

No.

In the Supreme Court of the United States

JAMES ROSEMOND,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Second Circuit**

PETITIONER'S APPENDIX

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18-3561-cr
United States v. Rosemond

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2019

(Argued: December 10, 2019 Decided: May 1, 2020)

Docket No. 18-3561-cr

UNITED STATES OF AMERICA,
Appellee,

- *against* -

JAMES J. ROSEMOND,
Defendant-Appellant,

DEREK ANDRE ENGLISH; RODNEY JOHNSON, also known as Rodney T. Hibbert, Toree Johnson; RONALD ANDERSON; BRIAN MCCLEOD, also known as Slim, Brian Connelly, Joseph King, Brian Conley, John A. Conley; DERRICK GRANT; SHAWN WILLIAMS, also known as William Shawn; JASON WILLIAMS,
*Defendants.**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

* The Clerk of Court is respectfully directed to amend the official caption to conform to the above.

Before:

SACK, CHIN, and BIANCO, *Circuit Judges*.

Appeal from a judgment of the United States District Court for the Southern District of New York (Kaplan, *J.*), convicting defendant-appellant of murder-for-hire, conspiracy to commit murder-for-hire, murder through use of a firearm, and possession of a firearm during a murder-for-hire conspiracy, and sentencing him to imprisonment for life plus 30 years. On appeal, defendant-appellant contends that at trial he was deprived of his Sixth Amendment rights to autonomy and effective assistance of counsel because his lawyer conceded, over his objection, an element of the charged crime -- that he had hired individuals to shoot the victim -- while arguing that the government had failed to prove intent to kill the victim. Defendant-appellant also argues that the district court improperly admitted uncharged prior bad-act evidence under Federal Rule of Evidence 404(b)(1).

AFFIRMED.

ELIZABETH HANFT, Assistant United States Attorney
(Samson Enzer, Drew Skinner, and Karl Metzner,
Assistant United States Attorneys, *on the brief*), for
Geoffrey S. Berman, United States Attorney for

the Southern District of New York, New York,
NY, *for Appellee*.

MICHAEL E. RAYFIELD (Scott A. Chasin and Shai M.
Silverman, *on the brief*), Mayer Brown LLP, New
York, NY, *for Defendant-Appellant*.

CHIN, *Circuit Judge*:

In this case, defendant-appellant James Rosemond was charged with murder-for-hire, conspiracy to commit murder-for-hire, possession of a firearm during a murder-for-hire conspiracy, and murder through use of a firearm, in violation of 18 U.S.C. §§ 1958, 924(c)(1)(A)(iii), and 924(j). These charges stemmed from the death of Lowell Fletcher. The government alleged that Rosemond hired others to kill Fletcher, who had previously assaulted Rosemond's teenage son. At trial, Rosemond's counsel conceded in summation that Rosemond hired individuals to shoot Fletcher, but he argued that the government failed to prove that Rosemond intended for Fletcher to be killed. The jury was not persuaded, and it returned a guilty verdict. The district court eventually sentenced Rosemond to imprisonment for life plus 30 years.

On appeal, Rosemond argues that he was deprived of his Sixth Amendment rights to autonomy and effective assistance of counsel because his lawyer conceded that he hired individuals to shoot Fletcher over his objection.

He also argues that the district court improperly admitted uncharged prior bad-act evidence under Federal Rule of Evidence 404(b)(1). For the reasons set forth below, we **AFFIRM**.

BACKGROUND

I. *The Facts*

On appeal from a conviction following a jury trial, the "facts are drawn from the trial evidence and described in the light most favorable to the government." *United States v. Wilson*, 709 F.3d 84, 85 (2d Cir. 2013).

A. *The Feud*

Rosemond owned Czar Entertainment ("Czar"), a Manhattan-based music management company that represented hip-hop, rap, and R&B artists. Czar's office was located across the street from a rival record label, Violator Records ("Violator"). From as early as 2002, when Rosemond paid his associate Derrick Grant "half a kilo of cocaine" to shoot the awning on Violator's office building, App'x at 1004, the two music companies were engaged in a contentious, often-violent rivalry.¹ In 2003, Rosemond himself shot a parked car

¹ Rosemond also ran a drug business, which, at its peak, involved ten individuals and sold as many as 70 kilograms of cocaine per week.

that belonged to Violator owner Christopher Lighty because Lighty was slow to return Rosemond's phone calls.

The rivalry intensified in February 2005. At that time, Czar represented rapper Jayceon Taylor, also known as "The Game." Despite being individually represented by Czar, Taylor was a member of G-Unit, a rap group managed by Violator and run by one of G-Unit's members, Curtis Jackson, also known as "50 Cent." While appearing as a guest on Hot 97, a New York-based radio station, Jackson insulted Taylor and ousted him from G-Unit. After hearing this transpire on the radio, Rosemond directed Mohammed Stewart, a Czar associate, to accompany Taylor to the Hot 97 studio to confront Jackson. When they arrived, Taylor, Stewart, and their entourage were shot at and retreated to Czar's office, but not before one of Taylor's friends was struck by a bullet. In retaliation, Stewart and one of his friends shot at the Violator building and were rewarded with a \$2,000 payment, arranged by Rosemond.

The violence continued to escalate. In 2006, at an awards ceremony at the Apollo Theater in Harlem, New York, Rosemond got into an altercation with another G-Unit member, Marvin Bernard, also known as "Tony Yayo." Following a brief exchange in the lobby, several G-Unit associates followed

Rosemond and others to the mezzanine of the theater where the G-Unit associates pulled out a gun and threatened violence. Rosemond and his Czar associates left the theater and went into Khalil Abdullah's car. Abdullah, one of Rosemond's associates, called his friend and told him to bring over some guns. The friend complied, and when Bernard and his crew left the Apollo Theater later that night, Abdullah directed the friend to shoot at Bernard's car while Rosemond looked on. Abdullah later learned that a bullet struck a passenger in the vehicle.

On March 20, 2007, as Bernard and at least two other G-Unit associates -- including Fletcher -- were leaving Violator's office, they saw a 14-year-old boy wearing a "Czar" sweatshirt. The men confronted the boy by surrounding him, pushed him up against a wall, slapped him, and threatened him with what appeared to be a gun. The boy was Rosemond's son. Later that day, after Rosemond learned what happened, he and a group of Czar associates were gathered outside of Czar's office when they saw Lighty's brother walking by. Stewart wanted to exact some immediate revenge on Rosemond's behalf, and, using a razor provided by Rosemond, slashed Lighty's brother in the face.

More violence ensued, as Rosemond continued to commit and order violent acts against G-Unit. In April 2007, Rosemond shot at Bernard's mother's house while several of Bernard's family members, including a baby, were inside. In early 2008, Rosemond paid Stewart to shoot at a Violator associate's house in Staten Island. Other Czar acts of violence included throwing a Molotov cocktail at a G-Unit associate's truck, attempting to shoot Jackson, hiring an arsonist to burn one of Jackson's cars, trying to lure Lighty to a restaurant where he would be shot, and shooting at a van filled with G-Unit associates in an attempt to "make it a coffin." App'x at 311.

Rosemond told an associate he did not plan to stop until somebody was killed. In September 2009, someone was killed.

B. *The Murder-for-Hire Conspiracy*

Brian McCleod met Rosemond in jail in the late 1990s. While there, McCleod introduced Rosemond to Grant, and the three of them grew friendly. In 2002, after all three were released, Rosemond gave McCleod and Grant jobs at his music label, which was then called Henchmen Entertainment (and later became Czar). McCleod was hired to supervise the activity at the studio, and Grant was hired to accompany Rosemond to events and serve as "muscle."

App'x at 1003. In 2003, McCleod stopping working at the record label, but he remained in contact with Rosemond. On August 9, 2004, McCleod received a call from Rosemond asking McCleod, in coded language, to go to an apartment in Queens to remove money and drugs. Shortly after McCleod arrived at the house, where there were 40 kilograms of cocaine and \$450,000 in cash, he was arrested. McCleod did not cooperate with law enforcement or implicate Rosemond, and he was ultimately convicted and sentenced to a term of imprisonment.

McCleod spent a portion of his jail sentence at Mohawk Correctional Facility ("Mohawk") in Rome, New York. A month before McCleod was released, Fletcher was transferred from another prison to Mohawk. While there, he bragged about slapping Rosemond's son. McCleod did not reveal to Fletcher that he was connected to Rosemond. On August 10, 2009, McCleod was released from jail. A few days later, as partial payment for McCleod not cooperating with law enforcement, Rosemond arranged for McCleod to receive \$5,000.

Shortly thereafter, McCleod met Rosemond in Central Park and told him he had "a line on the guy that slapped your son," App'x at 1028, indicating he knew an inmate still in prison with Fletcher. Rosemond said that he would

have paid \$10,000 for someone to "cut" Fletcher in jail, App'x at 1029, and he expressed interest in Fletcher's whereabouts because he was having trouble sleeping ever since Fletcher assaulted his son.

Rosemond and McCleod met up again around a week-and-a-half later. They talked more about "the line" McCleod had on Fletcher, and Rosemond said: "I have \$30,000 for anybody who brings him to me cause I'mma hit him so hard and so fast he's not gonna see it coming." App'x at 1034. After Rosemond said he was considering "doing this" himself, he asked for McCleod's thoughts. App'x at 1057. McCleod believed it was unwise for Rosemond to be involved in any violence himself, so he mentioned involving Grant. Rosemond instructed McCleod to see whether Grant would be interested. Grant was, but he wanted more than \$30,000. McCleod agreed with Grant that a larger fee was required because the \$30,000 was McCleod's fee for luring Fletcher to an attack, and Grant would need "at least twice that amount, if not more, maybe even close to a hundred [thousand dollars]" to be the shooter. App'x at 1068. McCleod then informed Rosemond that Grant was now involved in the plan.

McCleod learned from his contact in jail that Fletcher was being released on September 11, 2009. Rosemond instructed McCleod and Rosemond's

chauffeur -- Jason Williams -- to go to Long Island City, New York, where Fletcher would be released. After just missing Fletcher's release from jail, McCleod called Fletcher's lawyer, who happened to be with Fletcher.² The lawyer put Fletcher on the phone with McCleod, who introduced himself as "Slim," a friend-of-a-friend. App'x at 1076. McCleod pretended to want to help Fletcher land on his feet by offering him financial assistance. He also gave him his cell phone number. McCleod did this to earn Fletcher's trust so he would eventually be able to lure Fletcher to a location where he would be shot. When McCleod relayed his conversation with Fletcher to Rosemond, Rosemond ordered Jason Williams to give McCleod money to buy a new phone and instructed McCleod that the only person he should call from his new phone was Fletcher. Rosemond also inquired whether McCleod was "sure you [and Grant] can handle this?" App'x at 1083. McCleod said he was, and he bought the new phone using a fake name.

On September 25, 2009, McCleod met up with Rosemond.

Rosemond showed McCleod an address in the Bronx where Fletcher was supposedly living and instructed McCleod to scope out the address to "[s]ee if

² McCleod remembered that his contact at Mohawk shared a lawyer with Fletcher, and so he called that attorney to try to reach Fletcher.

something can be done up there." App'x at 1091. McCleod then proposed a code: if the location was good, McCleod would text Rosemond that he liked a girl; if it was not good, McCleod would text Rosemond that there was no chemistry. Rosemond agreed. After traveling to the Bronx and seeing several surveillance cameras in and around the building, McCleod told Rosemond via text that there was no chemistry.

The next day, on September 26, 2009, McCleod, Grant, and Jason Williams met and agreed on a location for the murder: Mount Eden Avenue in the Bronx, New York, between Inwood Avenue and Macombs Road. That night, McCleod called Fletcher, and, under the guise of receiving money and meeting some women, Fletcher agreed to meet McCleod the next day near the location McCleod, Grant, and Jason Williams selected. In coded language, McCleod relayed this information to Jason Williams and Rosemond. Rosemond said: "OK, have fun." App'x at 1134.

C. *The Murder-for-Hire*

On Sunday, September 27, 2009, Jason Williams picked McCleod up and they drove to Mount Eden Avenue where they saw Rodney "Toree" Johnson and Shawn Williams parked in Johnson's car a few blocks away on the corner of

Mount Eden Avenue and Jerome Avenue. Rosemond sent Johnson and Shawn Williams as back-up shooters in case something went wrong. Jason Williams and McCleod drove two blocks over between Inwood Avenue and Macombs Road, and they saw Grant standing in the area where they agreed to kill Fletcher. Grant had a gun, which Rosemond had provided him. When Fletcher got off the train nearby, McCleod directed him toward Grant, who shot and killed him.

When Rosemond learned that Fletcher was killed, he reacted by saying: "OK." App'x at 867. He expressed no shock and no anger that Fletcher was dead. Instead, Rosemond told Jason Williams to get rid of the gun used to murder Fletcher, and he paid him \$8,000 for his involvement in the scheme. In a separate reaction to the news that Fletcher was murdered, Rosemond told Czar associate Abdullah: "Yo, that bitch is out of here." App'x at 631.

On September 30, three days after the murder, McCleod asked Rosemond, in coded language, about him and Grant being paid for their involvement in the murder. Rosemond told him to be patient. Two days later, McCleod met Rosemond in person. Once again, Rosemond expressed no anger or disappointment that Fletcher was dead. Instead, he apologized for the delay in payment and instructed McCleod to meet up with Johnson, who had "a joint

for you." App'x at 1182. Rosemond instructed McCleod to split what Johnson gave him three ways, giving a third to Grant and a third to the guy from jail "that helped bring Fletcher to you." App'x at 1182. Later that day, McCleod met up with Johnson and another Czar associate named Brian James, and McCleod received a computer box containing a kilo of cocaine -- payment for the completed murder-for-hire.

II. *Procedural History*

Rosemond and Johnson were tried together in February and March of 2014. Together, they faced seven counts, four of which related to the murder-for-hire and three of which related to the drug conspiracy. Because Rosemond was previously convicted and sentenced on similar drug charges, only Johnson faced drug charges in that trial. The jury convicted Johnson of the drug-related charges, but it failed to reach a unanimous decision on the murder-for-hire charges, resulting in a mistrial.

Rosemond was retried alone in December 2014, and he was convicted on four counts related to the murder-for-hire. He was sentenced to life plus 20 years' imprisonment. This Court vacated that conviction and sentence, however, on November 1, 2016, holding that the district court erred in

interpreting the scope of Rosemond's proffer agreement waiver. *United States v. Rosemond*, 841 F.3d 95, 110 (2d Cir. 2016). In particular, we found that the district court erred in precluding Rosemond from arguing that the government failed to prove an element of the charged crime -- that Rosemond intended for Fletcher to be killed. *Id.*

In November 2017, Rosemond was tried for a third time. In his closing argument, Rosemond's attorney, David Touger, acknowledged that Rosemond paid for Fletcher to be shot, but he argued that the government failed to prove beyond a reasonable doubt that Rosemond intended for Fletcher to be killed. Rosemond was convicted. Before being sentenced, Rosemond moved for a new trial. In support of this motion, Rosemond filed two affidavits stating that he disagreed with the "trial strategy" advanced by Touger both before and during trial. App'x at 1704-07. Rosemond noted that he did not raise this issue before the district court because his "understanding was that Mr. Touger had final authority about what trial tactics to pursue and what arguments to present to the jury." App'x at 1705. The district court denied Rosemond's motion and sentenced him to life plus 30 years' imprisonment. This appeal followed.

DISCUSSION

On appeal, Rosemond argues principally that he was deprived of his rights to autonomy and effective assistance of counsel under the Sixth Amendment. He also argues that the district court improperly admitted uncharged prior bad-act evidence under Federal Rule of Evidence 404(b)(1). We address first the Sixth Amendment claims and then the evidentiary issue.

I. *The Sixth Amendment*

A. *Standard of Review*

"The question of whether a defendant's lawyer's representation violates the Sixth Amendment right to effective assistance of counsel is a mixed question of law and fact that is reviewed *de novo*." *Doe v. United States*, 915 F.3d 905, 910 (2d Cir. 2019) (citation omitted). Whether a defendant's Sixth Amendment right to autonomy has been violated is also a mixed question of law and fact, and thus we apply *de novo* review to that question as well. *See United States v. Read*, 918 F.3d 712, 719 (9th Cir. 2019).

B. *Applicable Law*

The Sixth Amendment provides certain procedural safeguards to individuals who have been charged with crimes, *see Gannett Co. v. DePasquale*,

443 U.S. 368, 379 (1979), including the right to a speedy, impartial trial; the ability to call and confront witnesses; and, relevant here, "the Assistance of Counsel."

U.S. Const. amend. VI. A defendant who elects to be represented, however, does not "surrender control entirely to counsel." *McCoy v. Louisiana*, 138 S. Ct. 1500,

1508 (2018); *see also Faretta v. California*, 422 U.S. 806, 820 (1975) (Sixth

Amendment "speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant"). Rather, the Sixth Amendment "contemplat[es] a norm in which the accused, and not a lawyer, is master of his own defense."

DePasquale, 443 U.S. at 382 n.10.

1. "Right to Autonomy"

By retaining counsel, defendants necessarily relinquish some autonomy to their attorneys. *See Taylor v. Illinois*, 484 U.S. 400, 418 (1988). After all, "[t]he adversary process could not function effectively if every tactical decision required client approval." *Id.* "Putting to one side the exceptional cases in which counsel is ineffective, the client must accept the consequences of the lawyer's decision to forgo cross-examination, to decide not to put certain witnesses on the stand, or to decide not to disclose the identity of certain witnesses in advance of trial." *Taylor*, 484 U.S. at 418.

Recently, however, the Supreme Court held that a defendant in a criminal case has a "protected autonomy right" -- that is, the "Sixth Amendment-secured autonomy" -- "to make fundamental choices about his own defense," including whether to persist in maintaining his innocence even in the face of overwhelming evidence of his guilt. *McCoy*, 138 S. Ct. at 1508, 1511.³

In *McCoy*, the defendant, Robert McCoy, was charged with three counts of first-degree murder and faced the death penalty. 138 S. Ct. at 1506. McCoy's attorney, Larry English, believed the evidence against his client was "overwhelming," and thus decided the best course of action was to concede that McCoy murdered the victims to try to avoid a death sentence. *Id.* Before and during trial, however, McCoy vehemently protested this strategy both to English in private and the court on the record. *Id.*

³ Prior to *McCoy*, the Supreme Court had never explicitly used the term "right to autonomy" in the criminal context. See Erica J. Hashimoto, *Resurrecting Autonomy: The Criminal Defendant's Right to Control the Case*, 90 B.U. L. Rev. 1147, 1152-55 (2010). The Supreme Court has long recognized, however, that an accused has the right to make certain decisions, particularly with respect to self-representation. See *Martinez v. Ct. App. of Calif.*, 528 U.S. 152, 160 (2000) ("[T]he *Faretta* majority found that the right to self-representation at trial was grounded in part in a respect for individual autonomy."); *McKaskle v. Wiggins*, 465 U.S. 168, 176-77 (1984) ("The right to appear *pro se* exists to affirm the dignity and autonomy of the accused."); see also *Faretta*, 422 U.S. at 834 ("The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction.").

At a hearing two days before trial, McCoy attempted to fire English as his attorney in part because English tried to convince McCoy to "cop out to three counts of first[-]degree murder." *McCoy App'x* at 455. At this hearing, English asked to be relieved as McCoy's attorney because he and McCoy had "an irrevocable disagreement between how to proceed in this case." *McCoy App'x* at 458. The court denied their requests to sever the attorney-client relationship.⁴ *McCoy*, 138 S. Ct. at 1506. At trial, during English's opening statement -- but not in earshot of the jury -- McCoy again voiced his disapproval of English's representation to the court after English told the jury "McCoy was the cause of these individuals' death [sic]." *Id.* The judge, however, affirmed McCoy's attorney's authority to decide how to proceed, and McCoy was ultimately convicted on all three counts of first-degree murder and sentenced to death. *Id.* at 1507.

The Supreme Court granted certiorari to determine "whether it is unconstitutional to allow defense counsel to concede guilt over the defendant's

⁴ After the court ruled that English had to continue representing McCoy, English began explaining the crux of their disagreement -- that McCoy was insisting that English put forward a defense at the guilt phase of the trial. As English explained "that the evidence in this case is so overwhelming against Mr. McCoy," the judge cut him off and assured that English had the authority to decide how to try the case. *McCoy App'x* at 469. He also noted that English had "stated this [concern] on the record prior to this date." *McCoy App'x* at 469.

intransigent and unambiguous objection," *id.*, and it held that "a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty," *id.* at 1505. In addition to the well-established decisions reserved for the client -- including "whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forego an appeal," *id.* at 1508 (citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983)) -- the Court clarified that a defendant also has the "[a]utonomy" to decide on "the objective of his defense," *id.* at 1505, 1508.

The Court in *McCoy* also held that a violation of a defendant's Sixth Amendment right to autonomy is structural error not subject to harmless error review; that is, once the error is established, the defendant is not required to show prejudice to be entitled to a new trial. *Id.* at 1511. Errors are structural "if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest." *Id.* (quoting *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017)). Because conceding a defendant's guilt against his wishes prevents a defendant from controlling his defense and "the effects of the admission would be immeasurable," *id.*, violating the right to autonomy is *per se* harmful.

2. *Right to Effective Assistance of Counsel*

Although the Sixth Amendment refers only to "Assistance of Counsel," U.S. Const. Amend. VI, it guarantees the right to *effective* assistance of counsel, see *McMann v. Richardson*, 397 U.S. 759, 771 (1970) ("[D]efendants facing felony charges are entitled to the effective assistance of competent counsel."). To prove this right has been violated, a defendant must show (1) the attorney's representation "fell below an objective standard of reasonableness," *Strickland v. Washington*, 466 U.S. 668, 688 (1984), and (2) there was "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *id.* at 694.

Courts reviewing ineffective assistance of counsel claims are "highly deferential," and must "strongly presume[]" that counsel "made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 689-90. This presumption is overcome only if "counsel failed to act reasonably considering all of the circumstances." *Jackson v. Conway*, 763 F.3d 115, 152 (2d Cir. 2014) (internal quotation marks omitted). When analyzing whether an attorney's performance was objectively reasonable, courts must avoid "the distorting effects of hindsight" and consider the lawyer's perspective at the time the decision was made. *Id.* at

153. If the attorney made a strategic choice after thoughtful consideration, that decision will be "virtually unchallengeable." *Henry v. Poole*, 409 F.3d 48, 63 (2d Cir. 2005) (quoting *Strickland*, 466 U.S. at 690).

One strategic choice a lawyer may make is to concede an element of the charged crime. Such a decision is "sound trial strategy" when the attorney does not concede his client's guilt. *United States v. Arena*, 180 F.3d 380, 397 (2d Cir. 1999), *abrogated on other grounds by Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393 (2003). It is also reasonable when there is "overwhelming evidence in the case." *United States v. Arnold*, 126 F.3d 82, 89 (2d Cir. 1997), *aff'd sub nom. Holloway v. United States*, 526 U.S. 1 (1999). Similarly, lawyers are permitted to admit their client committed certain acts while challenging whether those acts fit within the charged crime. *See, e.g., United States v. Jones*, 482 F.3d 60, 76-77 (2d Cir. 2006) (finding it was objectively reasonable for an attorney to admit his client shot the victim but argue the shooting was unrelated to a drug conspiracy).

Even if counsel's strategy is "professionally unreasonable," there is no ineffective assistance of counsel "if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. The stronger the prosecution's case, the less likely it is that the defendant was prejudiced by his attorney's actions. *Garner v. Lee*, 908

F.3d 845, 862 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 1608 (2019). When there is overwhelming evidence against a defendant, for example, counsel may make certain concessions without prejudicing the defendant. *See, e.g., Arnold*, 126 F.3d at 89.

C. *Application*

1. *Right to Autonomy*

Rosemond argues that his right to autonomy was violated when his attorney, Touger, conceded that he hired McCleod and Grant to shoot Fletcher. He contends this right was violated because Touger admitted "guilt of criminal acts over Rosemond's express objection." Appellant's Br. at 35. We are not persuaded, for we conclude that the right to autonomy is not implicated when defense counsel concedes one element of the charged crime while maintaining that the defendant is not guilty as charged.

Throughout its opinion, the *McCoy* Court's use of the word "guilt" is explicitly limited to the charged crime. 138 S. Ct. at 1505 (stating that *McCoy* "vociferously insisted that he did not engage in the *charged* acts and adamantly objected to any admission of guilt" (emphasis added)); *id.* at 1509 ("When a client expressly asserts that the objective of '*his* defence' is to maintain innocence of *the*

charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt." (second emphasis added)); *id.* at 1510 ("[C]ounsel may not admit her client's guilt *of a charged crime* over the client's intransigent objection to that admission." (emphasis added)). The dissent understood the majority's opinion to be so limited, too. When explaining its understanding of "[t]he constitutional right that the Court has now discovered," it noted: "a criminal defendant's right to insist that his attorney contest his guilt with respect to all *charged offenses*." *Id.* at 1514 (Alito, J., dissenting) (emphasis added).

The majority repeatedly made clear that its decision was meant to safeguard the "objective of [one's] defense," *see id.* at 1505, 1508-10, 1512, plainly stating that "it is the defendant's prerogative, not counsel's, to decide on the objective of his defense," *id.* at 1505. Once a defendant decides on an objective -- *e.g.*, acquittal -- "[t]rial management is the lawyer's province" and counsel must decide, *inter alia*, "what arguments to pursue." *Id.* at 1508 (internal quotation mark omitted). Conceding an element of a crime while contesting the other elements falls within the ambit of trial strategy. *See, e.g., Jones*, 482 F.3d at 76-77; *see also Arena*, 180 F.3d at 397. The majority in *McCoy*, in fact, acknowledged as much. 138 S. Ct. at 1510 (noting that the case did not deal with "strategic

disputes about whether to concede an element of a charged offense" but were instead "intractable disagreements about the fundamental objective of the defendant's representation"). Thus, when a lawyer makes strategic concessions in pursuit of an acquittal, there is no *McCoy* violation assuming, of course, the defendant's objective was to maintain his non-guilt (as opposed to, *e.g.*, pleading guilty in return for a lighter sentence).

Though we are not bound by our sister circuits' decisions interpreting *McCoy*, they reinforce our conclusion. *See, e.g., United States v. Holloway*, 939 F.3d 1088, 1101 n.8 (10th Cir. 2019) (defendant's right to autonomy was not violated when attorney and defendant had "strategic disputes" about how to achieve same goal); *United States v. Audette*, 923 F.3d 1227, 1236 (9th Cir. 2019) (defendant's right to autonomy was not violated because he disagreed with his attorney about "which arguments to advance"); *Thompson v. United States*, 791 F.App'x 20, 26-27 (11th Cir. 2019) (defendant's right to autonomy is not violated because attorney conceded some, but not all, elements of a charged crime). Thus, we hold that *McCoy* is limited to a defendant's right to maintain his innocence of the charged crimes.

Here, Rosemond and Touger shared the same goal: acquittal. In pursuit of that goal, Touger never conceded that Rosemond was guilty of the charged crimes; instead, Touger merely conceded one element as part of his strategy to argue that the government had failed to meet its burden to prove Rosemond intended for Fletcher to be killed, a necessary element to convict on a murder-for-hire charge. This was trial strategy, and Touger made the limited concession while zealously defending Rosemond's innocence. For example, he suggested Fletcher might have died because of gang violence unrelated to Rosemond, noted that the shell casings found on Mount Eden Avenue could have come from another gun, and questioned the reliability of the eyewitness. This is far different from *McCoy*, where the attorney immediately conceded that his client was guilty of the charged crime, 138 S. Ct. at 1506, and never explored arguments that could have led to acquittal. A lawyer's decision to make strategic concessions while maintaining that his client is not guilty of the charged crime does not violate a defendant's right to autonomy.

While it is true that Touger admitted that Rosemond committed *a* crime -- perhaps aiding and abetting an assault in the first-degree under New York Penal Law § 120.10 or conspiring to commit a kidnapping under 18 U.S.C. §

1201 -- he vehemently denied that Rosemond committed the charged crime.

Although there may be times where such a concession could expose a defendant to additional, future criminal liability, there is no indication that that was the case here. Moreover, as noted *supra*, we read *McCoy* as limited to a defendant preventing his attorney from admitting he is guilty of the crime with which he is charged. This understanding makes good sense, as a defendant's decision to admit guilt to the charged crime is similar to the other defense-related decisions the Supreme Court has listed as being within the defendant's province: whether to demand a jury trial, whether to testify in one's own behalf, and whether to appeal a decision. *McCoy*, 138 S. Ct. at 1508; *see also, e.g., Jae Lee v. United States*, 137 S. Ct. 1958, 1969 (2017) (defendant retains right to reject a plea and proceed to trial).

Finally, Rosemond's argument loses force when its nuance is considered. In his affidavit to the district court in support of his Rule 33 motion for a new trial, Rosemond affirmed that he did not want Touger to tell the jury he paid to have Fletcher shot because he "viewed it as a concession that [he] had committed an immoral and shameful act." App'x at 1705. Yet in the same affidavit, Rosemond also revealed the trial strategy he preferred Touger adopt: "I

asked him to argue to the jury instead . . . that I had paid Brian McCleod only to bring Fletcher to me." App'x at 1705. In other words, Rosemond was comfortable admitting to the jury that he paid for a kidnapping, but he drew the line at paying for a shooting. Had Rosemond asserted his right to autonomy to prevent his attorney from conceding *any* crime because of the "opprobrium" that accompanies such an admission, *McCoy*, 138 S. Ct. at 1508, his argument might carry more weight. It loses its thrust, however, when he picks and chooses which crime he is comfortable conceding.

This is especially true when Rosemond's argument is considered alongside the evidence the government presented of his rampant involvement in criminal activity. The evidence at trial demonstrated that Rosemond ran a drug operation and was involved in a series of violent acts against a rival record company, many of which involved the use of guns and two of which resulted in individuals being shot. Indeed, Rosemond looked on when Abdullah had a friend shoot up a car filled with G-Unit associates, and he was disappointed when Stewart refused to shoot up a house because he saw individuals were inside. While avoiding the shame that comes with admitting to a criminal act can be a genuine concern, that concern seems highly unlikely here.

2. *Right to Effective Assistance of Counsel*

Rosemond argues that his attorney was ineffective because he conceded that Rosemond paid for Fletcher to be shot, even though Rosemond told his lawyer not to make that concession. Because Rosemond fails to show that this was objectively unreasonable or that he would have been found not guilty had a different argument been advanced, his ineffective assistance of counsel claim fails.

Touger explained in his affidavit that he thought it was "the best defense strategy" to concede that Rosemond directed others to shoot Fletcher because he did not think the government could prove that Rosemond intended for Fletcher to be killed. App'x at 1707. Rosemond conceded this was "trial strategy." App'x at 1705. Nevertheless, Rosemond contends that because none of the witnesses testified that he expressly ordered Fletcher to be shot, Touger was ineffective for *not* arguing that Rosemond only instructed that Fletcher be brought to him.

To the contrary, there was ample evidence supporting Touger's strategy to concede that Rosemond ordered a shooting. The government's key witness, McCleod, who participated in the conspiracy and lured Fletcher to be

shot, testified that Rosemond agreed to pay Grant to be the shooter. Moreover, Rosemond was in Miami when the shooting took place, which belies the notion that he merely wanted Fletcher brought to him as he was over 1,000 miles away the day he sent five men with two guns to confront Fletcher. Finally, Rosemond's reaction to the news that Fletcher was killed -- telling one of his trusted employees, "Yo, that bitch is out of here," App'x at 631, 643-44, and simply saying "OK" when McCleod first broke the news, App'x at 867 -- further demonstrated his intent that, at the very least, Fletcher be shot. Thus, Rosemond fails to prove that Touger's assistance fell below an objective standard of reasonableness, even though that strategy ultimately did not work. *See Bell v. Cone*, 535 U.S. 685, 698 (2002) (noting that "judicial scrutiny of a counsel's performance must be highly deferential" (alteration omitted) (quoting *Strickland*, 446 U.S. at 689)); *United States v. Caracappa*, 614 F.3d 30, 48 (2d Cir. 2010) ("Monday-morning quarterbacking is not a sport encouraged by the laws governing ineffective assistance claims.").

Moreover, as detailed above, there was ample evidence that Rosemond hired McCleod and Grant to kill Fletcher. There is no reasonable probability that the outcome of the case would have been different had Touger

argued that Rosemond paid \$30,000 to have Fletcher, who was in New York, brought to Rosemond while Rosemond was in Miami. Rosemond, therefore, was not deprived of his Sixth Amendment right to effective assistance of counsel as his counsel's performance was neither deficient nor prejudicial to his defense.

II. *Evidentiary Rulings*

A. *Standard of Review*

It is well settled that because "a district court is in the best position to evaluate the evidence and its effect on the jury, its rulings on admissibility under Rule 404(b) will not be overturned on appeal absent a clear showing of abuse of discretion." *United States v. Pitre*, 960 F.2d 1112, 1119 (2d Cir. 1992). Therefore, we will reverse a trial court's evidentiary rulings only if the judge "acted arbitrarily and irrationally." *Id.*

B. *Applicable Law*

"Evidence of a crime, wrong, or other act" is inadmissible to prove a defendant's criminal propensity. Fed. R. Evid. 404(b)(1); *see also Huddleston v. United States*, 485 U.S. 681, 685 (1988). We evaluate Rule 404(b) "under an inclusionary approach," and prior bad acts may be admitted "for any purpose other than to show a defendant's criminal propensity." *United States v. Garcia*,

291 F.3d 127, 136 (2d Cir. 2002) (internal quotation mark omitted). Evidence of prior bad acts is admissible to "inform the jury of the background of the conspiracy charged, in order to help explain how the illegal relationship between participants in the crime developed, or to explain the mutual trust that existed between coconspirators." *United States v. Dupree*, 870 F.3d 62, 76 (2d Cir. 2017). The probative value of prior bad-act evidence is not substantially outweighed by the risk of prejudice if the conduct is not "any more sensational or disturbing" than the charged crime. *United States v. Lyle*, 919 F.3d 716, 737 (2d Cir. 2019).

C. *Application*

Rosemond argues that the district court abused its discretion by admitting evidence of prior bad acts for the purpose of "paint[ing] Rosemond as a violent criminal." Appellant's Br. at 42. He further contends that the amount of admitted evidence was excessive and prejudicial.

Before trial, the district court partially granted and partially denied the government's motion *in limine*. The lower court decided to admit prior bad-act evidence of several violent incidents between Czar and Violator that were in connection with, and led to, the murder-for-hire conspiracy. The district court also allowed evidence of uncharged narcotics trafficking acts.

We conclude that the district court did not abuse its discretion in admitting this evidence. First, the prior bad acts that were admitted provided the jury with context to understand why Rosemond paid to have Fletcher killed. They also provided background to show Rosemond sold narcotics, which demonstrated his ability to make payments -- in support of an element the government was required to prove to convict a defendant under 18 U.S.C. § 1958 -- in drugs. Second, these acts further explained the mutual trust between Rosemond and the other conspirators, illustrating why Rosemond was comfortable involving these individuals in a crime where a conviction could result in life imprisonment or, worse, death. 18 U.S.C. § 1958(a). Third, Rosemond was charged with murder-for-hire, which is far more sensational and disturbing than the conduct admitted as prior bad acts. Thus, the district court did not abuse its broad discretion when it admitted the 404(b) evidence.

CONCLUSION

For the foregoing reasons, the judgment of the district court is **AFFIRMED.**

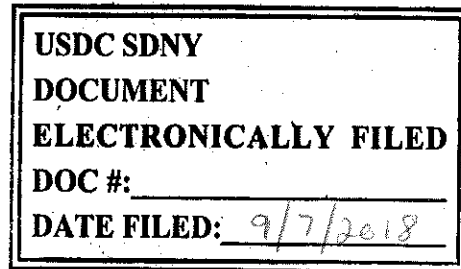
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

-against-

JAMES J. ROSEMOND

Defendant.
----- x



S6 10-cr-431 (LAK)

MEMORANDUM OPINION

Appearances:

Samson Enzer
Drew Skinner
Elizabeth Hanft
Assistant United States Attorneys
GEOFFREY S. BERMAN
INTERIM UNITED STATES ATTORNEY

James E. Neuman
Attorney for Defendant

LEWIS A. KAPLAN, *District Judge.*

This matter is before the Court on defendant James Rosemond’s motion for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure [DI 611].

Background

Rosemond was charged in a four-count indictment with (1) participating in a conspiracy to commit murder for hire, in violation of 18 U.S.C. § 1958, (2) committing the murder

for hire of Lowell Fletcher, in violation of 18 U.S.C. § 1958, (3) possession of a firearm in furtherance of the conspiracy to commit murder for hire, in violation of 18 U.S.C. § 924(c)(1)(A)(iii), and (4) causing the death of Lowell Fletcher by using and carrying a firearm in relation to the murder for hire of Fletcher, in violation of 18 U.S.C. § 924(j).¹ The charges arose out of the shooting and killing of Lowell Fletcher. The government sought to prove that Rosemond hired two individuals to murder Fletcher in exchange for \$30,000 after Fletcher assaulted Rosemond's teenaged son.

Rosemond was represented at this trial by his retained counsel, David Touger.² Touger made – in Rosemond's words – a “strategic choice” during trial to “argue that, although Mr. Rosemond may have directed others to shoot at the victim, he did so without the intent to commit a murder.”³ Rosemond points to several occasions in Touger's summation when he, to that end, “conceded that Mr. Rosemond had directed the shooting.”⁴ For example, Touger stated that Rosemond “paid for a shooting.”⁵ He said also that “[t]he only thing planned here was where the

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DI 237 (Superseding Indictment).

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This was Rosemond's third trial on these charges. The first ended in a hung jury. The second, before a different judge, resulted in a conviction, but that judgment was overturned in the Second Circuit on grounds that Rosemond's ability to defend against the charges had been unduly restricted. *See United States v. Rosemond*, 841 F.3d 95 (2d Cir. 2016). In any case, Rosemond is serving a term of life imprisonment by virtue of a conviction in another case.

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DI 611 at 1.

4

Id.

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Tr. at 1446:22.

shooting was going to take place” and that “[t]here was never a plan to shoot Lowell Fletcher *to death*.”⁶

Touger’s strategy ultimately was unsuccessful. The jury concluded that the government had proved beyond a reasonable doubt that Rosemond had the requisite intent to kill and convicted him on all counts.⁷

Rosemond now moves for a new trial. He maintains that Touger adopted his strategy of conceding that Rosemond had paid for others to shoot Fletcher “over [his] express opposition.”⁸ Rosemond maintains that he had wanted to assert that he had paid one of his associates merely to bring Fletcher to him “without any intention of either shooting or assaulting him.”⁹ He argues that Touger’s refusal to adopt Rosemond’s preferred strategy in favor of his own constituted a violation of Rosemond’s “right of autonomy” and warrants a new trial.

The government argues that the motion should be denied both because it is untimely and because it fails on the merits. Because the Court concludes that the circumstances alleged here, assuming for the sake of discussion the accuracy of the factual assertions made by and on behalf of

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Id. at 1454:19-24 (emphasis added); *see also* DI 611 at 2.

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Tr. at 1602:3-24.

8

DI 611 at 2.

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Id.; *see also* DI 612 (Affidavit of Rosemond) at 2.

Touger does not dispute the existence of a disagreement. He states that he “discussed [his preferred] strategy with Mr. Rosemond before and during the trial” and that “Mr. Rosemond repeatedly told [him] that he disagreed with the strategy” and “that he wanted to adopt a different strategy of denying that he ever paid anyone to commit the shooting, rather than only dispute the element of intent.” DI 613 at 2.

Rosemond, would not warrant a new trial, it need not reach the question of timeliness nor consider whether an evidentiary hearing is required.

Discussion

Rule 33

Rule 33 states that “upon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.”¹⁰ Although a “trial court has broader discretion to grant a new trial under Rule 33 than to grant a motion for acquittal under Rule 29, . . . it nonetheless must exercise the Rule 33 authority sparingly and in the most extraordinary circumstances.”¹¹ The Second Circuit has articulated the standard as follows:

“The ultimate test on a Rule 33 motion is whether letting a guilty verdict stand would be a manifest injustice. The trial court must be satisfied that competent, satisfactory and sufficient evidence in the record supports the jury verdict. The district court must examine the entire case, take into account all facts and circumstances, and make an objective evaluation. There must be a real concern that an innocent person may have been convicted.”¹²

The Court assumes for purposes of this motion, without deciding, that Touger indeed conceded at trial that Rosemond had directed the shooting and that he did so in the face of

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Fed. R. Crim. P. 33(a).

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United States v. Ghailani, 761 F. Supp. 2d 167, 195 (S.D.N.Y. 2011) (quoting *United States v. Ferguson*, 246 F.3d 129, 134 (2d Cir. 2001) (quoting *United States v. Sanchez*, 969 F.2d 1409, 1414 (2d Cir. 1992))) (internal quotation marks omitted).

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Ferguson, 246 F.3d at 134 (internal quotation marks and citations omitted).

Rosemond's expressed and allegedly contrary wishes.¹³ Accordingly, the question before the Court is whether his having done so impaired Rosemond's constitutional rights and resulted in a manifest injustice.

McCoy v. Louisiana

Rosemond argues that Touger's concession that Rosemond directed the shooting violated his Sixth Amendment "right of autonomy." He relies on *McCoy v. Louisiana*,¹⁴ in which the Supreme Court considered the case of a defendant who had been convicted on three counts of first-degree murder and sentenced to death. The defense attorney there had concluded that the evidence against the defendant was overwhelming and that the best or only way to avoid a death sentence at the penalty phase of the trial was to concede at the guilt phase of the trial that the defendant was the killer and then urge mercy in view of his "serious mental and emotional issues."¹⁵ The defendant both before and during the trial "vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt."¹⁶ The state court nonetheless had denied his requests to terminate his counsel's representation and for a new trial, concluding that the

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Were this a closer case, additional discussion would be warranted as to whether Touger in fact conceded that Rosemond directed the shooting. *See, e.g.*, Tr. at 1457:16-22 ("McCleod is the only one planning anything Only time Jimmy gets any strategizing was after the shooting actually occurred."). Nonetheless, the Court need not reach this question.

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138 S. Ct. 1500 (2018).

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Id. at 1506-07.

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Id. at 1505.

defendant's counsel had had the authority to concede guilt despite the defendant's opposition to the concession.¹⁷ The Supreme Court reversed and held that "a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty."¹⁸

The Court reasoned that while "[t]rial management is the lawyer's province," including decisions as to "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence,"¹⁹ a criminal defendant is entitled to "[a]utonomy to decide that the objective of the defense is to assert innocence" and to "insist on maintaining her innocence at the guilt phase of a capital trial."²⁰ As the Court stated, "[t]hese are not strategic choices about how best to *achieve* a client's objectives; they are choices about what the client's objectives in fact *are*."²¹

Application

As an initial matter, the government did not seek the death penalty in this case. Nor did Touger concede that Rosemond was guilty of any of the crimes charged. These facts alone set

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Id. at 1506-07.

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Id. at 1505.

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Id. at 1508 (quoting *Gonzalez v. United States*, 553 U.S. 242, 248 (2008)) (internal quotation marks omitted).

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Id.

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Id.

this case far apart from the holding of *McCoy*. While the Court well understands Rosemond's contention that the narrow holding of *McCoy* should be extended beyond capital cases and that this question will be resolved in due course by appellate courts, there is no need to decide it here.²² Even if the Court were to assume that *McCoy* is not limited to capital cases, Rosemond's motion would fail.

Rosemond provides no compelling basis to conclude that Touger's concession that Rosemond directed the shooting violated his constitutional right to autonomy or resulted in a "manifest injustice." In *McCoy*, the defendant "expressly assert[ed] that the objective of 'his defence' [wa]s to maintain innocence of the charged criminal acts" and his counsel "overr[ode] it by conceding guilt."²³ In this case, Rosemond and Touger both maintained Rosemond's innocence, but disagreed about the best course to attempt to avoid conviction. In other words, their "objectives" were identical – both sought a judgment of acquittal. Moreover, Touger's concession that Rosemond had directed a shooting did not amount to a concession that Rosemond had committed any of the charged crimes or any lesser offense. That Touger's concession may have described a state crime²⁴

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The government asserts that the holding in *McCoy* depends also on the defendant's "insistence" that his counsel maintain his innocence and that Rosemond's motion is precluded on the additional basis that he failed to so insist. DI 616 at 12. Because the Court concludes that the motion fails on alternative grounds, it need not reach the issue of "insistence" in this opinion.

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McCoy, 138 S. Ct. at 1509 (emphasis omitted).

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Rosemond asked the Court at oral argument to extend a defendant's "right of autonomy" to include decisions over whether to concede during a federal criminal case facts sufficient to be found guilty of a crime in state court. The Court takes no position on whether Touger's concession would have amounted to a state crime and, in any event, sees no principled basis for drawing such a line.

does not change the fact that the concession by itself was insufficient to establish Rosemond's guilt as to any one of the four counts in the indictment.

The Court concludes that Touger did not impair Rosemond's "right to autonomy" in conceding that Rosemond directed a shooting and focusing instead on whether the government proved beyond a reasonable doubt that he possessed the requisite intent to *kill*. The Court does not read *McCoy* to suggest that the "objective of the defendant" relates to anything other than the defendant's decision to maintain innocence or concede guilt. And it is well established that the determination of which arguments to advance to achieve acquittal falls squarely within the purview of defense counsel.²⁵ In Rosemond's own words, Touger's limited concession was a "strategic choice" to avoid conviction.²⁶

To hold otherwise could have chaotic and untold consequences. Rosemond asks this Court to broaden *McCoy* and call into question whether the many disagreements that arise between criminal defendants and their trial counsel with respect to counsel's choices about how best to seek acquittal in fact are impairments of the criminal defendants' right to autonomy. Extending *McCoy* in this manner could lead to endless post-conviction litigation concerning what transpired between defendants and their lawyers and how the defendants' unsuccessful defenses were conducted. It would substantially impair the finality of jury verdicts in criminal cases. This is particularly so

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Gonzalez, 553 U.S., at 248; *see also McCoy*, 138 S. Ct. at 1508 (distinguishing between "strategic choices about how best to *achieve* a client's objectives," which fall to counsel, and "choices about what the client's objectives in fact *are*," which fall to the client). *Cf. Strickland v. Washington*, 466 U.S. 668, 690 (1984) ("[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.").

²⁶

DI 611 at 2.

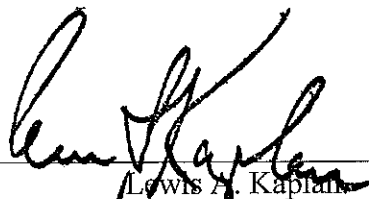
because such challenges would not be cabined, as they are when a defendant asserts ineffective assistance of counsel, by any requirement that a defendant prove prejudice in order to obtain relief.²⁷ This Court is not prepared to read *McCoy* so broadly absent definitive guidance from the higher courts.

Conclusion

For the foregoing reasons, Rosemond's motion [DI 611] is denied.

SO ORDERED.

Dated: September 7, 2018



Lewis A. Kaplan
United States District Judge

²⁷

The Supreme Court has held that when a criminal defendant raises a post-conviction claim of ineffective assistance of counsel, the defendant must show not only that "counsel's performance was deficient" and "fell below an objective standard of reasonableness," but also that "the deficient performance prejudiced the defense" such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 687-88, 694.

When a criminal defendant asserts a violation of his or her right to autonomy, however, there is no need to make a showing of prejudice. In *McCoy*, the Supreme Court concluded that "[b]ecause a client's autonomy, not counsel's competence" was at issue, the two-prong ineffective-assistance-of-counsel analysis did not apply. *McCoy*, 138 S. Ct. at 1510-11. Rather, the violation of the defendant's right to autonomy was "complete" when the state court "allowed counsel to usurp control of an issue within McCoy's sole prerogative." *Id.* at 1511. This error was "structural" in kind and, in the face of its "immeasurable" effects, the Court held that a new trial was warranted without a showing of prejudice. *Id.*

15-940-cr

United States v. Rosemond

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2015

(Argued: April 6, 2016 Decided: November 1, 2016)

Docket No. 15-940-cr

UNITED STATES OF AMERICA,

Appellee,

v.

JAMES J. ROSEMOND,

Defendant-Appellant,

DEREK ANDRE ENGLISH, RONALD ANDERSON, BRIAN MCCLEOD, AKA Slim,
AKA Brian Connelly, AKA Joseph King, AKA Brian Conley, AKA John A.
Conley, SHAWN WILLIAMS, AKA William Shawn, JASON WILLIAMS, DERRICK
GRANT, RODNEY JOHNSON, AKA Rodney T. Hibbert, AKA Toree Johnson,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Before:

KEARSE, CABRANES, AND CHIN, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the Southern District of New York (McMahon, C.J.), convicting defendant of murder for hire and related charges. On appeal, defendant contends that 1) the district court erred in ruling that certain defense arguments would open the door to admission of statements made during a proffer session; 2) the district court erred in admitting evidence of prior bad acts; and 3) there was insufficient evidence to support the conviction. We agree that the district court incorrectly applied the waiver provision in defendant's proffer agreement, and erred in precluding defense counsel from making certain arguments at trial. Because the error was not harmless, we vacate the judgment of conviction, and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.

SAMSON ENZER, Assistant United States Attorney
(Elizabeth Hanft, Karl Metzner, Assistant United States Attorneys, *on the brief*), for Preet Bharara, United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

JONATHAN I. EDELSTEIN, Edelstein & Grossman, New York, NY, *for Defendant-Appellant*.

CHIN, *Circuit Judge*:

Defendant-Appellant James J. Rosemond appeals a March 25, 2015 judgment entered in the United States District Court for the Southern District of New York (McMahon, C.J.), following a jury trial, convicting him of murder for hire, conspiracy to commit murder for hire, murder through use of a firearm, and possession of a firearm, in violation of 18 U.S.C. §§ 1958, 924(c)(1)(A)(iii), and 924(j). Rosemond was the head of Czar Entertainment, a music label that engaged in a lengthy and violent feud with a rival company, Violator Records, and its rap group, G-Unit. The feud culminated in the fatal shooting of a G-Unit associate, Lowell Fletcher.

Following his arrest for narcotics-related charges, Rosemond participated in proffer sessions with the Government in hopes of reaching a cooperation agreement. Rosemond and the Government signed a proffer agreement that prohibited the Government from using Rosemond's statements against him, except to rebut factual assertions made by him or on his behalf at a later proceeding. During one such proffer session, law enforcement officers asked Rosemond if he knew that his and his associates' actions in September 2009 would lead to Fletcher's death. Rosemond responded that he knew Fletcher would die.

