully answer any questions put to her before the grand jury, in court proceedings, and in any meetings with government agents in connection with or ancillary to such appearances, the United States makes the following representations.

Should any of the information provided by Christie Thetonia or any information acquired as a result of the information provided by her reveal any violations of law by her, with the exception of violent criminal acts, it will be deemed as having been given or acquired under use immunity as set forth in Title 18, United States Code, Section 6001 et seq., and it may not be used against her in any criminal proceeding.

Nothing in this letter will prevent the United States from instituting prosecution of Christie Thetonia for perjury or making a false statement if she commits such an act in connection with this agreement.

Government
Exhibit

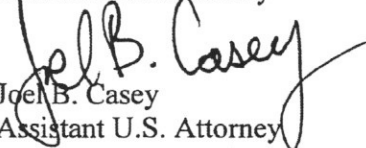
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15-CR-00040-JAW

This letter sets forth the complete understanding of Christie Thetonia and this Office concerning her testimony before the grand jury and related proceedings and interviews and there are no other agreements or representations concerning same.

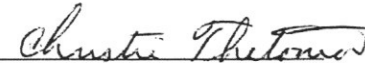
Very truly yours,

Thomas E. Delahanty II
United States Attorney


Joel B. Casey
Assistant U.S. Attorney

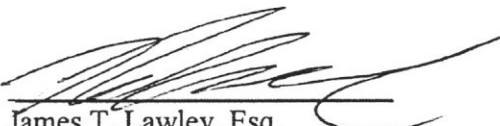
I have read this letter and discussed it fully with my lawyer. I understand it and agree to the conditions set forth in this letter.

Dated: 9/17/14


Christie Thetonia

I represent Christie Thetonia as her lawyer. I have reviewed this letter with her and advised her as to its content and importance, and to the best of my knowledge, she understands it.

Dated: 9/17/14


James T. Lawley, Esq.

SECRET

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)

Criminal No.

v.)

JEFFREY BENTON, a/k/a "JT,")

"Tallman," "Fresh";)

CHRISTIAN TURNER, a/k/a "P";)

JERMAINE MITCHELL,)

a/k/a "Melo," "MB";)

WILLIE GARVIN, a/k/a "Tank,")

"Black";)

TORRENCE BENTON,)

a/k/a "T-Black," "Scotty";)

JEREMY INGERSOLL-MESERVE;)

JACQUELINE MADORE,)

a/k/a "Jackie";)

DAVID CHAISSON, a/k/a "Davey";)

AKEEN OCEAN, a/k/a "A," "Alex";)

BURKE LAMAR; and)

WENDELL WHITE)

21 U.S.C. §§ 841(a)(1), 846, & 856;
18 U.S.C. §§ 2 and 371

1:15-cr-00040-JAW

INDICTMENT

The Grand Jury charges:

COUNT ONE

(Drug Conspiracy)

Beginning on a date unknown, but not later than January 1, 2010, and continuing until a date unknown, but no earlier than August 30, 2013, in the District of Maine and elsewhere, defendants

JEFFREY BENTON, a/k/a "JT,"

"Tallman," "Fresh";

CHRISTIAN TURNER, a/k/a "P";

JERMAINE MITCHELL,

a/k/a "Melo," "MB";

WILLIE GARVIN, a/k/a "Tank,"

"Black";

**TORRENCE BENTON,
a/k/a "T-Black," "Scotty";
JEREMY INGERSOLL-MESERVE;
JACQUELINE MADORE,
a/k/a "Jackie";
DAVID CHAISSON, a/k/a "Davey";
AKEEN OCEAN, a/k/a "A," "Alex";
BURKE LAMAR; and
WENDELL WHITE**

knowingly and intentionally conspired with each other and others known and unknown to commit offenses against the United States, namely, the distribution and possession with the intent to distribute 280 grams or more of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

It is further alleged that the penalty provisions of Title 21, United States Code, Section 841(b)(1)(A) apply.