At Rosemond's first trial for his role in Fletcher's murder, the district court ruled that any argument by defense counsel that the Government had failed to prove that Rosemond had intended to murder -- as opposed to merely shoot -- would open the door to admitting his proffer statement. The first trial resulted in a mistrial, and at the second trial the district court adhered to its prior rulings as to the proffer statements. As a consequence, Rosemond limited his defense. He was convicted on all counts.

On appeal, Rosemond contends that 1) the district court erred in ruling that certain defense arguments would open the door to the admission of statements made during a proffer session; 2) the district court erred in admitting evidence of prior bad acts; and 3) there was insufficient evidence to support the conviction. We conclude that the district court erred in unduly restricting Rosemond's ability to defend against the charges, and that such error was not harmless. Accordingly, we vacate the judgment and remand for a new trial.

BACKGROUND

I. The Facts

Because Rosemond appeals his convictions following a jury trial, "our statement of the facts views the evidence in the light most favorable to the government, crediting any inferences that the jury might have drawn in its

favor." *United States v. Dhinsa*, 243 F.3d 635, 643 (2d Cir. 2001) (quoting *United States v. Salameh*, 152 F.3d 88, 107 n.1 (2d Cir. 1998) (per curiam)). At trial, the Government elicited testimony from three cooperating witnesses -- Khalil Abdullah, Mohammed Stewart, and Brian McCleod -- about the violent hip hop feud between Czar Entertainment and G-Unit and the events leading up to Fletcher's death.

A. *The Feud*

Rosemond was the owner of Czar Entertainment, a music business that represented and managed various hip hop and rap musicians, including rap artist Jayceon Taylor. Czar had a longstanding and violent rivalry with Violator Records and its rap group, G-Unit, featuring Curtis Jackson, Marvin Bernard, and Lloyd Banks. The dispute arose in part after Jackson publicly insulted Taylor on Hot 97, a New York hip hop radio station, in February 2005. After hearing what was said on the radio, Rosemond told his associate, Mohammed Stewart, to accompany Taylor to Hot 97 to "make sure nothing happen[ed] to him." App. 309. When Taylor arrived at Hot 97, someone started shooting into the crowd outside the radio station. Taylor's friend was shot in the leg. Later that day, Stewart had another Czar associate shoot up the front door of Violator Records. Rosemond paid Stewart \$2,000 for that shooting.

Rosemond had another altercation with G-Unit in December 2006 at an award ceremony at the Apollo Theater in Harlem. Marvin Bernard of G-Unit confronted Rosemond at the event about Taylor "talking reckless" about G-Unit frontman, Curtis Jackson. App. 258. In anticipation of a shooting, Rosemond left through a side exit with his associates, including Khalil Abdullah. After they left the Apollo, Rosemond and Abdullah followed Bernard's car and shot fifty rounds into it when it pulled over. Following the Apollo incident, a meeting was organized by music industry mogul, Sean Combs, between Rosemond and G-Unit's manager, Christopher Lighty, to make peace between the groups. The meeting got heated and resulted in Rosemond getting "mushed in the face" by Lighty. App. 260. Rather than quell the feud, the meeting only increased tensions between the groups.

B. *Assault of Rosemond's Son and Subsequent Retaliation*

On March 20, 2007, three G-Unit associates -- Marvin Bernard, Jaleel Walter, and Lowell Fletcher -- were leaving Violator's office when they saw a 14 year-old boy wearing a sweatshirt bearing the Czar Entertainment logo. They confronted him, pushed him up against a wall, slapped him, and threatened him with a gun. A parking attendant at the garage across the street saw what was

happening and yelled at them to break it up. The G-Unit associates got into a black Suburban and drove away.

The boy was Rosemond's son. When Rosemond found out about the incident later that day, he was furious and immediately sent Stewart to cut a G-Unit associate with a razorblade. Stewart testified that Rosemond was so disturbed by the attack on his son that he sought to retaliate in "three ways": "through the law, through music and through streets." App. 315.

Rosemond first sought out assistance from law enforcement. Rosemond's son reported the incident to the police and identified Fletcher and Bernard as his attackers. Criminal charges were brought against them both. Fletcher eventually pled guilty to assault and endangering the welfare of a child, and began serving a term of imprisonment in Mohawk Correctional Facility. Next, on the musical front, Rosemond organized conferences with hip hop figures to "talk about the guns and violence in hip-hop." App. 315. Taylor also wrote a song about the feud.

The real retaliation, however, was achieved through "violence in the streets" where "[t]he objective was to shoot somebody." App. 315. Violence between the two gangs began to ratchet up. A month after the slapping incident, in April 2007, Rosemond claimed to have shot thirty rounds into

Bernard's mother's house in Queens. Over the next couple of years, he and his associates continued to target G-Unit members. For instance, Stewart threw Molotov cocktails at and shot rounds into G-Unit associate Walter's house and car in Staten Island, and another Czar associate was paid \$5,000 for having a G-Unit jeep torched in New Jersey. There were various unsuccessful attempts to shoot Bernard, Walter, Lighty, and their homes, cars, and family members by Rosemond, Stewart, and other Czar associates. At one point, after spotting G-Unit members enter a van, Rosemond "tried to make it a coffin" by shooting it up. App. 320.

Stewart testified to statements made by Rosemond during this time, including "something like they're not going to understand what it is until they're carrying a coffin." App. 315.

C. *The Fletcher Murder*

Meanwhile, Fletcher -- one of the assailants of Rosemond's son -- was serving his state sentence at Mohawk Correctional Facility, where his presence came to the attention of another inmate, Brian McCleod. Unbeknownst to Fletcher, McCleod was a friend of Rosemond. McCleod and Rosemond had spent time in jail together in the late 1990s and worked together in the music and drug business after they were released. McCleod had been serving a New York

state prison term for possession of cocaine he removed from a stash house at Rosemond's behest in 2004.

On August 10, 2009, McCleod was released on parole. Shortly thereafter, he met with Rosemond and told him that he "had a line on [*i.e.*, had access to] . . . the individual [who] slapped [Rosemond's] son," referring to Fletcher. App. 480. In response, Rosemond said that "since his son had been assaulted, he hadn't been able to sleep," and that he had been "hitting them everywhere they turn," including shooting their cars in front of the Apollo, blowing up their cars in South Beach, and shooting their homes. App. 481. Rosemond told McCleod that he wished he had known where Fletcher was incarcerated earlier, as he would have paid \$10,000 "for anybody who would have marked him, who would have scarred him," meaning "[t]hat he would have paid someone [that amount] to cut" Fletcher. App. 482.

Rosemond met McCleod a week later and told him that he would pay \$30,000 to anyone who "could bring [Fletcher to] him." App. 485. Rosemond said he would "hit him so fast and so hard, he's not even going to realize it's coming." App. 486. He "was talking about shooting" Fletcher. *Id.* McCleod suggested involving Derrick Grant, a trusted associate. Rosemond agreed. The next day, McCleod went to see Grant and told him that Rosemond "had 30,000

for anybody who would bring [Fletcher] to him." App. 490. Grant agreed to be the shooter.

Later that week, McCleod learned from a source that Fletcher was soon to be released from prison and had already been transferred to Queensboro, a temporary holding facility for those about to be released. McCleod informed Rosemond, who told McCleod to get in touch with Grant and Jason Williams, Rosemond's chauffeur. On September 11, 2009, McCleod and Williams drove to Queensboro, contemplating the possibility that "if something could happen," they would "maybe even do the deed that day," meaning "[t]he shooting." App. 494. When they arrived, however, McCleod learned that Fletcher had already been released. McCleod instead reached Fletcher by phone and "welcomed him home." App. 502. During that phone call, McCleod suggested that they "get together, talk it up, get with some girls, [and] have some drinks" in the "near future." App. 502. He also indicated that he had some money to give Fletcher to help him get on his feet. This was all to "artificially aid the relationship" to get Fletcher to "trust" him and "have an expectation and a reason to speak to [McCleod] in the future." App. 503.

Later that month, Rosemond instructed Williams to give McCleod money to buy a new, temporary phone to be used exclusively for speaking with

Fletcher. Rosemond asked McCleod if he could "handle the actual deed, the actual act of bringing Lowell Fletcher to a location, shooting Lowell Fletcher," because, if not, he could get someone else to do it. App. 506-07. McCleod assured him that "[e]verything's good." App. 507.

At some point during this period, Rosemond told Abdullah about how he had McCleod "line [Fletcher] up for when he get home" and that "these dudes ain't gonna be happy until they go to a funeral." App. 266.

On September 25, 2009, McCleod again met with Rosemond. Rosemond showed McCleod on his Blackberry what he had been told was Fletcher's address in the Bronx to determine whether it "would . . . be a good location to . . . actually have the shooting." App. 512. They agreed that McCleod would go to the address to see if it was a suitable location for a shooting, and report back to Rosemond. A code was created: if McCleod thought the location was safe, he would tell Rosemond, "I got with the girl, I like her"; if he did not, he would say, "I don't like her, not good chemistry." App. 515. Once he visited the building on West 161st Street in the Bronx, McCleod saw "cameras everywhere," and testified that he texted Rosemond back saying, "no, I don't like the girl, no chemistry." App. 517.

On September 26, 2009, McCleod, Williams, and Grant went out looking for a better location for the shooting. They settled on a dark, quiet area near the 4 Train station on Mount Eden Avenue in the Bronx. McCleod arranged to meet Fletcher there the following evening. He sent Rosemond a text that said, "I got a hot date," to which Rosemond responded, "OK. Have fun." App. 539.

The next day, before Fletcher was expected to arrive, McCleod and Williams met Grant at the agreed-upon location on Mount Eden Avenue. Rosemond had also sent two other Czar associates -- Rodney Johnson and Shawn Williams -- to serve as backup. McCleod and Fletcher then exchanged a series of phone calls as McCleod sought to lure Fletcher to the spot where Grant was waiting for him. McCleod told Grant -- the gunman -- to take his position. When the time came, Grant shot Fletcher five times in the back using a silencer and gun provided to him by Rosemond. Fletcher died shortly thereafter. In return, Rosemond paid McCleod and Grant with a kilogram of cocaine, worth approximately \$30,000.

After Fletcher's death, Rosemond told Abdullah what had transpired, saying, "Yo, the bitch is out of here" and "dude checked out." App. 267-68.

D. *Rosemond's Arrest and Proffer Session*

Prior to the indictment in this case, Rosemond was arrested and prosecuted for narcotics-related offenses in the Eastern District of New York.¹ In response to those charges, Rosemond participated in proffer sessions with the Government in hopes of reaching a cooperation agreement. A proffer agreement was executed, stipulating that the Government would not use any of Rosemond's statements made during the proffer sessions against him, except that they could be used "as substantive evidence to rebut, directly or indirectly, any evidence offered or elicited, or factual assertions made, by or on behalf of [Rosemond] at any stage of a criminal prosecution." App. 212.

During one such proffer session, "Rosemond was asked if he understood that, as a result of the actions he took with others in September 2009, Lowell Fletcher would be killed." App. 204. The notes taken during the proffer session state that Rosemond "responded affirmatively" and "knew [Fletcher] was going to be dead." *Id.*

¹ In the Eastern District of New York, Rosemond was convicted of engaging in a continuing criminal enterprise and numerous related narcotics, firearms, and money laundering counts. He was sentenced principally to life imprisonment. See *United States v. Rosemond*, 595 F. App'x 26 (2d Cir. 2014) (summary order) (substantially affirming convictions and sentence).

II. *The Proceedings Below*

A. *The First Trial*

A seven-count indictment was filed against Rosemond and his co-defendant, Rodney Johnson, charging them both with conspiracy to commit murder for hire, murder for hire, murder through use of a firearm, and possession of a firearm during murder for hire. Only Johnson was named in the remaining counts of the indictment, which related to the drug conspiracy and were substantially the same as the charges Rosemond had already been convicted of and sentenced for in the prior proceeding. A joint trial was held.

Brian McCleod testified for the Government as a cooperating witness. During the Government's direct examination, McCleod testified that Rosemond had never used the words "murder" or "kill" in connection with Fletcher. He also testified that he had previously told the prosecutors that he "did not think this was going to be a murder," and that he "knew there was going to be a shooting," but "was telling [himself] nobody was going to get killed." App. 176. Defense counsel thoroughly examined this subject on cross-examination, emphasizing that McCleod had previously told the prosecutors that he believed he was participating only in a shooting, not a murder. McCleod

admitted that he had repeatedly told prosecutors that he did not believe a murder would take place.

Defense counsel also asked McCleod if Rosemond had ever *in fact* told McCleod to murder Fletcher prior to the shooting. McCleod admitted that he had never discussed "murdering" or "killing" Fletcher with either Rosemond or Grant. His cross-examination included the following exchanges:

- Q. While we're on that, Mr. Rosemond never told you that he wanted you to murder Lowell Fletcher, correct?
- A. No, sir.
- Q. Mr. Rosemond never told you that he wanted you to enter into a conspiracy to murder Lowell Fletcher, did he?
- A. No one talks like that. No, sir.
- Q. Well, I don't know about no one, but certainly in this case, Mr. Rosemond never used those words, never said those words to you in any of the meetings he had with you. Yes or no, isn't that correct?
- A. He never used those words. No, sir.

App. 188.

- Q. Did you say to Mr. Grant, hey, listen, there is \$30,000 on the table for us to kill Lowell Fletcher? Did you say anything like that to Derrick Grant back at that time? Yes or no, Mr. McCleod.
- A. No, sir.

App. 188.

Q. Incidentally, up to this point, where you're on Mount Eden Avenue, as we have it from your direct testimony, you had no conversation with Mr. Rosemond about murdering. Mr. Rosemond never asked you to murder Lowell Fletcher, correct?

A. No, he did not.

Q. In fact, you had had no conversation up to this point with Derrick Grant about murdering Lowell Fletcher, had you?

A. No, I had not.

Q. In fact, you had no conversation with Rodney Johnson or Jason Williams about murdering Lowell Fletcher, isn't that true?

A. That is true.

App. 190.

The Government submitted a letter brief the next day, asserting that defense counsel's questioning opened the door to Rosemond's proffer statements because it implicitly argued that "Rosemond did not intend to have Fletcher murdered." App. 204. For the same reason, the Government took issue with defense counsel's opening, which included a statement that McCleod would testify that he "didn't know it was a murder; Jim Rosemond never told [him] to murder anybody."² App. 205. The Government argued that while questions

² The Government also argued that certain questions posed by defense counsel to the medical examiner about the caliber of the gun used furthered the implicit argument that Rosemond did not intend to murder Fletcher, and thus triggered

solely focused on impeaching McCleod with his prior inconsistent statements did not open the door to the proffer statement, other questions "were posed in order to elicit answers indicating that no mention of 'murder' or 'killing' had been made." App. 210. The "*only* conceivable purpose" of these questions, according to the Government, was to "imply to the jury that, in fact, Rosemond is not guilty of Counts One through Four of the Indictment because Rosemond did not intend to participate in a murder." *Id.*

The trial court heard argument the next morning and ruled from the bench that afternoon. A written ruling was issued later that day. The trial court concluded that the questions limited to prior statements were acceptable forms of impeachment with a prior inconsistent statement, but that the other questions -- focusing on the fact that Rosemond did not actually use the words "murder" or "kill" -- triggered Rosemond's proffer agreement waiver because they implicitly asserted that the object of the conspiracy was something less than murder. The trial court declined, however, to admit the proffer statement, to avoid a *Bruton* problem for Rosemond's co-defendant, Rodney Johnson. The court made clear that if the trial involved Rosemond alone, it would have admitted the proffer

Rosemond's proffer agreement waiver. The trial court found that the alleged implication of such questions -- that a small-caliber gun would not be used for a murder -- did not support such an argument.

notes. Instead, the court decided to "cabin" Rosemond's closing argument as follows:

[Defense counsel] can certainly attack the credibility of Mr. McCleod on the ground that he has given inconsistent statements in the past, and the jury will be carefully instructed on the prior inconsistent statement rule. He can argue in general terms that the Government has not proven all or certain of the elements of the charged crimes beyond a reasonable doubt. He can argue that the Government's proof fails to establish beyond a reasonable doubt the existence of a conspiracy, for example, because its evidence comes out of the mouths of admitted liars. *What he cannot do is argue that the Government has failed to prove that the object of the conspiracy and the intent of Rosemond was to murder Lowell Fletcher, as opposed to simply shooting him, or assaulting him, or doing violence to him.* That argument is inconsistent with a factual assertion made during his proffer, and so is not available to him.

App. 238 (emphasis added). Defense counsel so cabined his argument, focusing instead on the cooperating witnesses' motive to lie.

The jury was unable to reach a verdict on the murder for hire charges against either defendant. The court declared a mistrial.

B. *The Second Trial*

A second trial was held as to Rosemond alone on the same charges. Prior to cross-examining McCleod, defense counsel sought to clarify the permissible scope of his questions so as to not "repeat what took place at the last

proceedings." App. 659. Defense counsel then stated his interpretation of the district court's prior ruling, that is, that he could elicit only prior inconsistent statements. The Government "agree[d] with that interpretation, as long as [defense counsel] d[id] not argue in summation that this was merely a shooting based on those answers." *Id.* The district court also agreed, stating that defense counsel would be "entitled to examine, as indeed the prosecutor examined, about the statements that were or were not made." App. 659-60.

During McCleod's testimony, he was not asked -- either on direct examination by the Government or on cross-examination by defense counsel -- about his prior statements to prosecutors or whether Rosemond used the words "murder" or "kill" when discussing the Fletcher shooting.

During redirect, the prosecutor asked McCleod how he came to the realization that Fletcher was murdered, rather than "merely shot." App. 681.

McCleod answered as follows:

A: . . . [T]his is much too much planning for just a simple shot.

Q: In any conversation you had with James Rosemond, did he ever say to you, Don't kill Lowell Fletcher?

A: Mr. Rosemond never mentioned killing Fletcher at all.

. . .

Q: Why did you tell the government on [previous] occasions that this was a shooting?

A: The first time and even up until now I just -- I had some very serious issues with admitting to myself that I participated in the murder of another man to [sic] looks like me, especially considering my family history. . . . I guess I felt guilty. My mother's going through it. My brother was murdered. He was shot. And here I am doing the exact same thing.

. . .

Q: What words did Rosemond use when he was talking to you about what to do to Lowell Fletcher?

A: Well, . . . initially he just said he was going to hit him so hard and so fast he wasn't going to see it coming
And after that, it was, Am I sure I can handle it? Am I sure that Derrick, and I can handle it on our own?

App. 682-83. Defense counsel did not re-cross McCleod about his prior statement about not knowing that a murder was to occur.

Again, prior to summation, the court reiterated its ruling that Rosemond could not argue that "this was a mere shooting" because they had "been through that." App. 703 ("Been there; done that. If the argument is made, we will stop; we will read the proffer agreement; and then we will pick up and move on. The one advantage to having a do-over is that [defense counsel] hav[e] been through this once before, and have, I think, been very careful . . .").

This time, the jury convicted Rosemond on all counts. He was sentenced to life plus 20 years, consisting of concurrent mandatory life terms on the murder for hire and murder for hire conspiracy convictions, and two

additional consecutive ten-year terms on the firearms charges. 18 U.S.C. §§ 924(c), (j).

This appeal followed.

DISCUSSION

Three issues are presented: (a) the interpretation of Rosemond's proffer agreement; (b) the admission of uncharged acts; and (c) the sufficiency of the evidence on the element of intent. Because we vacate Rosemond's conviction on the ground that the district court improperly interpreted the scope of his proffer agreement waiver, we do not reach Rosemond's second argument. As to the third issue, we conclude that there was sufficient evidence to support Rosemond's conviction, and therefore decline to direct the district court to enter a judgment of acquittal.

I. The Proffer Agreement Waiver

Rosemond argues that the district court's rulings during the first trial -- which extended to the second -- unduly restricted the permissible scope of his lawyer's argument and questioning of witnesses, in violation of the Sixth Amendment. We agree, and conclude that the error was not harmless.

A. Waiver

As a preliminary matter, the Government contends that Rosemond has waived this argument absent any plain error by failing to renew his objection at the second trial. The contention fails. Where a defendant has made his position clear, further objections to "rulings or orders of the court are unnecessary" to preserve a claim of error for appellate review. Fed. R. Crim. P. 51(a); see *Thornley v. Penton Publ'g, Inc.*, 104 F.3d 26, 30 (2d Cir. 1997) ("Because [plaintiff] argued its position to the district judge, who rejected it, a further exception after [the ruling] would have been a mere formality, with no reasonable likelihood of convincing the court to change its mind on the issue."); *United States v. Lewis*, 823 F.3d 1075, 1082 (7th Cir. 2016) ("[T]here is no need for a party to state an 'exception' to a court ruling that has already been made."). The purpose of the appellate waiver rule is "to induce the timely raising of claims and objections, which gives the district court the opportunity to consider and resolve them." *Puckett v. United States*, 556 U.S. 129, 134 (2009).

The trial court was given such an opportunity here. As discussed above, the issue was fully litigated during the first trial and resulted in a ruling by the district court. At the second trial, the court stated that its prior rulings remained in effect. The Government argues that the district court was not given

an opportunity to revisit its prior rulings given the different context of the new trial, but does not point to any change in circumstances that would have had a material effect on the trial court's decision had it been brought to its attention. Thus, taking further exception under the circumstances would have been futile. See *Rose v. N.Y.C. Bd. of Educ.*, 257 F.3d 156, 160 (2d Cir. 2001).

B. *Applicable Law*

Under Rule 410 of the Federal Rules of Evidence, "a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea" is not "admissible against the defendant who made the plea or participated in the plea discussions." Fed. R. Evid. 410(a)(4); see also Fed. R. Crim. P. 11(f) ("The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410."). The protections of Rule 410, however, may be waived so long as the defendant agrees to the waiver knowingly and voluntarily. *United States v. Mezzanatto*, 513 U.S. 196, 209-10 (1995). In *Mezzanatto*, the Supreme Court deemed enforceable a waiver provision allowing the Government to use a defendant's statements made during plea negotiations to impeach him when he testified in a manner inconsistent with those statements. *Id.* at 198-99.

We considered a more expansive waiver in *United States v. Velez*, one that allowed the Government to introduce the plea negotiation statements not only when the defendant testified inconsistently, but also when the defense presented contradictory other evidence or even arguments. 354 F.3d 190, 195 (2d Cir. 2004). We concluded that "fairness dictates that the agreement be enforced" according to its terms, notwithstanding the disparity in bargaining power. *Id.* at 196 ("If the proffer agreement is not enforced, a defendant will have less incentive to be truthful, for he will know that his proffer statements cannot be used against him at trial as long as he does not testify, even if he presents inconsistent evidence or arguments." (quoting *United States v. Gomez*, 210 F. Supp. 2d 465, 475 (S.D.N.Y. 2002)); see also *United States v. Krilich*, 159 F.3d 1020, 1026 (7th Cir. 1998).

Proffer agreements are contracts to be interpreted according to ordinary principles of contract law. *United States v. Liranzo*, 944 F.2d 73, 77 (2d Cir. 1991). Like all contracts, proffer agreements must be interpreted "to give effect to the intent of the parties." *United States v. Barrow*, 400 F.3d 109, 117 (2d Cir. 2005) (quoting *Liranzo*, 944 F.2d at 77). We consider the district court's interpretation of the scope of a proffer agreement waiver *de novo* and its evidentiary rulings for abuse of discretion. *Barrow*, 400 F.3d at 117.

In determining whether a defendant has triggered the type of waiver contained in Rosemond's proffer agreement, we ask first whether there has been any evidence offered or elicited, or "factual assertion" made, by or on behalf of the defendant that would trigger the Rule 410 waiver, and second, if so, whether the proffer statement "fairly rebut[s]" the fact asserted or evidence offered or elicited. *See Barrow*, 400 F.3d at 117-21. If the defendant makes a factual assertion at trial that contradicts a statement made during the proffer session, the Government may then offer the earlier proffer statement to rebut the assertion being made at trial. *Id.* at 120. Rebuttal is "necessarily a flexible concept," *id.*, and not "limited to evidence that directly contradicts what it opposes; rather, rebuttal encompasses any evidence that the trial judge concludes fairly counters and casts doubt on the truthfulness of factual assertions advanced, whether directly or implicitly, by an adversary," *id.* at 121.

In *United States v. Barrow*, we held that a waiver provision substantially similar to the one in this case applied to any factual assertions made by or on behalf of the defendant, whether made "directly or implicitly," during counsel's opening argument or through cross-examination. 400 F.3d at 119. We made clear, however, that "[t]he mere fact that a defendant pleads not guilty and stands trial is not a factual assertion that triggers the proffer agreement waiver."

Id. at 118. Defense counsel may also "attempt to demonstrate why the facts put in evidence by the prosecution are insufficient," and "challenge[] the sufficiency of government proof on elements such as knowledge, intent, identity, etc.," without triggering the factual assertion requirement of the waiver. *Id.* at 119. In other words, the proffer agreement does not bar a defendant from arguing that the Government has failed to meet its burden of proof.

We reiterated this rule in *United States v. Oluwanisola*, concluding that defense counsel must be permitted to "draw the jury's attention to the lack of evidence" presented on specific elements without triggering the waiver. 605 F.3d 124, 132 (2d Cir. 2010). There, we vacated a conviction where defense counsel was precluded, except to an extent in summation, from arguing that specific elements had not been proven without triggering the proffer waiver. *Id.* To hold otherwise, we explained, would prevent defense counsel from challenging the Government's lack of evidence on a particular element, even where the Government "failed to introduce *any* evidence on a certain element." *Id.*

The line between challenging the sufficiency of the Government's evidence and implicitly asserting new facts can be a fine one. *See United States v. Roberts*, 660 F.3d 149, 158 (2d Cir. 2011) (admitting that this "distinction is more easily stated than applied"). When the defense introduces an exhibit or offers

testimony of a defense witness, there is a greater likelihood that new facts are being asserted. *See id.* at 163 (concluding that the waiver provision was triggered when defense counsel "put documentary evidence before the jury to imply facts that contradicted the defendant's proffer statements"). But "[p]articular caution is required when the purported fact is asserted by counsel rather through witness testimony or exhibits." *Id.* at 158. In evaluating defense arguments and questions, we have advised district courts to "consider carefully what fact, if any, has actually been implied to the jury before deciding whether proffer statements fairly rebut it." *Barrow*, 400 at 119; *accord Oluwanisola*, 605 F.3d at 132.

This distinction is illustrated by our treatment of cross-examination questions that attack a witness's credibility. On the one hand, defense counsel may cross-examine a witness "in a way that cast[s] doubt on his credibility," *Roberts*, 660 F.3d at 163, as well as "challeng[e] a witness's perception or recollection of an event," *Barrow*, 400 F.3d at 119. Such attacks "do[] not necessarily imply that the event did not occur, only that the witness may not have seen or reported it accurately," and thus primarily implicate the Government's burden of proving each element beyond a reasonable doubt. *Id.*; *see also Krilich*, 159 F.3d at 1025-26. For example, in *Oluwanisola*, defense counsel asked a series of questions implying that a cooperating witness was fabricating

his testimony that he saw the defendant perform certain incriminating acts. 605 F.3d at 132. We held that such questioning should not be construed as an implicit factual assertion that the defendant did not actually perform those incriminating acts. *Id.* at 133 ("There is no inconsistency or contradiction between a defendant's admission that he robbed the bank and his challenge to a witness's testimony that *the witness saw* the defendant rob the bank and recognizes the defendant.").

On the other hand, questions "*accusing* a witness of fabricating an event" can implicitly assert that the event did not take place, and may, depending on the context, satisfy the factual assertion requirement. *Barrow*, 400 F.3d at 119 (emphasis added). In *Barrow*, defense counsel affirmatively argued during opening statements that the defendant had been mistaken for someone else and that the true culprit was the cooperating witness's brother. Defense counsel then accused that Government witness during cross: "You made up about meeting the [confidential informant] there that day, didn't you?" *Id.* at 114. There, in light of his opening statement, defense counsel's question implicitly asserted that no meeting in fact took place "because his theory of mistaken identity depended on that fact." *Oluwanisola*, 605 F.3d at 133 (discussing *Barrow*).

To be sure, implicit in questions and arguments regarding witness fabrication, perception, or recollection will often be the claim that the event did not occur the way the Government suggests. Absent an affirmative assertion of fact contradicting the proffer agreement, however, such questions will usually be insufficient to trigger the "factual assertion" requirement of the proffer waiver.

To summarize, the following are not factual assertions sufficient to trigger the waiver provision in a proffer agreement:

- pleading not guilty, *see Barrow*, 400 F.3d at 118; *Krilich*, 159 F.3d at 1025;
- arguing generally that the Government has not met its burden of proof, *see Barrow*, 400 F.3d at 119;
- arguing specifically that the Government has failed to prove particular elements of the crime, such as intent, knowledge, identity, etc., *see id.* at 119;
- cross-examining a witness in a manner to suggest that he was lying or mistaken or was not reporting an event accurately, *see Oluwanisola*, 605 F.3d at 132-33; *Barrow*, 400 F.3d at 119; *Krilich*, 159 F.3d at 1025 ("Impeachment of a witness need not be 'contrary to' or

'inconsistent with' a defendant's admission of guilt in a bargaining proffer.");³

- cross-examining a police officer about discrepancies between his testimony and his earlier written report, *see Barrow*, 400 F.3d at 115, 119; and
- arguing that the Government failed to present corroborating evidence, *see Roberts*, 660 F.3d at 158-59.

The following are factual assertions that will trigger the waiver:

- asserting, in an opening statement, that someone other than the defendant was the real perpetrator of the crime, *see Barrow*, 400 F.3d at 114, 119;
- accusing an officer, in cross-examination, that he had fabricated a meeting with a confidential informant where defense counsel had argued mistaken identity in his opening statement, *see id.*; *see also Oluwanisola*, 605 F.3d at 132-33;
- arguing that a shooting was "an intended kidnapping gone wrong," when the defendant admitted in a proffer session that the

³ We do not foreclose the possibility that, in unusual circumstances not presented here, such cross-examination could suffice to trigger the "factual assertion" requirement of a proffer waiver.

shooting was "an intentional murder," *Gomez*, 210 F. Supp. 2d at 472 (noted with approval in *Velez*, 354 F.3d at 195-96); and

- proffering documentary evidence that implied that a cooperating witness was not present as alleged by the Government, where the evidence was offered not just to impugn the witness's credibility, but to prove a fact that contradicted the defendant's proffer statement, *see Roberts*, 660 F.3d at 163-64.

C. *Application*

Rosemond's proffer agreement contained a waiver that allowed his statements to come in as evidence "to rebut, directly or indirectly, any evidence offered or elicited, or factual assertions made, by or on behalf of [Rosemond] at any stage of a criminal prosecution." App. 212.

The proffer statements at issue were 1) Rosemond's positive response after being asked whether he "understood that, as a result of the actions he took with others in September 2009, Lowell Fletcher would be killed"; and 2) Rosemond's admission that he "knew [Fletcher] was going to be dead." App. 204.

We conclude that the district court erred in circumscribing both defense counsel's argument and his cross-examination of McCleod.

i. *Scope of Defense Counsel's Argument*

The district court interpreted Rosemond's proffer waiver to prohibit any implicit argument that "the Government has failed to prove that the object of the conspiracy and the intent of Rosemond was to murder Lowell Fletcher, as opposed to simply shooting him, or assaulting him, or doing violence to him," as that argument "is inconsistent with the factual assertion made during his proffer." App. 238. This ruling is at odds with our decisions in *Barrow* and *Oluwanisola*, both of which clearly allow defendants to argue that specific elements of the crime have not been proven. *See Oluwanisola*, 605 F.3d at 132; *Barrow*, 400 F.3d at 119.

Rosemond should have been permitted to argue, without triggering the proffer waiver, that the Government failed to prove that he intended to murder Fletcher. *See Barrow*, 400 F.3d at 119 (defense counsel may "challenge[] the sufficiency of government proof on elements such as . . . intent" without triggering the proffer waiver); *Oluwanisola*, 605 F.3d at 132 ("Under *Barrow*, [defense counsel] should have been permitted . . . to reference certain elements of the crime and argue that the government would be unable to sustain its burden of proof as to those elements."). There is a material difference between the statement "the Government's evidence fails to establish that Rosemond intended

that Fletcher be murdered, as opposed to shot or injured," and asserting as fact that "the object of the conspiracy was to non-fatally assault Fletcher"; only the latter is a factual assertion that would trigger the waiver. Defense counsel never attempted to affirmatively argue or prove that Rosemond conspired to commit only a nonfatal shooting. *Cf. Roberts*, 660 F.3d at 162 (finding waiver triggered where defense introduced flight logs and swipe-card records to "urge . . . a factual inference" that Government's witness was in fact elsewhere); *Barrow*, 400 F.3d at 119 (concluding that "statement of fact in a defense opening . . . unequivocally identifying [a different person] as the real perpetrator of the charged crimes" triggered the waiver's "factual assertion" requirement); *United States v. Hardwick*, 544 F.3d 565, 570-71 (3d Cir. 2008) (concluding that cross-examination insinuating that different drug gang had particular motive to kill victim triggered proffer agreement waiver). Notably, unlike the statement "Rosemond intended to commit a non-fatal shooting," the argument that there is insufficient evidence of intent to murder suggests no new facts and injects no alternate version of events inconsistent with the proffer statements. *See Roberts*, 660 F.3d at 158 ("[A]rguments or questions challenging 'the sufficiency of government proof,' . . . 'without a factual assertion contradicting facts admitted

in the proffer statement,' do not trigger a waiver provision." (quoting *Oluwanisola*, 605 F.3d at 133)).

The Government contends that implicit in the argument that there was insufficient evidence of intent to murder is the factual assertion that Rosemond did not *actually* intend to murder Fletcher. Challenges to the sufficiency of the Government's evidence, however, will often carry with them the inference that events did not actually occur consistent with the Government's theory, and thus -- at some level -- are arguably contrary to the proffer statements. The same is true when a defendant enters a plea of "not guilty," but these are not "factual assertions" as they do not propose an alternate version of events inconsistent with the proffer statement.

Defense counsel was also entitled to argue that certain inferences from the Government's proof should not be drawn. For example, the Government argued that an intent to murder should be inferred from certain statements made by Rosemond, such as "[he would] hit [Fletcher] so fast and so hard, he's not even going to realize it's coming," App. 486, and "these dudes ain't gonna be happy until they go to a funeral," App. 266. Defense counsel should have been permitted to challenge these types of inferences by "attempt[ing] to demonstrate why the facts put in evidence by the prosecution [were] insufficient

to permit the jury to find the elements of the crime proved." *Barrow*, 400 F.3d at 119. Defense counsel was entitled to argue that McCleod's testimony that he never heard Rosemond use the words "murder" or "kill" undercut the Government's assertion that Rosemond intended to murder without triggering the waiver. Just as the suggestion that a witness did not see the defendant rob the bank is not inconsistent with the defendant's admission that he robbed the bank, *Oluwanisola*, 605 F.3d at 133, McCleod's testimony that he never heard Rosemond say "murder" or "kill" is not inconsistent with Rosemond's admission during the proffer session that he knew Fletcher would die.

ii. *Scope of Defense Counsel's Cross-Examination*

Likewise, defense counsel's questions that probed the already elicited fact that McCleod never heard Rosemond use the words "kill" or "murder" were within bounds. The district court found that the questions "implied that Rosemond did not participate in a *murder* conspiracy or order the *murder* of Lowell Fletcher[,] . . . that any agreement to do violence to Lowell Fletcher was at best an agreement to commit a non-fatal shooting of Fletcher (and thus not an agreement to commit a murder-for-hire as charged), and that Rosemond never intended for Fletcher to be killed." App. 236. These questions,

it concluded, were implicit factual assertions that "directly contradict[ed] Rosemond's proffer that he knew Fletcher would be killed." *Id.*

We disagree. The questions at issue attacked the Government's proof without asserting any new facts. Rosemond's admission that he knew Fletcher would be dead is not inconsistent with McCleod's testimony that the words "kill" and "murder" were not used in their discussions, and the Government offered other proof of that intent. *See Oluwanisola*, 605 F.3d at 133 (explaining that witness fabrication of an event does not necessarily imply that the event did not occur). Rosemond could have intended the shooting to be a murder without saying as much to McCleod or using those specific words before the fact. Indeed, the Government's theory rests on that very scenario. *See Appellee's Br.* 35-36 ("The factual assertion implied by the Government . . . was that, notwithstanding the prior inconsistent statements by McCleod, it became clear to McCleod that Rosemond intended for Fletcher to be killed as part of the attack McCleod was hired to carry out, which is entirely consistent with Rosemond's proffer statement."). Such inquiry into exculpatory facts already elicited by the Government did not trigger the waiver. *See Barrow*, 400 F.3d at 119 ("[D]efense arguments that attempt to demonstrate *why the facts put in evidence by the prosecution* are insufficient to permit the jury to find the elements

of the crime proved [are not factual assertions that trigger the proffer agreement waiver]." (emphasis added)). Drawing the jury's attention to the fact that McCleod did not discuss killing or murdering in those words with Rosemond was simply an attempt to highlight the supposed insufficiency of Government proof on the element of intent.

Again, and most importantly, defense counsel did not accuse McCleod of actually conspiring with Rosemond to commit a non-fatal shooting, or make factual assertions to that effect. To the extent the questions might also have carried the implication that Rosemond did not actually intend to have Fletcher murdered, they were no more inconsistent with the proffer waiver than entering a plea of not guilty or challenging the sufficiency of the evidence.

As the district court correctly ruled, questions challenging the credibility of a witness do not trigger the waiver provision absent factual assertions contradicting the proffer statement. *See Roberts*, 660 F.3d at 158. Thus, it was permissible for defense counsel to ask questions regarding McCleod's prior statement that he never heard Rosemond use the words "kill" or "murder," as such questioning was not inconsistent with Rosemond's proffer statement that he "knew [Fletcher] was going to be dead." App. 204.

Finally, it is significant that at both trials it was the Government that elicited from McCleod the fact that Rosemond did not use the words "murder" or "kill." The Government did so on its direct examination of McCleod at the first trial, and during its redirect examination of McCleod at the second trial. At minimum, the Government opened the door, and defense counsel should not have been foreclosed from following up in cross-examination, recross-examination, or summation. Because the district court's interpretation of the scope of the waiver provision was unduly narrow, its restrictions on Rosemond's ability to cross-examine his witnesses and mount an effective defense violated the Sixth Amendment. *See Oluwanisola*, 605 F.3d at 133.

D. Harmlessness

Constitutional errors of this type are subject to harmless error review. *Oluwanisola*, 605 F.3d at 133. In assessing harmless error, we ask "whether we can 'conclude with fair assurance' that the errors 'did not substantially influence the jury.'" *Id.* (quoting *United States v. Ivezaj*, 568 F.3d 88, 98 (2d Cir. 2009)). We consider "(1) the importance of . . . un rebutted assertions to the government's case; (2) whether the excluded material was cumulative; (3) the presence or absence of evidence corroborating or contradicting the government's case on the factual questions at issue; (4) the extent to which the defendant was

otherwise permitted to advance the defense; and (5) the overall strength of the prosecution's case." *United States v. Gupta*, 747 F.3d 111, 133-34 (2d Cir. 2014) (alteration in original) (quoting *Oluwanisola*, 605 F.3d at 134)).

The error was not harmless. Indeed, the Government does not even argue in the alternative that it was. See Gov't Br. 31-44. The Government did, however, make such an argument in *Oluwanisola*, in similar circumstances. And we rejected that argument, even though, in that case, "defense counsel was permitted to make sufficiency arguments during summation." 605 F.3d at 134. Here, defense counsel was not permitted to make *any* sufficiency argument at *any* point during trial, whether during his opening, cross-examination, or closing. The district court's ruling therefore "had the effect of severely limiting [Rosemond's] ability to mount an effective defense. In a situation such as this one, where defense counsel risked letting the horse out of the barn if he did not closely adhere to the court's ruling, this limitation was substantial." *Id.*

We hold that the preclusion of defense arguments and cross-examination was not harmless error, and vacate Rosemond's convictions and remand for a new trial.⁴

⁴ Because we vacate the convictions on these grounds, we do not reach Rosemond's argument that the district court abused its discretion in admitting certain uncharged act evidence as excessive and prejudicial.

II. Sufficiency of the Evidence

Rosemond also argues that the Government failed to produce sufficient evidence to prove that Rosemond committed murder for hire or conspired to murder for hire because of the lack of evidence that Rosemond intended that Fletcher be killed. We reach this question despite our decision that Rosemond's conviction should be vacated on the grounds discussed above because, "if we were to conclude that there was insufficient evidence, we would be required to direct the district court to enter a judgment of acquittal," instead of a vacatur and remand for a new trial. *Oluwanisola*, 605 F.3d at 134 n.4.

We review challenges to the sufficiency of evidence *de novo*, and will uphold a conviction if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Vernace*, 811 F.3d 609, 615 (2d Cir. 2016) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In doing so, we "must view the evidence in the light most favorable to the government, crediting every inference that could have been drawn in the government's favor, and deferring to the jury's assessment of witness credibility and its assessment of the weight of the evidence." *United States v. Coplan*, 703 F.3d 46, 62 (2d Cir. 2012) (quoting *United States v. Chavez*, 549 F.3d 119, 124 (2d Cir. 2008)). "A defendant bears a heavy burden in seeking to overturn a

conviction on grounds that the evidence was insufficient." *United States v.*

Aleskerova, 300 F.3d 286, 292 (2d Cir. 2002) (internal quotation marks omitted).

There was sufficient evidence to show that Rosemond committed a murder for hire and conspired to do so with his associates. First, through cooperating witnesses, the Government presented a number of statements made by Rosemond from which an intent to murder could be inferred. For instance, witnesses testified that Rosemond said "something like they're not going to understand what it is until they're carrying a coffin," App. 315, and in connection with Fletcher's anticipated return home from prison, that "these dudes ain't gonna be happy until they go to a funeral," App. 266. Second, the jury could infer from the extent of planning and coordination that murder was the object of the conspiracy. Third, while Rosemond paid Czar associates \$5,000-\$10,000 for nonfatal attacks on other G-Unit associates, their homes, and their cars, he offered \$30,000 to anyone who would bring him Fletcher. Compared to the other shootings described during the course of the trial, the Fletcher shooting involved multiple meetings, coordination, and stealth, including the purchase of a separate phone used exclusively for communicating with Fletcher. Finally, Rosemond's behavior following Fletcher's death could reasonably imply that his goal had been achieved. After hearing that Fletcher had been killed, rather than

become angry or express regret, Rosemond gloated to friends about what had occurred and paid the participants for their actions.

In sum, viewing the evidence in the light most favorable to the Government, we conclude there was sufficient evidence to support Rosemond's convictions, and therefore decline to direct the District Court to enter a judgment of acquittal.⁵

CONCLUSION

For the reasons set forth above, we VACATE Rosemond's convictions and REMAND to the district court for further proceedings consistent with this opinion.

⁵ We note that our holding that the district court's error was not harmless but that a judgment of acquittal should not be entered is not internally inconsistent. The standards that we apply to determine whether an error was harmless and whether a judgment of acquittal should be entered are substantially different. When undertaking the latter analysis, we ask whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Vernace*, 811 F.3d at 615. Just because a rational trier of fact *could* have found that Rosemond had the requisite intent does not mean that a rational trier of fact *must* have done so, or that we can "conclude with fair assurance that the [district court's] errors did not substantially influence the jury." *Oluwanisola*, 605 F.3d at 133 (internal quotation marks omitted).



March 10, 2015

VIA ECF

J. Bruce Maffeo

Direct Phone 212-883-4951
Direct Fax 917-521-5866
jbmaffeo@cozen.com

Hon. Colleen McMahon
United States District Judge
Southern District of New York
500 Pearl St.
New York, NY 10007-1312

Re: **United States v. James Rosemond, 10 Cr. 431 (CM)**

Dear Judge McMahon:

This letter is submitted in advance of the sentencing of James Rosemond following his conviction after a jury trial of various charges arising from the shooting death of Lowell Fletcher on September 27, 2009. Because all of the charges for which Rosemond stands convicted, save that under 18 USC §924 (j)¹, carry a mandatory sentence of life imprisonment, the Court's discretion is accordingly limited. Moreover, the facts of the case need not be recited for the Court, who of course is intimately familiar with them having presided over this and the preceding trial that resulted in a mistrial in March of last year. We write nonetheless to provide the Court with additional facts regarding Rosemond that provide a fuller picture than what has been presented to date.

As an initial matter, we have reviewed the presentence report ("PSR") with Rosemond and conveyed our factual corrections to the probation officer, none of which, again with the exception of the gun charge referenced above, affects the sentencing outcome in this case. The discussion of Rosemond's personal history is accurate if of necessity abbreviated. Missing from the PSR, however, is a broader discussion of Rosemond's personal and business achievements, which by any measure are extraordinary.

Rosemond is fifty years old and grew up under difficult circumstances in Brooklyn, New York. His mother, now deceased, raised him as a single parent after separating from Rosemond's father because of his physical abuse toward her and her children. PSR, ¶¶114-116. Notwithstanding intermittent arrests and periods of incarceration, Rosemond surmounted these obstacles and went on to achieve notable success in the music industry both as a producer and manager, assembling a roster of celebrity clients. PSR, ¶119. He also fathered two children with Cynthia Reed, including his son, Jabalani, whose assault by Fletcher and his associates instigated the events leading to Rosemond's conviction in this case, as well as a now four year old daughter from his relationship with Tamika Wooley. PSR, ¶121.

¹ Section 924 (j) carries a sentence of either death, imprisonment for any term of years, or for life. See 18 U.S.C. §924. On March 5, 2015, after receiving a final draft of the presentence report, we advised the probation officer that the report incorrectly states that this provision carries a mandatory life sentence. See PSR ¶ 142. We ask that the report be corrected to reflect this correction.

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The contradiction between Rosemond's personal and professional achievements and the facts underlying his convictions both here and in the Eastern District of New York could not be starker, one that if anything becomes more pronounced after reading the letters submitted on his behalf. Dr. Theresa Buckson, who testified at both trials before Your Honor, writes at length of her 25 year relationship with Rosemond, which began before she began medical school:

We first met in New York at the Apollo Theater in Harlem in 1990, and quickly became the best of friends. I had just finished college and was working at several different jobs to save money to attend medical school. This was a time in my life of great financial hardship. Knowing this, he continually encouraged me to pursue my career in medicine and always had words of inspiration when all hope seemed lost.

James accomplished what many would perceive as not possible. He was raised with a modest upbringing in a single parent household and became a successful entrepreneur. He continues to encourage others to pursue their dreams and serves as an example that no matter where you begin in life, you can defeat the odds and be more than what your past would suggest that you should become.

Letter dated March 2, 2015, from Dr. Theresa Buckson. (A copy of Dr. Buckson's letter is annexed in Exhibit A with the other letters submitted on Rosemond's behalf.)

Dr. Buckson's comments do not stand alone. Cassandre Henriquez, a cousin of Ms. Woolley, shares her observations of Rosemond's many acts of kindness toward her and others:

He supported all those in need. Many a times friends, family, friends of friends and friends of family would drop by requesting support for a medical issue, for their child or even for themselves, etc. and he helped them in whatever way he could. He also supported as many causes as he could – including supporting many during and post the earthquake in Haiti.

Letter dated January 12, 2015, from Cassandre Henriquez (annexed in Exhibit A).

Jessica Evangelista, a recent law school graduate and also a single mother, relates how a chance encounter with Rosemond led to his assisting her in pursuing her ambition to become a lawyer:

I explained to him that I have always wanted to be a lawyer. I wanted to venture into an unknown area, which was the entertainment industry and he pushed me to go for it. I left my great position at the hotel and for an internship at a public relations firm with James's recommendation. While working there I had to run up to the 9th floor of the same building to an attorney's office for one of the PR firm clients. I was blown away by this small entertainment law firm ran by two women and all their plaques on the wall from the artist(s) they represented. I was left amazed, with such an interest to work there and be around those women. James knew exactly who I was talking about and was able to help me land an internship at the law firm. I ended up working for those amazing women for six years until they motivated and pushed me to go to law school. This was a domino affect (sic) of great memories and experiences in which James laid down the first piece for which I am internally (sic) grateful.

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Letter dated January 16, 2015, from Jessica Evangelista (annexed as Exhibit A).

The common theme in the letters excerpted above and the others submitted on Rosemond's behalf is his unique ability to inspire people who, like him, came from disadvantaged backgrounds to dare to achieve their dreams of a better life and career. Jarod Whitaker, a fledgling but successful businessman and a graduate student at NYU, writes the following:

[G]rowing up in the housing projects of North Philadelphia, I did not have access to refined businessmen and mentors who could help me carve out a roadmap for success. None of my immediate family members attended college or ascended past clerical or administrative positions at their respective jobs. Working for and being mentored by James Rosemond allowed me to graduate from an Ivy League institution and to command a salary and development fees that allows me to provide a very superior standard of living for my family. What James taught me was that hard work, consistency, character, and integrity are the building blocks for success.

Letter dated January 12, 2015, from Jarrod Whitaker (annexed as Exhibit A).

And as the several letters submitted from his fellow inmates reflect, Rosemond also has served as a positive role model for many of them.² Eban Carrion, a 24 year old inmate at the Metropolitan Correction Center, writes:

Sometime it take a guy like Jimmy Rosemond that can reach a guy that have no hope in life or society to see that anything is possible if you really want it. I never could relate to my prior counselors or mentoprs (sic) before but with Mr. Rosemond he told me his youth and how it was similar to mines and how he had a single mother and how he received his education in jail and was determined and how he ended up managing some of the top artists and athletes in the business. It[']s an inspiring story that made me want to try to be a better person and turn my situation around. If I could emulate Mr. Rosemond in his good qualities then I know I can beat the statistics in this life.

Undated letter from Eban Carrion (annexed as Exhibit A).

Finally, the Imam of Rosemond's mosque, whom Your Honor may recall was a constant presence in the audience during both trials, writes of Rosemond's devotion to his faith and charitable endeavors:

Once [Rosemond] was released and as he rebuilt his life in society as a successful entrepreneur, Mr. Rosemond worshipped often at our mosque for several years. During that time he was particularly charitable in donating to children's activities. While working as the C.E.O. of Czar Entertainment Inc. he provided a positive image for formerly incarcerated persons whom he never hesitated to assist during their own adjustment to post-incarceration life.

Letter dated February 9, 2015, from Imam Al-Hajj Talib 'Abdur-Rashid (annexed as Exhibit A).

² Attached as Exhibit B are copies of the many certificates for courses that Rosemond has completed during his incarceration.

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It is difficult to reconcile the portrait of Rosemond painted by these letters with that depicted at trial other than to accept the harsh reality that murder is a zero sum game where the finality of the deceased's death is balanced by what is here a near certain life sentence. The inevitability of that outcome, however, does not eradicate the positive achievements in James Rosemond's life to which these letters bear witness.

Respectfully submitted.

COZEN O'CONNOR



By: J. Bruce Maffeo

JBM
Enclosures

Cc: James Rosemond (by mail; w/encl)

HB6AAROS1

Jury Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 431 (LAK)

5 JAMES J. ROSEMOND,

6 Defendant.

7 -----x
8 New York, New York
9 November 6, 2017
10:00 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14
15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: SAMSON ENZER
19 DREW JOHNSON-SKINNER
20 ELIZABETH HANFT
21 Assistant United States Attorneys

22 DAVID TOUGER
23 JONATHAN I. EDELSTEIN
24 Attorneys for Defendant

25 ALSO PRESENT:

NYPD Detective Steven Smith
Nicholas Pavlis, Paralegal (USAO)

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1 (Case called)

2 THE COURT: Good morning, all. Be seated.

3 So we do not yet have a jury panel but I gather
4 they're not too far off. First of all, I received a letter for
5 Michael Rayfield and Scott Chessin of the Mayer Brown firm
6 asking for permission to withdraw in light of the fact that
7 evidently they weren't retained by Mr. Rosemond but in any case
8 Mr. Rosemond has hired somebody else. Is there any objection
9 to my granting their request.

10 MR. ENZER: None for the government.

11 THE COURT: Mr. Touger.

12 MR. TOUGER: No, your Honor.

13 THE COURT: Mr. Rosemond, what about you? Do you have
14 any objection to that?

15 THE DEFENDANT: No.

16 THE COURT: Thank you.

17 OK. As long as we have the moment, let me take care
18 of one piece of business with Mr. Rosemond.

19 Mr. Rosemond, I advise you as I am sure you know but I
20 advise you any way, that you have the right to testify in your
21 defense in this case. Your lawyers are obliged to give you
22 their best judgment as to whether in their opinion testifying
23 in your own defense would be in your interests. But the
24 decision is not theirs. It's yours and yours alone. Do you
25 understand that?

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1 THE DEFENDANT: Yes, I do.

2 THE COURT: OK. So if we get to the point where the
3 government rests and whether or not your attorneys put in any
4 defense for you, if your lawyers either say that the defendant
5 is going to present no evidence or they call some evidence and
6 they don't call you as a witness and you want to testify, I'm
7 going to ask you just to do this. Stand up just right where
8 you are. Don't say a thing. It's a signal to me. I'll excuse
9 the jury and I'll find out whether in fact you want to testify
10 and if you want to testify you'll be permitted to testify. Do
11 you understand?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Do you agree to that?

14 THE DEFENDANT: Yes, do.

15 THE COURT: But if you don't stand up at the point
16 where your defense says "no witnesses" or "no evidence" or "we
17 have no more evidence", if you don't stand up, I have no way of
18 knowing you want to testify and the conclusion I will draw is
19 that you don't want to testify, OK?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. OK. Now we have an additional
22 lawyer.

23 Mr. Edelstein, is it "Edelstein"?

24 MR. EDELSTEIN: Yes, your Honor.

25 THE COURT: You have been retained to assist in this

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1 trial?

2 MR. EDELSTEIN: I have, your Honor.

3 THE COURT: Mr. Rosemond, that's something I assume
4 you did, right?

5 THE DEFENDANT: Yes.

6 THE COURT: Anything else I should inquire about here,
7 Mr. Enzer?

8 MR. ENZER: No, your Honor.

9 THE COURT: All right. OK. Now, I gather Mr. Touger
10 has something he wants to raise.

11 MR. TOUGER: Yes, your Honor.

12 Your Honor, yesterday about 4:30 I got an e-mail from
13 the government that they had received four thousand pages of
14 Facebook pages of one of the cooperating witnesses. They
15 supplied me with approximately one hundred of those pages
16 saying in their mind those are what are "valuable" for lack of
17 a better term. I have reviewed those hundred pages but I
18 certainly do not have time at this point to review all those
19 four thousand pages by myself. What I'd ask the Court
20 especially since the government wants those pages reviewed at
21 their office and not, they don't want to give me the pages. So
22 what I'm asking the Court is if the Court would assign
23 Mr. Rosemond a paralegal through CJA funds because he has no
24 funds to do that, to review those four thousand pages.

25 As the Court is aware, Mr. Rosemond did have prior CJA

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1 counsel on his last two trials. His family has come forward
2 and hired attorneys obviously for this trial but those funds
3 are now dry and since we didn't know about this until as I said
4 Sunday at 4:30 there's no way of getting the funds to review
5 that.

6 THE COURT: Well, look, the most basic proposition is
7 you are going to have to establish eligibility under the
8 Criminal Justice Act.

9 MR. TOUGER: That's fine, your Honor.

10 We're happy to fill-out the form and as I said,
11 Mr. Rosemond had CJA counsel before.

12 THE COURT: Right. But he is being defended in this
13 case by retained counsel, a new one of whom has shown up this
14 morning for the first time and is presumably getting paid for
15 doing that.

16 MR. TOUGER: That's correct. He was retained last
17 week prior to us having any knowledge of this four thousand
18 page --

19 THE COURT: Well, you can appreciate why I have a
20 certain amount of concern with the assertion of indigency here.

21 MR. TOUGER: I can appreciate that, your Honor, but as
22 the Court knows for all the Curcio hearings we've done, none of
23 those funds came for Mr. Rosemond himself.

24 THE COURT: Well, I think you may have put it far more
25 strongly than is warranted. The fact is there are substantial

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1 funds that have been available to him for defending himself in
2 this case.

3 MR. TOUGER: In this case, yes.

4 THE COURT: Well, this is this case. That's what
5 we're talking about, all right? So --

6 MR. TOUGER: -- had found him eligible for CJA funds
7 previously.

8 THE COURT: I'm sorry?

9 MR. TOUGER: Judge McMahon had found him eligible for
10 CJA funds previously.

11 THE COURT: That was then. This is now. So you'd
12 better address the question in the affidavit of what funds are
13 actually available. It does not fly if somebody else is paying
14 the cost of the defense and they say, well, we'll pay for
15 Mr. Touger but we're not going to pay for the yellow pads and
16 we'll pay for Mr. Edelstein but we'd really like somebody else
17 for the government to pay for. You follow my drift?

18 MR. TOUGER: I understand the Court's thinking but I
19 think a paralegal would go through four thousand pages a little
20 different.

21 THE COURT: Yes, it's a lot cheaper.

22 MR. TOUGER: Then attorneys, yes.

23 THE COURT: Yes. So you're going to have to satisfy
24 me in the affidavit that there in fact are no funds available
25 to pay for this.

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1 MR. TOUGER: OK.

2 THE COURT: That's all I'm saying. OK?

3 Anything else?

4 MR. ENZER: Nothing from the government.

5 MR. TOUGER: Nothing at this time, your Honor.

6 THE COURT: OK. Now you may have detected that the
7 ambient temperature in here is not what it usually is. I
8 understand that there was some mechanical failure and possibly
9 a flood within the building. We have no indication of when air
10 conditioning will be restored. So it's going to be pretty warm
11 in here for the next few days I think. Maybe it'll be less
12 than that, I hope. Possibly a cold front will blow in from the
13 north. Keep our fingers crossed. Demonstrating the genius of
14 the GSA in allowing only one operable window per room and
15 barely that.

16 OK. Where do we stand on the jury panel, Andy?

17 COURTROOM DEPUTY: Usual for Monday is 11 o'clock,
18 judge.

19 THE COURT: OK. So the ETA for the jury panel is
20 11 o'clock. But stick around, maybe we'll get lucky.

21 (Recess)

22 (Continued on next page)

23

24

25

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1 A F T E R N O O N S E S S I O N

2 (2:40 p.m.)

3 MR. TOUGER: Your Honor, can we approach for a minute?

4 THE COURT: About what?

5 MR. TOUGER: Part of the issue that I brought up this
6 morning, your Honor, but on a different note. I told Mr. Mohan
7 that I wanted to bring it up to you.

8 THE COURT: On the paralegal?

9 MR. TOUGER: On the minutes, your Honor.

10 THE COURT: On the minutes?

11 MR. TOUGER: To get daily copy, your Honor.

12 THE COURT: I don't know anything about it.

13 We'll deal with it later.

14 MR. TOUGER: OK. Let's get going.

15 (Jury present)

16 THE COURT: OK.

17 Let's swear the jury, Andy.

18 (A jury of twelve and four alternates was sworn)

19 THE COURT: OK. The record will reflect that the
20 jurors and the defendant all are present, as they have been
21 throughout.

22 The first order of business, members of the jury, is
23 for me to give you some preliminary instructions to guide you
24 in your participation in the trial. It is the job of the jury
25 to find from the evidence what the facts are. You, and you

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1 alone, will be the judges of the facts. You will then be
2 obliged to apply to those facts the law that I give to you, and
3 you must follow that law, whether you agree with it or not.

4 You should understand that nothing I say or do during
5 the course of the trial is intended to indicate to you what
6 your verdict should be, and you shouldn't take it as that.

7 The evidence from which you are going to find the
8 facts will consist of the testimony of the witnesses, documents
9 and other things that may be received in evidence and any facts
10 that the lawyers agree upon or to use the jargon with which we
11 are all sadly afflicted, facts to which they may stipulate.
12 That's the legal jargon.

13 There are very rare occasions when the Court will
14 instruct you to find a particular fact. They normally deal, in
15 the very rare occasions when that comes up, with such things as
16 whether -- just to pick a date out of the air, April 14, 1876,
17 was a Wednesday or some other day of the week, objectively
18 determinable facts with which nobody could reasonably have any
19 controversy.

20 Some things are not evidence and are not to be
21 considered as evidence by you. Statements, arguments, and
22 questions by the lawyers are not evidence.

23 Secondly, objections to questions and other evidence
24 are not evidence. Lawyers, of course, have obligations to
25 their clients to object when they think evidence is being

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1 offered that is not properly received for your consideration.
2 You shouldn't be influenced by the objections. You shouldn't
3 be influenced by my rulings on them.

4 If an objection is sustained, you will ignore the
5 question. If it's overruled, you will treat the answer just
6 like anything else, any other answer.

7 There will be occasions I'm pretty confident where I
8 will instruct you that a particular piece of evidence may be
9 considered by you for one or more particular purposes but not
10 others. If that arises, I will explain it in more detail when
11 it occurs, but basically you are obliged to follow that
12 instruction too.

13 There will be times when I will exclude evidence or
14 conceivably a document or tell you to disregard something. If
15 I tell you that or if I strike evidence, you must adhere to
16 that. You may not consider anything I strike or tell you to
17 disregard.

18 The most obvious time when that occurs is a lawyer
19 asks or starts to ask a question, the witness blurts out an
20 answer, the other lawyer objects a little late on his feet
21 either because the witness got out in front of him, something
22 like that. In those circumstances, I may on occasion strike
23 the answer, and you just disregard the answer.

24 There are two kinds of evidence -- anybody who watches
25 television knows this -- direct evidence and circumstantial

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1 evidence. I am going to talk to you about that more at the end
2 of the case. But basically direct evidence is something that
3 you or the witness can see or hear or perceive. Circumstantial
4 evidence is indirect evidence. It's evidence from which you
5 draw a conclusion about something else.

6 There is a famous example about people coming into the
7 courtroom with wet umbrellas. Wet umbrellas are circumstantial
8 evidence that it is raining. It's no big magic here. The key
9 point is you may properly consider both kinds of evidence.

10 Implicit in the fact that it is your job to decide the facts is
11 that it is your job to decide which witnesses you believe and
12 exactly what they say that you believe.

13 It is going to be up to you and I want you to be alert
14 to that fact right from the git-go. There's not anybody, not
15 me or anyone else who at the end of the case is going to tell
16 you this witness was truthful, that witness wasn't. I'm sure
17 you know that, but I need to say it as well.

18 This, of course, as I have told you, is a criminal
19 case. There are three basic rules about criminal cases that
20 you have to keep in mind every minute.

21 The first is that the defendant is presumed innocent
22 unless and until proven guilty. There is, of course, an
23 indictment by the government against the defendant, but an
24 indictment is simply an accusation. It is nothing more. It is
25 not proof of guilt. It is not proof of anything at all. The

Hb6nros2

1 defendant starts out with a clean slate right this minute.

2 Second, the burden of proof is on the government until
3 the very end of the case. The defendant doesn't have to prove
4 that he is innocent. He doesn't have to present any evidence.
5 He doesn't have to testify. He has the right to remain silent,
6 and the law prohibits you from arriving at your verdict by
7 considering that the defendant may not have testified if that's
8 what happens.

9 Thirdly, the government must prove the defendant
10 guilty beyond a reasonable doubt. I will talk to you about
11 what that means at the end of the case, but bear in mind it is
12 a high standard of proof. It is a more exacting standard than
13 is used, for example, to decide who should pay for a dent in
14 your car fender after there's been some unfortunate episode at
15 a stoplight or in a parking lot. In those cases we are only
16 talking about money, not that money is never important, but we
17 are only talking about money. Here we are talking about far
18 greater consequences for a defendant, and the standard of
19 proof, therefore, is higher.

20 Now, a couple of words about the law in this case,
21 because there are some distinctions I want you to keep in mind.
22 In this case, the defendant is charged with murder through the
23 use of a firearm. He is charged with murder for hire, he's
24 charged with conspiracy to commit murder for hire, and he's
25 charged with possession of firearms during and in furtherance

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1 of the alleged conspiracy to commit murder for hire.

2 Now I am going to instruct you in detail at the end of
3 the case on the law governing those alleged crimes, but I want
4 to make two points now just for the sake of facilitating your
5 ability to follow and understand the evidence as it comes in.

6 The first point relates to the count that charges the
7 defendant with conspiracy to commit murder for hire. What I
8 want to talk to you about for just a minute is an important
9 concept concerning the law or the crime of conspiracy.

10 The crime of conspiracy is an agreement or an
11 understanding between two or more people to try to accomplish
12 one or more unlawful objectives. It sometimes requires more
13 than just an agreement, but I will talk about that later, if
14 it's necessary at all.

15 The key point that I want you to understand and that I
16 emphasize in order to help you follow the evidence with respect
17 to the conspiracy count is the need for the government in order
18 to convict on that count to prove that there was an agreement
19 or understanding to accomplish the illegal purpose charged in
20 the indictment, which was to hire one or more other people to
21 commit murder for hire.

22 It is important to understand that the crime of
23 conspiracy does not require the illegal objective actually to
24 have been accomplished. It's the agreement, not achievement.
25 So, just to take a very simple example that purposely has

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1 nothing at all to do with this case, if two guys agree to rob a
2 bank, they may be guilty of conspiracy to commit bank robbery,
3 even if no bank is ever robbed. That's the point.

4 The second point I think might be helpful to you in
5 following the evidence relates to the other three counts, the
6 counts charging murder through the use of a firearm, murder for
7 hire, and possession of firearms in furtherance of the alleged
8 conspiracy to commit murder for hire.

9 We call these three counts, the nonconspiracy counts,
10 substantive counts.

11 On the substantive counts, the defendant, provided
12 that the government carries its burden of proof beyond a
13 reasonable doubt, can be convicted if he committed the crime
14 himself, if he caused another person to commit the crime, or if
15 he aided and abetted another person to commit the crime.

16 So, to use the bank robbery example, just for purposes
17 of illustration, someone can be convicted of bank robbery if he
18 walks in to a bank and robs it, but he can be convicted of a
19 bank robbery also if he caused somebody else to walk in and rob
20 it or if he helped out, aided and abetted someone else to rob
21 the bank.

22 Now, as I said, I am going to explain all this in
23 great detail at the end of the case, and it will be those
24 instructions that I give at the end of the trial that you will
25 apply in reaching your verdict. A key point to keep in mind is

Hb6nros2

1 that, to whatever extent anything I say later is either
2 different from or elaborating on what I have just said, you
3 follow what I say at the end, not now. But I have given you
4 these basic points in the briefest summary just to help you
5 follow the proof.

6 Now, just a couple of words about your conduct as
7 jurors.

8 You are going to decide this case based solely on the
9 evidence presented here in this courtroom. That means that
10 during the trial you do no independent research about this
11 case, anything involved in this case, or any of the people or
12 corporations, if there are any, that are involved in the case.

13 In other words, you go to no dictionaries, no
14 reference materials, you don't search the Internet, you don't
15 visit the scenes, you don't look up anything on websites, you
16 don't blog about it, you don't read anybody else's blogs about
17 it, you use no electronic media whatsoever for any purpose in
18 connection with this case. Now, of course we never used to
19 have to say this, but there it is.

20 Until you retire to deliberate you may not discuss
21 this case with anyone, even with each other.

22 After you retire to deliberate, you then may discuss
23 the case with your fellow jurors, but you can't discuss the
24 case with anyone else at any time until after the case is over,
25 you have returned a verdict, and you have been discharged.

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1 Now, I just have to say one more word about cell
2 phones, BlackBerrys, and the Internet, because they are getting
3 to be a little bit of a problem for courts.

4 You can't communicate with anybody about this case,
5 not until it is all over, and certainly no texting, no
6 blogging, none of that stuff. It is just a very difficult
7 problem to deal with should it occur.

8 If any other juror to your knowledge is doing any of
9 those things, I hate to tell you, but you've got to report it
10 to Andy so that I can take appropriate action.

11 The second thing you should bear in mind, you
12 shouldn't have any contact with the lawyers or witnesses and
13 they should have no contact with you at all.

14 Now, this is a highrise building. We all ride the
15 elevators. The chances are you are going to get into an
16 elevator someday and somebody you are not supposed to be
17 talking to is going to be in that elevator.

18 Don't say a word, and they will not say a word to you.
19 And you should not take offense if somebody who's sitting eight
20 feet from you is in an elevator or in a hallway and cuts you
21 dead, to use the vernacular. They are just trying to be purer
22 than Caesar's wife and avoid any appearance that anything
23 improper has happened.

24 I would urge you to keep an open mind until the very
25 end of the case. You know, when somebody is writing a

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1 screenplay about a legal case, they can have everything
2 arranged in exactly the right order, so it all unfolds in a
3 perfect storyline.

4 Trials can't be done that way. They just can't.
5 Witness A knows X and witness B knows Y, and it doesn't come in
6 necessarily in the order you have if you were writing the TV
7 script. So you need to keep your mind open because you are not
8 going to have the whole picture in all likelihood until the
9 end.

10 You are welcome to take notes during the trial. Bear
11 in mind that it sometimes is difficult to take notes and pay
12 attention at the same time. I find that myself, all the time.

13 If you do take notes, just try and make sure that the
14 note-taking does not interfere with your paying attention and
15 understanding and really getting what's going on with the
16 witness.

17 If you do take notes, don't discuss them with anybody
18 else before your deliberations. Do not take them home at the
19 end of the day. Leave them in the jury room. Andy will take
20 care of them.

21 And when you come to your deliberations, rely on what
22 you perceived to have happened. Don't give inappropriate
23 precedence to the notes of other people.

24 Now just a word about how the trial will unfold and
25 then we are off to the start.

Hb6nros2

1 The government will make an opening statement. Think
2 of opening statements in trials like trailers at the movies.
3 They are what the person making the opening wants you to think
4 is going to be the full picture, and they are telling you what
5 they expect to prove.

6 Sometimes when I go to the movies and I see a trailer
7 and I see the movie, it is all just what I expected. And
8 sometimes I see the trailer and the movie is not quite what I
9 expected at all. That happens in trials too. Not that anybody
10 has done anything wrong; it's just that life is that way. So
11 the point I am making is it is just a statement of expectation
12 about what is down the road. It is not evidence.

13 The defendant's lawyer may but is not obliged to make
14 an opening statement. Opening statements, of course, are not
15 evidence, and they are not arguments.

16 The government then calls its witnesses.

17 The defense gets to cross-examine them.

18 After the government is through, the defendant may, if
19 he wishes, present evidence, whom the government may
20 cross-examine.

21 Once all the evidence is in, the lawyers will make
22 closing arguments to summarize and interpret the evidence for
23 you, and I will instruct you on the law.

24 Normally in a trial that goes beyond a week, what I am
25 about to talk to you about for 30 seconds doesn't become an

Hb6nros2

1 issue for the jury. That is to say, before the lawyers make
2 their closing arguments, I have to tell them what my final
3 instructions on the law will be so that their arguments are
4 appropriately suited to what I am going to tell you the law is.

5 In order to do that, the practice is that I write them
6 all out, I give the written copy to them in advance, they get
7 to come and argue with me that, Judge, we think you should do
8 something different, and I have to rule on all those points.

9 In a short trial that normally can't be done without
10 having you wait in the jury room while that process goes on.
11 It's boring, and it's in some ways a waste of time from your
12 point of view.

13 In a longer trial like this one I can normally get
14 that done after hours or on a weekend or on a day off, and we
15 will all try to make sure that happens.

16 But if we get to a point where we have to ask your
17 indulgence to sit still while we finish that process, please
18 understand we tried to avoid it and just couldn't manage it.

19 There are also occasionally times when legal issues
20 arise during a trial that have to be thrashed out. We may have
21 to ask you to go in the jury room. We will try and avoid that,
22 but just be assured that we, all, the lawyers and I, are very
23 mindful of the fact that we want to keep your duration in the
24 courthouse to a minimum. Everybody is very sensitive about
25 your investment of time.

Hb6nros2

Opening - Ms. Hanft

1 Now, somebody inquired I gather, if one of you needs a
2 restroom break during the course of the trial, either get
3 Andy's attention just by staring him in the eye or raising your
4 hand, and we'll take care of whatever the problem is.

5 We normally take a break somewhere around 10:30 to
6 11:15 in the morning, and, if we start at 2 o'clock, somewhere
7 between 3 and 3:30. That is the usual schedule. Here we are
8 starting a little late this afternoon, and we will just go
9 along and see how it goes. But in case of emergency, now you
10 know how to deal with it.

11 OK.

12 I think we're all set. And I believe Ms. Hanft is
13 going to open for the government.

14 MS. HANFT: Yes. Thank you, your Honor.

15 On a Sunday night in September 2009 a man named Lowell
16 Fletcher arrived in a dark and deserted area of the Bronx.
17 Fletcher was there to meet with a man he knew as Slim.
18 Fletcher thought that Slim was going to take him out for drinks
19 and give him some money.

20 Fletcher didn't know what Slim looked like. He had
21 only spoken to him on the phone, but they had a mutual friend,
22 and they had served time in the same prison.

23 Fletcher walked back and forth, but he didn't see
24 Slim. What Fletcher didn't know is that Slim never intended to
25 help him. Slim was part of a crew of men sent there to murder

Hb6nros2

Opening - Ms. Hanft

1 Fletcher, and Slim had lured Fletcher to that spot so that
2 Fletcher could be assassinated.

3 While Fletcher was looking around for Slim, a member
4 of the murder crew holding a gun with a silencer appeared out
5 of nowhere and shot Fletcher five times in the back.

6 Fletcher began to run. He made it around the corner
7 and down the block before he collapsed. Fletcher died later
8 that night. He was 32 years old.

9 Fletcher was lured to that spot and killed in a hired
10 hit. The man who ordered and paid for the murder is that man
11 the defendant, James Rosemond.

12 In order to understand how and why the defendant had
13 Fletcher murdered, you need to know a little more about the
14 defendant, so let me take a step back and tell you about what
15 the evidence will show in this trial.

16 In the early 2000s, the defendant was the CEO of a rap
17 music management company. He managed well-known artists. His
18 signing of one of those artists in particular, a rapper known
19 as The Game led to a bitter dispute with a rival rap group.
20 That rival rap group was called G-Unit.

21 G-Unit included rappers such as 50 Cent and Tony Yayo,
22 and Lowell Fletcher was a part of G-Unit.

23 You will hear from witnesses during this trial about
24 just how explosive the feud between the defendant and G-Unit
25 was, shootings at an office building in Chelsea, a shooting

Hb6nros2

Opening - Ms. Hanft

1 outside the Hot 97 radio station in Manhattan, the shooting of
2 a Bentley in Harlem.

3 But for Rosemond an incident in March 2007 was the
4 last straw. In March 2007, Rosemond's son was assaulted by
5 Fletcher and other G-Unit members when they saw him walking
6 down the street. During this assault, Rosemond's son was
7 slapped and threatened with a gun. Fletcher was arrested for
8 his role in the assault and went to prison.

9 But that was not enough to satisfy Rosemond. After
10 the assault on his son, Rosemond decided that a member of
11 G-Unit had to die, and because Rosemond ran a large-scale
12 cocaine trafficking operation in addition to his music
13 business, Rosemond had a group of criminal associates who were
14 loyal to him and who he could trust to do his dirty work.

15 As you will learn during this trial, after his son was
16 assaulted, Rosemond became obsessed with getting revenge on
17 G-Unit, and he made clear to his associates that he would not
18 be satisfied until G-Unit members were carrying a coffin.

19 Rosemond enlisted several of his criminal associates
20 to make attempts on the lives of members of G-Unit as well as
21 their family members.

22 As you will see and hear during this trial, for more
23 than two years, Rosemond and his team tried over and over again
24 to have a member of G-Unit shot and killed. But, try as he
25 did, Rosemond was unable to put a G-Unit member in a coffin.

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Opening - Ms. Hanft

1 Then in 2009 Rosemond learned that a vulnerable member
2 of G-Unit, Lowell Fletcher, was coming home from prison.
3 Rosemond learned this from Slim, an associate of Rosemond's who
4 had been in prison with Fletcher. Rosemond arranged for Slim
5 to lure Fletcher to a location where Fletcher would be
6 ambushed.

7 Rosemond recruited a crew of several men to murder
8 Fletcher, promising thousands of dollars as payment for the
9 deed. During this trial, you will hear about several meetings
10 that Rosemond had with Slim to plan Fletcher's murder. You
11 will hear that Rosemond collected information about Fletcher
12 and sent people to find a suitable location for the murder, a
13 place with as few cameras as well to avoid leaving a trace.

14 You will hear that after the murder crew selected a
15 spot for the murder, Rosemond instructed his personal chauffeur
16 to bring one of Rosemond's guns to the spot, a gun with a
17 silencer, and hand the gun off to the shooter.

18 Based on Rosemond's instructions, Slim began calling
19 Fletcher after Fletcher was released from prison.

20 In the days leading up to the murder, just like
21 Rosemond had arranged, Slim befriended Fletcher over a series
22 of phone conversations. He convinced Fletcher to meet up with
23 a promise of drinks, girls, and money to help Fletcher get back
24 on his feet.

25 You will hear how in the evening on September 27,

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Opening - Ms. Hanft

1 2009, Fletcher went to meet Slim in the Bronx. Rosemond's
2 murder crew was already there lying in wait.

3 Rosemond's trigger man appeared out of nowhere and
4 shot Fletcher over and over again in the back as Fletcher tried
5 to run away.

6 A woman driving down the street with her kids stopped
7 her car and tried to give Fletcher CPR. He was eventually
8 taken to the hospital, but he died that night.

9 After the deed was done, Rosemond told his chauffeur
10 to get rid of the murder weapon Rosemond had provided. So
11 Rosemond's chauffeur drove over to the East River and threw the
12 gun and its silencer into the water.

13 Shortly after the murder, Rosemond had one of his
14 associates pay Slim and the shooter in the form of about
15 \$30,000 worth of cocaine. He also paid his chauffeur thousands
16 of dollars for assisting with the murder.

17 Now, you won't hear that Rosemond expressly used the
18 words "kill" or "murder" when he ordered the hit on Fletcher or
19 spelled out all the details. He didn't have to. Rosemond made
20 clear through his actions and statements both before and after
21 the murder that Fletcher's murder was what he wanted when he
22 planned and ordered the deadly shooting of Fletcher.

23 The evidence you will hear and see at this trial will
24 prove beyond a reasonable doubt that the defendant James
25 Rosemond agreed with others to have a member of G-Unit murdered

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Opening - Ms. Hanft

1 and that Rosemond's crew accomplished this goal by shooting
2 Lowell Fletcher to death.

3 So how will the evidence prove that?

4 Let's talk a little bit about the evidence you can
5 expect to see and hear in this case. It will come in many
6 different forms, including the testimony of witnesses, physical
7 evidence, and documents.

8 You will hear from different types of witnesses, who
9 will testify as to what they saw and heard.

10 First, you will hear from law enforcement officers,
11 such as the officer who responded to the murder scene as well
12 as officers who responded to other violent acts that Rosemond
13 and his associates committed against members of G-Unit.

14 Second, you will hear from a few expert witnesses.
15 For example, you will hear from a medical examiner who will
16 testify you how Fletcher died from gunshot wounds.

17 Third, you will hear from everyday citizens who
18 happened to witness events relating to the murder. For
19 example, you will hear from an eyewitness who saw the shooting
20 take place on his way back from picking up dinner. And you
21 will also hear from Fletcher's sister who he was living with at
22 the time and who had spent that day with Fletcher the day he
23 was murdered.

24 Finally, you are going to hear from people who have
25 inside knowledge of Rosemond's crimes. That is because those

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Opening - Ms. Hanft

1 people committed crimes with Rosemond. For example, you will
2 hear from Slim, the lure man, and the chauffeur who brought the
3 gun about Rosemond's involvement in the planning and
4 orchestration of the murder.

5 In addition, you will hear from two other criminal
6 associates of Rosemond.

7 First, Rosemond's enforcer, who will testify you about
8 the numerous acts of violence he committed on Rosemond's behalf
9 as part of the G-Unit feud; and, second, the manager of
10 Rosemond's drug organization, who will testify about his
11 conversations with Rosemond about Fletcher before and after the
12 murder.

13 Make no mistake about it, these individuals have
14 committed serious crimes, just like the defendant. They will
15 tell you about their own arrests in this case and the crimes
16 they've committed in the past. You will hear how they were
17 caught, charged, and prosecuted by the government for what they
18 did.

19 Now, these insider witnesses aren't here to testify
20 out of the goodness of their hearts. They are here because
21 each of them has agreed to cooperate with the government in
22 exchange for leniency for their crimes.

23 The reality is and your common sense tells you that
24 only other criminals, the defendant's most trusted associates,
25 can tell you how the defendant's crimes were planned and

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Opening - Ms. Hanft

1 executed.

2 The question at the end of this trial will not be
3 whether these cooperating witnesses are good people or whether
4 you like them, but whether they are telling the truth.

5 So you should listen carefully when they testify,
6 scrutinize what they are saying. Is it consistent with what
7 you are hearing from other witnesses? Does it fit with the
8 rest of the evidence in this case? These are the questions
9 that will help you decide whether the cooperating witnesses are
10 telling the truth.

11 I mentioned you would also see physical evidence.
12 That evidence will support what you will hear from the
13 witnesses. For example, you will hear about cell phone
14 evidence tieing Rosemond to the planning and executing of the
15 murder.

16 You will also see video surveillance showing the
17 shooter and Fletcher in the last moments of his life.

18 Each of these witnesses and types of evidence will
19 provide you with a different piece of the story of what
20 happened that night in September 2009 when Fletcher was killed.

21 Soon you will begin to hear the evidence in this case,
22 but before I sit down, I'm going to ask you to do three things.

23 First, pay close attention to the evidence. It won't
24 always come in chronological order. But at the end of the
25 trial you will be able to put it all together and see how it

Hb6nros2

Opening - Mr. Touger

1 fits.

2 Second, follow Judge Kaplan's instructions on the law.

3 Third, use your common sense, the same common sense
4 you rely on in your everyday lives.

5 If you do those three things, you will return the only
6 verdict that is consistent with the evidence in this case, that
7 the defendant James Rosemond is guilty.

8 THE COURT: Thank you, Ms. Hanft.

9 Mr. Touger, do you care to open?

10 MR. TOUGER: Thank you, your Honor.

11 Good afternoon, ladies and gentlemen. My name is
12 David Touger, and it's my honor and privilege to represent
13 Mr. Rosemond along with Mr. Edelstein before you today.

14 The Court has given you some preliminary charges, and
15 the Court will give you charges at the end of the case. I want
16 you to listen very carefully when the Court does that.

17 When the Court gives you those charges, the Court will
18 tell you that it is the burden of these five individuals to
19 prove to you beyond a reasonable doubt each and every element
20 of each and every crime that Mr. Rosemond is charged with.

21 One of those elements that the government must prove
22 is that the conspiracy that was alleged to have been formed had
23 a purpose of killing someone, especially Lowell Fletcher.

24 The evidence that you will hear from the government in
25 this case will fall short on this element.

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Opening - Mr. Touger

1 What's important is that no matter how many elements a
2 crime charged has, whether it is three, ten, four, if they miss
3 one element, you must return a verdict of not guilty.

4 There is a major gap in the government's case. They
5 will present no evidence to prove that Jimmy intended that
6 Fletcher be murdered, as opposed to being shot or injured. To
7 bridge this gap in their proof, the government is going to
8 parade before you four separate cooperating witnesses, none of
9 which will be able to testify that the conspiracy was formed to
10 kill someone, let alone Lowell Fletcher.

11 What they will do is testify to numerous violent acts
12 that were perpetrated by both sides of this feud, both the
13 G-Unit side and Jimmy's record company side, and they will
14 allege to you that Jimmy is a drug dealer, a charge that he's
15 not even accused of at all, as the Court has already told you.

16 The government is going to try to bridge in gap in
17 their evidence by painting a picture of Jimmy as this big shot,
18 violent drug dealer and hope that you have so little regard for
19 your role as jurors that you forget that this is America and
20 you must be only convicted for the charges that you are charged
21 with.

22 You must follow the oath and the judge's charge on the
23 law and may only convict someone if the government has proved
24 those elements to you. That is what jurors in America are
25 charged with doing. That is the oath you took and have sworn

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Opening - Mr. Touger

1 to uphold.

2 The government may prove to you that Jimmy is a drug
3 dealer.

4 The government may prove to you that Jimmy committed
5 some violent acts, even acts where guns were involved.

6 But what the government will not prove to you is that
7 Jimmy intended that Fletcher be murdered as opposed to being
8 shot or injured. The government will not be able to prove that
9 one important element.

10 The government will want you to believe that James
11 Rosemond is a large-scale drug trafficker who perpetrates one
12 violent act after another and who spends each and every day
13 plotting to kill a member of G-Unit.

14 Yet in reality what happens over many years is that no
15 one gets hurt until the Fletcher incident.

16 The evidence will fail to show you that Jimmy ever
17 orders anyone killed or uses any colloquial term in that
18 manner, despite the fact that evidence will show you that Jimmy
19 himself is attached and threatened by members of G-Unit.

20 On many occasions when Jimmy is threatened or
21 attacked, he just walks away. Does that sound like the street
22 thug that they want you to believe that he is?

23 The government, besides the four cooperating
24 witnesses, will present many police officers and other civilian
25 witnesses. None of them will present any evidence that will

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Opening - Mr. Touger

1 help you come to any conclusions on whether the government has
2 proven that Jimmy intended that Fletcher be murdered as opposed
3 to shot or injured.

4 You will undoubtedly notice that when many of these
5 witnesses testify, I will not cross-examine them or have very
6 few questions for them. The reason is that they are solely
7 being used to prove facts that are either not in contention or
8 act as a smokescreen to attempt to cover up this hole in their
9 proof. The government will spend a lot of time proving facts
10 that the defense does not contest.

11 Yes, there was a feud between G-Unit, headed by Chris
12 Lighty and James' record company.

13 Yes, both sides committed violent acts against each
14 other.

15 Yes, both sides threatened each other.

16 This is not in dispute.

17 It is also not in dispute that Lowell Fletcher was a
18 gang member and was one of three grown adults who threatened
19 Jimmy's son with a gun and assaulted him outside the offices of
20 Jimmy's music company.

21 It also not in dispute that Jimmy was upset at the
22 fact that his son was assaulted in this fashion. Anyone on
23 this jury, anyone anywhere would be upset if your child came
24 home and said three grown men just assaulted me with a gun,
25 especially when your child is a small-built 14-year-old kid.

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Opening - Mr. Touger

1 So, yes, it is undisputed that Jimmy was upset by this action
2 by these men that belonged to G-Unit.

3 But what is interesting is that Jimmy, besides being
4 so upset, so upset that the government witnesses will testify
5 that he couldn't even sleep, the evidence will show that on the
6 day of the attack, when Jimmy goes outside after the attack has
7 occurred with a group of his followers, one of them points out
8 a man that is Chris Lighty's brother and he says, "Let's get
9 him. Let's get that guy for what he did, they did to your
10 son."

11 And what does Jimmy say, this man the government will
12 attempt to prove to you is a bloodthirsty killer, bent on
13 revenge, this man who allegedly will stop at nothing because of
14 the attack on his son? What does he do? You would expect me
15 to say that he said, "Go ahead, get him."

16 But in reality, you will hear that's not what he said
17 at all. He said, "No, leave that man alone."

18 There will be other incidents in this case that the
19 evidence will show where James himself is threatened with
20 deadly force or physically abused in public by members of
21 G-Unit when Jimmy just turns the other cheek.

22 The evidence will clearly demonstrate the gaping hole
23 in the government's case that Jimmy did not intend that
24 Fletcher be murdered.

25 Now let us discuss these four cooperators who will

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Opening - Mr. Touger

1 testify before you. The evidence will show that all four of
2 them were facing decades in jail if not the rest of their lives
3 when they were first arrested, and were told this and knew this
4 not only by their own knowledge, but they were told this by
5 their attorneys who were representing them.

6 The evidence will show that, instead of facing such a
7 harsh sentence, they decided to testify against Jimmy and walk
8 themselves out of jail.

9 The evidence will show you that three of the four are
10 already out of jail walking among you and I, despite all the
11 crimes they have committed in their lives.

12 They are free for one reason and one reason only:
13 They agreed to testify for those five people. They have lied
14 all their lives. They have lied to the government. They have
15 lied to judges. They have lied to parole officers. They have
16 lied to police officers. They have lied under oath. They have
17 lied not under oath. They have lied for their own benefit, and
18 they will do that here, because now they are lying for the most
19 important thing -- their freedom, instead of spending the rest
20 of their lives in jail.

21 One will even tell you point blank that he would stand
22 here and lie to you, ladies and gentlemen of the jury, if it
23 meant he would get out of jail, and you will see that he is out
24 of jail.

25 He is out of jail for one reason. He's agreed to

Hb6nros2

Opening - Mr. Touger

1 testify here. Just like his friends, he was decided to put
2 James in jail so they could go free.

3 You will hear them. You will hear the litany of
4 crimes that they have committed, most of them since they were
5 teenagers and long before they ever met Jimmy. You will hear
6 their testimony, and it is up to you to judge their
7 credibility.

8 The evidence will show, however, that two of them had
9 nothing to do with the charges before you and have no personal
10 knowledge of this crime whatsoever.

11 They are only being presented to you in an attempt to
12 inflame your emotions against Jimmy and manipulate you so that
13 you will not follow through with your oath to decide this case
14 as the Court has instructed you, based solely on the facts
15 presented to you at this trial, and convict James only because
16 you find him to be a bad person.

17 I give you more credit than that. I give you more
18 credit than the government does.

19 I believe that in the end you will be able to follow
20 the judge's charge on the law to you, and you will decide this
21 case based on the law given and the credible facts you will
22 hear.

23 The government doesn't want you to do that. They want
24 you to become so influenced by the evidence that has nothing to
25 did with these charges that you forget to do your job as

Hb6nros2

Opening - Mr. Touger

1 jurors.

2 The other two cooperators who, despite their
3 involvement in the shooting and killing of Lowell Fletcher,
4 will also be unable to bridge the gap in the government's case
5 against Jimmy.

6 Even after you hear the testimony, their evidence will
7 demonstrate that the government has still failed to prove that
8 Jimmy intended that Fletcher be murdered as opposed to shot or
9 injured.

10 The evidence will show that the perpetrators were
11 offered \$30,000 to bring Lowell Fletcher to James, and after
12 the shooting the perpetrators felt they should be paid twice
13 that because Lowell Fletcher had been killed.

14 The evidence will fail to prove that James ever
15 entered any conspiracy whose goal was to kill anyone, let alone
16 Lowell Fletcher.

17 The evidence will show you that in the end this is a
18 very simple case: Three grown men with a gun assault a little
19 kid. His father gets angry, as many of us would.

20 That is what this case is about, nothing else. It has
21 nothing to do with the feud between G-Unit and Jimmy's record
22 company. It has nothing to do with whether Jimmy is or is not
23 a drug dealer or has or has not perpetrated crimes of violence
24 because of the feud with Chris Lighty's company.

25 It has to do with one thing: A father seeking revenge

Hb6nros2

Opening - Mr. Touger

1 on the person who assaulted his son. The evidence will clearly
2 demonstrate this and will clearly demonstrate the gap in the
3 government's proof that Jimmy intended that Fletcher be
4 murdered as opposed to shot or injured.

5 I would ask you to do one thing as you listen to each
6 witness as they come before you. When they are done
7 testifying, ask yourself one question: Did that witness help
8 you to decide if Jimmy intended a murder?

9 There will be a lot of witnesses. For instance, the
10 ME that the government just spoke about. That witness will be
11 telling you the truth, will give you lots of scientific
12 evidence. But none of it will help you decide that question of
13 whether Jimmy intended this crime to occur.

14 And then if you decide that the witness has given you
15 evidence relative to this crime, then decide which way does
16 that witness swing the pendulum? Towards guilt or nonguilt?

17 If you do that, I believe, in the words of an old
18 hamburger commercial that you are going to finish each analysis
19 of each witness asking yourself one question: Where's the
20 beef? Where's the proof that Jimmy intended to kill someone?

21 The evidence by the prosecution will not provide you
22 with the beef.

23 You will get lettuce and unions, you'll get a roll,
24 you will even get some special sauce, but you won't get the
25 beef.

Hb6nros2

Opening - Mr. Touger

1 I trust you, ladies and gentlemen. I trust you to
2 listen carefully to the evidence. I trust you to listen
3 carefully to the judge's charge on the law associated with this
4 case.

5 I trust you to act as intelligent American jurors who
6 are sworn to uphold the Constitution of this great nation and
7 hold the government to its burden of proof, unlike the
8 prosecution, which is banking on you to be swayed by irrelevant
9 and emotional testimony and thus forget the task at hand.

10 A man died. That's the truth.

11 The question is, under what circumstances did he die,
12 and who intended his death?

13 I trust you, that the evidence will show you the
14 answers to those questions. I trust you to render the only
15 verdict that the credible evidence and the law allows, that of
16 not guilty on all counts.

17 Hold the prosecution to their burden. Do not fall
18 into their emotional trap. Do the job you have sworn to do,
19 and Jimmy, Mr. Edelstein and I will be very happy with your
20 results.

21 Thank you.

22 THE COURT: Thank you, counsel.

23 First witness for the government?

24 MS. HANFT: The government calls Leta Bethel.

25 LETA BETHEL,

Hb6nros2

Bethel - direct

1 called as a witness by the Government,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HANFT:

5 THE COURT: You may proceed, Ms. Hanft.

6 Q. Good afternoon, Ms. Bethel.

7 A. Good afternoon.

8 Q. How old are you?

9 A. 37.

10 Q. Are you currently employed?

11 A. Yes.

12 Q. Where are you employed?

13 A. I work for BJ's Wholesale.

14 Q. Where do you currently live?

15 A. In West Palm Beach, Florida.

16 Q. Ms. Bethel, could you speak into the microphone, please.

17 A. I'm sorry. In West Palm Beach, Florida.

18 Q. Where did you live prior to that?

19 A. Brooklyn, New York.

20 Q. Where did you grow up?

21 A. In Far Rockaway, Queens.

22 Q. When you were growing up, who was in your family?

23 A. Me, my sisters, and my brothers.

24 Q. How many brothers did you have?

25 A. Five brothers and two sisters.

Hb6nros2

Bethel - direct

1 Q. Could you please name your brothers.

2 A. Shefazz Bethel, Lowell Fletcher, James Bethel, Trevor
3 Carson, and Norman Atheis.

4 MS. HANFT: Your Honor, permission to approach?

5 THE COURT: Yes.

6 Q. Ms. Bethel, I'm showing you what's been marked for
7 identification as Government Exhibit 17.

8 What is this?

9 A. That is a picture of my brother.

10 Q. Does that picture fairly and accurately represent your
11 brother?

12 A. Yes, ma'am.

13 MS. HANFT: The government offers Government Exhibit
14 17?

15 THE COURT: Received.

16 (Government's Exhibit 17 received in evidence)

17 THE COURT: Let's skip the foundation unless there's a
18 reason you think you really need to lay it.

19 MS. HANFT: I understand, your Honor.

20 THE COURT: If there is an objection, we can deal with
21 it.

22 BY MS. HANFT:

23 Q. Did your brother have a nickname?

24 A. Yes.

25 Q. What was that nickname?

Hb6nros2

Bethel - direct

- 1 A. Lodi Mack.
- 2 Q. What is the age difference between you and your brother?
- 3 A. Like three years apart.
- 4 Q. Who was older?
- 5 A. He was.
- 6 Q. Did you and Lowell live together while you were growing up?
- 7 A. We lived together, and then we were separated.
- 8 Q. And about when were you separated?
- 9 A. When I was ten.
- 10 Q. For about how long?
- 11 A. For seven years.
- 12 Q. And so approximately when would you say that you and your
- 13 brother lived together again?
- 14 A. From when I was 17.
- 15 Q. And for about how long?
- 16 A. I'm sorry.
- 17 Q. For about how long?
- 18 A. From when I was 17 years old up until like 2005, '6, about
- 19 2005.
- 20 Q. Were you 17 years old in approximately 1997?
- 21 A. Right.
- 22 Q. During the time that you lived with Lowell as an adult, was
- 23 Lowell working?
- 24 A. Yes, he worked.
- 25 Q. What did he do?

Hb6nros2

Bethel - direct

- 1 A. Construction and he worked in a warehouse.
- 2 Q. Do you know whether Lowell was in a gang?
- 3 A. Yes, he was.
- 4 Q. What gang?
- 5 A. The Bloods.
- 6 Q. Have you heard of G-Unit?
- 7 A. Yes, I have.
- 8 Q. What is G-Unit?
- 9 A. A rap group.
- 10 Q. Do you know the names of any rap artists who were in
- 11 G-Unit?
- 12 A. Yes, I knew.
- 13 Q. What are some of the names?
- 14 A. 50 Cent, Tony Yayo, Lloyd Bates.
- 15 Q. Do you know Tony Yayo's real name?
- 16 A. Marvin Bernard.
- 17 Q. Have you ever seen him?
- 18 A. Yes, I have.
- 19 Q. I'm showing you what's been marked for identification as
- 20 Government Exhibit --
- 21 THE COURT: Why don't we use the Elmo.
- 22 Q. Ms. Bethel, can you see on your screen a photograph?
- 23 A. Yes.
- 24 Q. I'm showing you what's been marked as Government Exhibit
- 25 19. Do you recognize this?

Hb6nros2

Bethel - direct

1 A. Yes, ma'am.

2 Q. What is this?

3 A. That is a picture of Tony Yayo.

4 Q. Do you know Tony Yayo's real name?

5 A. Marvin Bernard.

6 MS. HANFT: The government offers Government Exhibit
7 19.

8 THE COURT: Received.

9 (Government's Exhibit 19 received in evidence)

10 Q. Do you know if your brother had a relationship with Tony
11 Yayo, or Marvin Bernard, while you were living with your
12 brother?

13 A. Yes, he had.

14 Q. What was the relationship?

15 A. He was his road manager.

16 Q. Before he was his road manager, did they have any sort of
17 relationship?

18 A. I guess they was friends.

19 Q. And so did there come a time when your brother started
20 spending time with G-Unit members?

21 A. Yes.

22 Q. Do you recall approximately when that was?

23 A. I would say around 2003, 2004. Maybe 2004.

24 Q. Did there come a time when you attended a G-Unit concert?

25 A. Yes.

Hb6nros2

Bethel - direct

1 Q. Tell the jury how that came to pass.

2 A. Well, I used to work in Long Island at a Wal-Mart and my
3 cousin called me and told me that they was having a concert,
4 and she asked me if I wanted to go. So I told her, yeah,
5 because I worked by the Nassau Coliseum, where they had the
6 concert, where they had the concert at. So me and her met up,
7 and when we got together we got to the Nassau Coliseum and my
8 cousin came and met us downstairs --

9 Q. Now you mentioned --

10 A. -- at the concert.

11 Q. I'm sorry, Ms. Bethel.

12 You mentioned a cousin who called you about a the
13 concert, and you mentioned a cousin who met you downstairs.

14 Were those the same people?

15 A. No, two different people.

16 Q. Your cousin who met you downstairs at the concert, what is
17 his name?

18 A. Jaleel Walter.

19 Q. Did he have a nickname?

20 A. Yes, Baja.

21 Q. Showing you what's been marked for identification as
22 Government Exhibit 32.

23 Do you recognize this?

24 A. Yes.

25 Q. Who is this?

Hb6nros2

Bethel - direct

1 A. That's my cousin.

2 MS. HANFT: The government offers Government Exhibit
3 32.

4 THE COURT: Which cousin is that?

5 THE WITNESS: Jaleel Walter. His nickname is Baja.

6 THE COURT: Thank you. Received.

7 (Government's Exhibit 32 received in evidence)

8 BY MS. HANFT:

9 Q. Ms. Bethel, can you describe what happened when you arrived
10 at the concert?

11 A. Me and my cousin that -- she's from Jersey. Me and her, my
12 cousin met us in the lobby, he took us to the bleachers and we
13 just watched the concert.