**QUANTITY ALLEGATIONS AS TO PARTICULAR DEFENDANTS
NAMED IN COUNT ONE**

With respect to the defendant **JEFFREY BENTON, a/k/a "JT," "Tallman," "Fresh,"** the amount involved in the conspiracy charged in Count One attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him, is 280 grams or more of cocaine base, a Schedule II controlled substance and, therefore, the mandatory minimum penalty provisions of Title 21, United States Code, Section 841(b)(1)(A) apply as to him.

With respect to the defendant **CHRISTIAN TURNER a/k/a "P,"** the amount involved in the conspiracy charged in Count One attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him, is 280 grams or more of cocaine base, a Schedule II controlled substance and, therefore, the mandatory minimum penalty provisions of Title 21, United States Code, Section 841(b)(1)(A) apply as to him.

With respect to the defendant **JERMAINE MITCHELL, a/k/a “Melo,” “MB,”** the amount involved in the conspiracy charged in Count One attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him, is 280 grams or more of cocaine base, a Schedule II controlled substance and, therefore, the mandatory minimum penalty provisions of Title 21, United States Code, Section 841(b)(1)(A) apply as to him.

As to the remaining defendants charged in Count One, no mandatory minimum terms of imprisonment apply.

COUNT TWO

(Using/Maintaining a Drug Involved Premises)

Beginning on a date unknown, but not later than January 1, 2010, and continuing until August 30, 2013, in the District of Maine, defendant

WENDELL WHITE

knowingly leased, rented, used and maintained, permanently or temporarily, an apartment located at 33 Sanford Street in Bangor, Maine, for the purpose of unlawfully distributing and using controlled substances, including cocaine base, and did aid and abet such conduct, in violation of Title 21, United States Code, Section 856(a)(1) and Title 18, United States Code, Section 2.

COUNT THREE

(Conspiracy to Violate Federal Firearms Laws)

THE CONSPIRACY AND ITS OBJECTS

1. Beginning on a date unknown, but not later than January 1, 2010, and continuing until a date unknown, but no earlier than August 30, 2013, in the District of Maine and elsewhere, defendants

**JEFFREY BENTON, a/k/a “JT,”
“Tallman,” “Fresh”;**

**CHRISTIAN TURNER, a/k/a “P”;
WILLIE GARVIN, a/k/a “Tank,”
“Black”; and
JEREMY INGERSOLL-MESERVE**

knowingly and intentionally conspired with one another and with others to commit offenses against the United States, specifically, (1) knowingly making false statements or representations with respect to information required to be kept by a federal firearms licensee in violation of Title 18, United States Code, Section 924(a)(1)(A); (2) knowingly transporting into or receiving firearms in a State other than the State where the firearms were purchased or obtained in violation of Title 18, United States Code, Section 922(a)(3); and (3) knowingly transferring, selling, trading, giving, transporting or delivering firearms to a person who the transferor knows does not reside in the State in which the transferor resides in violation of Title 18, United States Code, Section 922(a)(5).

MANNER AND MEANS OF THE CONSPIRACY

2. It was part of the conspiracy that certain of the defendants caused other conspirators (hereinafter collectively referred to as “the straw purchasers”) to obtain firearms at pawnshops in Brewer and Bangor operating with federal firearms licenses.

3. It was part of the conspiracy that the straw purchasers made false statements and representations in the forms that the pawnshops were required to keep in connection with the sale of each firearm.

4. It was part of the conspiracy that the straw purchasers turned the firearms so obtained over to defendant Turner and others knowing these persons were not residents of the State of Maine, whereupon the straw purchasers were compensated with currency and controlled substances for engaging in the transaction.

5. It was part of the conspiracy that defendant Turner and other coconspirators transported or made arrangements for others to transport the firearms so obtained from the State of Maine to the State of Connecticut where they were provided to defendant Jeffrey Benton and others.

6. It was part of the conspiracy that defendants Turner and Garvin and other coconspirators who were not residents of the State of Maine obtained firearms in private transactions with individual Maine residents in exchange for controlled substances.

7. It was part of the conspiracy that defendants Turner and Garvin and other coconspirators transported the firearms so obtained from the State of Maine to the State of Connecticut where they would be provided to defendant Jeffrey Benton and others.