14 Q. As you were watching the concert, did you see either your
15 brother or your cousin Mr. Walter?

16 A. Yes, I saw them.

17 Q. Where were they?

18 A. They was onstage.

19 Q. Do you know when your brother started spending time with
20 G-Unit?

21 A. When my cousin came home from jail.

22 Q. When you say your cousin, who are you referring to?

23 A. Jaleel Walter.

24 Q. How, if you know, did your brother meet G-Unit members?

25 A. My brother met G-Unit members from my cousin Jaleel Walter.

Hb6nros2

Bethel - direct

- 1 Q. Was there another time -- when you went to the concert, did
2 you see members of the G-Unit?
- 3 A. Yes, they was there.
- 4 Q. Could you name some of them?
- 5 A. Tony Yayo, Lloyd Bates, Olivia, I can't -- remember if 50
6 Cent was there.
- 7 Q. Was your brother there?
- 8 A. My brother was there, and so was my cousin.
- 9 Q. Was there another time when you saw your brother with Tony
10 Yayo?
- 11 A. Yes, I have.
- 12 Q. Where was that?
- 13 A. At my mother's funeral.
- 14 Q. And what happened at your mother's funeral?
- 15 A. My brother and Tony Yayo came to her funeral.
- 16 Q. When did your brother stop living with you?
- 17 A. Around 2005. Maybe 2005.
- 18 Q. Where did he live after that?
- 19 A. With Tony Yayo, Marvin Bernard.
- 20 Q. Did you say that he lived with Tony Yayo?
- 21 A. Yes, Marvin Bernard, yes.
- 22 Q. Do you know where he lived?
- 23 A. In the Hamptons.
- 24 Q. And was he working for Tony Yayo?
- 25 A. Yes, he was.

Hb6nros2

Bethel - direct

1 Q. What was he doing for Tony Yayo?

2 A. His road manager.

3 Q. After your brother began working for Tony Yayo as a road
4 manager, did you see him very often?

5 A. No.

6 Q. Why not?

7 A. Because he was traveling.

8 Q. Now, you mentioned seeing your brother and your cousin and
9 Tony Yayo at your mother's funeral. What year was that
10 approximately?

11 A. My mother passed away December 1, 2005.

12 Q. Do you recall other times when you saw your brother with
13 members of G-Unit?

14 A. Yes. In 2006 at a family reunion.

15 Q. What happened at that family reunion?

16 A. Well, they just came, and spent like probably ten minutes.

17 Q. When you say "they," who are you referring to?

18 A. My brother, Tony Yayo, and my cousin, Jaleel Walter.

19 Q. Did there come a time that your brother was incarcerated?

20 A. Yes, he was.

21 Q. Did you visit him during that time?

22 A. No.

23 Q. Do you know why he was incarcerated?

24 A. I guess, I am not sure, but maybe because of drugs. I am
25 not sure.

Hb6nros2

Bethel - direct

1 MR. TOUGER: I didn't hear the answer, Judge.

2 THE COURT: I couldn't hear you.

3 MR. TOUGER: I couldn't hear that answer.

4 THE COURT: Read back the answer, please.

5 (Record read)

6 BY MS. HANFT:

7 Q. Did there come a time when your brother was released from
8 jail?

9 A. Yes, ma'am.

10 Q. Do you recall approximately when that was?

11 A. That was in 2009, September 2009.

12 Q. Where did he go when he was released?

13 A. He came to live with me.

14 Q. So then how long after he was released did he come to live
15 with you?

16 A. For a couple of days.

17 Q. Can you describe how that came to pass?

18 A. My brother called me the day after he was released from
19 prison and told me that he needed a cell phone. So I met up
20 with him in Brooklyn, because at the time I was living in
21 Bronx. And me and him met on Sutter and Rutland. There's a
22 Metro PCS store as soon as you get off the train, so we met up
23 over there, and I bought him -- I purchased the phone for him.

24 And then he asked me if he could come over to my
25 house. So we got back on the train, went back to the Bronx.

Hb6nros2

Bethel - direct

1 And when he got to my house he asked me if I could stay with me
2 because he, you know, felt comfortable over there and stuff
3 like that. So I told him yeah. So that's how he ended up
4 staying with me.

5 Q. And where were you living at that time?

6 A. I was living on 161st and Melrose.

7 Q. In what borough?

8 A. The Bronx, New York.

9 Q. I'm going to show you what's been marked for identification
10 as Government Exhibit 615A.

11 Do you recognize this photograph?

12 A. Uh-huh.

13 Q. What is it?

14 A. That's the building I used to live in.

15 MS. HANFT: The government offers Government Exhibit
16 615A.

17 THE COURT: Received.

18 (Government's Exhibit 615A received in evidence)

19 Q. What floor did you live on?

20 A. The fifth.

21 Q. Now, at the time your brother came to live with you, who
22 else was living with you?

23 A. Me, my husband, my daughter, and my father and my brother.

24 Q. I'm sorry. Could you say that one more time?

25 A. Me, my husband, my daughter, my father, and my brother.

Hb6nros2

Bethel - direct

1 Q. After your brother moved in with you, what, if anything,
2 did you do for him?

3 A. The day he passed away, we went shopping. I went to go buy
4 a pullout couch for him, because at the time I only had a
5 one-bedroom. And we was walking to go to the furniture store.
6 I purchased the couch, but by the time they delivered it, you
7 know, or whatever -- then I had bought him a jacket that day,
8 which was the Sunday.

9 Q. OK. Ms. Bethel, you trailed off and you said you purchased
10 a couch, is that correct?

11 A. I bought a pullout couch, a sleeper sofa for him because I
12 only had a one-bedroom at the time, and he needed something to
13 sleep on.

14 Q. And you also mentioned buying him a jacket, is that
15 correct?

16 A. Yes. I bought him a jacket.

17 Q. What color was the jacket?

18 A. It was a red jacket.

19 Q. Did you return home later that day?

20 A. Yes. We went up -- we returned home later that day. We
21 cooked dinner and stuff.

22 I fell asleep because at the time I was pregnant with
23 my daughter, I was tired, and my brother woke me up, it was
24 like around 7, maybe 8, I don't -- I can't remember the time.
25 And he told me he was going to a party and I -- it was like,

Hb6nros2

Bethel - direct

1 all right. I'll see you later. I told him I was going to work
2 because I used to work overnight around that time.

3 So when he left, I went to work. I had to be to work
4 at 10 o'clock in the night. I used to work from 10 to 7 in the
5 morning. And when I got to work, like an hour of me working, I
6 had got a phone call from a detective saying that my brother
7 was murdered.

8 Q. And when are we talking about, Ms. Bethel. When did this
9 happen?

10 A. This was on September 27, of 2009.

11 Q. How do you recall that exact date?

12 A. Because it was the day before my son's birthday.

13 Q. Do you recall what day of the week it was?

14 A. A Sunday.

15 Q. You just testified that you went to work. Approximately
16 when did you say you went to work?

17 A. I had to be at work at 10 p.m.

18 Q. And what happened when you got to work?

19 A. I received a phone call from a detective stating that my
20 brother was a victim of a homicide.

21 Q. What did you do?

22 A. I paused for a little bit because I didn't really
23 understand the phone call. So he called me again and told me
24 again. And I ran to my manager and I asked him if I could
25 leave. I had a family emergency. And I got in the cab and I

Hb6nros2

Bethel - direct

1 went home.

2 Q. Do you recall approximately when you got that call from the
3 detective?

4 A. It had to be like around maybe 11.

5 Q. When you returned home, were you interviewed by detectives
6 about your brother's death?

7 A. Yes.

8 Q. Without telling us what you said, did you give them
9 statements about who you thought might be responsible?

10 A. Yes, I did.

11 Q. Did your brother have a funeral?

12 A. Yes, he did.

13 Q. Approximately when was that?

14 A. It was in October.

15 Q. Who paid for the funeral?

16 A. Me, my other brother, his best friend, and my sister.

17 Q. Did any G-Unit members attend the funeral?

18 A. No.

19 Q. I'm going to show you what's been marked for identification
20 as Government Exhibit 1110.

21 Do you recognize this, Ms. Bethel?

22 A. Yeah.

23 Q. What is it?

24 A. My brother's obituary.

25 Q. And where is this from?

Hb6nros2

Bethel - cross

1 A. That's from his funeral. The program from his funeral.

2 MS. HANFT: The government offers Government Exhibit
3 1110.

4 THE COURT: Received.

5 (Government's Exhibit 1110 received in evidence)

6 Q. You mentioned that this was offered by the funeral home.

7 What was the purpose of this document, Ms. Bethel?

8 A. For --

9 Q. Feel free to take a moment.

10 A. It was for his funeral, for the memories, his home going.

11 MS. HANFT: No further questions, your Honor.

12 THE COURT: Thank you.

13 Cross-examination.

14 MR. TOUGER: Thank you, your Honor.

15 CROSS EXAMINATION

16 BY MR. TOUGER:

17 Q. Good afternoon, Ms. Bethel.

18 A. Good afternoon.

19 Q. Could we agree that your brother never was a performer?

20 A. I'm sorry.

21 Q. Can we agree that your brother was never a performer for
22 G-Unit?

23 A. No, he wasn't.

24 Q. Nor for any other record company, correct?

25 A. No.

Hb6nros2

Bethel - cross

- 1 Q. When you say he was -- I believe you said he was Yayo's
2 road manager?
- 3 A. Uh-huh.
- 4 Q. Was he the one who was managing the road trip, or was he
5 just working on the stage crew?
- 6 A. I am not sure what he was doing, because I wasn't around --
- 7 Q. Right.
- 8 A. I just heard that's what he was.
- 9 Q. What you know is that he went on trips --
- 10 A. Right.
- 11 Q. -- with Yayo before?
- 12 A. Uh-huh.
- 13 Q. Where Yayo was performing at a concert, your brother would
14 go and help out?
- 15 A. Right.
- 16 Q. I think you testified that your brother was a gang member.
- 17 A. Yes, he was.
- 18 Q. And was he a member of a particular gang?
- 19 A. The Bloods.
- 20 Q. When did he become a member of the bloods?
- 21 A. I would say back in like '96.
- 22 Q. How old would he have been at that point?
- 23 A. Probably like 20.
- 24 Q. 20. Would you agree with me that when he died he was still
25 a member of the Bloods gang?

Hb6nros2

Bethel - cross

1 A. Yes.

2 Q. And I believe you testified also that at some point he went
3 to jail?

4 A. Uh-huh.

5 Q. And during the time period -- how long was he in jail, as
6 far as you know?

7 A. Probably like two years.

8 Q. And did you visit him at all during that time period?

9 A. No.

10 MR. TOUGER: Nothing further, your Honor.

11 Thank you.

12 THE COURT: Ms. Hanft?

13 MS. HANFT: No redirect, your Honor.

14 THE COURT: All right.

15 Thank you, Ms. Bethel.

16 THE WITNESS: You're welcome.

17 THE COURT: You are excused.

18 (Witness excused)

19 THE COURT: Next witness.

20 MR. JOHNSON-SKINNER: The government calls Gabriel
21 Diaz.

22 GABRIEL DIAZ,

23 called as a witness by the Government,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

Hb6nros2

Diaz - direct

1 BY MR. JOHNSON-SKINNER:

2 THE COURT: You may proceed, counselor.

3 MR. JOHNSON-SKINNER: Thank you, Judge.

4 Q. Sergeant Diaz, where do you work?

5 A. 44th Precinct.

6 Q. Is that part of the New York City Police Department?

7 A. Yes, it is.

8 Q. You said your rank is a sergeant?

9 A. Correct.

10 Q. How long have you been with the NYPD?

11 A. For about 18 years.

12 Q. How long have you worked in the 44th Precinct?

13 A. For about nine years now.

14 Q. Can you describe for the jury the area that the 44th
15 Precinct covers?

16 A. Yes. It's the High Bridge section of the Bronx, which
17 covers from East 149th Street all the way to Mt. Eden Avenue,
18 from Webster Avenue over to the river.

19 Q. Did you work there at about September of 2009?

20 A. Yes, I did.

21 Q. What was your assignment back then?

22 A. I was the Impact supervisor.

23 Q. What does it mean to be an Impact supervisor?

24 A. We were in charge of the rookies that just came out of the
25 academy.

Hb6nros2

Diaz - direct

1 Q. Directing your attention to September 27, 2009, were you
2 working that day?

3 A. Yes, I was.

4 Q. Do you remember the hours you were working that day?

5 A. I believe it was 1200 by 2057.

6 Q. Just for the jury what does it mean 1200 by 2057?

7 A. 12:00 in the afternoon to 8:57 at night.

8 Q. What day of the week was that day?

9 A. I believe it was a Sunday.

10 Q. How do you remember it was a Sunday?

11 A. I would have to look at my memo book to be exact.

12 Q. Well, let me ask you this: Do you remember what the first
13 thing you did was when you came to work that day.

14 A. Yes, I signed in the command log.

15 Q. And then what did you do?

16 A. I was scheduled for training at One Police Plaza.

17 Q. Did you go there?

18 A. Yes, I did.

19 Q. What happened when you got there?

20 A. It was cancelled.

21 Q. What did you do after that?

22 A. Returned back to the 44th Precinct.

23 Q. What did you do when you got back to the 44th Precinct?

24 A. I waited for the rookies to come in so I could deploy them.

25 Q. Where did you go after that?

Hb6nros2

Diaz - direct

- 1 A. I went on patrol.
- 2 Q. What does it mean to be on patrol?
- 3 A. You go out and you answer radio runs, 911 radio runs.
- 4 Q. Were you in or out of uniform that day?
- 5 A. In uniform.
- 6 Q. Were you on foot or in a vehicle?
- 7 A. Vehicle.
- 8 Q. Were you alone or with a partner?
- 9 A. With a partner.
- 10 Q. Did you respond to any incidents during your shift that
- 11 day?
- 12 A. Yes, I did.
- 13 Q. How did you hear about the first incident you responded to?
- 14 A. It was through a 911 call.
- 15 Q. What happened? What did you hear?
- 16 A. I heard a 10-10 with an aided come over at around, I
- 17 believe it was around 2115 hours which is 9:15 in the evening,
- 18 at the corner of Goble and Jerome Avenue.
- 19 Q. Just to back that up for the jury. What is a 10-10 aided?
- 20 A. A 10-10 aided is a man in need of medical assistance -- a
- 21 person, not a man.
- 22 Q. What did you do when you got that call?
- 23 A. I immediately responded to the location.
- 24 Q. Tell us again the location.
- 25 A. Goble Place and Jerome Avenue.

Hb6nros2

Diaz - direct

1 Q. And what borough is that in?

2 A. I'm sorry?

3 Q. What borough is that in?

4 A. The Bronx.

5 Q. About what time did you get to that location?

6 A. Maybe approximately two minutes after the call came over.

7 Q. Do you remember what time of day it was when you got there?

8 A. It was 9:15 in the evening.

9 Q. I'm showing you what's been marked for identification as
10 Government Exhibit 142F.

11 Do you recognize that?

12 A. Yes, I do.

13 Q. What is that?

14 A. It is a map of New York City.

15 MR. JOHNSON-SKINNER: Judge, we would offer 142F.

16 THE COURT: Received.

17 (Government's Exhibit 142F received in evidence)

18 Q. Does that map include the area that you responded to that
19 night?

20 A. Yes, it does.

21 Q. Can you just indicate to the jury -- you might be able to
22 touch the screen about the area. No.

23 Do you see a marker on that map?

24 A. Yes, I do.

25 Q. Is that about the area that you responded to?

Hb6nros2

Diaz - direct

1 A. Yes, approximately.

2 Q. I'm showing you what's been marked for identification as
3 Government Exhibit 142D.

4 Do you recognize that?

5 A. Yes, I do.

6 Q. What is that?

7 A. That is Jerome Avenue with intersections of Goble and West Mt.
8 Eden.

9 Q. Is it a map of that area?

10 A. Yes, it is.

11 MR. JOHNSON-SKINNER: Judge, we would offer Government
12 Exhibit 142D.

13 THE COURT: Received.

14 (Government's Exhibit 142D received in evidence)

15 BY MR. JOHNSON-SKINNER:

16 Q. Now, that the jury can see it, could you just say again the
17 intersection that you responded to?

18 A. Jerome Avenue and Goble Place.

19 Q. I'm also going to show you what's been marked for
20 identification as Government Exhibit 142G.

21 What is that?

22 A. It is an overview of the location I responded to.

23 MR. JOHNSON-SKINNER: We would offer Government
24 Exhibit 142G?

25 THE COURT: Received.

Hb6nros2

Diaz - direct

1 (Government's Exhibit 142G received in evidence)

2 Q. Could you just describe for the jury where the location is
3 that you responded to on this overview photograph.

4 A. This area right here.

5 Q. They might not be able to see you touching the screen, so
6 if you could just describe where it is.

7 A. The corner of Goble right underneath the train station,
8 which is Jerome Avenue.

9 Q. What's that raised thing on the left of the screen there?

10 A. The train tracks.

11 Q. And where is the area that you responded to in reference to
12 the train tracks?

13 A. Right underneath.

14 Q. Is Goble Place the street at the top of this photograph?

15 A. Yes, it is.

16 Q. I also show you what's been marked as Government Exhibit
17 142H.

18 What is that, Sergeant Diaz.

19 A. The same thing, an overview from a different location,
20 though, from a different view.

21 MR. JOHNSON-SKINNER: We would offer Government
22 Exhibit 142H?

23 THE COURT: Received.

24 (Government's Exhibit 142H received in evidence)

25 Q. Now, Sergeant Diaz, up in front of you there are what's

Hb6nros2

Diaz - direct

1 been marked for identification as Government Exhibits 143B, F,
2 and H. Just look at those and tell me if you recognize them.

3 A. Yes, I do.

4 Q. What are those?

5 A. Intersection of Jerome Avenue and Goble Place on all three
6 of them.

7 Q. They are photographs of that area?

8 A. Yes, it is.

9 Q. Is that a fair and accurate depiction of how it looked that
10 night that you responded there?

11 A. Yes, it is.

12 MR. JOHNSON-SKINNER: We would offer Government
13 Exhibits 143B, F, and H.

14 THE COURT: Received.

15 (Government's Exhibits 143B, 143F, and 143 H received
16 in evidence)

17 Q. Sergeant Diaz, when you arrived at that location what did
18 you see?

19 A. I saw an ambulance there rendering aid to a male that was
20 unconscious on laying on the floor.

21 Q. Did you observe the male's race?

22 A. Yes, I did.

23 Q. What was it?

24 A. A male black.

25 Q. You said he was lying on the floor. Where was he lying?

Hb6nros2

Diaz - direct

1 A. Almost right in between the fire hydrant the light post.

2 Q. Looking at Government Exhibit 143B, between the fire
3 hydrant and the light post?

4 A. Yes.

5 Q. Was he on the sidewalk or the street.

6 A. Part of his body was on the sidewalk. The other part was
7 in the street.

8 Q. What condition did the man appear to be in?

9 A. He was unresponsive.

10 Q. Did you attempt to get him to respond?

11 A. I attempted to ask him for his name and ask him what had
12 happened to him.

13 Q. What did he do, if anything?

14 A. No response.

15 Q. You said that an ambulance was there?

16 A. Yes.

17 Q. What did you see the medical personnel doing, if anything?

18 A. Rendering first aid.

19 Q. Were there any other police officers on the scene before
20 you?

21 A. No.

22 Q. What happened on the scene while the medical personnel were
23 there rendering aid?

24 A. They were, you know -- they were trying to render aid and
25 trying to figure out what was the reason for his

Hb6nros2

Diaz - direct

1 unresponsiveness, at which time they proceeded to put him on
2 the bed and put him in the ambulance. At that point they
3 proceeded to flip him over and noticed puncture wounds in the
4 back.

5 Q. Did you notice those or did you hear about that?

6 A. Yes, I did.

7 Q. Which one notice --

8 A. Both. Noticed and heard.

9 Q. What did you do when he was put in the ambulance?

10 A. I immediately proceeded to set up a crime scene because I
11 thought he had been stabbed.

12 Q. What does it mean to set up a crime scene?

13 A. To rope off a specific location to see if we can gather
14 some evidence in regards to the crime that had just happened.

15 (Continued on next page)

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HB6AAROS3

Diaz - Direct

1 BY MR. JOHNSON-SKINNER:

2 Q. And where did you put up the crime scene?

3 A. I approximately put it from the corner all the way to the
4 middle of Jerome Avenue towards Mount Eden Avenue.

5 Q. Looking at Government Exhibit 143-B, does that include the
6 area where you first set up the crime scene?

7 A. Yes, it does.

8 Q. For where did it start?

9 A. Approximately, the corner for hallway toward the middle of
10 West Mount Eden.

11 Q. Did you find anything when you first setup that crime
12 scene?

13 A. No, I did not.

14 Q. Did there come a time when you realized something relevant
15 to your duties that night?

16 A. Yeah, within five minutes after I had ordered the
17 responding sector to respond to the hospital with the victim.
18 I think they came over the air stating that it was not a stab
19 wound. It was bullet wound.

20 Q. Just backing up a little bit, you said the "responding
21 sector". What's "responding sector"?

22 A. The sector assigned the job at that particular moment.

23 Q. What's "sector"?

24 A. Police car with two officers in it.

25 Q. Where did those people go?

HB6AAROS3

Diaz - Direct

- 1 A. To Bronx Lebanon Hospital.
- 2 Q. What steps, if anything, did you take when you heard about
3 the bullet wounds?
- 4 A. I immediately expanded the crime scene.
- 5 Q. Where did you expand it to?
- 6 A. All the way to West Mount Eden.
- 7 Q. If we can go back to Government Exhibit 142-D, does this
8 map include where you expanded the crime scene to?
- 9 A. Yes, it does.
- 10 Q. If you could just describe to the jury where you started
11 and where?
- 12 A. Started at Goble Place.
- 13 Q. You started at Goble Place which is toward the bottom
14 center of this exhibit?
- 15 A. Yes.
- 16 Q. Then you said you went to Jerome Avenue and Mount Eden
17 Avenue?
- 18 A. West Mount Eden.
- 19 Q. Is that approximately where that No. 4 train sign is in the
20 exhibit?
- 21 A. Yes, it is.
- 22 Q. What did you do when you expanded the crime scene?
- 23 A. I roped off with police caution tape.
- 24 Q. Did you look for anything?
- 25 A. I was looking for evidence, yes.

HB6AAROS3

Diaz - Direct

- 1 Q. What kind of evidence were you looking for?
- 2 A. Either ballistics or a firearm.
- 3 Q. What are ballistics?
- 4 A. Bullets.
- 5 Q. Did you find anything in that area?
- 6 A. No, I didn't.
- 7 Q. About how long were you in that area?
- 8 A. Approximately, 15 minutes.
- 9 Q. What did you do after that?
- 10 A. After the patrol sergeant responded, I immediately went on
- 11 parole patrol.
- 12 Q. Did other offices come to the scene before you left?
- 13 A. Yes.
- 14 Q. What did those other officers do when they got there?
- 15 A. Secured the crime scene.
- 16 Q. You said you went back on patrol after that?
- 17 A. Correct.
- 18 Q. Did you have any further personal involvement, any
- 19 investigation of this case?
- 20 A. No, I didn't.
- 21 Q. I'll show you what's in evidence as Government Exhibit 17.
- 22 Do you recognize that photograph?
- 23 A. Yes, I do.
- 24 Q. Who is that?
- 25 A. The similarity to the victim that I found that day.

HB6AAROS3

Diaz - Direct

- 1 Q. Just a few more questions unrelated to Sergeant Diaz.
2 What's a CCRB complaint?
- 3 A. It's a complaint by the Civilian Complaint Review Board.
- 4 Q. And during your 18 years with the NYPD, have you been the
5 subject of any CCRB complaints?
- 6 A. Yes, I have.
- 7 Q. Have you been out on the street during your whole time with
8 the NYPD?
- 9 A. Yes, I have.
- 10 Q. What about most recent?
- 11 A. Within the last three years I have been assigned to desk
12 duty in regards to an injury I had on the job.
- 13 Q. What does it mean to have a CCRB complaint substantiated?
- 14 A. They find some type of evidence in regard to the complaint.
- 15 Q. Have you had any CCRB complaints substantiated?
- 16 A. Yes, I have.
- 17 Q. About how many? About how many were substantiated?
- 18 A. Maybe two, maybe three at most.
- 19 Q. As a result of the complaints being substantiated have you
20 been punished in any way?
- 21 A. Yes, I have.
- 22 Q. How?
- 23 A. Losing vacation days.
- 24 Q. Districting your attention to about 2010, do you recall one
25 in that year?

Hb6aaros3

Diaz - Cross

1 A. Yes, I do.

2 Q. Generally, what was that about?

3 A. In regard to a male that I stopped and found narcotics on
4 him.

5 Q. What, if anything, was substantiated against you on that
6 one?

7 A. The unlawful stop.

8 Q. Do you recall one in about 2006?

9 A. No, I don't.

10 MR. JOHNSON-SKINNER: No further questions, judge.

11 THE COURT: Thank you. Cross-examination.

12 MR. TOUGER: Very briefly, judge.

13 CROSS-EXAMINATION

14 BY MR. TOUGER:

15 Q. Sergeant, were there any witnesses on the scene when you
16 were there?

17 A. I believe so. There was a male Hispanic standing there.

18 Q. Did you interview that witness?

19 A. Yes, I did.

20 Q. And did Mr. Rosemond's name come up at all during that
21 interview?

22 A. No, it did not.

23 MR. TOUGER: Nothing further.

24 THE COURT: Thank you.

25 Witness is excused. Thank you.

Hb6aaros3

Brown - Direct

1 Next witness.

2 MR. JOHNSON-SKINNER: The government calls detective
3 William Brown.

4 WILLIAM BROWN,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 MR. JOHNSON-SKINNER:

9 Q. Detective Brown, where do you work?

10 A. New York Police Department, Crime Scene Unit.

11 Q. And your rank, detective, did I get it right?

12 A. Yes.

13 Q. What is the crime scene unit?

14 A. The Crime Scene Unit is a specialized unit within the
15 police department that at the request of precinct detectives we
16 respond to various crimes including homicides, rapes,
17 robberies, assaults where the victim is likely to die and
18 police involved shootings. At those scenes it is my
19 responsibility to document the scene using photographs, notes,
20 sketches and diagrams and to recover any potential evidence at
21 those scenes.

22 Q. During your career, about how many crime scenes have you
23 responded to or processed?

24 A. I've personally handled over 350 crime scenes and I've
25 assisted on over 400 more crime scenes.

Hb6aaros3

Brown - Direct

1 Q. Generally, when you arrive at a crime scene who is
2 typically there?

3 A. There is usually police officers, detectives, supervisors
4 at the scene usually safeguarded.

5 Q. What does it mean to safeguard a scene?

6 A. The scene is secure. It's secured by the police officers'
7 presence and they set up a yellow crime scene tape to keep
8 people out.

9 Q. In general, what steps do you take to process a scene?

10 A. First thing I do is I confirm with the detectives and the
11 officers at the scene and try to find out a brief synopsis of
12 what happened.

13 Q. What do you do after that?

14 A. For there I do a walk-through of the crime scene.
15 Basically, a walk-through is me and my partner walking through
16 the crime scene and observing what the crime scene looks like
17 and looking for potential evidence and just seeing what type of
18 evidence we might be dealing with.

19 Q. What do you do with any evidence you find?

20 A. Once he finds evidence we take crime scene photographs of
21 that scene and the evidence. We draw crime scene diagrams
22 showing the layout of the scene and where in that scene we
23 recovered the evidence.

24 Q. Directing your attention to September 28, 2009, did you
25 process a crime scene that day?

Hb6aaros3

Brown - Direct

- 1 A. Yes, I did.
- 2 Q. Where was that scene?
- 3 A. The scene was located on Mount Eden Avenue between Jerome
4 Avenue and Inwood Avenue in the Bronx.
- 5 Q. About what time did you get there on September 28?
- 6 A. My partner and I arrived at the scene at 1800 hours or six
7 p.m.
- 8 Q. You said your partner, who is your partner that day?
- 9 A. My partner was detective Enos.
- 10 Q. Were you the leader or the assisting person that day?
- 11 A. I was the assisting detective.
- 12 Q. I'll show you what's in evidence as Government Exhibit
13 142-D. Do you recognize that area?
- 14 A. Yes.
- 15 Q. If it's included can you indicate where you responded that
16 day?
- 17 A. Yes. Detective Enos and myself, we responded to Mount Eden
18 Avenue and Jerome.
- 19 Q. And just describe where that is on that map.
- 20 A. It's -- Mount Eden is in the center of the map. Jerome
21 Avenue is to the right. The general location that we responded
22 there's a number four and a "M" at the location.
- 23 Q. Is there a subway in that area?
- 24 A. Yes. The elevated subway runs along Jerome Avenue.
- 25 Q. Is there a highway in that area?

Hb6aaros3

Brown - Direct

1 A. Yes, there is.

2 Q. Where is the highway?

3 A. It's right above Mount Eden.

4 Q. That's indicated by 95 on this map?

5 A. Yes, indicated by Interstate 95.

6 Q. Let me show you what's been marked for identification as
7 Government Exhibit 140-C. What's that?

8 A. This is an overall view of Mount Eden Avenue towards Jerome
9 Avenue, shows the McDonalds to on the left-hand side of
10 photograph and it also shows the elevated subway which runs
11 along Jerome Avenue.

12 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
13 140-C.

14 THE COURT: Received.

15 (Government's Exhibit 140-C received in evidence)

16 Q. Detective, what's the street that runs under the elevated
17 subway?

18 A. That would be Jerome Avenue.

19 Q. What's at the other street that we see in a photograph?

20 A. Mount Eden.

21 Q. Describe what that scene looked like when you got there
22 that day.

23 A. Upon arrival the scene was safeguarded by police officers.
24 There was crime scene tape setup. It was raining that day.

25 Q. When you got there did you have an understanding of what

Hb6aaros3

Brown - Direct

1 kind of scene this was?

2 A. Yes. It was a homicide investigation.

3 Q. Did you have an understanding of what kind of evidence, if
4 any, you were looking for?

5 A. Yes. We were looking for discharged cartridge casings or
6 discharged shell casings.

7 Q. What is a cartridge or shell casing?

8 A. A discharged cartridge casing is the metal portion of a
9 cartridge which is either left inside of a firearm or ejected
10 from a firearm after a bullet travels down the barrel.

11 Q. Detective, are you familiar with the term A-Run?

12 A. Yes.

13 Q. What's an A-Run?

14 A. An A-Run is a subsequent crime scene run to an original
15 crime scene run.

16 Q. And do you know that day whether you were the original run
17 or the subsequent A-Run?

18 A. Yes, sir. Detective Enos and myself we were, the A-Run was
19 a subsequent run prior to us responding to Mount Eden and
20 Jerome.

21 THE COURT: Sorry. There was a subsequent run prior.

22 THE WITNESS: Yes, sir.

23 THE COURT: How does that work?

24 THE WITNESS: There was an original crime scene run
25 the day before. The victim was shot and killed on the 27th of

Hb6aaros3

Brown - Direct

1 Detective Enos and myself we responded to on the 28th that
2 would give us the same run number as the original but with a
3 letter designation.

4 THE COURT: So the letter designation indicates the
5 run that took place later in time; is that right?

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you. Go ahead.

8 Q. Were you in fact the subsequent run?

9 A. Yes.

10 Q. Do you know why there was a subsequent run that day?

11 A. Yes. The victim was shot and killed the day prior.

12 Q. So was there a body at the scene?

13 A. No, sir.

14 Q. What did you do when you first got there?

15 A. When we first got to the scene we confirmed with the
16 detectives and the officers on the scene.

17 Q. What did you do after that?

18 A. We did a walk-through.

19 Q. Did you see anything when you did the walk-through?

20 A. Yes. We observed -- initially, we observed six discharged
21 shell casings on the sidewalk and in the street along Mount
22 Eden and then later on we found another one for a total of
23 seven discharged .22 caliber shell casings.

24 Q. I'm going to show you what's been marked for identification
25 as Government Exhibit 152. Do you recognize that?

Hb6aaros3

Brown - Direct

1 A. Yes.

2 Q. What is that?

3 A. This is a computer drawn diagram of the crime scene.

4 Q. Who made it?

5 A. This was prepared by Detective Enos.

6 Q. Where was you when she was making it?

7 A. Usually standing right next to her. When you are the
8 assisting crime scene investigator you do everything in tandem
9 for cases just like this where my partner is unavailable to
10 testify, I could testify because I basically observed and
11 helped her with everything she did.

12 Q. Is that a fair and accurate representation of what the
13 crime scene looked like that day?

14 A. Yes, it is.

15 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
16 152.

17 THE COURT: Received.

18 (Government's Exhibit 152 received in evidence)

19 Q. Detective, what's that "M" in the upper right-hand corner?

20 A. The "M" stands for "McDonald's" which is the McDonald's we
21 seen on the left side of the photo prior.

22 Q. And then what had those numbers one, two, three, seven,
23 five, four and then six on the left?

24 A. Those are the locations that we recovered the discharged
25 shell casings for.

Hb6aaros3

Brown - Direct

1 Q. Just looking back briefly at Government Exhibit 142-D,
2 where on 142-D were we just looking on that sketch?

3 A. Right here towards the center of the diagram Mount Eden and
4 Jerome Avenue.

5 Q. And how far up on the West Mount Eden?

6 A. Towards the corner or intersection of Jerome Avenue.

7 Q. And then what about the other direction?

8 A. It would go down to Inwood Avenue which is one block west
9 of Jerome Avenue.

10 Q. Did anyone take photographs of that crime scene that night?

11 A. Yes. Detective Enos photographed the scene.

12 Q. What were your doing while she was photographing it?

13 A. I was writing down what she was taking photographs of.

14 Q. Why do you photograph the scene?

15 A. To memorialize the scene and the evidence that's contained
16 in that scene.

17 Q. In front of you there I think you have what's been marked
18 for identification as Government Exhibit 151-B through MM, that
19 folder there on your right. Look through that and tell me if
20 you recognize what's in there.

21 A. These are the photographs Detective Enos took of the crime
22 scene and the evidence that we recovered.

23 MR. JOHNSON-SKINNER: I'll offer those photographs
24 151-B through MM.

25 THE COURT: Received.

Hb6aaros3

Brown - Direct

1 (Government's Exhibits 151-B - 151-MM received in
2 evidence)

3 MR. JOHNSON-SKINNER: We'll publish some of them.

4 Q. First, Government Exhibit 151-B, what are we looking at
5 there?

6 A. This is a overall view of Mount Eden towards Inwood Avenue.

7 Q. And then going to 151-C, what does that show?

8 A. This is a overall view of the sidewalk of Mount Eden
9 towards Inwood Avenue.

10 Q. Then looking at 151-E, what does that show?

11 A. This is a overall view of Mount Eden Avenue towards Jerome
12 Avenue. You could see the McDonald's on the left-hand side and
13 the overhead subway that runs along Jerome Avenue.

14 Q. This is the opposite way of Mount Eden for what we were
15 just looking at?

16 A. Yes, sir.

17 Q. Looking at 151-M, what does that show?

18 A. This is a overall view of Mount Eden Avenue towards Jerome
19 Avenue and it shows the locations of the discharged shell
20 casings with the yellow evidence markers in place.

21 Q. Looking at 151-N, what does that show?

22 A. This is a overall view of Mount Eden Avenue toward Inwood
23 Avenue and it shows the location or locations of the discharged
24 shell casings indicated by the yellow evidence markers with the
25 numbers on them.

Hb6aaros3

Brown - Direct

1 Q. And then 151-O what's that?

2 A. This is a overall view of the sidewalk and street of Mount
3 Eden Avenue and it shows evidence of one, two and three which
4 are discharged shell casings.

5 Q. And 151-S, what is that?

6 A. This is a view of Mount Eden Avenue and it shows the
7 location of evidence of four and five.

8 Q. And 151-V, what does that show?

9 A. Mount Eden Avenue showing the location of evidence six.

10 Q. 151-X, what are we looking at there?

11 A. This is a closeup view of the first discharged shell
12 casings that we recovered at the scene.

13 Q. Does the shell casing appear intact?

14 A. No, sir. It appears to be squashed like it was either
15 stepped on or ran over.

16 Q. 151-Z, what's that?

17 A. This is closeup view of another discharged shell casing
18 that we recovered at the scene.

19 Q. This one is number two?

20 A. Yes.

21 Q. What is 151-BB?

22 A. A closeup view of the 22 caliber discharged shell casing
23 that we recovered at the scene indicated by the number three.

24 Q. And 151-DD, what's that?

25 A. Same thing, closeup view of the discharged shell casings

Hb6aaros3

Brown - Direct

1 recovered at the scene indicated by a number four.

2 Q. Then just briefly through 151-FF, "HH" show those to you.
3 "MM", what were those?

4 A. Those were the rest of the .22 caliber discharged shell
5 casings we recovered at the scene.

6 Q. Lastly 151-II, what does that show?

7 A. This is a overall view of Mount Eden Avenue toward Inwood
8 and it shows a location of evidence number 7 which is the
9 discharged shell casings we found later on while processing the
10 scene.

11 Q. Did you find any other evidence at the scene besides these
12 seven shell casings?

13 A. No, sir.

14 Q. What did you do with the shell casings after you marked
15 them and photographed them?

16 A. They're placed inside of a plastic bag. That bag is given
17 an evidence label and then later on that night the evidence is
18 turned over to a vouchering officer.

19 Q. Look at what's in front of you on the bench there marked as
20 Government Exhibit 100; do you recognize that?

21 A. Yes.

22 Q. How do you recognize that?

23 A. This is the envelope that contains the discharged shell
24 case.

25 MR. JOHNSON-SKINNER: We'll offer Government Exhibit

Hb6aaros3

Brown - Direct

1 100.

2 THE COURT: Received.

3 (Government's Exhibit 100 received in evidence)

4 Q. Sir, you recovered seven casings?

5 A. Yes.

6 THE COURT: Were they all when you recovered them in
7 the street as opposed to on the sidewalk?

8 THE WITNESS: There was one on the sidewalk. It would
9 have been the north sidewalk of Mount Eden and the rest were
10 recovered in the street.

11 THE COURT: Were they all partly or entirely crushed?

12 THE WITNESS: Most of them were damaged, yes, most of
13 them were crushed.

14 THE COURT: And the one on the sidewalk, was it
15 crushed to in whole or in part?

16 THE WITNESS: Can I look at my photos.

17 THE COURT: Sure.

18 THE WITNESS: Thank you.

19 (Pause)

20 THE WITNESS: Yes, the one on the sidewalk was also
21 crushed.

22 THE COURT: OK. This is a good point to stop for the
23 day I think.

24 MR. JOHNSON-SKINNER: Judge, we just have a few more
25 questions of this witness and we're done with him.

Hb6aaros3

Brown - Direct

1 THE COURT: Any cross?

2 MR. TOUGER: Just a couple, your Honor.

3 THE COURT: Let's make haste.

4 Q. First, detective, could you just open that bag and open the
5 shell casings and show one to the jury?

6 A. Sure.

7 MR. TOUGER: To speed things up, admit them into
8 evidence id that speeds things up.

9 Q. While you are doing that, detective, once you collected
10 that evidence and put it in the bag, what did you do with
11 respect to the evidence?

12 A. They're vouchered and well, first they're turned it over to
13 a vouchering officer and he vouchers them. Vouchering is the
14 police department's way of safeguarding and keeping track of
15 evidence.

16 Q. Were there any tests ordered on this evidence?

17 A. Yes.

18 Q. What kind of tests?

19 A. Ballistics testing.

20 Q. What is in general ballistics testing?

21 A. In this case ballistics testing we requested that the
22 discharged shell basics be looked at under a microscope to see
23 if they were all fired from the same firearm.

24 Q. And other than what you did at the crime scene that night,
25 did you have any other further involvement in this case?

Hb6aaros3

Brown - Cross

1 A. No, sir.

2 MR. JOHNSON-SKINNER: No further questions.

3 THE COURT: Thank you.

4 Mr. Touger.

5 THE WITNESS: I have the 22.

6 Q. Could you just demonstrate that?

7 A. This is .22 caliber discharge shell casings.

8 THE COURT: All right.

9 Thank you.

10 Mr. Touger.

11 CROSS-EXAMINATION

12 BY MR. TOUGER:

13 Q. Detective, would you be correct in saying .22 caliber is
14 the smallest cartridge that a gun can fire?

15 A. No, sir. There's a smaller --

16 Q. What is the next one?

17 A. There's a .17 caliber.

18 Q. And then .22?

19 A. Yes.

20 Q. And there are much larger weapons that bullets that can be
21 fired, correct?

22 A. Yes, there is.

23 Q. For instance a .45 caliber would be twice the size, right,
24 approximately?

25 A. Yes.

Hb6aaros3

Brown - Cross

1 THE COURT: All depends on what the firearm is, right?

2 MR. TOUGER: That is my next question, actually.

3 THE COURT: Well, good. I am helping you out.

4 A. Yes. It depends on the firearm.

5 Q. So a .22 caliber can only fire a .22 caliber bullet?

6 A. That's correct.

7 Q. And would I be correct in saying that you have no way of
8 knowing when those shell casings fell onto that street?

9 A. That's correct.

10 Q. Would I also be correct in saying that no fingerprints were
11 found on those shell casings?

12 A. That's correct.

13 Q. And would I be correct in saying that you have no idea how
14 the shell casings got to that particular location?

15 A. That's correct.

16 Q. They don't come out of a weapon crushed?

17 A. Typical not, no.

18 Q. So obviously, something ran over or stepped on these shell
19 casings?

20 A. Correct.

21 MR. TOUGER: Nothing further, your Honor.

22 THE COURT: Thank you.

23 The witness is excused. Thank you.

24 Ladies and gentlemen, we'll break for the day. See
25 you at 9:30 sharp tomorrow morning please. Counsel remain for

Hb6aaros3

Brown - Cross

1 a minute.

2 (Jury not present)

3 THE COURT: Be seated, folks.

4 Anything else we need to do this afternoon?

5 MR. TOUGER: Your Honor, very briefly as far as this
6 morning, I will bear the cost of a paralegal but it dawned on
7 me that I forgot to bring up in court the idea of Mr. Rosemond
8 getting a copy of the minutes. I'm sure the government is
9 getting it. We certainly cannot afford that and I would ask --

10 THE COURT: This is like it doesn't answer the
11 question. That's my problem with this. You don't get it. The
12 guy is paying privately for a defense.

13 MR. TOUGER: No, he is not paying.

14 THE COURT: Somebody is paying.

15 MR. TOUGER: His wife paid for it, your Honor. She
16 does not have the money to pay for --

17 THE COURT: Well, then I need an affidavit. I don't
18 know need his affidavit. I need the affidavit of who ever is
19 paying. It's really simple.

20 MR. TOUGER: Well, she makes a very nice living, your
21 Honor, but she is not willing to pay for daily copy.

22 THE COURT: I need something.

23 MR. TOUGER: That says she's not willing to pay for
24 daily copy?

25 THE COURT: For example, that would be a start.

Hb6aaros3

Brown - Cross

1 MR. TOUGER: The problem is she doesn't live in the
2 New York metropolitan area and it's going to take some time to
3 get it and I don't want to fall behind in the minutes.

4 THE COURT: There is e-mail. There is fax. There's
5 all kinds of way of communicating in the twinkling of an eye.
6 I am really not trying to give you a hard time. I am really
7 not. But the fact of the matter is substantial money is being
8 paid privately to cover the defense. And it's one thing if
9 you've got people who don't have the money to do any more than
10 they are doing. And it's another thing if people are going to
11 say, well, let's have the government pay for this part of it
12 even though we have the money. That's my concern.

13 MR. TOUGER: I am just saying, your Honor. I'll get
14 the affidavit.

15 THE COURT: Thank you. I mean really.

16 OK. That's it? Thanks very much.

17 (Adjourned to Tuesday, November 7, 2017 at 9:30 a.m.)
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Hb7nros1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 431 (LAK)

5 JAMES J. ROSEMOND,

6 Defendant.

7 -----x
8 New York, New York
9 November 7, 2017
9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14
15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: SAMSON ENZER
DREW JOHNSON-SKINNER
ELIZABETH HANFT
Assistant United States Attorneys

19 DAVID TOUGER
20 JONATHAN I. EDELSTEIN
Attorneys for Defendant

21 ALSO PRESENT:

22 NYPD Detective Steven Smith
23 Nicholas Pavlis, Paralegal (USAO)
24
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(Trial resumed)

(Jury not present)

THE COURT: Good morning. We have received notes from two jurors, one at the end of the day yesterday, which will be marked Court Exhibit A, from I think it's Mr. Simon -- in any case, it's Juror No. 10.

Who is speaking?

Mr. Rosemond, pipe down.

The note reads, "Although I do not anyone at the prosecution table" -- it sounds like there's a word "know" omitted -- "I believe I know their supervisor AUSA Michael Gerber. He is not a close friend, but I do see him socially a few times a year. I only thought of this connection when I saw him in the gallery during the opening statements. I do not believe it will affect my ability to be a juror, but feel I should tell you."

He is right on that.

Counsel, what do you propose I do about it, if anything?

MR. TOUGER: Your Honor, I have also been informed by government he's actually attending a bat mitzvah of Hadassa Waxman this weekend with a bunch of U.S. attorneys.

THE COURT: You have been informed of that?

MR. TOUGER: By the government.

Hb7nros1

1 THE COURT: With respect to Juror No. 10?

2 MR. TOUGER: Correct.

3 THE COURT: All right.

4 MR. ENZER: Your Honor, if I may, we learned last
5 night, after our supervisor, Mr. Gerber, attended the opening
6 statements in this trial, he informed us that he has a social
7 relationship with this juror, Mr. Simon, and that the juror
8 also has a social relationship with another assistant in our
9 office, Hadassa Waxman, that he knows Ms. Waxman used to be a
10 violent crime prosecutor, and that he knows Mr. Gerber is the
11 supervisor of the violent organized crime unit, which is the
12 unit handling this prosecution, and also that the juror is
13 attending a bat mitzvah for Ms. Waxman's daughter this weekend
14 that Waxman will be at, Gerber will be at, the juror will be at
15 and his family.

16 We notified defense counsel of this before learning of
17 the note.

18 THE COURT: OK. What is the proposal?

19 MR. TOUGER: Based on that, your Honor, I would ask,
20 although I hate to lose a juror so early in a trial, I don't
21 think have much choice but to ask that he be excused.

22 THE COURT: Mr. Enzer?

23 MR. ENZER: We have no objection to that.

24 THE COURT: OK. Juror No. 10 is excused.

25 We will organize this when they get in the courtroom.

Hb7nros1

1 The second note we received this morning from Juror
2 No. 1. The note will be Court Exhibit B.

3 It is addressed to Andy. It says:

4 "Hi, Andrew. I realized that if this case goes over
5 two weeks, I have a conflict on November 21. I have a family
6 holiday vacation which was planned and booked prior to my jury
7 duty. I have brought all of my documentation to show you.
8 Please let me know how to proceed."

9 Now, to that I need to add that, for reasons of a
10 family responsibility of my own that arose only yesterday, I
11 will be unavailable on November 20.

12 So I think what we do with Juror No. 1 is make sure
13 she's ready to go again on November 27, and we won't sit the
14 20th and 21st.

15 MR. TOUGER: I was going to say is that the week of
16 Thanksgiving?

17 THE COURT: Yes, it is.

18 That is fine with everybody?

19 MR. ENZER: That is fine, your Honor.

20 MR. TOUGER: Yes.

21 THE COURT: OK.

22 Anything else before we bring in the jury?

23 Did you say something, Mr. Touger?

24 MR. TOUGER: No.

25 THE COURT: You were just --

Hb7nros1

1 MR. TOUGER: I was going to say something, but I am
2 sure the Court wants to get going so we can wait until later in
3 the day.

4 MR. ENZER: Your Honor, I took it from your comment we
5 are going to check to confirm that Juror No. 1 is back after?

6 THE COURT: Yes, we are.

7 MR. ENZER: OK.

8 MR. TOUGER: I guess there is one thing. I'm sorry.

9 THE COURT: This is kind of like whack-a-mole.

10 MR. TOUGER: I'm sorry, your Honor.

11 As I read Mr. Masi's 3500 --

12 THE COURT: As you read who?

13 MR. TOUGER: Detective Masi.

14 THE COURT: Detective Masi.

15 MR. TOUGER: Detectives Masi's 3500 material, in there
16 he states in the notes that Mr. Stewart testified at a
17 suppression hearing on one of the 404(b) incidents that's going
18 to come out in testimony.

19 I have now learned from the government that they have
20 talked to Mr. Stewart, and Mr. Stewart says he didn't testify.
21 The only thing I would ask is, tomorrow, when state court
22 opens, if the government would just verify that with that
23 district attorney on that case.

24 THE COURT: Why is this the government's job?

25 MR. TOUGER: Because it's testimony of their witness

Hb7nros1

1 on a 404(b) on a crime that he's going to testify about.

2 THE COURT: Why don't you talk to the government.

3 MR. TOUGER: OK.

4 THE COURT: OK. Let's get the jury. I'll note that
5 the defendant has been present throughout.

6 Mr. Touger today is one of your days, right?

7 MR. TOUGER: Yes, your Honor.

8 If we could stop at 3:15.

9 (Continued on next page)

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Hb7nros1

1 (Jury present)

2 THE COURT: Good morning, everybody.

3 The jurors all are present. All right.

4 We have had a note from Mr. Simon, Juror No. 10, in
5 consequence of which Mr. Simon is excused from further service
6 on this case. Collect your card from Andy and go back down to
7 room 160.

8 Alternate No. 1, Ms. Handler, will now be Juror No.
9 10.

10 Now, Ms. Paladino, you sent us a note about November
11 21.

12 JUROR: Yes.

13 THE COURT: You will be back from your trip and ready
14 to resume on November 27 unless the trial is earlier concluded,
15 is that right?

16 JUROR: Yes.

17 THE COURT: All right.

18 So, members of the jury, because Ms. Paladino has
19 prebooked travel plans that will require her to leave on
20 November 21, and because of a family situation involving
21 somebody else involved in the trial that relates to November
22 20, we will not sit on the 20th or the 21st. So we will not
23 sit the entire week of Thanksgiving. If we are not done before
24 then, we'll resume the trial on November 27.

25 But everybody is off the week of Thanksgiving,

Hb7nros1

Crooks - direct

1 beginning to end.

2 OK. The government's next witness?

3 MR. ENZER: The government calls Claude Crooks.

4 CLAUDE CROOKS,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ENZER:

9 THE COURT: Mr. Enzer, proceed, please.

10 Q. Good morning, Mr. Crooks.

11 A. Good morning.

12 Q. How old are you, sir?

13 A. 39.

14 Q. Where were you born?

15 A. Brooklyn.

16 Q. Where did you grow up?

17 A. Queens.

18 Q. Are you currently employed?

19 A. Yes.

20 Q. What is your line of employment?

21 A. Security.

22 Q. When you say security, what do you mean?

23 A. Security guard.

24 Q. Let me direct your attention to September of 2009. Where
25 did you live in September of 2009?

Hb7nros1

Crooks - direct

1 A. Bronx, New York.

2 Q. What general neighborhood did you live in?

3 THE COURT: Mr. Crooks, it would be helpful if you
4 backed the microphone another inch away from you.

5 Thank you. Go ahead.

6 Q. What general neighborhood did you live in in September of
7 2009?

8 A. McCombs, McCombs Road.

9 Q. Are there any train stops near there?

10 A. 4 line, 4 train.

11 Q. And where does that -- where does the 4 train stop near
12 McCombs?

13 A. Two, three blocks on Jerome and Mt. Eden.

14 MR. ENZER: Can we please publish Government Exhibit
15 142G.

16 Q. Mr. Crooks, do you see on your screen an aerial photograph?

17 A. Yeah.

18 Q. On this photograph, can you show us -- could you
19 describe -- I'm sorry.

20 THE COURT: It might work. There is an outside chance
21 it will work today.

22 MR. ENZER: OK.

23 Q. Nonetheless, can you just describe where that 4 train stop
24 is?

25 A. It's Mt. Eden and Jerome.

Hb7nros1

Crooks - direct

1 Q. Is that on the left side of this photo?

2 A. Yes.

3 Q. And on the left side, running diagonally from the left to
4 the top of the photo it looks like an elevated track.

5 What is that?

6 A. That is the train station.

7 Q. And do you see West Mt. Eden Avenue on this map --

8 A. Yes.

9 Q. -- running left to right.

10 Are there any restaurants where Mt. Eden meets Jerome
11 Avenue, or were there any back in September 2009, any
12 restaurants where those two streets meet?

13 A. There's Little Caesars pizza there, and there was also a
14 Chinese restaurant, but you can't really see it on this
15 exhibit, the picture I'm seeing right now.

16 Q. The Chinese restaurant, was it kind of below and behind the
17 tracks?

18 A. It was across -- the tracks is in the middle. The Chinese
19 restaurant is basically across the street from the tracks.

20 Q. So it is on West Mt. Eden or Mt. Eden Avenue, but beyond
21 Jerome, beyond the tracks, right?

22 A. Right.

23 MR. ENZER: OK. We can take that down.

24 Q. Let me direct your attention to the evening of September
25 27, 2009.

Hb7nros1

Crooks - direct

1 On that date, what did you do for dinner?

2 A. Went to the Chinese restaurant.

3 Q. The Chinese restaurant you just described?

4 A. Yes.

5 Q. That is at Mt. Eden and Jerome?

6 A. Yes.

7 Q. After you bought dinner at the Chinese restaurant, what
8 happened next?

9 A. I was trying to get home. Across the street on the side of
10 McDonald's, on the right side, I tried to continue to walk, but
11 I noticed a guy was crossing the street, all black hoody on --
12 just all black period, and I just sensed something about the
13 guy crossing the street.

14 So I crossed over, still trying to get home, and I
15 seen a guy with a colorful outfit on. A bag of chips was
16 dropped on the ground, and the guy I seen on the right side,
17 his arm was extended. I ran.

18 As I was running to the corner, the victim was behind
19 me so fast that he asked me, "Where's the nearest train
20 station?" And I told him, "Right," out of nervousness, and I
21 just went in my direction and he went in his direction and I
22 went home.

23 Q. OK. I want to go through that again with photos so that
24 the jury can follow what you are saying.

25 In front of you is a folder with photographs marked

Hb7nros1

Crooks - direct

1 Government Exhibits 141A through F. It's a physical folder
2 right there on the ledge in front of you.

3 Do you see it?

4 Do me a favor and look at those photos and tell me if
5 you recognize the general area that is shown in those
6 photographs.

7 A. Yeah.

8 Q. Are each of those photographs photographs of different
9 locations in the vicinity of Mt. Eden and Jerome in the Bronx?

10 A. Yeah. These are photographs of Mt. Eden.

11 Q. And do those photographs fairly and accurately depict what
12 that area looked like back in September 2009?

13 A. Yes.

14 MR. ENZER: The government offers Government Exhibits
15 141A through F.

16 THE COURT: Received.

17 (Government's Exhibits 141A through F received in
18 evidence)

19 MR. ENZER: Let's publish Government Exhibit 141A.

20 BY MR. ENZER:

21 Q. Mr. Crooks, what are we looking at in this photograph?

22 A. Mt. Eden and Jerome.

23 Q. Do you see a McDonald's on the left?

24 A. Yes.

25 Q. Touching the screen, can you touch where the Chinese

Hb7nros1

Crooks - direct

1 restaurant was that you got dinner. Maybe make a little bit of
2 like a circle with your finger, OK?

3 THE COURT: Is that showing on your screen, Mr. Enzer.

4 MR. ENZER: I see it.

5 THE COURT: The jury sees it?

6 JURORS: Yes.

7 BY MR. ENZER:

8 Q. So, on the night of September 27, '09, you said you got
9 dinner there and then you left and crossed the street?

10 A. Yes.

11 Q. Which street did you cross?

12 A. The side of McDonald's.

13 Q. But did you cross Jerome or Mt. Eden?

14 A. I crossed Jerome.

15 Q. OK. When you crossed Jerome, were you on the McDonald's
16 side of Mt. Eden or on the Little Caesars' side of Mt. Eden?

17 A. I was on the McDonald's side.

18 Q. Show us where you ended up at McDonald's, on the McDonald's
19 side of Mt. Eden when you noticed the man in the black hoody.

20 A. It is not working.

21 THE COURT: I am seeing a little blue circle.

22 Did you just draw a little circle?

23 MR. ENZER: I think that's the old circle.

24 BY MR. ENZER:

25 Q. Can you draw a new circle with your finger where you were

Hb7nros1

Crooks - direct

1 when you saw the man in the black hoody?

2 A. It's not working.

3 THE DEPUTY CLERK: It doesn't appear to be working.

4 THE COURT: Members of the jury, this worked for about
5 seven minutes after they fixed it this morning.

6 Can you tell us in words where you were at the time
7 Mr. Enzer asked you about, that is, where were you when you saw
8 the man in the black hoody?

9 THE WITNESS: Near the parking lot, the drive through
10 of McDonald's.

11 THE COURT: Do you see cars parked at the curb on the
12 left side of the photograph along Mt. Eden?

13 THE WITNESS: Yes.

14 THE COURT: OK. So you were somewhere between the
15 second car and the third car, but on the sidewalk near the
16 McDonald's, right?

17 THE WITNESS: Yes.

18 THE COURT: Let's go.

19 BY MR. ENZER:

20 Q. When you were standing there, you said you saw a man in a
21 black hoody?

22 A. Yes.

23 Q. Where was that man?

24 A. Further from the picture, but he was by the playground
25 area. It is not really a playground, but it just had benches

Hb7nros1

Crooks - direct

1 further from the McDonald's.

2 Q. So he was on Mt. Eden?

3 A. Yes.

4 Q. On this picture, down or up? Down or up from where you
5 were?

6 A. Further up from McDonald's.

7 THE COURT: Meaning farther away from Jerome Avenue,
8 right?

9 THE WITNESS: Right.

10 THE COURT: Which side of the street was he on, the
11 left side in the picture or the right side?

12 THE WITNESS: He was going towards my side.

13 THE COURT: Was he in the street?

14 THE WITNESS: When I seen him, he was walking in the
15 street.

16 THE COURT: Was he walking toward Jerome or away from
17 Jerome?

18 THE WITNESS: He was just crossing the street. I just
19 seen him cross and that's it. It wasn't like he was walking
20 directly in my direction, but it looked like he was walking
21 towards me. He didn't fully walk towards Jerome.

22 THE COURT: OK. Go ahead.

23 BY MR. ENZER:

24 Q. That is, he's physically between Jerome and Inwood, right?

25 A. Right.

Hb7nros1

Crooks - direct

1 Q. OK. What were the lighting conditions like when you saw
2 him?

3 A. It was dark.

4 Q. Were there any street lamps?

5 A. Yeah, there were streetlights.

6 Q. Can you describe the man.

7 A. I can't -- the only way I can describe it is tall and
8 muscular build.

9 Q. What was he wearing?

10 A. Black hoody, just all black.

11 Q. You said after you saw him you crossed the street?

12 A. Yes.

13 Q. Why did you do that?

14 A. I just -- I just sensed danger, and so I just crossed.

15 MR. ENZER: Let's publish Government Exhibit 141B.

16 Q. In this photograph is this also showing Mt. Eden?

17 A. Yes.

18 Q. But in this photograph Jerome is to our rear, right?

19 A. Yes.

20 Q. And so we're facing towards Inwood and McCombs, is that
21 right?

22 A. Yeah.

23 Q. So on this photograph, you said that you were near the
24 driveway to the McDonald's when you noticed the man in the
25 black hoody wearing all black?

Hb7nros1

Crooks - direct

- 1 A. Yes.
- 2 Q. And you said that you then crossed the street?
- 3 A. Yeah.
- 4 Q. Which street did you cross?
- 5 A. The left side, Little Caesars' side.
- 6 Q. So you crossed Mt. Eden to get to the Little Caesars' side
- 7 of Mt. Eden?
- 8 A. Yeah.
- 9 Q. OK. When you crossed, what did you see?
- 10 A. When I crossed, I seen the guy with the colorful hoody on,
- 11 and I seen him -- I seen him drop the bag of chips, and that's
- 12 when I ran.
- 13 Q. The guy with colorful clothing on, can you describe where
- 14 he was.
- 15 A. He was on the left side, but turning -- it looked like he
- 16 was coming from the corner on the left side.
- 17 Q. Is that the corner of Inwood and Mt. Eden?
- 18 A. Yeah.
- 19 Q. All right. So he was coming from the corner of Inwood and
- 20 Mt. Eden. In which direction was he walking? Was he walking
- 21 towards Jerome or towards McCombs?
- 22 A. He was basically walking as if he was -- like walking
- 23 towards the playground area.
- 24 Q. Which is towards Jerome, right?
- 25 A. Right.

Hb7nros1

Crooks - direct

- 1 Q. In other words, he's walking towards you?
- 2 A. Yeah, basically, yeah.
- 3 Q. Was he between you and the man with the black hoody?
- 4 A. Yeah.
- 5 Q. OK. Now you said the guy in the colorful outfit with the
- 6 bag of chips is between you, he's walking towards you. What,
- 7 if anything, did you see the man in the black hoody do?
- 8 A. I just seen his arm extended. That's it.
- 9 Q. Did you hear anything?
- 10 A. I heard noises as I was running.
- 11 Q. OK. So the guy with the black hoody, he extends his arm.
- 12 Can you show the jury what that looked like with your
- 13 arm.
- 14 A. He was just like standing, like this.
- 15 Q. What did you believe was happening?
- 16 A. He was shooting him.
- 17 Q. What did you do?
- 18 A. I just ran.
- 19 Q. Which way did you run? Towards the shooting or away from
- 20 it?
- 21 A. Away from it.
- 22 Q. Which would be towards Jerome?
- 23 A. Yes.
- 24 Q. Now, how far was the shooter, the guy in the black hoody,
- 25 from the guy in the colorful outfit when the shooter was firing

Hb7nros1

Crooks - direct

1 shots?

2 A. A couple feet away from him. It wasn't close range.

3 THE COURT: I'm sorry. It was or was not close range?

4 THE WITNESS: Excuse me?

5 THE COURT: Did you say it was close range --

6 THE WITNESS: It wasn't.

7 THE COURT: Was not. Thank you.

8 MR. ENZER: Let me illustrate, if I may, Judge, with
9 the distances in the courtroom?

10 THE COURT: Yes.

11 BY MR. ENZER:

12 Q. I want you to tell me when to stop if you can estimate --
13 if you are the guy in the black hoody and I'm the guy in the
14 colorful outfit, I want you to tell me to stop when you know
15 the approximate distance. Should I walk away or towards you?

16 A. Towards. Yeah, about there.

17 MR. ENZER: So the distance from the witness stand to
18 the end of the prosecution table.

19 THE COURT: OK. Can we agree on an approximate
20 distance, gentlemen?

21 MR. TOUGER: 15 feet.

22 MR. ENZER: Approximately 15 feet.

23 THE COURT: Members of the jury, counsel agree it was
24 approximately 15 feet. You must accept that approximation.

25 BY MR. ENZER:

Hb7nros1

Crooks - direct

1 Q. Did you see any physical struggle between the shooter and
2 the guy getting shot in the colorful outfit?

3 A. No.

4 Q. How many whistles, how many shots did you hear?

5 A. I heard two of them.

6 MR. ENZER: Can we please publish Government Exhibit
7 141A.

8 Q. Using this photograph, can you show us which way you ran.
9 Describe it.

10 A. I ran towards Jerome and tried to -- I turned the corner, I
11 turned right, and the victim was running alongside with me, and
12 that's when he asked me where's the nearest train station.

13 Q. OK. Now, using this photograph, can you describe where you
14 would get on to the 4 train in this photograph.

15 A. The left, the left side.

16 Q. Near the McDonald's?

17 A. Yeah.

18 Q. The double arches?

19 A. Yes, the McDonald's side.

20 Q. Which is a left off of Mt. Eden, right?

21 A. Yeah.

22 Q. So you ran away from the entrance to the 4?

23 A. Yeah.

24 Q. And the victim you're saying was running next to you?

25 A. Yes.

Hb7nros1

Crooks - direct

1 MR. ENZER: Can we publish Government Exhibit 141D.

2 Q. On this photograph, do you see Jerome?

3 A. Yeah.

4 Q. Is Jerome the street that runs from the bottom left to the
5 middle right of the screen? Left to right?

6 A. Yeah.

7 Q. And then it's intersecting with Mt. Eden in this
8 photograph?

9 A. Yeah.

10 Q. If you take Jerome the way this photo shows, if you walk up
11 Jerome, what's the next street you hit?

12 A. Mt. Eden.

13 Q. If you walk on Jerome past Mt. Eden to the next street,
14 what's the next street you hit?

15 A. You mean -- I'm not understanding.

16 Q. All right. Looking at this photograph, do you see a guy at
17 the corner --

18 A. Yeah.

19 Q. -- of Mt. Eden and Jerome?

20 Do you see that guy?

21 A. Yeah.

22 Q. I want you to pretend that he makes a right here and walks
23 a block. What's the next street?

24 A. Goble.

25 Q. So you were running on Jerome towards Goble?

Hb7nros1

Crooks - direct

- 1 A. Yeah.
- 2 Q. Which is away from the entrance to the 4?
- 3 A. Right.
- 4 Q. And the victim was next to you?
- 5 A. Yeah.
- 6 Q. And what happened during your exchange with the victim?
- 7 A. After that I just went the opposite way of the victim.
- 8 Q. Which way did you tell him to go?
- 9 A. Straight where I was going.
- 10 Q. Towards Goble?
- 11 A. Right.
- 12 Q. And that's not the right way to get to the train, correct?
- 13 A. That's correct.
- 14 Q. What happened after that?
- 15 A. That's when I went to -- I went to the store, and then I
- 16 headed home, and that was it.
- 17 Q. Did you call the police to report the shooting that day?
- 18 A. I didn't call the police because I didn't know whether he
- 19 was dead or not.
- 20 Q. After the shooting, did you speak with a detective from the
- 21 New York City Police Department about the shooting?
- 22 A. Yes. They spoke to me the very next day and I had to go to
- 23 work.
- 24 Q. Did you eventually make a complaint against the detective?
- 25 A. Yeah.

Hb7nros1

Crooks - cross

1 Q. Why did you do that?

2 A. Because they was trying to basically say I had -- well,
3 not -- I felt they was trying to say I had something to do with
4 it, so that's why I made the complaint.

5 Q. Something to do with the shooting?

6 A. Yeah.

7 Q. Did you have something to do with it?

8 A. No.

9 Q. Did you volunteer to testify today, or are you commanded to
10 testify under subpoena?

11 A. I was under subpoena.

12 Q. During the shooting that you witnessed on September 27,
13 '09, did you see the shooter take any money from the victim?

14 A. No.

15 Q. Did you hear the shooter demand any money from the victim?

16 A. No.

17 Q. Did the shooter exchange any words with the victim during
18 the shooting?

19 A. I don't know.

20 Q. No further questions, your Honor.

21 THE COURT: Thank you.

22 Mr. Touger.

23 CROSS EXAMINATION

24 BY MR. TOUGER:

25 Q. Mr. Crooks, did you actually see the shooter?

Hb7nros1

Crooks - cross

1 A. I just said he just extended his arm. That's it.

2 Q. And then you started running?

3 A. Yeah.

4 Q. You actually don't know when or where the victim got shot?

5 A. That's what I said earlier. I don't know.

6 Q. OK. And you can't even describe the color of the skin of
7 the shooter at all, can you?

8 A. No, I can't. I never once described him as far as his
9 face. I never described his face or nothing, just his outfit.
10 That's it.

11 Q. You have no idea what he looked like?

12 A. No.

13 Q. If he walked by you two days after this incident, you would
14 not have recognized him?

15 A. No.

16 MR. TOUGER: Nothing further, your Honor.

17 THE COURT: Thank you. The witness is excused.

18 (Witness excused)

19 THE COURT: You are done, Mr. Crooks.

20 THE WITNESS: That's it?

21 THE COURT: That's it.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you.

24 Next witness.

25 MS. HANFT: The government calls Elizabeth Marte.

Hb7nros1

Marte - direct

1 ELIZABETH MARTE,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. HANFT:

6 THE COURT: You may proceed, Ms. Hanft.

7 Q. Good morning, Ms. Marte.

8 A. Good morning.

9 Q. How old are you?

10 A. 46.

11 Q. Where do you live?

12 A. In the vicinity of Mt. Eden.

13 Q. What borough is that in?

14 A. In the Bronx.

15 Q. Who you did live with?

16 A. With my kids.

17 Q. What do you do for a living?

18 A. Right now I am a manager in a cardiology office.

19 Q. What is your educational background?

20 A. RN.

21 Q. What does RN stand for?

22 A. Registered nurse.

23 Q. How do you become a registered nurse?

24 A. I went to Lehman College for four years.

25 Q. Do you currently practice as a nurse?

Hb7nros1

Marte - direct

1 A. No.

2 Q. I'm going to direct your attention to September of 2009.
3 Were you involved in a police investigation at that time?

4 A. Yes.

5 Q. Can you please explain for the jury how that came to be?

6 A. I was driving on Jerome Avenue on that day, and I saw a man
7 on the floor, and I noticed that he wasn't breathing because
8 there was no chest movements. And as I was driving, like, I
9 was telling my kids, "That man is not breathing," and my kids
10 was like, "No, mom. Just keep going, keep going."

11 And I wanted like to stop and check, but my kids
12 insisted for me to keep driving. But, as I drove, I had to
13 stop, like, I couldn't just continue driving. So I stopped and
14 I got out of the car and I went to check on him.

15 Q. Ms. Marte, you mentioned that you saw a man lying, I
16 believe you said on the floor.

17 A. Yeah.

18 Q. When you say the floor, what do you mean by that?

19 A. He was actually on the street next to the sidewalk.

20 Q. At the time you were driving, and I believe you testified
21 you were with your children?

22 A. Yes.

23 Q. Was anyone else in the vehicle?

24 A. There was a friend of mine in the vehicle as well.

25 Q. When you were driving what were you able to observe, if

Hb7nros1

Marte - direct

- 1 anything, about the person lying on the ground?
- 2 A. That he was not breathing because there was no chest
- 3 movements.
- 4 Q. Do you know what day of the week this was?
- 5 A. It was a Sunday.
- 6 Q. How do you know that?
- 7 A. Because the next day I had to go back to work.
- 8 Q. Can you describe approximately where you saw the man?
- 9 A. Yeah. It was actually on Jerome Avenue that I saw him
- 10 because I was driving south on Jerome Avenue.
- 11 Q. Do you have a sense of where along Jerome Avenue?
- 12 A. Yes.
- 13 Q. Where?
- 14 A. It was right in front of like a parking place at the
- 15 corner.
- 16 Q. The corner of Jerome and another street?
- 17 A. Yes.
- 18 Q. Anything else you noticed or recall about the area?
- 19 A. Yeah. There was some kind of construction.
- 20 Q. And what time of day was this?
- 21 A. It was in the nighttime. I cannot recall the exact time,
- 22 but it was nighttime.
- 23 Q. Now you mentioned you saw that the individual wasn't
- 24 breathing.
- 25 A. Yeah.

Hb7nros1

Marte - direct

1 Q. Could you tell if the person was alive or dead before you
2 stopped your vehicle?

3 A. Before I stopped my vehicle, no, I did not know if he was
4 alive or dead.

5 Q. Did you see anyone else in the area?

6 A. Yeah, there was two gentlemen like standing on the sidewalk
7 just looking at him.

8 Q. What, if anything, were they doing?

9 A. They were just looking. They were not doing anything.

10 Q. What, if anything, did you do?

11 A. So I got out of the car, and I asked them if, you know,
12 like, what happened, like. And they were like, We don't know.
13 He just collapsed here.

14 So I went to check on him, and I noticed that he had
15 no pulse or he wasn't breathing.

16 Q. What did you do?

17 A. So I asked the guys that were there, I said, Did you notice
18 when he stopped breathing?

19 And they were like, No, we didn't notice.

20 Q. Once you got out of the car, how did the person on the
21 ground look to you?

22 A. What I noticed when I went was that his pockets, his pants
23 pockets were out, which was kind of odd.

24 Q. Did you see anyone take anything from his pockets?

25 A. No.

Hb7nros1

Marte - direct

1 Q. Do you recall what he looked like?

2 A. He was a black male.

3 Q. Do you recall what he was wearing?

4 A. I don't -- I can't remember. It was so long ago.

5 Q. I'm going to show you what's in evidence as Government
6 Exhibit 143B.

7 MS. HANFT: Can we please publish 143B.

8 Q. Do you recognize this photograph?

9 A. Yes.

10 Q. Can you orient us. What is the street running from the
11 bottom left diagonally up the screen?

12 A. That's Jerome Avenue.

13 Q. And then the street that's intersecting here, is that the
14 street you said you couldn't recall the name of?

15 A. Yeah.

16 Q. Do you remember what letter the name of the street begins
17 with?

18 A. I think it's Goble Street, something like that.

19 Q. OK. And which direction were you driving that evening?

20 A. I was driving south on Jerome Avenue.

21 Q. Now, is south on Jerome Avenue up the screen from the
22 bottom left or from the --

23 A. Yeah. It's going in that direction.

24 Q. The direction from the bottom left --

25 A. Yeah.

Hb7nros1

Marte - direct

1 Q. -- up?

2 Can you show us on this photograph where you stopped
3 your car approximately.

4 A. I stopped my car right in front where the construction area
5 is. It was like across the street from Goble.

6 Q. You may be able to indicate, make an X or a circle if you
7 press hard on the screen.

8 Could you do that for the jury please.

9 A. Sure. I parked around here.

10 THE COURT: It's not working.

11 THE WITNESS: It is not working.

12 THE COURT: Do you see in the photograph the black or
13 dark colored car along the curb?

14 THE WITNESS: I see what?

15 THE COURT: A dark or black colored car along the curb
16 in the photo?

17 THE WITNESS: Yes.

18 THE COURT: Where in relation to that car did you stop
19 that night?

20 THE WITNESS: Across from that, where the blue
21 construction thing is.

22 THE COURT: I see.

23 THE WITNESS: It's like across the street.

24 THE COURT: On the south side of the intersection?

25 THE WITNESS: Yes.

Hb7nros1

Marte - direct

1 THE COURT: Across the street?

2 THE WITNESS: Yes.

3 THE COURT: Thank you. Let's go.

4 BY MS. HANFT:

5 Q. Where was the body?

6 A. The body was near the hydrant.

7 Q. The hydrant, is that in the middle of this photograph?

8 A. Yes, it's like, maybe, you know, like in front of that
9 black vehicle there.

10 MS. HANFT: Could we please publish Government Exhibit
11 143F.

12 Q. Could you orient the jury in this picture. We have a
13 street coming from the left and then meeting another street
14 from the middle on the right of the photograph.

15 Which direction were you driving?

16 A. I was driving this way.

17 Q. The witness is indicating from the right on her screen to
18 the left.

19 A. Right.

20 Q. In other words, is that Jerome Avenue Ms. Marte?

21 A. Yes, that's Jerome Avenue.

22 THE COURT: Let's try to do this a little more simply.
23 Jerome Avenue runs north and south, right?

24 THE WITNESS: Yes.

25 THE COURT: You were driving south on Jerome.

Hb7nros1

Marte - direct

1 THE WITNESS: South. That's correct.

2 THE COURT: And Goble, the cross-street, goes east and
3 west?

4 THE WITNESS: Yes.

5 THE COURT: So we are looking at the northwest corner
6 of Goble and Jerome, correct?

7 THE WITNESS: I would consider that going -- that's
8 actually the south.

9 THE COURT: The south of what?

10 THE WITNESS: The Jerome Avenue, that's -- that area
11 right there is -- that's going south, because the north is
12 across the street from that.

13 THE COURT: I thought we just agreed Jerome Avenue
14 runs north and south.

15 THE WITNESS: North and south, yes. So this is the
16 south side, going to the south.

17 THE COURT: The fire hydrant on Jerome Avenue in the
18 photograph is a few feet north of the streetlight pole, right?

19 THE WITNESS: I don't understand your question.
20 Sorry.

21 BY MS. HANFT:

22 Q. Ms. Marte, you were going south --

23 A. Yeah.

24 Q. -- you've stated previously.

25 A. Yes.

Hb7nros1

Marte - direct

1 Q. In this picture, were you driving left to right or right to
2 left?

3 A. That would be going south would be on -- yeah, the right.

4 THE COURT: You would be driving right to left in the
5 photograph, correct?

6 THE WITNESS: Yeah.

7 MS. HANFT: Understood.

8 Q. The body that you saw lying on the ground, could you
9 indicate where on this photograph the body was.

10 A. Right here, where -- next to the hydrant.

11 Q. Now, was the body between the hydrant and the lamppost or
12 on the other side of the hydrant, if you recall?

13 A. Well, he was on the street, and the hydrant is on the
14 sidewalk.

15 Q. Understood. So the body was in the street. Am I correct
16 that it was near the hydrant?

17 A. Yes.

18 Q. Now, you testified that when you saw the person lying on
19 the ground you got out of the car and you began to administer
20 CPR, is that correct?

21 A. Yes.

22 Q. And what did you do?

23 A. I did chest compressions, and I was also giving him mouth
24 to mouth.

25 Q. Generally speaking, what are chest compressions and mouth

Hb7nros1

Marte - direct

1 to mouth?

2 THE COURT: Excuse me. Is this really necessary?

3 MS. HANFT: Your Honor, I can move on. That's fine.

4 THE COURT: There's no dispute the man is dead, right?

5 BY MS. HANFT:

6 Q. Could you tell in what way the person on the ground was
7 injured?

8 A. No.

9 Q. Did you see any wounds?

10 A. No.

11 Q. Why did you give him CPR?

12 A. Because I noticed he wasn't breathing. He didn't have a
13 heartbeat.

14 So I wanted to give the -- you know, the person a
15 chance, so I didn't know when he stopped breathing, when he
16 collapsed, so --

17 Q. About how long did you perform CPR?

18 A. I performed CPR until the ambulance came.

19 Q. And what happened when an ambulance came?

20 A. He was taken in the stretcher, and as he was going inside
21 the ambulance I noticed that he threw up.

22 Q. Based on your background in nursing, what does that mean?

23 A. Well, when I saw him threw up, you know, I immediately
24 realized that he was going to pass away because usually that's
25 one of the things that happens when --

Hb7nros1

Marte - cross

1 Q. Did you have any contact with the New York City Police
2 Department after that?

3 A. Yes.

4 Q. What sort of contact, generally speaking?

5 A. They called me a few days later to ask me questions.

6 MS. HANFT: One moment, your Honor.

7 THE COURT: Sure.

8 MS. HANFT: No further questions for this witness,
9 your Honor.

10 THE COURT: Thank you.

11 Mr. Touger.

12 CROSS EXAMINATION

13 BY MR. TOUGER:

14 Q. First, Ms. Marte, I want to commend you for stopping. But
15 you didn't see anything that caused the victim to collapse,
16 correct?

17 A. No.

18 THE COURT: If he collapsed.

19 Q. You didn't see -- that's a good question?

20 A. No, I didn't.

21 Q. You didn't see him collapse?

22 A. No.

23 Q. The first you saw was him on the ground?

24 A. Yes.

25 Q. You didn't see what caused that at all?

Hb7nros1

Smiddy - direct

1 A. No.

2 MR. TOUGER: Nothing further, your Honor.

3 THE COURT: Thank you.

4 And thank you for stopping.

5 THE WITNESS: Thank you.

6 THE COURT: OK. Next witness.

7 MR. ENZER: The government calls Dr. Smiddy.

8 MONICA SMIDDY,

9 called as a witness by the Government,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ENZER:

13 THE COURT: Thank you. Let's proceed.

14 Q. Doctor, what is your occupation?

15 A. I am a physician and a specialist in forensic pathology.

16 Q. What is forensic pathology?

17 A. Forensic pathology is a specialty where the doctor has
18 training in the performance of autopsies, the classification of
19 injuries, and the certification of death.

20 Q. Where do you work?

21 A. I am employed by the Office of the Chief Medical Examiner,
22 which is part of the Department of Health, and I'm currently
23 working in the Brooklyn office.

24 Q. What is your title?

25 A. City medical examiner 2.

Hb7nros1

Smiddy - direct

1 Q. And what are your duties at the Office of the Chief Medical
2 Examiner?

3 A. My primary duties involve the performance of autopsies,
4 issuing death certificates, testifying as an expert witness,
5 and in my senior capacity I do a lot of training and teaching
6 of medical students and pathology residents and pathology
7 fellows.

8 Q. How long have you worked at the Office of the Chief Medical
9 Examiner?

10 MR. TOUGER: Your Honor, I can speed this process up.
11 I consent that she is an expert in her field.

12 THE COURT: OK. Let's go.

13 Thank you, Mr. Touger.

14 MR. ENZER: Well, the government offers Dr. Smiddy as
15 an expert?

16 THE COURT: That is not necessary.

17 Just ask your questions.

18 BY MR. ENZER:

19 Q. What is an autopsy?

20 A. An autopsy begins with an external examination. The doctor
21 will make note of special characteristics, weight and height,
22 scars and tattoos. And during the external examination the
23 doctor will make notes about injuries that may cause or
24 contribute to death.

25 Following that, an internal examination is done, where

Hb7nros1

Smiddy - direct

1 all of the major organs are examined in a systematic fashion.
2 Again, the doctor is looking for disease or injury that may
3 cause or contribute to the individual's death.

4 Q. Have you performed any autopsies in your career?

5 A. Yes, I've performed many autopsies.

6 Q. Approximately how many?

7 A. Well over a thousand.

8 Q. Have you supervised other medical examiners performing
9 autopsies?

10 A. Yes, I do that on a daily basis.

11 Q. Did you conduct an autopsy of a man named Lowell Fletcher?

12 A. Yes, I did.

13 Q. Was an autopsy report prepared for Fletcher?

14 A. Yes.

15 Q. Was the autopsy report prepared by an employee of your
16 office, the Office of the Chief Medical Examiner?

17 A. Yes.

18 Q. Is the preparation of an autopsy report required for
19 autopsies conducted by your office?

20 A. Yes.

21 (Continued on next page)

22

23

24

25

HB7AAROS2

Dr. Smiddy - Direct

1 BY MR. ENZER:

2 Q. Are autopsy reports prepared at or around the time the
3 autopsy is performed by your office?

4 A. Yes.

5 Q. Is it a routine practice of your office to prepare an
6 autopsy report?

7 A. Yes.

8 THE COURT: Mr. Touger, we don't need to do that this,
9 right?

10 MR. TOUGER: I have no objection.

11 THE COURT: OK. Let's skip the formalities.

12 Q. In front of you is a folder with a document premarked
13 Government Exhibit 153. Have you -- before testifying today
14 did you have an opportunity to examine this document?

15 A. Yes, I did.

16 Q. What is it?

17 A. It's a copy of the autopsy report, the toxicology report
18 and other supporting documents.

19 MR. ENZER: The government offers Government Exhibit
20 153.

21 THE COURT: Received.

22 (Government's Exhibit 153 received in evidence)

23 MR. ENZER: Can we please publish Government Exhibit
24 153.

25 THE COURT: Yes.

HB7AAROS2

Dr. Smiddy - Direct

1 MR. ENZER: Let's turn to the case worksheet which I
2 believe is page eight.

3 (Pause)

4 Q. Doctor, if you don't see it in the hard copy, it's on the
5 screen.

6 When was Fletcher pronounced dead?

7 A. The decedent was pronounced dead on September 27, 2009, at
8 approximately 9:44 p.m.

9 Q. Now, is there a difference between being pronounced dead
10 and actually dying?

11 A. Yes, there is.

12 Q. What's the difference?

13 A. The difference is in this particular case the shooting
14 occurred at one point in time. The decedent was then picked up
15 by emergency medical individuals who then continued
16 resuscitation. The decedent was then taken to the emergency
17 department where resuscitation was continued and then
18 pronounced dead shortly thereafter admission to the emergency
19 department.

20 Q. In other words, the victim might have died before he was
21 pronounced dead?

22 A. Yes.

23 Q. Where was Fletcher pronounced dead?

24 A. At Bronx Lebanon Hospital.

25 Q. What happened to his body after he died?

HB7AAROS2

Dr. Smiddy - Direct

1 A. The body is transported to the Office of the Chief Medical
2 Examiner and at the time it was on the campus of Jacobi
3 Hospital in the Bronx.

4 MR. ENZER: Can we please go to page two of Government
5 Exhibit 153.

6 (Pause)

7 Q. When did the autopsy of Fletcher occur?

8 A. The autopsy was performed on September 28 at approximately
9 11 a.m.

10 Q. September 28, '09?

11 A. Yes.

12 Q. Where did the autopsy take place?

13 A. At the office of the medical examiner in the Bronx Borough.

14 Q. Doctor, what is an external examination?

15 A. Well, an external examination is the first step of the
16 autopsy. The decedent will be examined on the table for
17 evidence of injuries or therapeutic intervention.

18 Q. As part of your autopsy of Fletcher did you conduct an
19 external examination?

20 A. Yes.

21 MR. ENZER: May we please go to page three of
22 Government Exhibit 153.

23 Q. Doctor, what, if any, injuries did you discover on external
24 examination of Fletcher's body?

25 A. The decedent had five gunshot wounds, three gunshot

HB7AAROS2

Dr. Smiddy - Direct

1 entrance wounds on the back and two gunshot entrance wounds on
2 the back of the left arm.

3 Q. And what, if anything, did your external examination reveal
4 about where the bullets entered Fletcher's body?

5 A. Three of the bullets entered the skin and muscles of the
6 back. Two of them on the upper back, another on the left side
7 of the midback.

8 Q. And how about the ones in the arm?

9 A. Two of them entered the skin and muscles of the left arm.

10 Q. Were there any entrance wounds to the front of Fletcher's
11 body?

12 A. No.

13 Q. What, if anything, did your external examination reveal
14 about the path of the bullets?

15 A. The bullet gunshot entrance wound to the left side of the
16 midback, that bullet entered the left thoracic cavity. It
17 traveled through the rib cage. It perforated the left lung and
18 aorta which is a major blood vessel coming off of the heart and
19 then perforated the heart where it became lodged within the
20 heart muscle.

21 Q. Doctor, you mentioned "thoracic cavity". What is that?

22 A. It's part of the rib cage.

23 Q. You used the word "perforated". What do you mean by
24 "perforated"?

25 A. It means that the bullet passes through a major organ or

HB7AAROS2

Dr. Smiddy - Direct

1 blood vessel.

2 Q. Have you given any designations to the gunshot wounds?

3 A. Yes.

4 Q. What?

5 A. Alphabetical, A through E.

6 Q. Do you know the sequence in which the bullets entered
7 Fletcher's body?

8 A. No.

9 MR. ENZER: OK. Your Honor, with the Court's
10 permission we've premarked for identification Government's
11 Exhibit 154 which is a blank diagram. And we'd ask that the
12 doctor be permitted to stand and draw for the jury the gunshot
13 entrance for us.

14 THE COURT: All right.

15 Q. Doctor, please come up. Here is pen. Why don't you draw
16 on Government Exhibit 154 what you observed about the injuries.

17 A. This is a body diagram showing the decedent lying on the
18 autopsy table. And as I am looking at the back of the decedent
19 I'm going to put an "R" underneath the right hand and an "L"
20 underneath the left hand so that you will be oriented. And
21 beginning with the three gunshot entrance wounds to the back of
22 the body, there was an entrance wound on the left side of the
23 midback that I've indicated with a circle and that bullet
24 traveled from the back of the body through the skin and muscles
25 of the back into the left thoracic cavity through the rib cage.

HB7AAROS2

Dr. Smiddy - Direct

1 It perforated the left lung and the aorta and then became
2 lodged within the heart muscle and I've indicated that with a
3 rectangle that represents the bullet that is now lodged within
4 the heart.

5 In this gunshot wound I've labeled "A" and I'll put an
6 arrow to the gunshot entrance wound, an "A" with an arrow to
7 the bullet.

8 There were two additional gunshot entrance wounds.
9 Both of them were located on the upper back just below the
10 shoulders. And these were designate as "B" and "C". Those two
11 bullets traveled through the skin and soft tissues of the upper
12 back and neck and they both became lodged within the soft
13 tissues of the back of the neck. I've indicated those bullets
14 with rectangles on the diagram and that's bullet "B" and that
15 is bullet "C". So those bullets traveled through the soft
16 tissue upwards through the neck.

17 We have two gunshot entrance wounds on the back. This
18 is also referred to as the dorsal aspect of the left arm. And
19 they are located just below the left shoulder and I've
20 indicated them with circles and designated them as "D" and "E".

21 The bullets traveled through the soft tissues. One
22 bullet becomes embedded within the soft tissues of the armpit
23 or the axilla. The other bullet travels through the soft
24 tissues and becomes embedded within the muscles. There is some
25 bleeding or hemorrhage associated with these two gunshot wounds

HB7AAROS2

Dr. Smiddy - Direct

1 but there are no fractures of the left humerus.

2 THE COURT: "Humerus" is a bone in the arm, right?

3 THE WITNESS: It is, yes.

4 Q. Doctor, why did you label the penetrating Wound A as "A"?

5 A. Because that's the most severe injury. That the bullet was
6 the one that traveled through the lung, the aorta and then into
7 the heart.

8 MR. ENZER: Government offers Government Exhibit 154.

9 THE COURT: Received.

10 (Government's Exhibit 154 received in evidence)

11 Q. Doctor, you can return to the witness stand. Thank you.

12 Did you recover any bullets during your autopsy of
13 Fletcher?

14 A. Yes.

15 MR. ENZER: Permission to approach?

16 THE COURT: Yes.

17 (Pause)

18 Q. Doctor, I just handed you a bag premarked for
19 identification as Government Exhibit 101. Did you have an
20 opportunity to examine the contents of the bag before
21 testifying today?

22 A. Yes.

23 Q. Do you recognize the bag and what's in it?

24 A. Yes, I do.

25 Q. What is this bag and what is in it?

HB7AAROS2

Dr. Smiddy - Direct

1 A. The bag contains an envelope, a white envelope. This is
2 the envelope that the New York Police Department Firearms and
3 Ballistics Division, this is their envelope and they write
4 their notes on the outside of the envelope. And then on the
5 inside five small manila envelopes that are labeled with the
6 medical examiner case number. They were labeled by me and the
7 time of the autopsy. And in each envelope -- there are five of
8 them. Each envelope contains the bullets, five bullets that I
9 retrieved during the course of the autopsy.

10 Q. And are the bullets and other contents of the bag in
11 substantially the same condition as when you recovered them
12 from Fletcher's body.

13 A. Yes.

14 MR. ENZER: The government offers Government Exhibit
15 101.

16 THE COURT: Received.

17 (Government's Exhibit 101 received in evidence)

18 MR. ENZER: With the Court's permission I'll publish
19 the bullets on the ledge of the -- in front of the jury.

20 THE COURT: Yes.

21 (Pause)

22 Q. Doctor, are you familiar with the term "range of fire"?

23 A. Yes.

24 Q. Can you explain that term to the jury?

25 A. "Range of fire" indicates the distance between the muzzle

HB7AAROS2

Dr. Smiddy - Direct

1 of the gun and skin surface.

2 Q. What is "fouling"?

3 A. "Fouling" is black gray soot. It's a product of
4 combustion. When a firearm is discharged the gunpowder creates
5 a kind of soot that collects in the barrel of the gun. If the
6 muzzle of the gun is close enough to the skin surface then you
7 will see that black soot deposited on the skin surface and we
8 refer to that black soot as "fouling".

9 Q. What is "stippling"?

10 A. "Stippling" is the result of gunpowder residues, burnt and
11 unburnt powder residues that are deposited on the skin surface.
12 The detectives refer to it as "powder tattooing". Stippling is
13 punctate abrasions on the skin surface. When the muzzle of the
14 gun is close enough to the skin surface it may create these
15 small stippled wounds and this is referred to as an
16 intermediate range gunshot range.

17 Q. And are fouling and stippling used in determining range of
18 fire?

19 A. Yes, they are.

20 Q. During the external examination of Fletcher was there any
21 fouling or stippling near the five gunshot wounds that you have
22 identified?

23 A. No.

24 Q. Based on the lack fouling or stippling, do you have an
25 opinion as to the range of fire?

HB7AAROS2

Dr. Smiddy - Direct

1 A. Yes. These would be distant range gunshot wounds.

2 Q. When you say "distant", how distant?

3 A. Well, beyond, at least beyond two feet, probably beyond
4 three.

5 MR. ENZER: Can we please publish Government Exhibit
6 153 and go to the additional autopsy notes.

7 (Pause)

8 Q. Doctor, we're looking -- for the record, we're looking at
9 additional autopsy notes in this exhibit that say "homicide
10 clothing 10/9/09". Thank you.

11 Directing your attention to October 9, 2009.

12 A. Yes.

13 Q. Did you receive clothing recovered from Fletcher on or
14 about that date?

15 A. Yes, I did.

16 Q. What clothing?

17 A. I received boxer shorts, a T-shirt, jeans, sneakers, socks
18 and a jacket.

19 Q. Did you examine the clothing?

20 A. Yes.

21 Q. What, if any, findings did you make on examination of these
22 clothing items?

23 A. The upper body garments, the jacket and T-shirt, they
24 contained defects that were consistent with the gunshot
25 entrance wounds to the back of the body and the jacket also had

HB7AAROS2

Dr. Smiddy - Direct

1 defects consistent with the gunshot entrance wounds to the left
2 arm.

3 Q. When you say "defect" what do you mean?

4 A. It means that the bullet actually passed through the
5 garments prior to entering the body.

6 Q. What color is the jacket?

7 A. The jacket was red.

8 Q. Was there any fouling or stippling on any of the clothing?

9 A. No.

10 Q. Did you recover any bullets from any of the clothing that
11 would have been worn on Fletcher's lower body, his pants, his
12 underwear?

13 A. There were no defects. There were no gunshot wounds to the
14 lower extremities and there were no defects on the lower body
15 garments to suggest that bullets were traveling through the
16 garments.

17 Q. Doctor, what is an internal examination?

18 A. The internal examination is where the doctor will remove
19 all of the major organs and examine them in a systematic
20 fashion for injury and also disease any natural disease that
21 may be present.

22 Q. As part of your autopsy Fletcher did you conduct an
23 internal examination of his body?

24 A. Yes.

25 Q. What, if any, injuries did you observe on internal

HB7AAROS2

Dr. Smiddy - Direct

1 examination?

2 A. There were no injuries to his brain. There were no
3 injuries to any of the abdominal organs, no injuries to the
4 liver or to the kidneys, the pancreas, the bladder. The major
5 injuries were to the heart and to the left lung and to the
6 aorta.

7 Q. And what injuries were there to those organs?

8 A. There was a significant amount of hemorrhage, bleeding
9 within the left thoracic cavity. That's a direct result of the
10 bullets that are perforating the heart, the aorta and the left
11 lung. And there were hemorrhages also within the left lung and
12 in the heart.

13 Q. Doctor, what is toxicology?

14 A. Toxicology is a laboratory test. During the course of the
15 autopsy the doctor will collect specimens from the decedent
16 that will be submitted to our toxicology laboratory. Chemical
17 analyses will be done on the specimens. The chemical analyses
18 will detect alcohol, drugs of abuse, prescription medications
19 and over-the-counter medications.

20 Q. During your internal examination of Fletcher, were these
21 specimens collected for toxicology?

22 A. Yes.

23 Q. Was an analysis performed on those specimens?

24 A. Yes.

25 Q. What were the results?

HB7AAROS2

Dr. Smiddy - Direct

1 A. In the blood there was no alcohol, drugs of abuse or
2 prescription medications.

3 In the urine there were no prescription medications.
4 Cannabinoids, which is marijuana, was detected.

5 Q. Can you explain for the jury why marijuana would show up in
6 the urine but not the blood?

7 A. It means that at the time of the shooting and shortly
8 before, the decedent was not using marijuana. It had already
9 been metabolized and is now going through the kidneys being
10 filtered and then it will go out through the urinary bladder
11 and the urine. So the marijuana was used hours to days prior
12 to death.

13 MR. ENZER: Can you publish Government Exhibit 153,
14 page one.

15 (Pause)

16 Q. Doctor, are you familiar with the term "cause of death"?

17 A. Yes.

18 Q. What does that term mean?

19 A. Well, the cause of death is the disease or in this case the
20 injury responsible for the decedent's death.

21 Q. In the autopsy report for Fletcher, this exhibit, is there
22 a conclusion to a reasonable degree of medical certainty as to
23 the cause of his death?

24 A. Yes.

25 Q. What is the conclusion?

HB7AAROS2

Dr. Smiddy - Direct

1 A. The gunshot wound of the posterior torso with injuries of
2 the lung, heart and aorta.

3 Q. In other words, Wound A?

4 A. Yes.

5 Q. Before you began your autopsy of Fletcher did your office
6 receive information from the treating hospital, Bronx Lebanon,
7 about the suspected cause of Fletcher's death?

8 A. Yes.

9 Q. What information did your office receive from the hospital
10 about the suspected cause of his death?

11 A. The case was called-in as stab wounds.

12 Q. Based on your autopsy of Fletcher do you agree that
13 stabbing was the cause of his death?

14 A. No.

15 Q. During your autopsy did you find any indication that
16 Fletcher had been stabbed with a knife?

17 A. He was not stabbed.

18 Q. What in your opinion was the cause of his death?

19 A. The gunshot wounds.

20 Q. Can you explain for the jury how it is possible that Bronx
21 Lebanon might have been mistaken -- how they could mistaken
22 gunshot wounds for stab wounds.

23 A. Well, all of the gunshot entrance wounds were on the back.
24 The doctors are working on the front. They're performing
25 cardio pulmonary resuscitation. Also, the doctors' primary

HB7AAROS2

Dr. Smiddy - Cross

1 focus is on resuscitation, saving the individual's life.

2 Unlike the forensic pathologist who can spend a lot of time
3 looking at each individual wound, the doctors are not paying a
4 lot of attention to the individual wounds.

5 In this particular case, at Bronx Lebanon Hospital
6 it's also a teaching hospital. There are many doctors who
7 don't have the same level of expertise in terms of the
8 identification and classification of injuries.

9 MR. ENZER: No further questions, your Honor.

10 THE COURT: Thank you.

11 Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. TOUGER:

14 Q. These are obviously very small bullets, correct?

15 A. Yes, they are.

16 Q. And you've obviously seen in your experience as an ME much
17 larger bullets, I presume?

18 A. Yes, I have.

19 Q. Would I be correct in saying if Gunshot Wound A didn't
20 occur and only the other four gunshots, the deceased would have
21 lived?

22 A. Only if he received medical intervention.

23 Q. So but Gunshot A is the one that caused his death, correct?

24 A. It caused the most severe injuries.

25 Q. The other gunshots didn't penetrate any organs?

HB7AAROS2

Dr. Smiddy - Redirect

1 A. Correct.

2 Q. Didn't penetrate any vital veins or arteries?

3 A. Correct.

4 Q. And wouldn't have caused death as long as at some point he
5 got some type of medical care?

6 A. Most likely.

7 Q. The only -- basically, the -- Gunshot A pierced his aorta
8 his life was in serious danger at that point?

9 A. Yes.

10 Q. Even if it had not become lodged in the heart the piercing
11 of the aorta put him in great danger of death, correct?

12 A. Yes.

13 MR. TOUGER: Nothing further, your Honor.

14 THE COURT: Thank you, Dr. Smiddy.

15 MR. ENZER: May I do a brief direct?

16 THE COURT: Yes.

17 REDIRECT EXAMINATION

18 BY MR. ENZER:

19 Q. Doctor, have you performed autopsies aside from this case
20 in which a small caliber bullet was used to kill somebody?

21 A. Yes.

22 Q. Can a small caliber bullet kill somebody?

23 A. Absolutely.

24 Q. Did small caliber bullets kill Lowell Fletcher in this
25 case?

HB7AAROS2

Dr. Smiddy - Recross

1 A. Yes.

2 MR. ENZER: No further questions.

3 THE COURT: Anything else?

4 CROSS-EXAMINATION

5 BY MR. TOUGER:

6 Q. Obviously, these bullets caused Mr. Fletcher's death but
7 just as obviously the larger the caliber of the bullet, the
8 more damage it can cause, correct?

9 A. Not necessarily, counselor.

10 Q. Well, it makes a bigger hole, right?

11 A. It may make a bigger hole.

12 Q. And if for instance it's a copper jacket bullet it makes --
13 has more damage, correct?

14 A. Not necessarily.

15 Q. It can cause more damage; that's all I'm asking.

16 A. Well, it's possible.

17 Q. Well, you always hear about in the press about how --

18 THE COURT: We are not having a cross-examination
19 about what you always hear about in the press.

20 MR. TOUGER: Nothing further, your Honor.

21 THE COURT: Thank you. Dr. Smiddy, you are excused.

22 We'll take our morning break right here.

23 Counsel, stick around for a minute.

24 (Jury not present)

25 THE COURT: You may step down, Dr. Smiddy.

HB7AAROS2

Dr. Smiddy - Recross

1 THE WITNESS: Thank you.

2 THE COURT: Please be seated, folks.

3 (Witness not present)

4 THE COURT: I'm just going to urge counsel to move
5 along. We have had about four hours of testimony this morning
6 and yesterday to prove facts that are, A, undisputed and, B,
7 could have been stipulated and read to the jury in less than
8 five minutes. Let's get on with it. No dispute about the
9 cause of death, the location, the points where the bullets were
10 recovered which took a long time to prove. Could have been
11 done with a stipulated diagram. I doubt you needed any of
12 these witnesses. Let's move on.