OVERT ACTS

8. During the course of the conspiracy the following overt acts were committed in furtherance of the conspiracy.

9. The following firearms were obtained in the manner described in paragraphs 2 and 3, above.

Date	# of Guns	Make	Model	Caliber	Serial Number	Actual Buyer
02/07/12	2	Taurus Taurus	PT100AR PT 24/7	.40 9mm	SNE76139 TXD61539	Turner Turner
03/04/12	1	Desert Eagle	IMI	.40	95310125	CCI
03/08/12	1	Keltec	PT-9	9mm	RTF09	Turner
03/19/12	1	Taurus	PT 24/7	.40	SB097598	Turner
03/29/12	1	Springfield	XD40	.40	US199590	Turner

06/03/12	2	Springfield Sig Sauer	XD357 P220	357 mag .45	US332567 G286271	Turner Turner
06/06/12	2	Glock Ruger	33 P90	357 Sig .45	GFD190 663-66612	Turner Turner
10/02/12	1	Glock	21	.45	MRS312	Turner
10/09/12	2	Ruger S&W	LC9 SW9VC	9mm 9mm	320-78962 DYJ6002	Turner Turner
05/16/13	2	Taurus Rossi IA	PT 24/7 711	9mm 357 mag	TXD61537 F036155	Turner Turner

10. On about each of the dates referenced in paragraph 9, defendant Turner and CCI met with the straw purchasers to tell them which firearms they were to purchase and provide them with cash to pay for the firearms.

11. On about each of the dates referenced in paragraph 9, the straw purchasers entered the aforementioned pawnshops and completed forms that were required to be maintained by the pawnshops in connection with each firearms transaction. In completing these forms, the straw purchasers made false statements and representations concerning the identity of the actual buyer of the firearm and their own drug addiction or unlawful use of controlled substances.

12. On about each of the dates referenced in paragraph 9, defendant Turner or CCI met with the straw purchasers to take custody of the firearms and pay the straw purchasers in currency or controlled substances for making the purchase.

13. Within days of each transaction described in paragraph 9, defendant Turner transported, or caused others to transport, the firearms to the State of Connecticut where they would be provided to defendant Jeffrey Benton and others who were at the time residents of the State of Connecticut.

14. On June 3, 2012, defendant Ingersoll-Meserve caused a straw purchaser to purchase the two firearms for defendant Turner. Defendant Ingersoll-Meserve and the straw purchaser met with defendant Turner who told them which firearms he wanted the straw purchaser to purchase and provided them with cash to pay for the firearms.

15. On June 3, 2012, defendant Ingersoll-Meserve and the straw purchaser drove to a pawnshop in the City of Brewer, where the straw purchaser purchased the firearms defendant Turner had requested. After purchasing the firearms, defendant Ingersoll-Meserve and the straw purchaser met with defendant Turner, provided him with the firearms and defendant Turner provided them with a quantity of cocaine base.



16. On June 5, 2012, defendant Turner sent a straw purchaser a series of text messages in an attempt to coordinate the purchase of firearms that day from a pawnshop in the City of Brewer.

17. On October 2, 2012 and October 9, 2012 defendant Turner arranged for transportation to the pawnshop in the City of Brewer for the straw purchaser who actually engaged in the firearms transactions on those two days.

18. On various dates in 2011 and 2012, defendants Turner and Garvin, both residents of the State of Connecticut, obtained firearms in Maine in private transactions with individual Maine residents in exchange for controlled substances.

19. On various dates in 2011 and 2012, defendant Garvin transported a total of seven firearms obtained in this manner from the State of Maine to the State of Connecticut, to include three (3) Taurus 9mm handguns, three (3) .40 caliber handguns, and one (1) Glock handgun, with the assistance of another conspirator, whereupon they would provide the firearms to defendant

Benton and others who were at the time residents of the State of Connecticut.

DATE: FEBRUARY 12, 2015
Date: 

(Assistant) United States Attorney

A TRUE BILL
Original on file with the Clerk's Office

Grand Jury Foreperson 