13 I'd also like the witness list.

14 (Recess)

15 THE COURT: OK. Let's get the jury.

16 (Jury present)

17 THE COURT: OK. Defendant and jurors are present, as
18 they have been throughout.

19 Next witness, please.

20 MR. JOHNSON-SKINNER: The government calls Mohammed
21 Stewart.

22 MOHAMMED STEWART,

23 called as a witness by the Government,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

HB7AAROS2

Stewart - Direct

- 1 BY MR. JOHNSON-SKINNER:
- 2 Q. Good morning, Mr. Stewart.
- 3 A. Good morning.
- 4 Q. How old are you?
- 5 A. 39.
- 6 Q. Where were you born?
- 7 A. Brooklyn, New York.
- 8 Q. Where did you grow up?
- 9 A. Pretty much Brooklyn, New York.
- 10 Q. How far did you go in school?
- 11 A. Pretty much to the 11th grade.
- 12 Q. You ever get a GED?
- 13 A. Yes.
- 14 Q. Are you currently employed?
- 15 A. Not working right now.
- 16 Q. What was your most recent job?
- 17 A. Rehabbing homes, flipping them and car sales.
- 18 Q. About when did you stop doing that?
- 19 A. Recently.
- 20 Q. Have you committed crimes in your life, Mr. Stewart?
- 21 A. Yes.

22 (Continued on next page)

23

24

25

HB7AAROS2

Stewart - Direct

1
1 Q. Generally, what type of crimes have you committed?

2 A. Selling drugs, shootings.

3 Q. I want to talk about some of those crimes in more detail
4 later. For now, did there come a time when you were arrested
5 in connection with your current case?

6 A. Yes.

7 Q. What were you charged with?

8 A. I was charged with drug conspiracy, possession of a weapon,
9 and possession of a weapon in furtherance of a drug conspiracy.

10 Q. What is a drug conspiracy?

11 A. Drug conspiracy is when you conspire to sell drugs with
12 other people.

13 Q. What kind of drugs were involved?

14 A. In the conspiracy, cocaine, crack and crack cocaine.

15 Q. Did you plead guilty to those crimes?

16 A. Yes.

17 Q. Are you on bail now, having pled guilty to those crimes?

18 A. Yes.

19 Q. Have you been sentenced yet?

20 A. No.

21 Q. Why are you testifying here today?

22 A. Because I signed an agreement where I have to.

23 Q. Is that a cooperation agreement with the government?

24 A. Correct.

25 Q. When you committed those crimes that you pled guilty to,

Hb7nros3

Stewart - direct

1 did you do them alone or with other people?

2 A. Sometimes both.

3 Q. Do you see anyone in the courtroom here today with whom you
4 committed crimes?

5 A. Yes.

6 Q. Who did you see?

7 A. Jimmy.

8 Q. What is Jimmy last name?

9 A. Rosemond.

10 Q. Could you indicate where he's sitting and an article
11 clothing that he's wearing.

12 A. Dark-colored suit between the attorney's desk over there.

13 Q. What seat is he at, at the attorney's desk?

14 A. The middle seat.

15 MR. JOHNSON-SKINNER: Your Honor, can the record
16 reflect that the witness has identify the defendant James
17 Rosemond.

18 THE COURT: Yes.

19 BY MR. JOHNSON-SKINNER:

20 Q. Do you know Jimmy Rosemond by any nicknames?

21 A. Yes.

22 Q. What nicknames?

23 A. Ace.

24 Q. Any other nicknames?

25 A. We called him Jimmy.

Hb7nros3

Stewart - direct

1 Q. I'll show you what's been marked for identification as
2 Government Exhibit 1. Who is that?

3 A. That's Jimmy.

4 MR. JOHNSON-SKINNER: Judge, we offer Government
5 Exhibit 1.

6 THE COURT: Received.

7 (Government's Exhibit 1 received in evidence)

8 MR. JOHNSON-SKINNER: Can we publish that to the jury,
9 please.

10 BY MR. JOHNSON-SKINNER:

11 Q. Since you called him Jimmy, I'll use that name, too.

12 What crimes did you commit with Jimmy?

13 A. We sold drugs, beefing with shooters with G-Unit.

14 Q. Generally speaking, during what time period did you commit
15 those crimes with the defendant?

16 A. Pretty much from '05, '06 maybe until about 2009, '10.

17 Q. What role did you play in those shootings against G-Unit
18 that you mentioned?

19 A. For a big period of time I dealt with most of -- most of
20 it, most of the beef.

21 Q. When you said you dealt with it, what did you actually do?

22 A. We would -- wherever they were at, we would bring it to
23 him.

24 Q. What does it mean to bring it to them?

25 A. Violence.

Hb7nros3

Stewart - direct

1 Q. Did you ever shoot a gun?

2 A. Yes.

3 Q. What role did Jimmy play in those acts of violence?

4 A. Most times he was calling the shots.

5 Q. We'll come to this in more detail later. Did you ever
6 learn whether someone died in connection with that beef with
7 G-Unit?

8 A. Yes.

9 Q. Who died?

10 A. Lodi Mack.

11 Q. Did you ever speak to Jimmy about Lodi Mack's death?

12 A. Yes.

13 Q. Briefly, what did you say and what did he say in response?

14 A. I asked him if we all could sleep now, and he responded,
15 Yeah, I can sleep. And --

16 Q. What, if anything --

17 THE COURT: The witness, had you finished your answer?

18 THE WITNESS: Yeah. That's fine.

19 Q. What, if anything, were you given or did you see before you
20 asked Jimmy, Can we sleep now?

21 A. Somebody named Jason, he asked me an obituary before Jimmy
22 came outside.

23 Q. I want to back up now. You talked about when you spoke to
24 Jimmy for the first time.

25 About when was that?

Hb7nros3

Stewart - direct

- 1 A. Spoke to him the first time when? What do you mean?
- 2 Q. The first time in your life. Where were you when you spoke
- 3 to him?
- 4 A. That was about maybe around 2000.
- 5 Q. Where were you physically at that time?
- 6 A. I was incarcerated.
- 7 Q. What were you in jail for?
- 8 A. I was charged with robbery.
- 9 Q. How did you come to speak to Jimmy while you were
- 10 incarcerated?
- 11 A. My mom put me on the phone with him.
- 12 Q. How did your mom know Jimmy?
- 13 A. She was renting an apartment from him and his fiancée at
- 14 the time.
- 15 Q. Where was that apartment?
- 16 A. Staten Island.
- 17 Q. How old were you then, about?
- 18 A. Maybe about around 19ish, 18.
- 19 Q. What's the approximate age difference between you and
- 20 Jimmy?
- 21 A. I think he's about almost 15 years older than me.
- 22 Q. Did there come a time when you met Jimmy in person?
- 23 A. Yes.
- 24 Q. About what year was that?
- 25 A. About, I'm thinking about '01, '02.

Hb7nros3

Stewart - direct

1 Q. Where did you meet him?

2 A. At the house.

3 Q. Did anyone else live with Jimmy at that house in Staten
4 Island at about that time?

5 A. Yes.

6 Q. Who lived there?

7 A. Cynthia Reed and Jabulani, his son.

8 Q. Who was Cynthia Reed?

9 A. Jabulani's mother.

10 Q. Did you ever meet Jabulani?

11 A. Yes.

12 Q. About how old was he when you first met him?

13 A. I might have met him first around 1996 or '5, 1995, 1996.

14 Q. And about how old was Jabulani at that time?

15 A. He was a toddler.

16 Q. I will show you what's been marked for identification as
17 Government Exhibit 1008.

18 Do you recognize the person in that photograph?

19 A. Yes.

20 Q. Who is that?

21 A. That's Jabulani.

22 MR. JOHNSON-SKINNER: We offer Government Exhibit
23 1008.

24 THE COURT: Received.

25 (Government's Exhibit 1008 received in evidence)

Hb7nros3

Stewart - direct

1 MR. JOHNSON-SKINNER: Can we publish that to the jury,
2 please.

3 BY MR. JOHNSON-SKINNER:

4 Q. About how old is Jabulani in this photograph, if you know?

5 A. About 13 maybe, 14 maybe.

6 MR. JOHNSON-SKINNER: We can take that down. Thank
7 you.

8 Q. Mr. Stewart, at some point after you met Jimmy, did you
9 begin to spend time with him?

10 A. Yes.

11 Q. About what year did you start doing that?

12 A. Shortly after he came home.

13 Q. What did the defendant do for a living at that time?

14 A. He was in the music business.

15 Q. Did he have a company?

16 A. Yes.

17 Q. What was the name of the company at that time?

18 A. Henchmen.

19 Q. Did that name ever change?

20 A. Yes.

21 Q. What did it change to?

22 A. Czar.

23 Q. Do you know if the defendant had an office?

24 A. Yes.

25 Q. Where was the office?

Hb7nros3

Stewart - direct

1 A. West 25th Street.

2 Q. Is that in Manhattan?

3 A. Yes.

4 Q. Were you being paid by the defendant at that time for the
5 time you spent with him?

6 A. No.

7 Q. Did he ever give you money?

8 A. I received money from him.

9 Q. Why?

10 A. Different reasons, a few different reasons.

11 Q. What are some of the reasons?

12 A. For different shootings.

13 Q. At that time --

14 A. Different acts of violence.

15 Q. At that time, what was Jimmy's role with the company
16 Henchmen?

17 A. That was his company. He was the CEO.

18 Q. What did he actually do?

19 A. Managed rappers, singers, produced movies.

20 Q. Who were some of the rappers or singers he worked with?

21 A. He managed Game, Foxy Brown, Sean Kingston, a couple of
22 others.

23 Q. I'll show you what's been marked for identification as
24 Government Exhibit 1004.

25 Do you recognize the people in that photograph?

Hb7nros3

Stewart - direct

1 A. Yes.

2 Q. Who is in that photograph?

3 A. Me, Taja, Blaine, Tony Martin, and Jimmy.

4 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
5 1004?

6 THE COURT: Received.

7 (Government's Exhibit 1004 received in evidence)

8 MR. JOHNSON-SKINNER: Publish that to the jury,
9 please.

10 BY MR. JOHNSON-SKINNER:

11 Q. Now that the jury can see it where is Jimmy in that
12 photograph?

13 A. He is to the left in a gray sweater.

14 Q. Where were you?

15 A. To the right in a black shirt.

16 Q. You said the person in the red shirt was Tony Martin?

17 A. Correct.

18 Q. Who was he?

19 A. He was Game's road manager.

20 MR. JOHNSON-SKINNER: Judge, permission to approach
21 the witness?

22 THE COURT: Yes.

23 BY MR. JOHNSON-SKINNER:

24 Q. I put before you what's been marked for identification as
25 Government Exhibit 1030.

Hb7nros3

Stewart - direct

1 Do you recognize that?

2 A. Yeah.

3 Q. What is that?

4 A. My jacket.

5 MR. JOHNSON-SKINNER: We will offer Government Exhibit
6 1030.

7 THE COURT: Received.

8 (Government's Exhibit 1030 received in evidence)

9 BY MR. JOHNSON-SKINNER:

10 Q. What kind of jacket is that?

11 A. It's the Czar jacket.

12 Q. What does it say on the jacket there, if you can show it to
13 the jury?

14 A. Czar.

15 Q. What part were you showing? Is it --

16 A. Where it says Czar Entertainment.

17 Q. On the front breast there?

18 A. It says Czar Squad on the right.

19 Q. Where did you get that jacket?

20 A. Jason gave them out at the office. Jimmy had paid for
21 them.

22 Q. Who is Jason that you've mentioned?

23 A. Somebody that worked closely with us at the office.

24 Q. I'll show you what's been marked for identification as
25 Government Exhibit 6.

Hb7nros3

Stewart - direct

1 Who is that in that photograph?

2 A. It's Jason Williams.

3 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
4 6.

5 THE COURT: Received.

6 (Government's Exhibit 6 received in evidence)

7 MR. JOHNSON-SKINNER: Publish that to the jury,
8 please.

9 THE COURT: Yes.

10 BY MR. JOHNSON-SKINNER:

11 Q. Besides you, who else had that jacket that Jason gave you?

12 A. Jason had one, Jimmy had one, Teddy had one. The closest
13 people in the office had it.

14 Q. I'll show you what's been marked for identification as
15 Government Exhibit 1020.

16 Do you recognize that?

17 A. Yes.

18 Q. What is that?

19 A. It's my business card.

20 Q. We will offer Government Exhibit 1020.

21 THE COURT: Received.

22 (Government's Exhibit 1020 received in evidence)

23 BY MR. JOHNSON-SKINNER:

24 Q. What does that mean there, Tef Henchmen?

25 A. Tef was a name that I had in jail from adolescence, and

Hb7nros3

Stewart - direct

1 Henchmen was his name, and felt like we were under him, and it
2 gave a little bit of music credibility, you know.

3 Q. To whom?

4 A. You know, credible association, being -- trying to get
5 meetings and stuff and use it to my advantage.

6 Q. What is the does the nickname Tef mean?

7 A. It was sort of being young and following the whole John
8 Gotti thing, being the Teflon Don. So when I was young and
9 catching a lot of cases, I used to beat them all the time.

10 Q. Is that still your nickname?

11 A. No.

12 Q. Where did you get this card by the way?

13 A. Jason had them made.

14 MR. JOHNSON-SKINNER: You can take that down. Thank
15 you.

16 Q. You testified earlier that you also sold drugs with
17 Rosemond. When did you first start to sell drugs with the
18 defendant?

19 A. About 2007.

20 Q. How long did that go on for?

21 A. Maybe about two, two and a half years.

22 Q. About how many kilograms of cocaine total did you sell
23 during that time period?

24 A. A lot. I'm not really sure.

25 Q. More than a hundred?

Hb7nros3

Stewart - direct

- 1 A. I think so.
- 2 Q. Who did you get drugs from first in connection with Jimmy?
- 3 A. Winston.
- 4 Q. Who is Winston?
- 5 A. A childhood friend of his.
- 6 Q. How did you come to meet Winston?
- 7 A. Jimmy told me one day on a plane somebody would be calling
- 8 me, somebody would get in touch with me; and he just called me
- 9 one day, told me to meet him.
- 10 Q. At the time you were talking to Jimmy on the plane, what
- 11 was your understanding of what the person was going to call you
- 12 about?
- 13 A. About drugs.
- 14 Q. Did Winston, in fact, call you?
- 15 A. Yes.
- 16 Q. What happened after you spoke to Winston?
- 17 A. He told me to come meet him downtown Brooklyn in front of
- 18 Junior's, and I went to meet him and he passed me a shoebox.
- 19 Q. What was in the shoebox?
- 20 A. Cocaine. I don't know if it was one or two kilos.
- 21 Q. Just take a step back and tell us in general, how did
- 22 Jimmy's drug operation work?
- 23 A. It was going -- basically he, west to east coast, the guys
- 24 get it here and sell it.
- 25 Q. When you said west to east coast, what do you mean?

Hb7nros3

Stewart - direct

1 A. We were shipping.

2 Q. Where were the drugs sold?

3 A. Here in New York.

4 Q. Besides Jimmy and Winston, were there other people involved
5 in that drug selling?

6 A. Yes.

7 Q. Who were some of them?

8 MR. TOUGER: Objection, your Honor.

9 THE COURT: Overruled.

10 Q. Who were some of them?

11 A. Khalil, Little D, Akbar, Black.

12 Q. I just want to quickly go through some of those people. We
13 can put up what's been marked for identification as Government
14 Exhibit 13 who is that person?

15 A. Winston.

16 MR. JOHNSON-SKINNER: We will offer Government Exhibit
17 13.

18 THE COURT: Received.

19 (Government's Exhibit 13 received in evidence)

20 BY MR. JOHNSON-SKINNER:

21 Q. Is that the Winston that we were just talking about?

22 A. Yes.

23 Q. I'll show you what's been marked for identification as
24 Government Exhibit 11. Do you recognize that person?

25 A. Yes.

Hb7nros3

Stewart - direct

1 Q. Who is that?

2 A. Little D.

3 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
4 11.

5 Publish that to the jury.

6 THE COURT: Received.

7 (Government's Exhibit 11 received in evidence)

8 BY MR. JOHNSON-SKINNER:

9 Q. What role, if anything, did he play in the drug operation?

10 A. He was one of the distributors.

11 Q. I'll show you what's been marked for identification as
12 Government Exhibit 29.

13 Who is that?

14 A. That's Kesner.

15 THE COURT: Say that again, please.

16 A. That's Kesner.

17 Q. What's Kesner's last name?

18 A. Rosemond.

19 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
20 29?

21 THE COURT: Received.

22 (Government's Exhibit 29 received in evidence)

23 BY MR. JOHNSON-SKINNER:

24 Q. What was his relationship with Jimmy, if anything?

25 A. That was his brother.

Hb7nros3

Stewart - direct

1 Q. Did he play any role in the drug operation?

2 A. Yes.

3 Q. I show you what's been marked for identification as
4 Government Exhibit 4.

5 Who is that?

6 A. That's Khalil.

7 Q. We will offer Government Exhibit 4.

8 THE COURT: Received.

9 (Government's Exhibit 4 received in evidence)

10 BY MR. JOHNSON-SKINNER:

11 Q. Did he play any role in the drug operation?

12 A. Yes.

13 Q. What did he do?

14 A. He was a shipper and seller.

15 Q. I show you what's been marked for identification as
16 Government Exhibit 26.

17 Who is that?

18 A. That is Akbar.

19 Q. Did he play any role in the drug operation?

20 A. Yes.

21 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
22 26.

23 THE COURT: Received.

24 (Government's Exhibit 26 received in evidence)

25 BY MR. JOHNSON-SKINNER:

Hb7nros3

Stewart - direct

1 Q. I show you what's been marked for identification as
2 Government Exhibit 25.

3 Who is that?

4 A. That's Black.

5 Q. Did he play any role in the drug operation?

6 A. Yes.

7 MR. JOHNSON-SKINNER: We will offer Government Exhibit
8 25.

9 THE COURT: Received.

10 (Government's Exhibit 25 received in evidence)

11 BY MR. JOHNSON-SKINNER:

12 Q. What was Black's role?

13 A. Black was our -- one of the west coast connects.

14 Q. What does it mean to be a connect on the west coast?

15 A. Somebody that we could go out there to buy drugs from at a
16 good price.

17 Q. Lastly I'll show you what's been marked for identification
18 as Government Exhibit 27.

19 Do you recognize that person?

20 A. Yes.

21 Q. Who is that?

22 A. That's Mark.

23 Q. Did he play any role in the drug organization?

24 A. Yes.

25 MR. JOHNSON-SKINNER: We will offer Government Exhibit

Hb7nros3

Stewart - direct

1 27.

2 THE COURT: Received.

3 (Government's Exhibit 27 received in evidence)

4 BY MR. JOHNSON-SKINNER:

5 Q. The last thing is I just want to show you what's been
6 marked as Government Exhibit 10.

7 Who is that?

8 A. That's me.

9 Q. We will offer Government Exhibit 10.

10 THE COURT: Received.

11 (Government's Exhibit 10 received in evidence)

12 MR. JOHNSON-SKINNER: You can take that down. Thanks.

13 BY MR. JOHNSON-SKINNER:

14 Q. How much were you buying each kilogram for in New York City
15 at about this time?

16 MR. TOUGER: Objection again, your Honor.

17 THE COURT: Overruled.

18 A. Which time?

19 Q. About the period that you sold with Jimmy. I think you
20 said about 2007 to 2009.

21 A. At one time then I was buying from him, and then I started
22 to go out west and get it myself. When I was buying from them,
23 it might have went anywhere from \$28,000 a kilo to \$31,000 a
24 kilo.

25 Q. How much profit did you make during the entire period you

Hb7nros3

Stewart - direct

- 1 sold drugs that we have been talking about?
- 2 A. I'm not sure.
- 3 Q. More than a hundred thousand dollars?
- 4 A. Yes.
- 5 Q. Close to a million dollars could it be?
- 6 A. Maybe over.
- 7 Q. What did you do with all that drug money?
- 8 A. Spent it.
- 9 Q. What kind of things did you spend it on?
- 10 A. Cars, jewelry, clothes, apartments.
- 11 Q. Do you have any of those apartments or cars or jewelry
- 12 anymore?
- 13 A. No.
- 14 Q. Did you use that money for anything in connection with the
- 15 home that you currently own?
- 16 A. Yes.
- 17 Q. What did you do?
- 18 A. I rehabbed it.
- 19 Q. Have you forfeited any amount of money to the United States
- 20 government as part of your guilty plea?
- 21 A. Yes.
- 22 Q. How much money?
- 23 A. About \$80,000.
- 24 Q. Did you ever sell crack cocaine?
- 25 A. Yes.

Hb7nros3

Stewart - direct

1 Q. About how much crack did you sell?

2 A. I'm not really sure right now. I don't remember.

3 Q. More than a kilogram?

4 A. I'm not sure. I don't remember.

5 Q. Fair to say a large amount?

6 A. Yes.

7 Q. You've testified before about G-Unit.

8 How did you learn about any problem between G-Unit and
9 Jimmy?

10 A. I was pretty much there for a lot of it.

11 Q. By the way, what is G-Unit?

12 A. G-Unit is supposed to be a rap group that 50 Cent owns, his
13 company, also part street gang.

14 Q. Who were some of the people that are affiliated with
15 G-Unit?

16 A. 50 Cent, Tony Yayo, Lloyd Banks, Young Buck, Baja, Maserati
17 Fox, a lot of those guys, Lodi Mack.

18 Q. What is Violator Records?

19 A. Violator was pretty much a management, a rap management
20 company that managed 50 Cent and G-Unit.

21 Q. Who owned that rap management company?

22 A. Chris Lighty.

23 Q. Did Violator have any offices?

24 A. Yes.

25 Q. Where were the offices?

Hb7nros3

Stewart - direct

1 A. The office was across the street from Jimmy's on 25th
2 Street.

3 Q. I'm going to show you a few more photos. Let me know if
4 you know the people.

5 First what's been marked for identification as
6 Government Exhibit 20.

7 Who is that?

8 A. That's 50.

9 MR. JOHNSON-SKINNER: We will offer Government Exhibit
10 20.

11 THE COURT: Received.

12 (Government's Exhibit 20 received in evidence)

13 BY MR. JOHNSON-SKINNER:

14 Q. Do you know his real name?

15 A. Curtis. Curtis Jackson.

16 Q. I'll show you what's been marked for identification or
17 might actually be in evidence as Government Exhibit 19.

18 MR. JOHNSON-SKINNER: Publish that to the jury.

19 Q. Who is that?

20 A. Tony Yayo.

21 Q. Do you know his real name?

22 A. Marvin Bernard.

23 Q. What was his role, if anything, with G-Unit?

24 A. He was a rapper.

25 Q. I show you what's been marked for identification as

Hb7nros3

Stewart - direct

1 Government Exhibit 18.

2 Who is that?

3 A. Chris Lighty.

4 MR. JOHNSON-SKINNER: We will offer Government Exhibit
5 18.

6 THE COURT: Received.

7 (Government's Exhibit 18 received in evidence)

8 BY MR. JOHNSON-SKINNER:

9 Q. Lighty was the owner of Violator Records that you said
10 managed G-Unit?

11 A. Yes.

12 Q. I'll show you what's in evidence as Government Exhibit 32.

13 Who is that?

14 A. Baja.

15 Q. What was his role, if anything?

16 A. He was Tony Yayo's manager, 50 Cent's street dude.

17 Q. Do you know any other names for him?

18 A. Monster.

19 Q. I'll show you what's in evidence as Government Exhibit 17.

20 Who is that?

21 A. Lodi Mack.

22 Q. What was his role, if you know, with G-Unit?

23 A. He was another one of their street dudes.

24 Q. And last, I'll show you what's been marked for
25 identification as Government Exhibit 30.

Hb7nros3

Stewart - direct

1 Who is that?

2 A. That's Game.

3 Q. We will offer Government Exhibit 30.

4 THE COURT: Received.

5 (Government's Exhibit 30 received in evidence)

6 BY MR. JOHNSON-SKINNER:

7 Q. Tell us again what Game did.

8 A. Game was a rapper that was managed by Jimmy.

9 Q. Over what period of time did Jimmy manage Game, if you
10 know?

11 A. I think from about 2005 until -- I don't know when he
12 stopped, but for a long time.

13 Q. What was your understanding about what that problem between
14 Jimmy and G-Unit was about?

15 A. It had a lot to do with Game beefing with 50 Cent.

16 Q. What was that beef about between Game and 50 Cent?

17 A. Words. 50 was talking about him on the radio. Game wanted
18 to approach him, about Jimmy dropping some records early when
19 50 was trying to release his artists, things like that.

20 Q. Whose records?

21 A. Game's.

22 Q. Why did it matter to 50 if Jimmy dropped those Game
23 records?

24 A. Because he's trying to get his money first, recoup his
25 money off his artists. And at that time he's building momentum

Hb7nros3

Stewart - direct

1 for his team, and we are going to use it, Jimmy was going to
2 use it for his.

3 Q. Did you know The Game's real name?

4 A. Jayceon Taylor.

5 Q. I'll show you what's been marked for identification as
6 Government Exhibit 53.

7 Who were some of the people in that photograph?

8 A. I see Jimmy, Game, and me.

9 Q. We will offer Government Exhibit 53.

10 THE COURT: Government 53 is received.

11 (Government's Exhibit 53 received in evidence)

12 MR. JOHNSON-SKINNER: Publish that.

13 BY MR. JOHNSON-SKINNER:

14 Q. Now that the jury can see it, where is Game?

15 A. Game's on the right side of the photo with an orange shirt.

16 Q. Where is Jimmy?

17 A. On the left in the pin striped suit.

18 Q. Where are you?

19 A. Behind Game and in a striped sweater.

20 Q. Next I'll show you what's been marked for identification as
21 Government Exhibit 1000.

22 MR. JOHNSON-SKINNER: If we could zoom in on that.

23 Q. Who is in that photograph?

24 A. That's me and Game down in Miami.

25 Q. We will offer Government Exhibit 1000.

Hb7nros3

Stewart - direct

1 THE COURT: Received.

2 (Government's Exhibit 1000 received in evidence)

3 MR. JOHNSON-SKINNER: Publish that to the jury,
4 please.

5 BY MR. JOHNSON-SKINNER:

6 Q. Which one is you?

7 A. With the white T-shirt on.

8 Q. And you said it was taken in Miami. Do you remember about
9 when it was taken?

10 A. That was VMA weekend.

11 Q. Do you remember about what year?

12 A. Maybe about '05, 06.

13 Q. What is VMA weekend?

14 A. MTV Video Music Awards.

15 Q. What's that white shirt that you are wearing in that
16 picture?

17 A. A G You Not shirt.

18 Q. What is G You Not?

19 A. That was a campaign that we had that was like an anti-50
20 Cent.

21 Q. What is under the "G You Not" on your shirt there?

22 A. A rat.

23 Q. What is the significance of that?

24 A. With a line going through it. And it's -- we were
25 basically putting out there that 50 Cent was a rat, and we were

Hb7nros3

Stewart - direct

1 trying to promote no snitching.

2 Q. What is snitching?

3 A. Snitching is cooperating.

4 Q. I turn your attention --

5 MR. JOHNSON-SKINNER: You can take that down. Thank
6 you.

7 Q. I turn your attention to 2005. Do you recall an incident
8 that occurred in 2005 at Hot 97?

9 A. Yes.

10 Q. First, what is Hot 97?

11 A. Hot 97 is an urban radio station here in New York.

12 Q. Where is it located?

13 A. West side of Manhattan.

14 Q. Were you actually present at that incident?

15 A. Yes.

16 Q. How did you come to be at Hot 97 that day?

17 A. Jimmy called me and asked me to escort Game up there, meet
18 Game up there. He wanted to talk to 50.

19 Q. Who wanted to talk to 50?

20 A. Game.

21 Q. Did you go there?

22 A. Yes.

23 Q. Who was there when you got there?

24 A. When I got there, Game was there with a whole bunch of
25 California dudes, and 50's trucks were parked outside, and they

Hb7nros3

Stewart - direct

1 were upstairs --

2 Q. You said --

3 A. -- live on air.

4 Q. You said 50's trucks.

5 What kind of trucks are you talking about?

6 A. His bulletproof trucks.

7 Q. I'll show you what's been marked for identification as
8 Government Exhibit 645A.

9 Do you recognize that?

10 A. Yes.

11 Q. What is that?

12 A. The building where Hot 97 is.

13 MR. JOHNSON-SKINNER: We will offer Government Exhibit
14 645A.

15 THE COURT: Received.

16 (Government's Exhibit 645A received in evidence)

17 BY MR. JOHNSON-SKINNER:

18 Q. What happened when you came to Hot 97 that day?

19 A. As I was walking down, got onto the block, I see a large
20 crowd in front of the building, and I see a hand come from by
21 the doors and start shooting at the crowd that I was going to
22 meet, for no reason, just fired shots into the crowd from 50's
23 entourage.

24 Q. You said there was a hand out of a door. Do you see the
25 door on this picture 645A?

Hb7nros3

Stewart - direct

1 A. Yes.

2 Q. Where is the door, if you can describe it?

3 A. I don't know which particular door because I was on the
4 side of the building at the corner, but I know it was out of
5 one of these first two to the right.

6 Q. You said the shots were going towards the group of people
7 that you were coming to meet?

8 A. Correct.

9 Q. Was that The Game's people?

10 A. Correct.

11 Q. What happened after that shooting?

12 A. After that shooting I found out that they shot one of
13 Game's guys for no reason.

14 Q. What did you do after the shooting?

15 A. After the shooting I met up with Game. He was real
16 distraught, shaken up, a little teary eyed, and said he wanted
17 something to happen.

18 Q. After you had that conversation with Game, what did you do
19 next?

20 A. Called up some of my home boys and had them meet me in
21 Manhattan.

22 Q. Who did you call?

23 A. One of them was Andre Collier.

24 Q. I'll show you what's been marked for identification as
25 Government Exhibit 21.

Hb7nros3

Stewart - direct

1 Do you recognize that photograph?

2 A. Yes.

3 Q. Who is that?

4 A. That's Andre Collier.

5 MR. JOHNSON-SKINNER: We will offer government Exhibit
6 21.

7 THE COURT: Received.

8 (Government's Exhibit 21 received in evidence)

9 BY MR. JOHNSON-SKINNER:

10 Q. Did you meet up with Collier that day?

11 A. Yes.

12 Q. Where?

13 A. In Manhattan.

14 Q. Where did you go?

15 A. We wound up going to Violator.

16 Q. Why did you go to Violator?

17 A. We thought that they might head back somewhere in the area
18 over there, or we could see somebody affiliated with them over
19 there and maybe we could catch them.

20 Q. And Violator is the management company of G-Unit?

21 A. Yes.

22 Q. That 50 Cent was a part of?

23 A. Yes.

24 Q. I'll show you what's been marked for identification as
25 Government Exhibit 600C.

Hb7nros3

Stewart - direct

1 Do you recognize that?

2 A. Yes.

3 Q. What is that?

4 A. The office of Violator.

5 MR. JOHNSON-SKINNER: We will offer Government Exhibit
6 600 C?

7 A. The building for Violator.

8 MR. JOHNSON-SKINNER: We will offer Government Exhibit
9 600C?

10 THE COURT: Received.

11 (Government's Exhibit 600C received in evidence)

12 BY MR. JOHNSON-SKINNER:

13 Q. What happened when you and Collier got there that day?

14 A. We waited for a while, got tired of waiting, and he shot up
15 the building.

16 Q. Who shot up the building?

17 A. Andre.

18 Q. What part of the building did he hit, if anything?

19 A. The doors, the glass doors.

20 Q. What happened to the glass?

21 A. It shattered.

22 Q. I show you what's been marked for identification as
23 Government Exhibit 600Y.

24 Do you recognize that?

25 A. Yes.

Hb7nros3

Stewart - direct

1 Q. What is that a photograph of?

2 A. That's a photograph of 20 West 25th Street, where our
3 offices were located.

4 MR. JOHNSON-SKINNER: We will offer Government Exhibit
5 600Y?

6 THE COURT: Received.

7 (Government's Exhibit 600Y received in evidence)

8 MR. JOHNSON-SKINNER: Publish that to the jury.

9 BY MR. JOHNSON-SKINNER:

10 Q. Mr. Stewart, help orient us here.

11 What are we looking at?

12 A. On the right side, by that open door in front of the
13 dumpster, behind the dumpster, maybe a little in front of that
14 was where Czar was; and across the street, maybe where that
15 first vehicle is or shortly after that, is where Violator was.

16 Q. You are looking on the left side where that silver car is
17 parked?

18 A. Yes.

19 Q. Did anyone order you to do that, shooting at Violator
20 Records?

21 A. No.

22 Q. Did you talk to anyone about the shooting afterwards?

23 A. Yes.

24 Q. Who did you talk to?

25 A. I spoke to Jimmy.

Hb7nros3

Stewart - direct

1 Q. What did you say to him and what did he say in response?

2 A. I don't remember the whole conversation, but it was more or
3 less that he said, Don't be doing that stuff for them dudes,
4 and don't be doing that stuff for free.

5 And then, Know your value. Let those dudes on the
6 front line do it, his entourage meaning --

7 Q. Meaning who by --

8 A. Meaning Game -- let Game's people deal with that stuff.

9 Q. Were you ever paid for that shooting?

10 A. Yes.

11 Q. Who paid you?

12 A. Jimmy. He told me he would get me a couple of dollars from
13 Game.

14 Q. Did you actually get any money?

15 A. Yes.

16 Q. How much?

17 A. \$2,000.

18 Q. You can take that down, thank you.

19 Did there come a time when you attempted to shoot at
20 Violator again?

21 A. Yes.

22 Q. What year was that about?

23 A. Maybe '06.

24 Q. How did it come to be that you did that?

25 A. Jimmy had asked me, then called it off and called me again.

Hb7nros3

Stewart - direct

1 And I interpreted that he wanted me to do it again and went
2 over there with Andre.

3 He was parked on 26th Street, and as I was cutting
4 through the alley, I was stopped randomly by police. I was put
5 under arrest. I don't know why, until they searched and found
6 a gun.

7 And the car, which was on the next block over, they
8 went back to the car, found the gun in the car, and it was kind
9 of odd, but we were both arrested, charged with gun possession.

10 Q. Let me show you first what's been marked for identification
11 as Government Exhibit 600B.

12 What is that a photograph of?

13 A. It's a photograph of West 25th Street, and there's the
14 church that I was walking through the alleyway with -- I was
15 walking through the alleyway when the police officers ran,
16 trapped me off in there and arrested me.

17 Q. We will offer Government Exhibit 600B.

18 THE COURT: Received.

19 (Government's Exhibit 600B received in evidence)

20 MR. JOHNSON-SKINNER: You can publish that to the
21 jury, please.

22 BY MR. JOHNSON-SKINNER:

23 Q. So, Mr. Stewart, so the jury can see it, what street is
24 this again?

25 A. West 25th Street.

Hb7nros3

Stewart - direct

- 1 Q. And what offices, if anything, does it show?
- 2 A. It shows Czar.
- 3 Q. And you said that you were parked that day on 26th Street?
- 4 A. The next street over.
- 5 Q. So where is 26th in relation to what we see on this
- 6 picture?
- 7 A. Well, you can -- it's behind to the left. You can -- the
- 8 church has an opening that can go from 26th Street and cut
- 9 through to 25th Street if you want to cut through from 26th to
- 10 25th.
- 11 Q. Who, if anyone, were you with that day?
- 12 A. Andre Collier.
- 13 Q. What kind of car were you in?
- 14 A. I was in an Infiniti.
- 15 Q. You said that you got arrested as you were walking in that
- 16 alleyway by the church?
- 17 A. Yes.
- 18 Q. What, if anything, did you see happen to Mr. Collier?
- 19 A. I was brought back to the car. He was pulled out of the
- 20 car. And asked us if we knew each other. We denied it. They
- 21 search the car, arrested both of us.
- 22 Q. And was there, in fact, a gun in the car that day?
- 23 A. Yes.
- 24 Q. Whose gun was it?
- 25 A. Probably -- I don't remember. The gun was shared.

Hb7nros3

Stewart - direct

- 1 Q. You said you were charged in that case?
- 2 A. Yes.
- 3 Q. What happened to the case?
- 4 A. It was dismissed.
- 5 Q. What's your understanding of why it was dismissed?
- 6 A. We took it to pretrial, and we had it -- we had the weapon
- 7 suppressed.
- 8 Q. Did you get bail in that case?
- 9 A. Yes.
- 10 Q. Did anyone contribute money towards your bail?
- 11 A. Yeah. My bail was \$75,000 bond, \$35,000 cash. Jimmy gave
- 12 about \$4,000 towards the bail.
- 13 Q. Were you involved in any conflict with G-Unit immediately
- 14 after that gun case was dismissed?
- 15 A. Yes.
- 16 Q. Just briefly, what incident?
- 17 A. We went -- me, Jimmy, I think Courteney, and I think maybe
- 18 Teddy -- it was a long time ago -- we went to the Apollo and --
- 19 Q. What's the Apollo?
- 20 A. The Apollo Theater in Harlem.
- 21 Q. About what month and year was this?
- 22 A. It was the day after I won the trial, the pretrial, just
- 23 got released.
- 24 Q. About what year would that make it?
- 25 A. I'm thinking '06, late '06.

Hb7nros3

Stewart - direct

1 I went and met Jimmy up there. It was mix tape awards
2 being held there, and we walked through security. And behind
3 us we just hear real loud commotion. G-Unit bum rushed the
4 doors, bypassed security, so we kind of knew why they were
5 doing that.

6 Jimmy was -- I don't know who approached. I think
7 they saw us. They stood by the stairs, and Jimmy greeted one
8 of them, greeted Tony Yayo in a friendly manner, in Creole,
9 "*Qu'est-ce qui ce passé?*" It's, like, hi, how are you doing, I
10 guess.

11 And he wasn't taking to it. He was -- he had an
12 attitude, and more or less pressed him, like, What's up with
13 your boy Game?

14 Q. Who said that?

15 A. Tony Yayo.

16 Q. What happened after that?

17 A. In an aggressive manner towards Jimmy.

18 And it was -- I don't remember the exact words, but it
19 was more or less us going back and forth with them. We went
20 upstairs. I tapped them, let's go upstairs. They eventually
21 came up stairs, a mob of them, about 20 or 30 of them.

22 Q. A mob of who?

23 A. G-Unit.

24 Q. What happened upstairs?

25 A. Maybe about 20 or 30 of them, it looked like they tried to

Hb7nros3

Stewart - direct

1 trap us off from leaving. One guy named Fox, Maserati Fox
2 tried to block off the entrance. The other 20, 30 dudes stood
3 at the other exit.

4 I backed up, grabbed a bottle, had it under my coat.
5 He thought it was a gun. He walked away.

6 We got of there safely. I grabbed Jimmy. I said,
7 let's go. We got out of there safely.

8 Q. OK. Let me first show you what's been marked for
9 identification as Government Exhibit 650A.

10 I will also show you 650G.

11 What are those photographs of?

12 A. That's a photograph of the Apollo.

13 MR. JOHNSON-SKINNER: We'll offer 650A and 650G.

14 THE COURT: Received.

15 (Government's Exhibits 650A and 650G received in
16 evidence)

17 MR. JOHNSON-SKINNER: If you can put up 650A,
18 Mr. Pavlis, please.

19 BY MR. JOHNSON-SKINNER:

20 Q. You said you got outside safely?

21 A. Yeah, we ran down the back stairs, got out of there.

22 Q. What happened when you were outside?

23 A. Shortly after, Khalil came to meet us, Khalil and two guys.

24 MR. JOHNSON-SKINNER: You can put up Government
25 Exhibit 4, which is in evidence.

Hb7nros3

Stewart - direct

- 1 Q. Is that Khalil?
- 2 A. Yes.
- 3 Q. What did you see Khalil do, if anything?
- 4 A. I saw him talking to Jimmy.
- 5 Q. What happened next?
- 6 A. He had two guys pull up, and eventually we all separated.
- 7 Q. Where did you go?
- 8 A. I went with Jimmy, got in a truck.
- 9 Q. What happened after you got in that truck with Jimmy?
- 10 A. I stood in the truck. Jimmy left.
- 11 Q. Did you ever see Jimmy again that night?
- 12 A. Yes.
- 13 Q. Where were you when you saw him again?
- 14 A. I was in the truck.
- 15 Q. What, if anything, did Jimmy say to you when he got back?
- 16 A. Something like that they had shot up his, Yayo's Bentley.
- 17 MR. JOHNSON-SKINNER: You can take that picture down.
- 18 Thank you, Mr. Pavlis.
- 19 Q. Mr. Stewart, did there come a time after that incident at
- 20 the Apollo when members of G-Unit did something against Jimmy
- 21 or a member of his family?
- 22 A. Yes.
- 23 Q. Just generally, what happened?
- 24 A. They'd slapped his son. They had slapped Jabulani.
- 25 Q. When did you learn about this?

Hb7nros3

Stewart - direct

1 A. The same day it happened?

2 Q. Where were you when you learned about it?

3 A. I was in Manhattan on the way home in New Jersey.

4 Q. Just going back to one thing we just talked about at the
5 Apollo. You said that Jimmy got in the car and said they shot
6 up Yayo's Bentley.

7 Who was "they" in that conversation?

8 A. Jimmy, Khalil, two guys he was with. Not saying who in
9 particular.

10 Q. Sorry. Tell us again who was there when you learned about
11 the incident against Jabulani?

12 A. Sorry.

13 Q. Where were you when you learned about the incident against
14 Jabulani?

15 A. I was driving, probably headed to the tunnel.

16 Q. How did you learn about it?

17 A. Teddy called me.

18 Q. What did Teddy say?

19 A. Teddy kept calling me and asking me to come back to the
20 office. I didn't want to come. I was a little upset with
21 Jimmy at the time.

22 Q. What did you end up doing?

23 A. I eventually wound up coming back.

24 Q. First, I'll show you what's been marked for identification
25 as Government Exhibit 31.

Hb7nros3

Stewart - direct

1 Who is that?

2 A. That's Teddy.

3 MR. JOHNSON-SKINNER: We will offer Government Exhibit
4 31?

5 THE COURT: Received.

6 (Government's Exhibit 31 received in evidence)

7 MR. JOHNSON-SKINNER: Publish that to the jury,
8 please.

9 BY MR. JOHNSON-SKINNER:

10 Q. Did you have an understanding of Teddy's relationship with
11 Jimmy, if anything?

12 A. Yes.

13 Q. What was it?

14 MR. TOUGER: Objection, your Honor.

15 THE COURT: Lay a foundation.

16 Q. Did you ever see Teddy around Jimmy?

17 A. Yes.

18 Q. How often?

19 A. Every day.

20 Q. Did you ever talk to Teddy yourself?

21 A. Yes.

22 Q. Did you ever talk to Jimmy about Teddy?

23 A. Yes.

24 Q. Did understand any relationship between Teddy and Jimmy?

25 A. Yes.

Hb7nros3

Stewart - direct

- 1 Q. What was your understanding of it?
- 2 A. That they were close.
- 3 Q. What did Teddy do, if anything, to your knowledge?
- 4 A. He was a friend to Jimmy, and he worked at the office.
- 5 Q. What happened when you got to the office?
- 6 A. Walked in the office, and I saw Jimmy, Teddy, and Jabulani.
- 7 Jimmy was upset. Jabulani looked upset, like he was, like,
- 8 looked like he had might have been crying, a little shaken up.
- 9 Q. About how old was Jabulani at that time?
- 10 A. About 13, 14, maybe.
- 11 Q. What did you learn happened?
- 12 A. That G-Unit had slapped him up, roughed him up, and pulled
- 13 out guns on him.
- 14 Q. Did you learn who, if anyone, from G-Unit was involved?
- 15 A. I heard Yayo and 50 might have been in the truck, but at
- 16 that time that was -- and some other street guys.
- 17 Q. Did you hear any other names at that time?
- 18 A. No, not at that time.
- 19 Q. Where did you go next after you were in the office?
- 20 A. We went downstairs.
- 21 Q. Who came downstairs with you, if anyone?
- 22 A. I think we all came down, a couple of guys met us
- 23 downstairs, some of Jimmy's friends.
- 24 Q. Who were some of the other people that were there?
- 25 A. Two main that I remember was Little D and Hitler, one of

Hb7nros3

Stewart - direct

1 his friends named Hitler.

2 MR. JOHNSON-SKINNER: We'll put up Government Exhibit
3 11 which is in evidence.

4 Q. Remind us who that is?

5 A. That's Little D.

6 Q. You said you went downstairs. Where did you go?

7 A. Went right in front of the building.

8 Q. That's Czar?

9 A. Czar.

10 Q. Czar's building.

11 What happened when you got downstairs?

12 A. We were all talking, all just congregating downstairs.
13 Somebody said that's Chris Lighty's brother walking past, him
14 and another guy.

15 I spoke to Jimmy. I asked him what he wanted to do.
16 If I remember right, he was like, I don't remember the exact
17 words, but it was more like they didn't have nothing to do with
18 it. And I just didn't agree with it. I felt like, and I
19 explained to him that, you know, They did that to your son.
20 All gloves should be off.

21 Q. What was Jimmy's reaction, if anything, when you said all
22 gloves should be off?

23 A. He just looked at me and he just nodded. He nodded his
24 head like in agreement. He got in deep thought, he just nodded
25 his head in agreement.

Hb7nros3

Stewart - direct

1 Q. What did you do next?

2 A. I asked him if he had a razor.

3 Q. What happened?

4 A. He asked around. I think he might have got it from Little
5 D, and he gave it to me. And I started to walk behind him, and
6 he saw me walking up, Chris Lighty's brother saw me walking up
7 on him, and as I swung at him with it, he flinched. I didn't
8 get him how I wanted to, but I think I touched him with it.

9 Q. Did you see what, if anything, happened to Chris Lighty's
10 brother?

11 A. I didn't see. It was a big commotion. They pulled out
12 knives, acted like they wanted to fight, but I heard later on
13 after I left that he was outside dealing with an ambulance. He
14 was in an ambulance.

15 Q. I show you what's in evidence already as Government Exhibit
16 600Y.

17 Does this photograph include the area near where you
18 were outside the building that day?

19 A. Yes.

20 Q. Where were you on this block approximately when you saw
21 Chris Lighty's brother?

22 A. We were about near the dumpster, where the dumpster is.
23 The dumpster wasn't there.

24 Q. Where was the brother?

25 A. On the opposite side of the street, walking.

Hb7nros3

Stewart - direct

1 Q. And where was Jimmy at the time that you attacked the
2 brother?

3 A. Standing next to me -- well, when I attacked him, I don't
4 know, but he was somewhere around here.

5 Q. What time of day was it, about?

6 A. Early evening. 6, 7 o'clock, maybe.

7 MR. JOHNSON-SKINNER: You can take that down. Thank
8 you.

9 Q. Mr. Stewart, did you see Jimmy's attitude towards the feud
10 in the G-Unit change at all during this time?

11 A. Yes.

12 Q. What did you notice?

13 A. He was always upset.

14 Q. What was he upset about?

15 A. I guess his son getting slapped.

16 Q. How do you know he was upset about that?

17 A. We always spoke about strategy almost every day.

18 Q. Strategy about what?

19 A. Different ways we would deal with them or, you know, pass
20 information about them, where they would be, where they lived,
21 you know, things like that.

22 Q. Did you discuss with Jimmy a way that you were going to
23 approach that rivalry with G-Unit?

24 A. Yes, he told me a way.

25 Q. What was the way?

Hb7nros3

Stewart - direct

1 A. That he would deal with it with the law, with the streets,
2 and through the media.

3 Q. So let me start with the first one.

4 Through the law, what do you mean by that?

5 A. That he was going to have his baby mother press charges
6 against them.

7 Q. Against who?

8 A. Against G-Unit and have them locked up.

9 Q. Who was the baby mama that you were talking about?

10 A. Cynthia.

11 Q. That's Jabulani's mother?

12 A. Jabulani's mother.

13 Q. When you said through media, what did you mean by that?

14 A. Go through the press and have them denounce hip hop, hook
15 up with people, heavyweights in hip hop and protest the
16 violence against children in hip hop, stuff like that.

17 Q. Who was going to do that?

18 A. He was going to let Cynthia do that, and he reached out to
19 Russell Simmons and Ben Chavis and people like that.

20 Q. As part of that media campaign, was any music involved?

21 A. Yeah.

22 Q. What was the point of the music?

23 A. I don't -- through I guess Game rapping, but that I guess
24 through the media stuff was also affecting their music.

25 Q. Do you know if Jimmy himself ever made any music or any

Hb7nros3

Stewart - direct

1 tape related to this?

2 A. I remember him talking on a tape.

3 MR. TOUGER: Objection, your Honor.

4 THE COURT: Sorry.

5 Did you say something, Mr. Touger.

6 MR. TOUGER: I objected to this. It doesn't seem like
7 it's on firsthand knowledge.

8 THE COURT: Sustained.

9 Lay a foundation.

10 BY MR. JOHNSON-SKINNER:

11 Q. How do you know about Jimmy talking on this tape?

12 A. I saw him go in the booth.

13 Q. Where were you at the time?

14 A. At Czar.

15 Q. What do you remember Jimmy saying on that tape?

16 A. I don't remember. It was a message to 50, but I don't
17 think it was after his son getting slapped, though.

18 Q. The third way you talked about was through the street.

19 What was your understanding of what was meant by that?

20 A. We would bring it, bring it to them, beef.

21 Q. What does it mean to bring beef to somebody?

22 A. Whenever we see them, it was on, that we knew where they
23 were at, if something happened to one of them.

24 Q. What do you mean if something happened, what kind of
25 things?

Hb7nros3

Stewart - direct

1 A. Somebody got hurt.

2 Q. Who were the main people involved in the effort to hurt
3 G-Unit?

4 A. Me, Jimmy, Jason, Khalil.

5 Q. During that time period, 2007 to 2009, did you discuss that
6 feud with Jimmy?

7 A. Yes.

8 Q. In person or on the phone? How did you do it?

9 A. Both.

10 Q. By the way, how many phones did the defendant have at that
11 time?

12 A. He had a lot.

13 Q. How many?

14 A. Sometimes more than five.

15 Q. What kind of phones did you see him with?

16 A. We all would -- I mean, iPhone, BlackBerry. We all had a
17 lot of phones.

18 Q. How many phones did you have at that time?

19 A. About the same, five.

20 Q. What's the point of having five different cell phones?

21 A. You got your family and friends line, and then you had a
22 phone for, you know, certain people you would hustle with --

23 MR. TOUGER: Your Honor, is this his phone that we are
24 talking about?

25 THE WITNESS: Yeah.

Hb7nros3

Stewart - direct

1 THE COURT: Yes.

2 A. And different people you were hustling with.

3 Q. Why did you have phones for the people you were hustling
4 with?

5 A. Trying to contain them per phone, two people per phone,
6 three people per phone, so other people that might have
7 something going on wouldn't lead into what you had going on
8 with the other people on this phone.

9 Q. Why did you need different phones for that? Why not do all
10 of that on the same phone?

11 A. If these two people got caught up in an investigation, I
12 wouldn't want them to affect these two people and those other
13 people and those other people on those phones.

14 Q. Did you ever have in-person meetings with Jimmy about
15 G-Unit?

16 A. Yes.

17 Q. Where did some of these meetings take place?

18 A. Everywhere. Sometimes in cars, sometimes at the office,
19 sometimes in -- by Central Park, a couple of different places.

20 Q. What did you and Jimmy physically do during those meetings,
21 let's say first in a car?

22 A. We would do -- we would talk.

23 Q. Did Jimmy do anything in the car during those meetings?

24 A. Yes.

25 Q. What did he do?

Hb7nros3

Stewart - direct

1 A. First all the time the radio goes up.

2 Q. What about the meetings outside of the car, like the ones
3 in Central Park or at the office. What did you and Jimmy
4 physically do during those meetings?

5 A. We would walk, circle blocks.

6 Q. Did you have an understanding of why you were circling the
7 block?

8 A. I pretty much think it would be for surveillance, if we
9 were being watched, targeted. We would know if somebody was
10 following us.

11 Q. Were other people usually around for those conversations?

12 A. No.

13 Q. What did you discuss in those conversations?

14 A. All pretty much whatever was going on up to date, whatever
15 was going on at that time period as far as G-Unit.

16 Q. Give us some examples.

17 A. I don't remember right now.

18 Q. Was information --

19 A. A long time ago.

20 Q. -- passed back and forth between you?

21 MR. TOUGER: Objection. Leading.

22 A. Examples of --

23 THE COURT: Just a minute.

24 What do you have to say, Mr. Touger?

25 MR. TOUGER: If the witness says he doesn't remember,

Hb7nros3

Stewart - direct

1 I don't think he should be allowed to be led into the
2 conversations.

3 THE COURT: Sustained as to form. Do this another
4 way.

5 Q. Do you remember the gist of those conversations?

6 A. Yeah. I just don't remember specific conversations from
7 specific times that we were walking or in a car.

8 Q. In general. Do you remember in general what was discussed?

9 A. Sometimes we would talk about issues within the business,
10 drug business sometimes. We would talk about things with
11 G-Unit, you know.

12 Q. With respect to the things with G-Unit, do you remember in
13 general what was discussed?

14 A. I don't have a particular time that we're talking about.

15 Q. Did you ever conduct surveillance of G-Unit members?

16 A. Yes.

17 Q. What did you do?

18 A. Go to their houses, get their phone records, find -- get
19 their phone numbers and get their call lists, incoming,
20 outgoing call list. I would find addresses, go to their
21 houses, stake out their houses.

22 Q. Did you ever do that surveillance with anyone else?

23 A. Yes.

24 Q. Who were some of the people you did it with?

25 A. Jason. I've done with Jimmy, Andre.

Hb7nros3

Stewart - direct

1 Q. Do you remember any particular times of surveillance?

2 A. Yes.

3 Q. What do you remember?

4 A. I remember a couple times I was outside Baja's house, a
5 couple of times I was outside his sister's house, a time we
6 went to Tony Yayo's mother's house.

7 Q. Do you remember any times with Jason?

8 A. Yes.

9 Q. What do you remember?

10 MR. TOUGER: Your Honor, I am going to object to
11 leading again.

12 THE COURT: I don't understand the objection. He said
13 did something happen, and --

14 MR. TOUGER: No. The question before that. He just
15 got out the second one too quickly for my knees to get up and
16 stand.

17 THE COURT: The answer was yes.

18 Overruled.

19 BY MR. JOHNSON-SKINNER:

20 Q. What do you remember about that time with Jason?

21 A. A few incidents with Jason. One time we drove through
22 Baja's block. We were staking out his sister's house. That
23 was like their headquarter.

24 Another time we went to Tony Yayo's mother's house,
25 looking for his brother. But we weren't sure -- I never seen

Hb7nros3

Stewart - direct

1 him before. I was relying on Jason to point him out. I was
2 looking to shoot him.

3 And Jason said he thinks that's him, but he's not
4 sure. The dude stopped by the car, took a deep breath, and I
5 told him I wasn't going to shoot an innocent person. I didn't
6 want to make a mistake. So we just pulled off and kept going.

7 Q. Did Jimmy ever talk to you about how this dispute with
8 G-Unit would end?

9 A. Yeah.

10 Q. What did he say?

11 A. He told me that those dudes ain't going to be happy until
12 they carrying a coffin.

13 Q. What was his demeanor like when he said that?

14 A. He had like a little smirk on his face, like somewhat like
15 it was a joke. With a smile on his face, but bad joke.

16 Q. Did he say anything else besides that?

17 A. No.

18 Q. When he said those dudes, what was your understanding of
19 who he was talking about?

20 A. G-Unit.

21 Q. I want to talk to you about a particular member of G-Unit.

22 I am going to show you what is in evidence as
23 Government Exhibit 32.

24 Who is that again?

25 A. That's Monster, Baja.

Hb7nros3

Stewart - direct

- 1 Q. Remind us. What connection did he have to G-Unit?
- 2 A. That was Tony Yayo's road manager and 50's right hand, his
3 street dude.
- 4 Q. Did you ever commit or attempt to commit any acts of
5 violence against Baja?
- 6 A. Yes.
- 7 Q. About how many acts do you remember?
- 8 A. A lot.
- 9 Q. What period are we talking about?
- 10 A. From --
- 11 Q. What time period?
- 12 A. From about 2007 to maybe '09.
- 13 Q. Can you just briefly list the acts that you remember.
- 14 A. I remember sending one of my home boys to shoot up his
15 house, sending him -- sending one to shoot up his sister's
16 house.
- 17 Q. Sending who? I didn't hear you.
- 18 A. One -- the same home boy to shoot up his sister's house. I
19 remember being outside his sister's house one night after they
20 tried to set my barbershop on fire. I remember trying to blow
21 up his bulletproof truck and shooting it up in the house. A
22 couple of things.
- 23 Q. Any acts involve Jimmy personally?
- 24 A. An attempt.
- 25 Q. Let's go through those one at a time.

Hb7nros3

Stewart - direct

1 You mentioned that you sent your home boy to shoot up
2 Baja's house.

3 Who was the home boy?

4 A. A kid named Life.

5 Q. Can you describe what Life looks like?

6 A. Light skinned, tall, skinny.

7 Q. Where was Baja's house at the time?

8 A. In Staten Island.

9 Q. How did it come to be that you got Life to shoot at Baja's
10 house?

11 A. He was a friend of a friend, and he went and called him for
12 me.

13 Q. Who called who?

14 A. My friend that owned the barbershop, that owned the
15 barbershop, called Life.

16 Q. Why did you even start that? Why did you even send Life to
17 Baja's house?

18 A. Because Jimmy asked me.

19 Q. What did Jimmy say?

20 A. That he wanted the house shot up.

21 Q. Did you offer Life anything to do it?

22 A. Yeah, I gave him some money.

23 Q. Do you know if Life actually shot up the house?

24 A. I was told he did.

25 Q. How much did you pay Life?

Hb7nros3

Stewart - direct

- 1 A. I think I gave him about two or three grand.
- 2 Q. Did you ever get any money from anyone for that?
- 3 A. I think Jimmy gave me some money later.
- 4 Q. How much money?
- 5 A. I'm thinking I confused one of the times -- it might have
- 6 been about 12 grand, if I'm right.
- 7 Q. Jimmy gave you 12 grand, you gave Life two grand you said?
- 8 A. I paid Life out of my pocket, and Jimmy wanted to give me
- 9 money for it later.
- 10 Q. You also testified about sending someone to Baja's sister's
- 11 house, is that right?
- 12 A. Yes.
- 13 Q. Who did you send to his sister's house?
- 14 A. Life. He went with Jason.
- 15 Q. Whose idea was that shooting?
- 16 A. Jimmy's.
- 17 Q. Did Jimmy talk to you about that?
- 18 A. Yes.
- 19 Q. What did Jimmy say?
- 20 A. He wanted both houses shot up. I think he was going to
- 21 Africa and he wanted it done while he was gone.
- 22 Q. Did Life actually go to the house?
- 23 A. Yes.
- 24 Q. How do you know that?
- 25 A. He -- I saw him leave with Jason.

Hb7nros3

Stewart - direct

1 Q. You said Jason. Is that the same Jason Williams that we
2 saw before in Government Exhibit 6?

3 A. Yes.

4 Q. You said you saw him go with Jason.

5 Where were you when you saw him go?

6 A. We were on Staten Island.

7 Q. Did you all meet up first?

8 A. Yes.

9 Q. Do you know if Life had a gun?

10 A. Yes.

11 Q. What gun did he have?

12 A. I gave him a gun, a .22 silencer.

13 Q. Where did you get that gun from?

14 A. I got it from Jason. I was holding it for a while.

15 Q. Whose gun was that?

16 A. Jimmy's.

17 Q. Did you ever get that gun back from Life?

18 A. Yes.

19 Q. What did you do with that gun when you got it back?

20 A. Put it at a girl's house.

21 Q. Did you ever do anything else with it later on?

22 A. I eventually gave it back to Jason.

23 Q. By the way, whose car did they go in when they went to
24 Life's sister's house -- I'm sorry to Baja's sister's house?

25 A. Jason's.

Hb7nros3

Stewart - direct

- 1 Q. What kind of car was that?
- 2 A. A Nissan Altima, I think.
- 3 Q. Do you know if there are any special features in that car?
- 4 A. Yes.
- 5 Q. What's in it?
- 6 A. He had a trap.
- 7 Q. What's a trap?
- 8 A. A stash box where you can hide things.
- 9 Q. Where was the box where you could hide things in that car?
- 10 A. It was in the dashboard, in the face. I think it was in
- 11 the radio.
- 12 Q. That shooting at Baja's sister's house, did you pay Life
- 13 for that?
- 14 A. I gave him some money.
- 15 Q. About how much?
- 16 A. I think I gave him half of what I told him, about \$1500.
- 17 Q. Did you ever speak to Jimmy about that after it was over?
- 18 A. Yeah.
- 19 Q. What was that conversation?
- 20 A. It wasn't good. We sat in his car, and it was a little bit
- 21 of an argument. Life was swearing up and down that he shot at
- 22 the house. Jimmy was saying that he didn't, and nobody heard
- 23 it, nobody knows about it, that it didn't happen. And we were
- 24 arguing about money.
- 25 Q. Did you personally have a problem with Baja at that time?

Hb7nros3

Stewart - direct

- 1 A. No.
- 2 Q. Now, that .22 -- that gun that you gave, what caliber is
3 it?
- 4 A. .22.
- 5 Q. Did it have anything special on it?
- 6 A. It had a silencer.
- 7 Q. It had a what?
- 8 A. A silencer.
- 9 Q. Had you ever used that gun?
- 10 A. Yes.
- 11 Q. When had you used it?
- 12 A. I just tested it and fired it.
- 13 Q. What did it sound like when it was shot?
- 14 A. It was real quiet.
- 15 Q. How does a silencer fit on a gun?
- 16 A. You screw it on.
- 17 Q. What part of the gun is it screwed on to?
- 18 A. The front nose of it.
- 19 Q. Did you ever talk to Jimmy about the silencer on that gun?
- 20 A. Yes.
- 21 Q. What did you say about it?
- 22 A. I asked him where I can get some at, and he said that they
23 can't find the dude.
- 24 Q. Can't find what dude?
- 25 A. The dude that makes them. A military guy, nobody could

Hb7nros3

Stewart - direct

1 find him.

2 Q. Did you ever have any conversations with Jimmy about that
3 gun itself?

4 A. Yes.

5 Q. What was that conversation?

6 A. He was talking to me about it --

7 MR. TOUGER: Can we have a time period.

8 THE COURT: Well, you will get to cross-examine.

9 Let's continue.

10 BY MR. JOHNSON-SKINNER:

11 Q. What was that conversation?

12 A. Basically the effects of it, that it ain't going to stop
13 anybody -- can't stop nobody, but if want to you use it, you
14 know, it's effective, you shoot somebody in the head and you
15 shoot them behind the ear in the head, something like that; and
16 the damage that it causes, though, was that somebody gets hit
17 with it, the bullets bounce around the body and they cut
18 arteries and stuff like that.

19 Q. You testified there was an attempted time that Jimmy was
20 involved in?

21 A. Yes.

22 Q. And against who was that done, the attempt?

23 A. Against Baja at his house.

24 Q. The same house on Staten Island?

25 A. Yes.

Hb7nros3

Stewart - direct

1 Q. I'm going to show you what's been marked for identification
2 as Government Exhibit 1001.

3 Do you recognize that?

4 A. Yes.

5 Q. What's that?

6 A. That's the subdivision where the house, Baja's house was
7 at.

8 MR. JOHNSON-SKINNER: We will offer Government Exhibit
9 1001.

10 THE COURT: Is that the house?

11 THE WITNESS: They all look the same, but it appears
12 it's the one in front.

13 THE COURT: In the middle?

14 THE WITNESS: Yes.

15 THE COURT: OK. Received.

16 (Government's Exhibit 1001 received in evidence)

17 MR. JOHNSON-SKINNER: Publish that.

18 BY MR. JOHNSON-SKINNER:

19 Q. The one in the middle there looks like it's Baja's house to
20 you?

21 A. Yes.

22 Q. How did it come to be that you went to Baja's house with
23 Jimmy?

24 A. I don't understand the question.

25 Q. Why did you end up there?

Hb7nros3

Stewart - direct

- 1 A. He told me to meet him there.
- 2 Q. Who told you that?
- 3 A. Jimmy.
- 4 Q. How did you get there?
- 5 A. I drove.
- 6 Q. Where was Jimmy when you got there, if at all?
- 7 A. He was parked on the side block.
- 8 Q. What kind of car was he in?
- 9 A. He was in a red Expedition.
- 10 Q. Do you know whose car that is?
- 11 A. I think it is a Little D's or something. He was always
- 12 driving.
- 13 Q. What did you do when you saw Jimmy in the red Expedition?
- 14 A. Got in.
- 15 Q. Did you start talking to him?
- 16 A. Yes.
- 17 Q. What did you talk about?
- 18 A. Spoke about he wanted Baja's house shot up.
- 19 Q. What did you do next?
- 20 A. Got the gun.
- 21 Q. Where did the gun come from?
- 22 A. The back of the truck.
- 23 Q. What was in the back of that truck?
- 24 A. The back of the truck there was a stash box in there.
- 25 Q. Where was it?

Hb7nros3

Stewart - direct

- 1 A. It was in the floor under the seat, in the back seat.
- 2 Q. Did you see how the stash box got opened?
- 3 A. Combination of buttons in the front. I am not sure how.
- 4 Q. Who opened the stash box?
- 5 A. Jimmy.
- 6 Q. And there was a gun in there?
- 7 A. Yes.
- 8 Q. What kind of gun was it?
- 9 A. It was a big gun with a silencer. I think it was his .45.
- 10 I am not sure of the caliber.
- 11 Q. Whose gun was that?
- 12 A. Jimmy's.
- 13 Q. Can you describe for us what the gun looks like.
- 14 A. About this big maybe, with a silencer on it.
- 15 Q. About a foot and a half?
- 16 A. Maybe.
- 17 Q. Does that sound right?
- 18 A. Yeah.
- 19 Q. Was that a typical handgun?
- 20 A. No.
- 21 Q. Did you get that gun that day?
- 22 A. Yes.
- 23 Q. What did you do with it?
- 24 A. I left the car, walked over Baja's house, went behind the
- 25 house towards the backyard, and I was going to shoot up his

Hb7nros3

Stewart - direct

1 house.

2 Q. What happened next?

3 A. I saw a little girl in the window. I turned around and
4 left.

5 Q. Where did you go when you left?

6 A. I went back to the car.

7 Q. What happened when you got in the car?

8 A. Jimmy asked me what happened. I told him I didn't do it.
9 He asked why. I told him I saw a little girl in the house, I
10 think it was his daughter, and I wasn't going to shoot up the
11 house. He was upset.

12 Q. What, if anything, did he say?

13 A. Don't be wasting his time.

14 Q. Were you paid anything for that?

15 A. No.

16 Q. Did there ever come a time when you were retaliated against
17 by Baja?

18 A. Yes.

19 Q. Generally speaking, what kinds of things happened?

20 A. He set my barbershop on fire, shot up my Escalade twice,
21 tried to kidnap my brother.

22 Q. Can you describe for the jury what happened the first time
23 they shot at your Escalade?

24 A. Yeah. We were followed through Staten Island. Sitting
25 talking to a friend, one person walking on the right side of

Hb7nros3

Stewart - direct

1 the vehicle, started shooting into the car. A white van cut us
2 off, the driver jumps out, a passenger jumps out, all three of
3 them start shooting into the truck.

4 And as I'm down I see somebody come through the side
5 doors of the van and start shooting into my truck. And they
6 started to all get back in the van. I tried to put my car in
7 drive and ram them with the back doors opened up, and a lot of
8 shots came out the back doors into my windshield.

9 I ducked again. Me and my -- the passenger ducked
10 again, and somebody started firing at them out the window in
11 the projects, and they drove off.

12 Q. Were you hit in that incident?

13 A. No.

14 Q. Remind us. What color was the van?

15 A. It was a white van.

16 Q. Did you learn whose van that it was?

17 A. Yes.

18 Q. How did you learn it?

19 A. Jimmy told me it belonged to Tony Yayo's brother.

20 Q. What did you do after all the shots were fired?

21 A. I tried to get out of Staten Island. I was then being
22 followed by police. Tried to shake them.

23 I was cut off. Tried to cut through a gas station. I
24 was cut off by the police at the gas station. And jumped out,
25 weapons drawn, told me to get out of the vehicle.

Hb7nros3

Stewart - direct

1 They searched the car. Told me to stay right there.
2 I was later arrested.

3 Q. What were you arrested for?

4 A. I think I was charged with obstruction.

5 Q. What did you do, if anything, that got you arrested?

6 A. I was waiting around because I had a lot of money in a box
7 in the car, but it was cold and my jacket was in there. And
8 the officer told me to, don't go to the car.

9 But I was out there for a couple of hours and they
10 wouldn't let me leave. So I asked another officer a couple of
11 hours later, Can I get my coat?

12 And he said, Yeah, go ahead.

13 The other officer who originally told me hours earlier
14 stay away from the truck then arrested me and charged me with
15 obstruction.

16 Q. What about the second time that your car got shot up?

17 What happened to you then?

18 A. I had just left the barbershop and just put a gun inside
19 the barbershop for those guys to protect themselves. And as I
20 was leaving I saw a guy standing by the store about a half a
21 block away holding a bag. As I am walking to the truck, he's
22 walking towards me.

23 I get in the truck. I start it up. I see him turn
24 the corner, drops his bag, pulls out his gun and starts
25 shooting in my truck.

Hb7nros3

Stewart - direct

1 Q. What did you do with your truck after it got shot up that
2 time?

3 A. I gave it to some guys I had in Brooklyn to strip it and
4 make it disappear.

5 Q. What did you do with the car, if anything?

6 A. I gave --

7 Q. Why did you give it to those guys?

8 A. So they could make it disappear, so I wouldn't have to pay
9 for it anymore.

10 Q. How were you not going to have to pay for it?

11 A. Insurance would pay for it. It was a brand-new truck,
12 about \$70,000, and I didn't want to pay for it anymore.

13 Q. How did you report it to insurance?

14 A. I reported it stolen.

15 Q. Did the insurance company believe you?

16 A. They didn't pay for it.

17 Q. Let's talk about the last incident you mentioned with
18 respect to Baja.

19 You said you tried to blow up his truck?

20 A. Yes.

21 Q. Was that before or after your trucks got shot at?

22 A. After my trucks got shot up.

23 Q. Whose idea was this incident?

24 A. It was my idea to make him lose the truck.

25 Q. Why did you want to do that?

Hb7nros3

Stewart - direct

1 A. Because I felt that they felt that they were untouchable
2 that they were invincible because they had all of these
3 bulletproof trucks, and I felt that was the only difference
4 between me and him that made it hard for me to catch up with
5 him.

6 Q. Where was the truck when you tried to blow it up?

7 A. In front of his house.

8 Q. Were you there by yourself or with someone else?

9 A. At that time I was with Andre.

10 Q. That is Andre Collier that we talked about before?

11 A. Yes.

12 Q. What happened with you and Andre?

13 A. The time it was blown up?

14 Q. Yes.

15 A. We made some Molotov cocktails, and we -- he was going to
16 throw one at the house. I was going to throw one at the truck.
17 And he would fire the shots into the house, and I would fire
18 the shots into the truck.

19 We were hoping that he would -- I would hit the truck
20 first and hoping he would come outside -- or he was supposed to
21 hit the house first with the Molotov cocktail.

22 Q. Who is the "he" that you are talking about?

23 A. Andre. And hopefully Baja would then come running out of
24 the house that was on fire, and then we would ambush him.

25 Q. What is a Molotov cocktail?

Hb7nros3

Stewart - direct

1 A. It is a bottle made with gasoline and a cloth coming out.

2 Q. Did that plan work? What happened?

3 A. Andre in throwing his Molotov cocktail burnt himself. But
4 to me it was more important for him to lose the truck than to
5 set the house on fire.

6 Q. What did you do?

7 A. I threw mine at the truck and shot up the truck and the
8 house with it.

9 Q. What gun did you use to shoot up the truck?

10 A. I had a nine-millimeter.

11 Q. What happened to that gun after you used it in that
12 shooting?

13 A. The DA found it in my truck.

14 Q. Did you ever use that gun for other shootings?

15 A. Yes.

16 MR. JOHNSON-SKINNER: Permission to approach, your
17 Honor.

18 THE COURT: Yes.

19 Q. I am putting before you what's been marked for
20 identification as Government Exhibit 115 -- I'm sorry, 1115.

21 Did you have an opportunity to review that before you
22 testified today?

23 A. Yes.

24 Q. What do you recognize it to be?

25 A. My gun.

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Stewart - direct

1 Q. Is that the gun that you had at Baja's house?

2 A. Yes.

3 MR. JOHNSON-SKINNER: We will offer Government Exhibit
4 1115.

5 THE COURT: Received.

6 (Government's Exhibit 1115 received in evidence)

7 MR. JOHNSON-SKINNER: Judge, with the Court's
8 permission, I will take that out of the bag and just show it to
9 the jury.

10 It's been secured.

11 THE COURT: All right.

12 It has been made safe, right?

13 MR. JOHNSON-SKINNER: It has.

14 BY MR. JOHNSON-SKINNER:

15 Q. Mr. Stewart, did you ever talk to Jimmy about that incident
16 at Baja's house?

17 A. I am sure we did.

18 Q. Were there ever any attempted acts against Jimmy?

19 A. He told me about one.

20 Q. What did he tell you?

21 A. That -- well, I told you about, you know, the Apollo. And
22 he told me about a time that he was at a restaurant and he saw
23 50 Cent, and when he was leaving he felt like they tried to
24 ambush him. They were following him on the West Side Highway
25 and tried to pull up on him and somehow he got away.

Hb7nros3

Stewart - direct

1 Q. Did he say anything to you about what, if anything, he did
2 after that incident?

3 A. He got rid of the car that he was driving that they knew he
4 would be in and he sent it down to Miami.

5 Q. You testified earlier that some of the acts against you
6 involved that white van. Remind us. Who's van was that?

7 A. That was Tony Yayo's brother's van.

8 Q. Do you know about any acts that were done against that van
9 in retaliation?

10 A. Yes.

11 Q. How do you know about that?

12 A. Jimmy first told me. He said dudes caught those dudes in
13 the van, going in the van.

14 Q. Did he say anything else to you?

15 A. He said and they shot it up.

16 Q. You said Jimmy first told you. Did somebody else tell you
17 about that?

18 A. Yeah.

19 Q. Who else told you about it?

20 A. Khalil told me.

21 Q. That's the Khalil we saw before in Government Exhibit 4?

22 A. Yes.

23 Q. What did Khalil say?

24 A. Later on he was, like months later I was a little upset
25 with him about -- we had some money quarrels. And he had told

Hb7nros3

Stewart - direct

1 me that he was trying to like prove that to me that he was
2 there for me, like he was saying that -- he was like trying to
3 prove I'm the one that shot up that, that van for you. I'm the
4 one that shot it up. Like, not Jimmy, I'm the one that did it.

5 And he was saying that -- I asked him, How?

6 He said he caught them all going in the van, and he
7 tried to make it a coffin.

8 Q. Let me show you what's in evidence as Government Exhibit
9 19.

10 Whose is that again?

11 A. That's Tony Yayo.

12 Q. Were there any other acts of violence that you knew about
13 that were committed against Yayo or his family members?

14 A. Yes.

15 Q. How do you know about this?

16 A. Jimmy told me a time that he had a -- he said he had shot
17 up Tony Yayo's mother's house.

18 Q. Do you know where Tony Yayo's mother's house was?

19 A. Yes.

20 Q. Where was it?

21 A. Queens.

22 Q. What did Jimmy tell you about that?

23 A. He said he waited for his sister to walk in. She was
24 walking in with her baby, and he shot it up.

25 Q. Do you remember the specific words he used?

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Stewart - direct

1 A. I think he said he shot it up with his .45, waiting for
2 that bitch to walk in, something like that.

3 Q. That .45 is that the same big gun that you described at
4 Baja's house?

5 A. That's what I interpreted.

6 MR. JOHNSON-SKINNER: Judge, if it is convenient for
7 the Court, this is a good pausing point.

8 THE COURT: Sure.

9 Members of the jury, we will see you at 2:15.

10 (Luncheon recess)

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Stewart - direct

1 A F T E R N O O N S E S S I O N

2 (2:20 p.m.)

3 THE COURT: Be seated, folks.

4 MR. TOUGER: Your Honor, if I could have two minutes
5 of court time before we start.

6 THE COURT: Why?

7 MR. TOUGER: Just to update you on my application from
8 yesterday.

9 THE COURT: Yes.

10 MR. TOUGER: I sent out the affidavit.

11 THE COURT: Would you go to the lectern. You have a
12 low voice sometimes.

13 MR. TOUGER: I sent out the affidavit as the Court
14 requested. Unfortunately, the person in question is traveling,
15 so to find a notary to sign the affidavit has been rather
16 difficult.

17 I don't want to really fall that far behind in
18 testimony. I was wondering if your Honor could provisionally
19 order it and then tomorrow I give you the affidavit that states
20 that the person has no funds to do this.

21 THE COURT: No. This is a retained defense. That's
22 what it is. I don't know anything about this notion of a
23 retained defense with the government paying for those parts
24 that the defendant or those financing the defense don't wish to
25 pay.

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Stewart - direct

1 MR. TOUGER: Your Honor, there's Second Circuit case
2 law.

3 THE COURT: You provide it to me.

4 MR. TOUGER: I will do so right now.

5 THE COURT: Not right now.

6 We have a trial to conduct.

7 THE DEPUTY CLERK: Shall I get the jury?

8 MR. TOUGER: May I hand it up to you?

9 THE COURT: Yes. You can give it to me.

10 MR. ENZER: Judge, before the jury, could we raise two
11 items.

12 THE COURT: Go ahead.

13 MR. ENZER: First, moments ago our witness was
14 accosted by somebody who is here I think in support of
15 Rosemond, an individual named Coles Donovan. I would ask the
16 Court to admonish those in the audience not to threaten
17 witnesses in a federal courthouse. The statement apparently
18 that this individual made to our witness I'm told was, "It
19 looks like they put a nice suit on you."

20 THE COURT: Nobody is to approach any of the witnesses
21 or speak to them. And if there is a violation, I hope you have
22 your toothbrush.

23 MR. ENZER: The second item we can deal with later.
24 We will deal with the next item later. That's it.

25 THE COURT: OK. Bring in the jury.

Hb7nros3

Stewart - direct

1 (Jury present)

2 THE COURT: OK. The jurors are all present.

3 The defendant has been present throughout.

4 The witness is reminded he's still under oath.

5 Proceed, Mr. Johnson-Skinner.

6 MR. JOHNSON-SKINNER: Thank you, Judge.

7 BY THE DEPUTY CLERK:

8 Q. Mr. Stewart, before the lunch break we talked about various
9 acts against Baja or members of his family.

10 Did you and Jimmy ever plan any additional acts
11 against Baja?

12 A. I am not sure what you're referring to. I don't remember
13 exactly where we left off at.

14 Q. Did you and Jimmy ever have a conversation about Baja and
15 an amount of money?

16 A. Yes.

17 Q. What was the first conversation you had with Jimmy about
18 that?

19 A. One of the first conversations we had was, he got a phone
20 call or he had a meeting with somebody -- rather, he bumped
21 into somebody at the mosque, and I think it was a guy named
22 Adi. He bumped into somebody at the mosque, and he told him
23 that Baja was looking for me and Baja had ten grand on me, to
24 catch me.

25 Q. What does it mean to catch you?

Hb7nros3

Stewart - direct

1 A. He put ten grand on my head, \$10,000.

2 Q. Did you and Jimmy ever discuss retaliating against Baja?

3 A. Yeah. So Jimmy told me he wanted to see how much it would
4 take to reverse it, for us to put it back out on Baja.

5 I told him that I knew some dudes that could catch up
6 with Baja, and he said tell them that we got 25, meaning 25
7 grand.

8 I went and spoke to my guys in Brooklyn that had a
9 link, a line on Baja, and they were like they're not going to
10 get involved in the beef, his beef. They weren't too fond of
11 him anyway. They weren't going to get involved in his beef for
12 25 grand.

13 So the conversation asked him how much it would take.

14 They were like -- I said, What? 35? 45? Went up
15 until we got to 75, 75 grand.

16 I agreed on a number. I anticipated that I would pay
17 half of that 75,000 and Jimmy would pay half of the 75.

18 So when I told my man, I said, Will 75 do it? His
19 response was, We will tear Baja's head off for 75.

20 Q. You said your man. Who were you talking about?

21 A. Nuky.

22 Q. Is that one of the guys in Brooklyn?

23 A. Yeah. He said, We'll tear Baja's head off for 75 grand.

24 I went and I told Jimmy, went back had a meeting with
25 Jimmy.

Hb7nros3

Stewart - direct

1 And Jimmy was like, Nah, too much.

2 And I was a little upset, because I'm dealing with the
3 beef, getting cars shot up, going to war with these dudes in
4 the street. He out in Miami hanging out; I'm dealing with the
5 issues. And I felt like it shouldn't have been a price to
6 eliminate the immediate threat.

7 Q. You said the guys in Brooklyn said 75 to tear his head off.

8 What did you understand that to mean?

9 A. At that moment it meant to, as we would say, park him, kill
10 him.

11 Q. And you said that Jimmy said, Nah, it was too much.

12 What did you understand that to mean? Too much what?

13 A. Too much money. He wasn't worth that.

14 Q. Did you ever pay those guys in Brooklyn?

15 A. No.

16 Q. Did you ever have any other disputes with Jimmy besides
17 that one you just talked about?

18 A. We had a couple. We had the argument in the car about him
19 not wanting to give me the rest of the money to pay the guys.
20 And now they were upset at me. Life, he was upset at me
21 because he felt I didn't give him all his money, and I wasn't
22 going to pay any more out of my pocket. So I had a beef with
23 those guys behind that.

24 Q. Let me just stop there. Are you talking about Life
25 shooting at Baja's house and --

Hb7nros3

Stewart - direct

1 A. Life shooting at Baja's house.

2 Q. And Jimmy didn't give you all the money for that?

3 A. He didn't -- yes, for the second act that they said they
4 did.

5 Q. Any other incidents that you remember?

6 A. Yeah. There was a time he sent Jason -- he called me to
7 meet him in Manhattan, somewhere uptown, midtown.

8 And I didn't feel right about the meeting he wanted,
9 so I made sure I brought -- I had my gun with me, the one you
10 have.

11 And I noticed that where I parked at, he parked so far
12 up the block, and he got out with a hooded parka on, walking
13 with his head down as if trying to be inconspicuous, and the
14 car was real far away from -- he was walking to me. He had his
15 hand in his jacket as if he was holding something.

16 At the time we were talking, he was addressing me
17 about he didn't like the things I was saying about him to his
18 partner.

19 The things I was saying was I'm dealing with all this
20 G-Unit beef by myself. These dudes were shooting at my cars,
21 you know, setting my barbershop on fire, trying to kidnap my
22 brother, and he's on a plane somewhere. I can't even call him
23 for bullets. He didn't like it. He said don't talk like that.

24 Q. Who was it that you were talking to in that parka that you
25 mentioned?

Hb7nros3

Stewart - direct

1 A. Khalil. He was addressing me like that, telling me I
2 shouldn't be talking like that. He kept looking up and down
3 the block, like he was about to do something.

4 I tried to stay close to him, in a reasonable distance
5 in case I had to grab him or something.

6 And I noticed that the car never moved from up the
7 block, and one of his good friends got out of the car.

8 Q. Who was that?

9 A. A guy named Tut.

10 Q. Did you see anyone else there that day besides Jimmy and
11 Tut?

12 A. I think Jason was driving. I think I saw Jason through the
13 window when he --

14 Q. How did that incident end?

15 A. A little awkward, but he was like, Man, you don't say
16 things like that, and we separated.

17 Q. About when was that?

18 A. Sometime, maybe '08, '09.

19 Q. I would like to show you what's in evidence as Government
20 Exhibit 18.

21 MR. JOHNSON-SKINNER: You can publish that.

22 Remind the jury who that is.

23 A. That's Chris Lighty.

24 Q. Were you ever involved in any act of violence or planned
25 act of violence against him?

Hb7nros3

Stewart - direct

1 A. Yes.

2 Q. How many incidents about do you remember?

3 A. Two or three maybe?

4 Q. What are they just --

5 A. As a matter of fact, maybe a little more.

6 Q. Just briefly, list the ones you remember, and then we'll go
7 through them.

8 MR. TOUGER: Objection, your Honor.

9 Can we approach?

10 THE COURT: Yes.

11 (Continued on next page)

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Stewart - direct

1 (At sidebar).

2 MR. TOUGER: As far as I am concerned the 404(b)
3 evidence that we have a list of, there aren't more than two or
4 three Chris Lighty attacks. He says there are more. We have
5 no no notification of any more.

6 THE COURT: My recollection of what he said, and I
7 will ask you to check me on this -- I am referring to the
8 reporter -- is that he said two or three.

9 There might be more. Is that what he said.

10 (Record read)

11 THE COURT: Let's see where we go.

12 (Continued on next page)

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Stewart - direct

1 (In open court)

2 BY THE COURT:

3 Q. We were talking about incidents attempted or committed
4 against Chris Lighty. Just list the ones that you remember
5 briefly, and then we'll go through them.

6 A. I remember a time when we were in New Jersey, in Bayonne.
7 I drove out there to meet him and Jason.

8 THE COURT: Who's him?

9 THE WITNESS: James.

10 Q. The defendant James Rosemond?

11 A. Yes. We -- they were shooting a video somewhere in
12 Bayonne. We were parked on the other side of this big highway,
13 road. It was like a train station, and we were sitting
14 surveillancing the area where they would be leaving out of.

15 Q. Who is they?

16 A. G-Unit.

17 Q. What happened while you were sitting there?

18 A. A bunch of cars left the video shoot. While we're sitting
19 waiting, he's like, There they go.

20 Q. Who said that?

21 A. Jimmy. There they go.

22 Q. Just remind us. Who else was in the car?

23 A. Jason.

24 Q. Where was Jason?

25 A. Jason was driving.

Hb7nros3

Stewart - direct

1 Q. Where were you seated?

2 A. In the back with Jimmy.

3 Q. And what car was this?

4 A. Expedition.

5 Q. Do you remember the color?

6 A. The red Expedition.

7 Q. The red Expedition?

8 A. That belonged to Little D.

9 Q. Jimmy said, There they go?

10 A. Yeah.

11 Q. What happened next?

12 A. We started driving, following them. We're headed in the
13 direction towards New York to the turnpike.

14 As they're going through a toll booth, they are in one
15 lane, we are a little bit behind them, we're going through the
16 other toll booth.

17 As that's happening, he reaches for his gun out the
18 trap. Jimmy reaches for his gun out the trap. As he's trying
19 to reach for it, he's fumbling with it, he fires a shot, a
20 random shot. Boom. Don't know where it went.

21 He's looking a little distraught, a little
22 uncomfortable. I just asked him, What's going on?

23 I said, Maybe that's a sign. Let's go.

24 Try another day.

25 Q. Let me back that up a little bit. Do you remember the car

Hb7nros3

Stewart - direct

1 that you were following that day, what it looked like?

2 A. It was a sedan. I don't know the kind of car. It was a
3 dark-colored sedan. Chris Lighty and his security guy was in
4 it.

5 Q. How do you know that?

6 A. I saw them.

7 Q. And you said Jimmy reached for the gun. Where did he reach
8 for the gun? Where was the gun?

9 A. In the box in the back.

10 Q. That's the trap that you talked about before that was in
11 the back seat?

12 A. Yes.

13 Q. What kind of gun was it?

14 A. It was his .45.

15 Q. Did it have anything on it?

16 A. With the silencer.

17 Q. What happened after that shot went off?

18 A. I told you it was a little -- he looked a little
19 uncomfortable, stuck between doing that and not, and I just
20 said let's go.

21 Q. So what happened after that?

22 A. We left.

23 THE COURT: Let me just see if I can clarify.

24 You said he reached in the back to where the trap was.

25 Did I understand that right?

Hb7nros3

Stewart - direct

1 THE WITNESS: No. We were in the back.

2 THE COURT: You were in the back?

3 THE WITNESS: Yeah.

4 THE COURT: You were both in the back seat, is that
5 right?

6 THE WITNESS: Uh-huh.

7 THE COURT: You need to use words.

8 THE WITNESS: Yes.

9 THE COURT: And the trap was where?

10 THE WITNESS: It was on the floor. I'm not sure if it
11 was directly under our seat or between our seat and the middle
12 row seat, but it was in the back section of the car. It was a
13 big trap, big box.

14 THE COURT: OK. Where was the gun when the shot was
15 fired?

16 THE WITNESS: I think he was -- I'm not a hundred
17 percent sure because it was dark in the car. It was late at
18 night. It was still -- I don't know if he had it out the trap
19 halfway or if it was still fully in the trap, but I know he was
20 in a down motion, pulling it out.

21 THE COURT: When you say he was in a down motion, he
22 was bent over?

23 THE WITNESS: He was leaning over, trying to get it
24 out.

25 THE COURT: OK. So this is not a situation where he

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Stewart - direct

1 had the gun in his hand and was firing it through the window at
2 anything?

3 THE WITNESS: No.

4 THE COURT: It was a situation where he went for the
5 gun and it went off?

6 THE WITNESS: Correct.

7 THE COURT: Let's move on.

8 BY MR. JOHNSON-SKINNER:

9 Q. Do you remember any other incidents planned or attempted
10 against Chris Lighty?

11 A. There was a time we were in Manhattan and we were in his
12 car, me, him, and Jason, and we were driving down Sixth Avenue
13 and we saw Chris Lighty talking to his wife, his kid. And he
14 wanted Chris Lighty to get shot, and we circled the block and
15 we came back. Chris Lighty was gone.

16 Q. Who was the "he" that wanted Chris Lighty --

17 A. Jimmy.

18 Q. -- to be shot?

19 Did you a gun in the car at that time?

20 A. I didn't have a gun, but there was a gun in the car.

21 Q. Do you remember what gun it was?

22 A. I don't remember.

23 Q. Do you remember where the gun was?

24 A. No. I remember having it, but --

25 Q. Do you recall any other incidents planned or attempted

Hb7nros3

Stewart - direct

1 against Chris Lighty?

2 A. Yes.

3 Q. What other ones do you recall?

4 MR. TOUGER: Objection, your Honor.

5 THE COURT: What is the objection?

6 MR. TOUGER: As noted at the bench previously, your
7 Honor.

8 THE COURT: Overruled.

9 BY MR. JOHNSON-SKINNER:

10 Q. What other events do you recall?

11 A. I remember another event where Jimmy had got some
12 information that Chris would be having a meeting on 26th Street
13 at a restaurant in a couple of days. A couple of days prior we
14 circled the neighborhood looking out for cameras, etc. We came
15 back, discussed the day we was going to meet up. Came back. I
16 called my partner, Dre -- Andre Collier.

17 Q. Andre Collier.

18 A. And asked him if he wanted to do it, to shoot him.

19 He said, Yeah.

20 We met up. Jimmy said he was in a restaurant, Dre
21 went in to go see him, to pop him, and he said he didn't see
22 him in there.

23 Q. Who said that?

24 A. Andre. Come to find out he wasn't there. I don't know, he
25 might have made a mistake, but it never happened.

Hb7nros3

Stewart - direct

- 1 Q. Do you know if Andre had brought a gun?
- 2 A. Yeah.
- 3 Q. He did bring a gun?
- 4 A. Yeah.
- 5 Q. Other than that attack that you were a part of on Chris
- 6 Lighty's brother with the razor, do you know of any other
- 7 incidents against Chris Lighty's family connected to Jimmy?
- 8 A. Yeah.
- 9 Q. How do you know about this incident?
- 10 A. He told me.
- 11 Q. Who told you?
- 12 A. Jimmy.
- 13 Q. What did he tell you?
- 14 A. That he saw his cousin outside of going into his house and
- 15 took a couple of shots at him. He was running with a silencer.
- 16 Q. Did Jimmy say where the cousin's house was?
- 17 A. Yonkers, New Rochelle area.
- 18 Q. Do you remember the words that Jimmy used when he told you
- 19 he shot at him with a silencer?
- 20 A. No. It was something like, it was "pew, pew, pew,"
- 21 imitating the silencer sound.
- 22 Q. Did he tell you which gun he used?
- 23 A. His .22.
- 24 Q. Did he tell you whether anyone else was there?
- 25 Do you recall?

Hb7nros3

Stewart - direct

1 A. I think he said he was with Teddy, if I remember correctly.

2 Q. Do you know if James Rosemond ever committed any attempted
3 act against 50 Cent?

4 A. Yeah.

5 MR. TOUGER: Objection, your Honor.

6 Q. How?

7 A. We were on --

8 THE COURT: Just a minute.

9 MR. JOHNSON-SKINNER: One second.

10 MR. TOUGER: Can we approach.

11 (Continued on next page)

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Hb7nros3

Stewart - direct

1 (At sidebar)

2 THE COURT: Mr. Touger.

3 MR. TOUGER: This is the incident in Florida?

4 MR. JOHNSON-SKINNER: No. It's Battery Park City.

5 He's testified about this before.

6 MR. TOUGER: I'm sorry.

7 MR. JOHNSON-SKINNER: Suge Knight you mean?

8 MR. TOUGER: Yeah.

9 Sorry, your Honor.

10 (Continued on next page)

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Hb7nros3

Stewart - direct

1 (In open court).

2 Q. Mr. Stewart, we were talking about whether you knew of any
3 attempted acts against 50 Cent. Do you?

4 A. Yes.

5 Q. How do you know about it?

6 A. I was there.

7 Q. Who were you there with?

8 A. Jimmy.

9 Q. Where were you?

10 A. We were on the West Side Highway.

11 Q. Were you in a car or on foot?

12 A. We were in the red truck again, red Expedition.

13 Q. What happened?

14 A. We were riding on the West Side Highway. We see an
15 entourage going into a building.

16 Jimmy's like, It's 50.

17 He was driving. It was a building right off Battery
18 Park. They were going south. The building was to the right.

19 And I look. I see a whole entourage. As he's driving
20 he's trying to hit the buttons and still one hand trying to
21 reach in the back, somehow to get the gun, trying to control
22 the car.

23 And I'm like, There's police driving behind us.

24 It didn't seem like he cared.

25 Q. I just didn't hear you.

Hb7nros3

Stewart - direct

1 A. It didn't seem like he cared. I wasn't trying to go to
2 jail that night. He eventually stopped. We parked. I think I
3 walked around the block, but they were gone. We waited for a
4 while, but I think they were gone.

5 Q. Did anyone shoot anyone that day?

6 A. No.

7 Q. Did you ever hear about any acts of violence against
8 vehicles, G-Unit vehicles besides the ones you that did?

9 A. Yeah.

10 Q. How did you hear about that?

11 A. Jimmy told me about a house in New Jersey, about where it
12 was located and how it was situated and who stayed there, and
13 it was a bulletproof truck that was one of 50 Cent's
14 bulletproof trucks that were always there. And that -- after
15 he told me when it got blown up.

16 Q. Did he say who blew it up?

17 A. No, he didn't say who blew it up particularly.

18 Q. Now, Mr. Stewart, during this period we have been talking
19 about, 2007 to 2009, did you do anything to protect yourself
20 during that time?

21 A. Yes.

22 Q. Did you ever wear anything?

23 A. Yes.

24 Q. What did you wear?

25 A. I always wore a vest a bulletproof vest.

Hb7nros3

Stewart - direct

1 Q. Why did you do that?

2 A. They shot up my car a few times. He had put some money on
3 my head.

4 Q. When you were arrested by the DEA, what happened to those
5 vests?

6 A. I turned them over.

7 Q. How many did you have?

8 A. Two.

9 MR. JOHNSON-SKINNER: Permission to approach the
10 witness, Judge.

11 THE COURT: Yes.

12 Q. I'm handing you what's been marked for identification as
13 Government Exhibit 1050. You can open that up and tell me if
14 you recognize what's in there.

15 A. Take them out?

16 Q. Sure. Do you recognize those?

17 A. Yes.

18 Q. What are they?

19 A. My bulletproof vests.

20 MR. JOHNSON-SKINNER: We will offer Government Exhibit
21 1050.

22 THE COURT: Received.

23 (Government's Exhibit 1050 received in evidence)

24 BY MR. JOHNSON-SKINNER:

25 Q. Now, Mr. Stewart, we have been talking about violence that

Hb7nros3

Stewart - direct

1 you were involved in during the period about 2007 to 2009, did
2 you ever do any acts of violence separate from any incidents
3 with G-Unit?

4 A. Yes.

5 Q. About how many shootings can you remember that were
6 separate from Czar or G-Unit during that time period?

7 A. Maybe about three.

8 Q. Can you briefly list them, and then we'll go through them.

9 A. I shot at an OG blood member, shot at a girl's house, and
10 shot into a car full of some guys out in Newark.

11 Q. OK. We'll start with that Newark one.

12 What happened there?

13 A. I went to buy some drugs from someone, and they introduced
14 me to a fake connect. And so I plotted on them, laid on them,
15 and tried to trap them, and saw them in a car and fired into
16 the car and they were in there.

17 Q. Do you know if you hit anyone?

18 A. I am not sure.

19 Q. You mentioned you shot at a girl's house. What happened
20 there?

21 A. A girl I was talking to. I went to her house and I saw she
22 had a guy there, and they were engaging in sexual activity.
23 And I fired through her windows and messed up their party.

24 Q. You said you were talking to her. Did you have a romantic
25 relationship --

Hb7nros3

Stewart - direct

1 A. We were dating, yeah.

2 Q. -- with her?

3 Did you know if you hit anyone there when you shot
4 through the windows?

5 A. No.

6 Q. You also mentioned a shooting at an OG Blood?

7 A. Yes.

8 Q. What was his name?

9 A. His name was O.G. Cal.

10 Q. How did you know, if you did, O.G. Cal?

11 A. How do I know if I hit him?

12 Q. How do you know if he is?

13 Did you have any relationship with him?

14 A. No. He rolled up on the scene one night talking to me
15 aggressively and threatened me. I called up one of my friends.
16 He brought me my truck and my gun.

17 I called him to meet him, to talk to him, or I
18 arranged a meeting to talk to him, and he still was aggressive
19 and threatening me. So I just grabbed him and, pointblank
20 range, and shot him a lot of times.

21 Q. You said pointblank. How close were you to him?

22 A. I put the gun to his stomach and fired a bunch of shots.

23 Q. Do you know whether he survived?

24 A. He lived.

25 Q. During this time period, were you ever charged with

Hb7nros3

Stewart - direct

- 1 kidnapping?
- 2 A. Yes.
- 3 Q. What happened there?
- 4 A. Somebody had robbed some money from my girl, stole some
5 money out my girl's car, and I went, found them, told him to
6 get in the car with me and --
- 7 Q. Where did you find them?
- 8 A. In a club.
- 9 Q. Did he get in the car with you?
- 10 A. Yes.
- 11 Q. Did you use a gun to get him in the car?
- 12 A. No.
- 13 Q. What happened after you got in the car?
- 14 A. Drove around the corner, and I told him get in the trunk.
- 15 Q. Did he do that?
- 16 A. He got in the trunk. Drove him to Staten Island, opened
17 the trunk, had a bunch of guys waiting and gave him a spanking.
- 18 Q. What do you mean by a spanking?
- 19 A. We beat him up.
- 20 Q. Did you participate in that?
- 21 A. Yeah.
- 22 Q. Did there come a time in 2009 that you moved out of the New
23 York City area?
- 24 A. Yes.
- 25 Q. Where did you move to?

Hb7nros3

Stewart - direct

1 A. I moved to Atlanta; Atlanta, Georgia.

2 Q. After you moved to Atlanta, did there ever come a time that
3 you came back to New York City in connection with the
4 defendant?

5 A. Yes.

6 Q. Can you describe the circumstances first of why you came
7 back.

8 A. Yeah. Jason kept calling me and asking me to come up,
9 Jason Williams.

10 MR. JOHNSON-SKINNER: Put up Government Exhibit 6,
11 which is in evidence.

12 Publish that to the jury.

13 A. He kept calling me, asking me that, telling me that dude
14 wanted to speak to me. That was how we would reference Jimmy
15 on the phone, is dude, never say his name.

16 And I was hesitant to come up, didn't want to have
17 anything to do with that stuff anymore. So I eventually came,
18 and he's like, when I roll up on him, passed me an obituary.

19 Q. Who passed you the obituary?

20 A. Jason.

21 Q. First where did you go? Where was this?

22 A. The Lower East Side in Manhattan. It was a restaurant over
23 there they were at.

24 Q. Who was on the obituary that you got from Jason?

25 A. Lodi Mack.

Hb7nros3

Stewart - direct

1 Q. I'll show you what's in evidence as Government Exhibit
2 1110.

3 Do you recognize that?

4 A. Yeah.

5 Q. What's that?

6 A. Obituary for Lodi Mack.

7 Q. What happened after Jason handed you that?

8 A. I wasn't sure who it was, and I'm like, Who's that?

9 He's looking at me with his eyes open like, like I
10 should know.

11 I'm like, OK.

12 And Jimmy walks out, bouncing, and he starts talking
13 to me. We start talking.

14 He's like -- I said, We all can sleep now?

15 He's like, Yeah.

16 I can get some sleep.

17 He's like, dude, you don't know how many sleepless
18 nights I had with this, fighting with my girl, fighting with T
19 because she think I'm cheating.

20 I'm like, I don't know. I was dealing with the beef
21 with you.

22 And he looked, nodded.

23 And he went on to, Well, this is what I called you to
24 tell you, you know. Baja moved down to Atlanta. You know,
25 Baja moved to Atlanta.

Hb7nros3

Stewart - direct

1 I said, For what? Why Atlanta. I just moved there.
2 He's like, you know, Apparently to get away from you.
3 And he's like, But that's why I called you, to tell
4 you that, you know, y'all can coexist down there, but y'all
5 just got to, you know, you just got to stay low and stay away
6 and stay out the light.

7 He's, like, but he's working on, you know, the
8 address, but nobody -- he's not telling nobody where he lived.

9 50 had bought Baja the house.

10 Q. Who's not telling anybody where he is?

11 A. Baja's not letting nobody know where he lives at and that
12 50 bought him the house.

13 Q. Let me just back up a little bit.

14 You said Jimmy was bouncing when he came outside.
15 What does that mean?

16 A. The way he was walking. He had a pep in his step.

17 Q. What did you mean when you asked, Can we sleep now?

18 A. Is it over?

19 Q. Is what over?

20 A. The beef.

21 Q. With who?

22 A. G-Unit.

23 Q. Are you aware of any other acts of violence or attempted
24 acts of violence involving Jimmy after that you time that you
25 were shown that obituary?

Hb7nros3

Stewart - direct

1 A. No. That was the last thing that I know of.

2 Q. Now, Mr. Stewart --

3 MR. JOHNSON-SKINNER: You can take that down. Thank
4 you.

5 Q. -- I am going to direct your attention to April 16, 2010.

6 Did anything significant happen to you then?

7 A. Excuse me.

8 Q. Anything important happen to you on April 16, 2010?

9 A. Yes.

10 Q. What happened?

11 A. I was arrested by the DEA.

12 Q. Where were you when you were arrested?

13 A. In Staten Island.

14 Q. What were you doing in New York City at that time?

15 A. I was picking up money.

16 Q. What kind of money?

17 A. I was supposed pick up about 150 grand.

18 Q. From what?

19 A. My drug sales.

20 Q. Who arrested you?

21 A. DEA, IRS, ATF was there.

22 Q. What, if anything, was seized from you at the time of your
23 arrest?

24 A. They found \$80,000 on me and my gun.

25 Q. Why did you have \$80,000 on you?

Hb7nros3

Stewart - direct

- 1 A. That was some of my money I was picking up.
- 2 Q. Where was the gun?
- 3 A. In my trap.
- 4 Q. How did they get to it?
- 5 A. I opened the box.
- 6 Q. Did you do that immediately?
- 7 A. No.
- 8 Q. When did you do it?
- 9 A. When they told me where it was located.
- 10 Q. The agents knew where the trap was?
- 11 A. And they showed me and they said they wanted to give me
- 12 back my car.
- 13 Q. That's when --
- 14 A. It was busted up --
- 15 Q. What do you do? You opened the trap?
- 16 A. So I opened it.
- 17 Q. What did you decide to do with your case after you were
- 18 arrested?
- 19 A. I decided to cooperate.
- 20 Q. What day did you make that decision?
- 21 A. Immediately.
- 22 Q. The same day you got arrested?
- 23 A. Uh-huh. Yes.
- 24 Q. So what happened to you?
- 25 Did you go to prison, or were you released on bail?

Hb7nros3

Stewart - direct

- 1 A. I was released on bail.
- 2 Q. Did there come a time when you went back to Atlanta?
- 3 A. Yes.
- 4 Q. And did you remain on bail when you were in Atlanta?
- 5 A. Yes.
- 6 Q. You said you decided to cooperate. What steps did you take
- 7 to cooperate?
- 8 A. At that moment?
- 9 Q. At first, and then we'll go on later.
- 10 A. I spoke about my west coast connect, and I spoke about the
- 11 catcher that would catch for me.
- 12 Q. So you talked to the government?
- 13 A. Yes.
- 14 Q. What other things did you do to cooperate?
- 15 A. Eventually?
- 16 Q. Yes.
- 17 A. Went to go buy drugs from my connect and proffered, made
- 18 recordings.
- 19 Q. You bought drugs at the direction of the government from
- 20 your supplier?
- 21 A. Yes.
- 22 Q. Who did you record conversations with?
- 23 A. The supplier.
- 24 Q. Remind us who that was.
- 25 A. Henry Butler, Black.

Hb7nros3

Stewart - direct

- 1 Q. Who else, if anyone?
- 2 A. Eventually, later on, Jimmy.
- 3 Q. How frequently were you in touch with the agents during
- 4 that period of your cooperation?
- 5 A. Every day.
- 6 Q. What about later on?
- 7 A. For a long period of time it was often. It eventually died
- 8 down.
- 9 Q. You mentioned a proffer. What is a proffer?
- 10 A. It's when you go in and you have to state the facts of the
- 11 situations.
- 12 Q. Who do you state that to?
- 13 A. The government agents and the attorneys.
- 14 Q. Did you have an attorney at those meetings?
- 15 A. Yes.
- 16 Q. At first what prosecuting office were your proffers with?
- 17 A. The Eastern District, in Brooklyn.
- 18 Q. You testified that you had proffers. About how many of
- 19 them were there?
- 20 A. At that time or all to date?
- 21 Q. Total.
- 22 A. A whole lot. Maybe --
- 23 Q. More than 50 you think?
- 24 A. Maybe more. Maybe a hundred. I don't know.
- 25 Q. In your initial proffers, did you tell the whole truth

Hb7nros3

Stewart - direct

1 about crimes that you knew Jimmy committed?

2 A. Absolutely not.

3 Q. Why not?

4 A. I was trying to protect him.

5 Q. Why were you trying to protect him?

6 A. I didn't really tell anything about anybody that was on our
7 side. I just cared about him. I didn't want to see him in any
8 trouble.

9 Q. Who were you giving information about initially?

10 A. Just the west coast connect, the catcher, and myself.

11 Q. If we haven't said already, what's a catcher?

12 A. The catcher is the person that picks up the drugs, that
13 receive it in the mail.

14 Q. How long did it go on for that you were holding back
15 information about Jimmy and the other people on your side?

16 A. Before I might have just gave them -- I was piecing, and
17 that was maybe after meeting with them at least for two weeks
18 straight.

19 And that was when I started to see that they had a lot
20 more than I was giving and knew a lot more, and I realized that
21 I didn't want to play with them, with the agents. And --

22 Q. So what did you do then?

23 A. I started to tell the whole truth.

24 Q. You testified that you pled guilty to those crimes that you
25 were charged with pursuant to a cooperation agreement, right?

Hb7nros3

Stewart - direct

1 A. Yes.

2 Q. After you pled to that cooperation agreement, did you get
3 in trouble with the law at all in Atlanta?

4 A. Yes.

5 Q. About what year was the first incident?

6 A. Maybe 2010 or '11.

7 Q. What happened that led to that first incident?

8 A. I was with a bunch of guys. There was a fight at a day
9 party, and we were trying to get out of there, and security
10 wouldn't let us go. Got into -- through the back door and got
11 into an argument with them.

12 Somebody threw a garbage began at them and it wound up
13 going over the balcony.

14 Q. What happened to you?

15 A. I was arrested -- one of the people arrested up there that
16 day and charged with disorderly conduct.

17 Q. Did you throw the garbage can?

18 A. No.

19 Q. What happened to that case?

20 A. I pled no contest, and I paid a fine and pled to a
21 misdemeanor.

22 Q. Why did you --

23 A. Disorderly conduct.

24 Q. Why did you plead no contest?

25 A. Because I didn't feel I was guilty of it.

Hb7nros3

Stewart - direct

1 Q. Did you tell the government about that, what happened?

2 A. Yes.

3 Q. Did something else happen to you in Atlanta in a club?

4 A. Yeah.

5 Q. What happened to you?

6 A. I was shot.

7 Q. How did that happen?

8 A. I was out there. I took some rappers I knew. They flew
9 into Atlanta for BET weekend to a club. Some of the guys I was
10 with had a problem with some of the owners. I knew them,
11 because when I was on -- when Jimmy was on the run, one of them
12 didn't like him and would give me information, his name, give
13 me information about where he heard he would be at. And --

14 Q. So what happened to you in the club?

15 A. He bumped me -- I guess it got back that I was giving it
16 out -- one of the guys bumped me, and the other set of guys I
17 was with was arguing with them. And the next thing I knew
18 shots were fired. A few people were hit. I got hit once. A
19 few other people got hit.

20 Q. Did you do anything to instigate that shooting?

21 A. No.

22 Q. Where were you hit?

23 A. In the back.

24 Q. What did you do after you got hit?

25 A. I drove myself to the hospital.

Hb7nros3

Stewart - direct

- 1 Q. Did you give your real name at the hospital?
- 2 A. No.
- 3 Q. Why didn't you?
- 4 A. I didn't want anyone to know I was there. I didn't want
- 5 anybody to know I got shot.
- 6 Q. Why not?
- 7 A. I just wanted to keep it private.
- 8 Q. Did you tell the government about that right away?
- 9 A. No.
- 10 Q. Why not?
- 11 A. I wasn't -- one, I wasn't in contact with them anymore.
- 12 Yeah.
- 13 Q. Do you feel like you did anything wrong in that incident?
- 14 A. No.
- 15 Q. Was there something involving appliances that were bought
- 16 with a stolen credit card?
- 17 A. Yes.
- 18 Q. What was that?
- 19 A. I had somebody that I was buying building materials from,
- 20 appliances and all of that stuff, and --
- 21 Q. Did you know whether or not the appliances were stolen or
- 22 bought with a stolen card?
- 23 A. No.
- 24 Q. And --
- 25 A. That was actually -- that -- when I actually bought the

Hb7nros3

Stewart - direct

1 stuff from them and when I was getting the stuff from them was
2 before I was even arrested by the DEA. But they didn't come to
3 my house to raid my house until after I was arrested.

4 Q. OK. Is that when they found those appliances?

5 A. Yeah.

6 Q. Were you arrested for anything in connection with the
7 appliances?

8 A. No.

9 Q. Directing your attention to about January 2014, did someone
10 come to your house and solicit you to commit a crime with them?

11 A. Yes.

12 Q. What happened?

13 A. I guy I know came to my house and told me he wanted to get
14 somebody hit up, shot. And I told him I would get back to him.

15 Q. Why did you tell him that you would get back to him?

16 A. I didn't trust him. He knew some friends that we had in
17 common -- me and Jimmy had in common, and I reported it to the
18 agents, and that was it.

19 Q. Did any other things like that happen to you since you have
20 been in Atlanta?

21 A. A few times.

22 Q. Did you tell the government about them?

23 A. Yes.

24 Q. Since you have been arrested, have people approached you to
25 buy drugs?

Hb7nros3

Stewart - direct

- 1 A. Yes.
- 2 Q. Have you ever sold drugs since the time of --
- 3 A. No.
- 4 Q. -- your arrest in about April of 2010?
- 5 A. No.
- 6 Q. What have you done when the people have approached you?
- 7 A. Sometimes it just goes in one ear and out the other.
- 8 Sometimes I've told the government.
- 9 Q. Why didn't you tell the government every time?
- 10 A. Sometimes I don't take them serious enough, or I don't feel
- 11 that it would be significant enough.
- 12 Q. Have you smoked marijuana while you have been on bail?
- 13 A. Yes.
- 14 Q. Over what time period?
- 15 A. Pretty much over the last two years.
- 16 Q. When is the most recent time?
- 17 A. A couple of -- a couple of weeks ago.
- 18 Q. Was marijuana ever kept in your house in Atlanta?
- 19 A. Yes.
- 20 Q. Did you tell the government about that, that you were
- 21 smoking marijuana?
- 22 A. Yes.
- 23 Q. From when you started or --
- 24 A. Small quantities.
- 25 Q. From when you started or later on?

Hb7nros3

Stewart - direct

- 1 A. Later on.
- 2 Q. Are you allowed to possess a gun right now, Mr. Stewart?
- 3 A. Sorry?
- 4 Q. Are you allowed to possess a gun?
- 5 A. No.
- 6 Q. Why not?
- 7 A. It's against my agreement, cooperation agreement to commit
- 8 any crimes, and I am a felon.
- 9 Q. Has there ever been a gun in your house since you have been
- 10 on bail?
- 11 A. Yes.
- 12 Q. Whose gun is that?
- 13 A. My wife has guns.
- 14 Q. Are they licensed?
- 15 A. Yes.
- 16 Q. Did you tell the government about that?
- 17 A. Yes.
- 18 Q. Did you ever touch that gun?
- 19 A. Yes. I've let them know early on, when I first was
- 20 arrested, that she had guns and a carrying permit and all of
- 21 that kind of stuff, and her family is in you law enforcement
- 22 and they have guns and they're always around me. I've let them
- 23 know.
- 24 Q. The gun that you touched, why did you touch it?
- 25 A. The times was because I felt they were left around me and

Hb7nros3

Stewart - direct

1 they had me -- they were a liability for me. I wanted to
2 remove them from --

3 Q. Was your wife in the house at the time?

4 A. Not the last time, no.

5 Q. What happened that last time?

6 A. That I touched a gun?

7 Q. Yes. Where was the gun, first of all?

8 A. The gun was in the garage.

9 Q. And where was your wife at that time? Was she living with
10 you?

11 A. She was up north, up here.

12 Q. What did you do with the gun?

13 A. I took it and I buried it.

14 Q. Why did you do that?

15 A. Because I felt that I was in the house, and people knew I
16 was at my house and I didn't want -- we were getting random
17 anonymous complaints to police that there was illegal activity
18 going on in my house, though it wasn't. It was just right
19 before this case that that was happening. I didn't want to put
20 myself at risk. And when I went back home, she told me, she
21 said, Babe, you know, my gun's in the garage.

22 I said, All right, and I took it and took it in the
23 yard and buried it.

24 Q. Did you ever touch any other guns?

25 A. Yeah.

Hb7nros3

Stewart - direct

1 Q. Whose guns were those?

2 A. I had about seven employees at my place of business, and
3 they all carried guns, all Georgia residents, all had carrying
4 permits. Georgia is a free-carry state. Everyone keeps a gun
5 like a wallet.

6 Q. Why did you ever touch those guns?

7 A. Sometimes they would leave them randomly around my office,
8 and, again, it's risky for me for that stuff to be around me,
9 so sometimes I move from office to office, and her office she
10 might have a gun, his office he would have one, and I would
11 take it, and he might leave it while he's selling a car, and I
12 might move it to the back office or like that.

13 MR. JOHNSON-SKINNER: Judge, if it's convenient for
14 the Court, this is a good pausing point.

15 THE COURT: All right.

16 Members of the jury, we'll see you at 9:30 tomorrow
17 morning.

18 (Continued on next page)

19

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25

Hb7nros3

Stewart - direct

1 (Jury not present)

2 THE COURT: The witness can step down now.

3 (Witness not present)

4 THE COURT: Be seated, please.

5 How much more with this witness?

6 MR. JOHNSON-SKINNER: The government has about 20 more
7 minutes.

8 THE COURT: How long do you expect to be with him,
9 Mr. Touger?

10 MR. TOUGER: I would say less than an hour.

11 THE COURT: OK.

12 All right. I think I still have the affidavit of
13 indigency here. I thank you, Mr. Touger for the case. It is
14 on point.

15 What I need to be satisfied about is why you really
16 need it. So tell me about that.

17 MR. TOUGER: Your Honor, it's very hard to, especially
18 in a trial that's going to last over a two- or three-week
19 period, what I'm depending on for my summation and for records
20 is my notes, and my notes don't have page numbers.

21 What I like to do during summation is direct jurors to
22 the page numbers so they know that I am not just making this up
23 out of thin air. It is also much easier to prepare a
24 cross-examination.

25 THE COURT: We are now not talking about a paralegal.

Hb7nros3

Stewart - direct

1 MR. TOUGER: I am just talking about the minutes.
2 That is all I am asking for, your Honor.

3 THE COURT: OK. That is approved.

4 MR. TOUGER: Thank you, your Honor.

5 I appreciate that.

6 THE COURT: OK.

7 What else? Anything else?

8 MR. ENZER: Your Honor, we have a jointly proposed,
9 consent proposed protective order for the government to allow
10 defense counsel and their paralegal to inspect but not
11 disseminate Facebook materials for one of our cooperators.
12 This is something we discussed previously.

13 THE COURT: Has Mr. Touger seen it?

14 MR. TOUGER: I signed it.

15 MR. ENZER: He's seen it and signed it.

16 THE COURT: OK. Hand it up, please.

17 Mr. Touger, Andy tells me that you have to make
18 something called an E-voucher request to get the transcript.
19 We've got millions of people in Washington working very hard to
20 make it complicated to do anything anymore that used to be
21 easy.

22 MR. TOUGER: It used to be very easy, your Honor.
23 You're correct.

24 THE COURT: I understand. I will have a witness list
25 from the government in the morning.

Hb7nros3

Stewart - direct

1 MR. ENZER: Yes, Judge. We handed one to the deputy
2 earlier. We will give you another one right now.

3 THE COURT: You don't have to.

4 Here we are.

5 MR. JOHNSON-SKINNER: We have taken the Court's point,
6 and we are going to discuss with defense counsel after the
7 proceeding today possible stipulations to eliminate some of
8 those witnesses.

9 THE COURT: Yes, I hope so, because it doesn't do
10 anybody any good, I mean you don't want to put the jury to
11 sleep, either side.

12 MR. JOHNSON-SKINNER: Correct.

13 THE COURT: All right. If there's nothing else we
14 will stand adjourned until tomorrow.

15 (Adjourned to Wednesday, November 8, 2017, at 9:30
16 a.m.)

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HB8AAROSF-CORRECTED Jury Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 431 (LAK)

5 JAMES J. ROSEMOND,

6 Defendant.

7 -----x

8 New York, New York
9 November 8, 2017
9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14
15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: SAMSON ENZER
DREW JOHNSON-SKINNER
ELIZABETH HANFT
Assistant United States Attorneys

19 DAVID TOUGER
20 JONATHAN EDELSTEIN
Attorneys for Defendant

21 ALSO PRESENT:

22 NYPD Detective Steven Smith
23 Nicholas Pavlis, Paralegal (USAO)

HB8AAROSF-CORRECTED

Jury Trial

1 (Trial resumed; jury not present)

2 THE COURT: OK. Good morning everybody.

3 We have a juror note.

4 I'm not sure Andy has had time to give you xeroxing.

5 COURTROOM DEPUTY: No, your Honor.

6 THE COURT: It's all right. The juror note says:

7 Dear judge, could we please hear the charges again?

8 Thank you have a nice day.

9 Juror No. 10.

10 What do you propose I do, gentlemen?

11 MR. JOHNSON-SKINNER: Judge, we would propose that if
12 we respond to that juror, you just tell the juror that the jury
13 will hear the charges at the end of the case.

14 THE COURT: Mr. Touger.

15 MR. TOUGER: I would be happy to give the jury the
16 charge again. My only worry is that we end up answering every
17 individual juror's question. I think the jury should know what
18 they're deciding on.

19 THE COURT: Is there any serious objection to that?

20 MR. JOHNSON-SKINNER: No, judge.

21 THE COURT: All right. I propose to read them the
22 paragraph that was contained in my preliminary instruction to
23 which neither of you objected just describing the four charges.

24 No doubt it would -- excuse me -- that was at the
25 beginning of the voir dire.

HB8AAROSF-CORRECTED

Jury Trial

1 Let me see if there's a better selection. The
2 alternative is to read them something longer from the
3 preliminary instructions but I'm not inclined to do that.

4 MR. TOUGER: I suggest your paragraph is fine, judge.

5 THE COURT: Fine. Is there anything else?

6 MR. JOHNSON-SKINNER: We just have two brief
7 transcript corrections that the parties have agreed on.

8 THE COURT: OK. What are they?

9 MR. JOHNSON-SKINNER: On page 148, line 21.

10 THE COURT: Yes.

11 MR. JOHNSON-SKINNER: It says:

12 Somebody named Jason, "he asked me an obituary".

13 It should be:

14 "He passed me", P-A-S-S-E-D.

15 THE COURT: So stipulated, Mr. Touger?

16 MR. TOUGER: Yes, your Honor.

17 THE COURT: And next one. Thank you.

18 MR. JOHNSON-SKINNER: Page 222, line 24.

19 THE COURT: Yes.

20 MR. JOHNSON-SKINNER: It says:

21 "Who was it that you were talking to in that parka
22 that you mentioned".

23 It should be:

24 "You were talking to, that partner that you
25 mentioned".

HB8AAROSF-CORRECTED

Jury Trial

1 THE COURT: "In that partner" or just "that partner"?"

2 MR. JOHNSON-SKINNER: "That partner". "Who was it
3 that you were talking to, that partner that you mentioned".

4 THE COURT: So stipulated, Mr. Touger?

5 MR. TOUGER: Yes, your Honor.

6 THE COURT: OK. Thank you.

7 Do we have a jury yet? We're still missing a juror.
8 anything else we can usefully accomplish before the jury gets
9 here?

10 MR. JOHNSON-SKINNER: Nothing from us, judge.

11 THE COURT: Mr. Touger?

12 MR. TOUGER: No, your Honor.

13 THE COURT: Do you have your witness list for me,
14 Mr. Johnson-Skinner?

15 MR. JOHNSON-SKINNER: It's the same list as yesterday.

16 THE COURT: Oh, you gave it to me yesterday? All
17 right. Thank you very much. We'll recess till we have a jury.

18 (Recess)

19 THE COURT: The record will reflect the defendant's
20 presence as he has been throughout this morning.

21 (Jury present)

22 THE COURT: Good morning, folks. The jurors are all
23 present.

24 Mr. Stewart, I remind you you are still under oath.

25 Mr. Johnson-Skinner, before you continue I want to

HB8AAROS1

Stewart - Direct

1 deal with the note.

2 A member of the jury gave Andy a note earlier asking
3 to hear the charges again. So I'll repeat what I said at the
4 beginning of the jury selection.

5 Count One charges that the defendant and others during
6 all or part of the period 2007 to 2009 conspired to commit
7 murder-for-hire of members of a rival music management
8 organization in exchange for drugs and money and that this
9 resulted in the death of a man called Lowell Fletcher.

10 Count Two charges the defendant with paying drugs and
11 money to others to murder Mr. Fletcher.

12 Count Three in the most general terms charges the
13 defendant with possessing or aiding and abetting the possession
14 of firearms, at least one of which was discharged in
15 furtherance of the conspiracy charged in Count One.

16 Finally, Count Four charges the defendant with
17 possessing a firearm in the course of the murder-for-hire
18 charged in Count Two causing the murder of Mr. Fletcher.

19 OK. You may continue, Mr. Johnson-Skinner.

20 MR. JOHNSON-SKINNER: Thank you, judge.

21 MOHAMMED STEWART,

22 called as a witness by the Government,

23 having PREVIOUSLY been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. JOHNSON-SKINNER:

HB8AAROS1

Stewart - Direct

1 Q. Mr. Stewart, one photograph I didn't show you yesterday, I
2 want to show you what's been marked for identification as
3 Government Exhibit Two. Do you recognize that person?

4 A. Yes.

5 Q. Who is that?

6 A. It's Toree.

7 Q. Toree have any relationship to Jimmy that you know of?

8 A. Yes.

9 Q. What's the relationship?

10 A. They're friends and they hustle together.

11 MR. JOHNSON-SKINNER: Judge, we offer Government
12 Exhibit Two.

13 THE COURT: Received.

14 (Government's Exhibit Two received in evidence)

15 MR. JOHNSON-SKINNER: Publish that to the jury?

16 THE COURT: Yes.

17 (Pause)

18 Q. You said they "hustle together", what does that mean?

19 A. Sold drugs together.

20 Q. How do you know that?

21 A. Well, there was a time Jimmy called me and told me that
22 Toree would be meeting me in East New York, Brooklyn to pass me
23 something, meaning drugs. And I took too long to get there,
24 Toree left. There was also another time when they got robbed.

25 Q. Who got robbed?

HB8AAROS1

Stewart - Direct

1 A. The crew got robbed for a couple kilos and Khalil called me
2 to come meet them in Brooklyn and Toree was one of the guys
3 there with two other people, Little D and his cousin.

4 Q. You said "Khalil", is that the Khalil we saw yesterday?

5 A. Khalil Abdul.

6 Q. Mr. Stewart, when we stopped yesterday we were talking
7 about run-ins that you had with the law in Atlanta after you
8 signed your cooperation agreement. You told us about an arrest
9 you had related to a disorderly conduct charge. Did there ever
10 come a time you were arrested again?

11 A. Yes.

12 Q. About when was that?

13 A. August, 2017.

14 Q. What were you arrested for?

15 A. Obstruction of police.

16 Q. Who were you living with at the time?

17 A. My wife, my two children and my two cousins who are
18 disabled. They were living with me.

19 Q. How old are your children?

20 A. Six and seven.

21 Q. How old are the two cousins?

22 A. One is 14 now and one is 39.

23 Q. You said they're disabled. In what way are they disabled?

24 A. The 39-year-old has cerebral palsy. She is a physically
25 and mentally disabled and she's like on a second grade reading

HB8AAROS1

Stewart - Direct

1 level. And the 14-year-old is considered mentally disabled.

2 Q. Why do those two cousins live with you?

3 A. Back I think about 2011 my aunt died from a drug overdose
4 and her daughter died two weeks later and they were in the
5 state's -- they were going to be in the state's custody if
6 someone didn't take them and no one else could. And I had the
7 space in my house, so I came and got them and let them live
8 with me for the last six years.

9 Q. Did the police ever come to your house in connection with
10 those cousins?

11 A. Yes.

12 Q. How many times about?

13 A. Well, in about 30 hours which was crazy they got about six
14 or seven anonymous complaints. I don't know from where and
15 when that there was in August, that someone was being held
16 hostage in my house, that one of the complaints was that
17 somebody was kidnapped, that there were drugs and guns. These
18 are all different phone calls for different reasons. There
19 were drugs and guns in my house.

20 Another time that they were being abused. Another
21 time there was no food and water that they were being deprived
22 food and water. There was another complaint. So there was
23 another one that there was an active fight going on with me and
24 my wife and the children were being abused.

25 And every time the police came in to investigate at

HB8AAROS1

Stewart - Direct

1 that moment when the call was placed they didn't find or see
2 anything like that. Two of the times I wasn't even home.

3 Q. You said you were arrested. What happened on the day you
4 were arrested?

5 A. The day I was arrested the police in Atlanta came to my
6 house at midnight and I was sleep. Everyone in the house was
7 sleep. And I see a bunch of police at my door and they said
8 they have to do a check, that they just got a tip that
9 something was going on at the house. I didn't want to let them
10 in. They kind of pushed the issue. I told them they didn't
11 have a warrant. They then removed my cousins and removed
12 property out the house. I got into a verbal altercation with
13 one of the officers. It led to me getting arrested, wife
14 getting arrested. Never charged with any of that stuff but
15 they did charge us with the obstruction of, I guess, their
16 police work.

17 Q. You said you were in a verbal altercation. What did you
18 say?

19 A. I called the cop a bitch.

20 Q. Did you try to block the officers from going anywhere in
21 your house?

22 A. No, not that I remember at all.

23 Q. What's your understanding of that level of that obstruction
24 of officers charged?

25 A. That it's a real petty crime, misdemeanor.

HB8AAROS1

Stewart - Direct

- 1 Q. Were you detained or bailed?
- 2 A. I was bailed.
- 3 Q. Who decides the bail?
- 4 A. A judge.
- 5 Q. That's in Atlanta?
- 6 A. Yes.
- 7 Q. What happened to your wife.
- 8 A. She got a bail. Mine was 2500. Hers was 7500.
- 9 Q. What's the status of that obstruction officers case now?
- 10 A. Haven't heard anything.
- 11 Q. Do you know about the other court date?
- 12 A. No. I don't even think they're going to go forward with
- 13 it. They have video and from what I've seen it shows neither
- 14 of us doing anything.
- 15 Q. You said there were allegations of child abuse. Have you
- 16 ever abused your children or those cousins?
- 17 A. No.
- 18 Q. Were ever arrested for child abuse?
- 19 A. No.
- 20 Q. Were you ever charged with child abuse?
- 21 A. No.
- 22 Q. Did you ever lock the kids and their cousins in a room?
- 23 A. No.
- 24 Q. Did you ever deprive them of food or water?
- 25 A. No.

HB8AAROS1

Stewart - Direct

1 Q. Have you ever disciplined one of your cousins with force?

2 A. Yes.

3 Q. How many times?

4 A. Once.

5 Q. What happened?

6 A. About maybe a month before that, it was about 9:30 at night
7 and she had disappeared and --

8 Q. Which cousin?

9 A. The 14-year-old. They were -- they had went swimming and
10 she had went swimming. She had my two little ones with her and
11 we were kind of worried looking for her for hours and kind of
12 couldn't find her. And she come stumbling back to the house
13 and I asked her what was she at. She didn't respond. I said,
14 Where were you at? Didn't respond. Popped her -- told her to
15 get in the car. Popped her in the back of her neck. And as
16 she was getting in, popped her on her butt.

17 Q. Did you she have any injuries on her?

18 A. No. That was the extent of it.

19 Q. Did you ever tell the government about this arrest?

20 A. Yes. And I actually called them before I was arrested when
21 I felt the police were just violating and when they were in my
22 house.

23 Q. Was your cooperation agreement ripped up over this
24 incident?

25 A. No.

HB8AAROS1

Stewart - Direct

- 1 Q. What's your understanding of whether your sentencing judge
2 will hear about first this disorderly conduct arrest you had?
3 A. He is going to know everything about it.
4 Q. What about your marijuana use and possession?
5 A. He is gonna know about it.
6 Q. What about this arrest of obstruction of officers?
7 A. He is gonna know about it.
8 Q. You testified before that you pled guilty to a firearms
9 count. Does that cover shootings?
10 A. Yes.
11 Q. About what time period does it cover?
12 A. It covers from I figured around 2000, my arrest everything
13 from this situation and prior.
14 Q. What's the maximum sentence you face on those counts you
15 pled guilty to?
16 A. Life in prison.
17 Q. Do you have a mandatory minimum sentence?
18 A. Yes.
19 Q. What's the mandatory minimum sentence?
20 A. 20 years.
21 Q. That's in prison?
22 A. Yes.
23 Q. I'm going to show you Government Exhibit 506QQ. Do you
24 recognize that?
25 A. Yes.

HB8AAROS1

Stewart - Direct

1 Q. What's that?

2 A. Cooperation agreement.

3 Q. That's your cooperation agreement?

4 A. Yes.

5 MR. JOHNSON-SKINNER: We offer Government Exhibit
6 3506QQ.

7 THE COURT: Received.

8 (Government's Exhibit 3506QQ received in evidence)

9 MR. JOHNSON-SKINNER: Publish that to the jury please
10 and go to the last page of that.

11 (Pause)

12 Q. Mr. Stewart, who signed this agreement?

13 A. Me.

14 Q. Who else signed it?

15 A. My attorney.

16 Q. And the attorneys for the government signed it?

17 A. Yes.

18 Q. What are your obligations under this agreement?

19 A. Obligations are to not commit any further crimes, to be
20 available to testify and to cooperate.

21 Q. Do you have to tell the truth under the agreement?

22 A. And tell the truth.

23 Q. If you meet your obligations under this agreement, what's
24 your understanding of what the government will do for you?

25 A. The government will write me a 5K letter which allows the

HB8AAROS1

Stewart - Direct

1 judge to go outside of my sentencing guidelines of 20 to life.

2 Q. Who writes that 5K letter?

3 A. The government.

4 Q. What's your understanding of what type of information goes
5 into that 5K letter?

6 A. All my past crimes, everything I've admitted to, everything
7 that I pled guilty, my cooperation.

8 Q. Who receives the letter?

9 A. The judge.

10 Q. And you said the letter allows the judge to go below that
11 mandatory minimum sentence?

12 A. Yes.

13 Q. Would the 5K letter -- what's the maximum possible sentence
14 you could get?

15 A. I still could get life in prison.

16 Q. What's the lowest possible sentence you could get?

17 A. It's up to the judge but I'm still within the 20 to life
18 but it's up to the judge if he wants to go outside of that.

19 Q. If he gets the letter and if he goes outside of it, could
20 you get time-served?

21 A. Yes.

22 Q. Who decides your sentence?

23 A. The judge.

24 Q. Do you know what you'll be sentenced to?

25 A. No.

HB8AAROS1

Stewart - Direct

- 1 Q. Were you promised any particular sentence?
- 2 A. No.
- 3 Q. What sentence do you want to get?
- 4 A. I'd like to get no jail time.
- 5 Q. What's your understanding of what happens today if you
- 6 don't tell the truth?
- 7 A. That my agreement will be destroyed, ripped up.
- 8 Q. Do you get that 5K letter to the judge?
- 9 A. No.
- 10 Q. And if you don't get that letter, what effect does that
- 11 have on your possible sentence?
- 12 A. That I will be doing between 20 to life in prison.
- 13 Q. All right. How old were you about when you committed your
- 14 first crime?
- 15 A. Young, under ten.
- 16 Q. What kind of crime was it?
- 17 A. I used to steal and fight.
- 18 Q. About how many fights have you gotten into in your life?
- 19 A. A lot.
- 20 Q. Have you ever gotten into a fight with a woman who you have
- 21 been in a relationship with?
- 22 A. Yes.
- 23 Q. How many times?
- 24 A. A lot.
- 25 Q. How old were you when you first sold drugs?

HB8AAROS1

Stewart - Direct

- 1 A. Maybe about 14/15. I don't remember.
- 2 Q. What kind of drugs have you sold in your life?
- 3 A. I've sold marijuana, crack cocaine, heroin, ecstasy.
- 4 Q. How old were you when you first committed a shooting?
- 5 A. Maybe about 15/16.
- 6 Q. Thinking about the time when you were under 18, about how
- 7 many shootings did you do?
- 8 A. Maybe about four/five.
- 9 Q. As far as you know, was anyone hit in those shootings?
- 10 A. Not sure.
- 11 Q. Were you arrested for them?
- 12 A. No.
- 13 Q. Did you tell the government about them?
- 14 A. No.
- 15 Q. Have you pleaded guilty in the past to committing a robbery?
- 16 A. Yes.
- 17 Q. Did you actually commit a robbery?
- 18 A. No.
- 19 Q. What did you do?
- 20 A. What do you mean?
- 21 Q. What did you do that led to you getting arrested and
- 22 pleading guilty to the robbery?
- 23 A. I was in high school. I was with -- about 16. I was with
- 24 a bunch of friends a lot of them older than me. We used to go
- 25 from school, go shoplifting. We were poor and didn't have nice

HB8AAROS1

Stewart - Direct

1 clothes. We used to go and get nice clothes and we used to go
2 stealing. And a bunch of friends ran into a store to go take
3 some clothes and the guy tried to lock them in there. Opened
4 the door and I got out. They were still in there. I left. A
5 bunch of us left out. A bunch of kids were still in there.
6 The next thing I know the police were called. Some of us were
7 on the train. We got locked up, charged with robbery. I'm not
8 sure what happened in the store. That's it.

9 Q. Did you have anything with you that day when you got
10 arrested?

11 A. I had a box cutter on me.

12 Q. What were you going to use the box cutter for?

13 A. If I had stole something we would cut the alarm off of the
14 clothing with it.

15 Q. Did you use force in that incident?

16 A. No.

17 Q. Why did you plead guilty to robbery?

18 A. There was -- it was a plea deal that in order for the other
19 six defendants in the case to get a plea we all had to plea and
20 they were begging me. And I was influential and they were
21 influential on me and felt that it was the best case scenario
22 at the time.

23 Q. You felt it was in your best interest at that time to plead
24 guilty to the robbery?

25 A. Yeah.

HB8AAROS1

Stewart - Direct

1 Q. Did you ever testify in a grand jury about a shoplifting
2 case?

3 A. Yes.

4 Q. About how old were you when you testified?

5 A. I was about the same age 16/17 years old.

6 Q. Why did you testify in the grand jury?

7 A. The attorney recommended it I had at the time.

8 Q. Did you tell the truth in the grand jury?

9 A. No.

10 Q. Why not?

11 A. The attorney recommended, he gave me an idea what he
12 thought that I should say and that would be believable.

13 Q. Do you think it was in your best interest at that time to
14 not tell the truth to the grand jury?

15 A. Yeah. I was like I said 16 years old.

16 Q. Did you ever actually commit a robbery on any other
17 occasions?

18 A. Yes, I did commit a robbery.

19 Q. Tell us what happened.

20 A. I was about 18 and I had just got sentenced on the robbery
21 that happened when I was 16 that I didn't do. I was upset and
22 felt I was going away from what I didn't commit. And there was
23 a store owner in the neighborhood that I didn't like and I went
24 inside his store with a friend and held him at gunpoint, robbed
25 him, robbed the store, hit him in the head with the gun and

HB8AAROS1

Stewart - Direct

1 left out.

2 Q. Did you get arrested for that?

3 A. No.

4 Q. Did you tell the government about that?

5 A. Yes, I did.

6 Q. When did you start serving your sentence on that first
7 robbery conviction?

8 A. About three days after that robbery.

9 Q. How long did you spend in jail?

10 A. About four years.

11 Q. Did you commit any crimes while you were in jail?

12 A. Yes.

13 Q. What happened?

14 A. Got in fights, assaults, had weapons, assaulted staff.

15 Q. Were you injured while you were in jail?

16 A. Yes.

17 Q. How were you injured?

18 A. I was cut.

19 Q. Is that the scar on your face now?

20 A. Yes.

21 Q. By the way, were you ever affiliated with any gang?

22 A. Loosely.

23 Q. What gang?

24 A. Mostly the Bloods but affiliated with Crips as well.

25 Q. You said "loosely". What do you mean by that?

HB8AAROS1

Stewart - Direct

1 A. In high school that's really who I used to hang out with, a
2 lot of Bloods.

3 Q. When did you get out of prison?

4 A. 2001.

5 Q. Were you on parole when you got out?

6 A. Yes.

7 Q. Did you return to committing crimes?

8 A. Yes.

9 Q. What kind of crimes did you commit then?

10 A. Drugs, shootings.

11 Q. You said "drugs". Were you selling drugs?

12 A. Yes.

13 Q. Did you carry a gun when you were selling guns at about
14 that time?

15 A. On and off, yeah.

16 Q. Did there come a time you were stopped by police officers
17 in about July 2002?

18 A. Yes.

19 Q. What happened after the officers stopped you?

20 A. Long time ago I was pulled over. I was driving. I was
21 about 22. I had drugs on me, a lot of crack and they found it
22 and I asked the officer, Let me go, I'll pay you. Offered to
23 give him ten grand, let me go.

24 Q. Did he let you go?

25 A. No.

HB8AAROS1

Stewart - Direct

1 Q. What happened to you?

2 A. I was arrested.

3 Q. What happened to that case?

4 A. I took a plea on it.

5 Q. What did you plead to?

6 A. I don't remember. It was a long time ago.

7 Q. Did you plead to a drug charge?

8 A. Yes.

9 Q. Did you tell the government about that incident?

10 A. Yes.

11 Q. Do you know someone named Jahborn?

12 A. Yes.

13 Q. Did you have any incidents involving him?

14 A. Yes.

15 Q. Please describe that for the jury.

16 A. Around that same time period I was about 22 in a club in
17 the neighborhood and there was a fight breaking out with two
18 groups of girls that I knew and tried to separate them. He
19 wanted them to keep fighting and we got into a verbal thing
20 inside of the club. On the outside when we left they acted
21 like they wanted to jump me. We started fighting, me and him
22 and two of his guys. I left went to my car. He started
23 shooting at me. I went to the block that I was, that I had
24 friends on and we got together, got in some cars, got some guns
25 and went back to his projects where he hangs out at and

HB8AAROS1

Stewart - Direct

1 surrounded the project and just started shooting at them.

2 Q. Do you know if you hit anyone?

3 A. Not sure.

4 Q. Were you arrested for that?

5 A. No.

6 Q. Did you tell the government about that?

7 A. Yes.

8 Q. Were you involved in a shooting of someone named Wayno,
9 W-A-Y-N-O, and Top Dog?

10 A. No. I shot at them.

11 Q. What happened?

12 A. There was a time I was driving through the neighborhood and
13 they shot at my car. They were on a corner and I just heard
14 shots go at my car. And so a couple days later I'm driving to
15 go meet some friends. I happened to see them. I had a gun on
16 me. And I parked, jumped out and there was a crowd of them and
17 I shot at them. As I shot at them into their crowd they fired
18 back. I got shot in the foot.

19 Q. Do you know if you hit anyone when you shot at them?

20 A. Not sure.

21 Q. Did you get arrested for that?

22 A. No. I ran.

23 Q. Did you tell the government about that?

24 A. Yes.

25 Q. Did you get arrested in about July of 2003 for an incident

HB8AAROS1

Stewart - Direct

1 on the Verazzano Bridge?

2 A. Yes.

3 Q. What happened there?

4 A. I was talking on my phone and my license was suspended. A
5 bridge officer asked me to pull over. I pulled over and he
6 asked me for my key, my license and my key. I didn't have a
7 license at the time. It was suspended. I gave him a fake
8 name. I didn't want to give him my key though. I just told
9 him, Go run my license. Go run the license number I gave you.
10 He didn't want to. He tried to reach in the car and grab my
11 key. I didn't let him. It became a tussle for the key. I saw
12 him reaching for his gun. I thought he was gonna shoot me. I
13 put the car in drive while he was leaning in the car and he was
14 dragged. Shortly after I jumped out and ran off the bridge.
15 They chased me.

16 Q. Did you get arrested?

17 A. Yes.

18 Q. What happened to that case?

19 A. I took a plea.

20 Q. What did you plead to?

21 A. I don't remember but I did a little bit of time for it.

22 Q. How much time about?

23 A. Not long. It took I think about nine months.

24 Q. Did you tell the government about that incident?

25 A. Yes.

HB8AAROS1

Stewart - Direct

1 Q. Have you committed other crimes that we didn't specifically
2 talk about today?

3 A. I'm sure.

4 Q. You willing to answer questions about them if the defense
5 counsel or the judge has any questions about them?

6 A. Yes.

7 Q. Last, I want to show you what's been marked for
8 identification as Government Exhibit 54. Do you recognize that
9 person?

10 A. No.

11 MR. JOHNSON-SKINNER: Judge, we offer this exhibit
12 subject to connection by a witness later today.

13 THE COURT: All right. Subject to connection.

14 MR. JOHNSON-SKINNER: Publish that to the jury.

15 (Pause)

16 Q. You don't know that person, right?

17 A. I don't think so.

18 Q. I'll show you now what's in evidence as Government Exhibit
19 Four. You identified this person earlier as Khalil, right?

20 A. Yes.

21 Q. When was the last time you saw or spoke to Khalil?

22 A. I haven't seen Khalil since 2010.

23 Q. What were the circumstances under which you talked to him?

24 A. I went to his house and asked him for the money he owed me.

25 Q. Were you working for the government at that time?

HB8AAROS1

Stewart - Direct

1 A. Yes.

2 Q. Did you do that at the government's direction?

3 A. Yes.

4 Q. You haven't spoken to him since that time?

5 A. No.

6 Q. I'll put up now what's been marked for identification as
7 Government Exhibit Nine.

8 (Pause)

9 Q. Do you recognize that person?

10 A. Yes.

11 Q. Who is that?

12 A. That's Slim, Jimmy's friend.

13 MR. JOHNSON-SKINNER: Judge, we'd offer Government
14 Exhibit Nine.

15 THE COURT: Received.

16 (Government's Exhibit Nine received in evidence)

17 MR. JOHNSON-SKINNER: Publish that to the jury.

18 (Pause)

19 Q. When is the last time you've spoken to or saw Slim?

20 A. I haven't seen Slim in years, maybe before 2010.

21 Q. Before or after that time where you met Jason and Jimmy and
22 got the obituary?

23 A. Before that.

24 Q. Last I'll put up what's in evidence as Government Exhibit
25 Six. Who is that again?

HB8AAROS1

Stewart - Cross

1 A. Jason.

2 Q. When is the last time you saw or spoke to him?

3 A. Last time I saw Jason was in the night he passed me the
4 obituary. I'm sure we spoke a few times after that cause we
5 were close but I don't remember the last time.

6 Q. About when was the last time you spoke to him?

7 A. I'm sure it was in 2010.

8 MR. JOHNSON-SKINNER: No further questions, judge.

9 THE COURT: Thank you.

10 Cross-examination, Mr. Touger?

11 MR. TOUGER: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. TOUGER:

14 Q. Good morning, Mr. Stewart.

15 A. Good morning.

16 Q. If at any time you don't understand one of my questions
17 just ask me to rephrase it and I will, OK?

18 A. Yes.

19 Q. Can we agree that not all the G-Unit people who worked for
20 G-Unit were nice people?

21 A. Correct.

22 Q. And can we also agree that there were violent people in
23 this group?

24 A. Correct.

25 Q. And who are some of the more violent people?

HB8AAROS1

Stewart - Cross

1 A. Fox, Maserati Fox, Baja, the ones that I had run-ins with.

2 Q. So there's more than a handful of people that did violent
3 acts that are related to G-Unit, correct?

4 A. Correct.

5 Q. And for instance, Baja, what was his nickname?

6 A. "Monster".

7 Q. What was his reputation on the street?

8 A. That he'll bring it. I heard that he's -- I don't know but
9 I've heard that he's a killer.

10 Q. And would you agree with me that you spoke about during
11 your direct that members of G-Unit had bulletproof trucks, I
12 believe you called them?

13 A. Yes.

14 Q. And when you say "trucks", they're not actually trucks.
15 They're like SUVs?

16 A. Chevy Suburbans.

17 Q. If you know, did they have those bulletproof SUVs and
18 Suburbans before any of this feud started?

19 A. Yes, they did.

20 Q. So they didn't get those vehicles because of this feud?

21 A. No, they -- he's had them for a long time.

22 Q. Now, can we also agree, Mr. Stewart, that as far as you
23 know you've never shot and killed anybody?

24 A. Sorry?

25 Q. Can we also agree that as far as you know you've never shot

HB8AAROS1

Stewart - Cross

1 and killed anybody?

2 A. I've shot people. I've never killed anybody.

3 Q. You've never killed anyone?

4 A. Correct.

5 Q. Can we also agree that you've never ordered somebody else
6 to kill somebody?

7 A. Correct.

8 Q. But you have ordered other people or asked other people to
9 shoot other people, correct?

10 A. Correct.

11 Q. And when you were asking them to shoot other people how
12 would you do that?

13 A. Well, to shoot houses, that's what you are referring to?

14 Q. Well, you actually asked people to shoot individuals,
15 correct?

16 A. Yes.

17 Q. And would you say, would you please go shoot Mr. X or would
18 you use some vernacular?

19 A. Long time ago. I don't remember the conversation too much.

20 Q. What I'm he saying is would you -- when you asked a person
21 to shoot somebody would you say, go shoot Mr. X but don't kill
22 him or would you just say, go shoot Mr. X?

23 A. I only remember one time in particular. I normally handled
24 my stuff myself.

25 Q. When you were shooting all these people you spoke about

HB8AAROS1

Stewart - Cross

1 shooting in your life, you never wanted to kill any of those
2 people, correct?

3 A. It wasn't the intention, no.

4 Q. That wasn't your intention, right?

5 A. No.

6 Q. For instance, you never -- all the shootings with Baja you
7 never tried to kill him, right?

8 A. Never tried to kill him but I wouldn't have lost sleep.

9 Q. But you never, your intention of your shootings with Baja
10 were never to kill him, correct?

11 A. No.

12 Q. Now, you were not present when Mr. Fletcher was shot,
13 weren't you?

14 A. No.

15 Q. And you were not present when McCleod and others went to
16 the Bronx to pick the location for the shooting, were you?

17 A. No.

18 Q. And you were not present in Queens with McCleod and Jason
19 the first day they went to find Mr. Fletcher, were you?

20 A. No.

21 Q. And you were not present for any conversations between
22 Jimmy and McCleod where Lowell Fletcher was discussed, were
23 you?

24 A. No.

25 Q. And you were not present for any conversations between

HB8AAROS1

Stewart - Cross

1 Jimmy and Jason when Lowell Fletcher was discussed at all prior
2 to the shooting?

3 A. I don't think so.

4 Q. Well, you were in Georgia prior to the shooting, right?

5 A. For a period, yeah.

6 Q. And Jimmy and Jason never came down to discuss the shooting
7 of Lowell Fletcher, correct?

8 A. No.

9 Q. So would I be correct in saying that you have no eyewitness
10 testimony about this shooting of Lowell Fletcher?

11 A. Correct.

12 Q. And you have no knowledge of any of the planning, firsthand
13 knowledge of any of the planning of the shooting of Lowell
14 Fletcher, do you?

15 A. No, I don't.

16 Q. So everything you know about that incident you've heard
17 from other people?

18 A. Correct.

19 Q. Or read it in the media?

20 A. I don't read much.

21 THE COURT: I'm sorry?

22 THE WITNESS: Didn't read much. I didn't give any
23 details about it.

24 THE COURT: Thank you.

25 Q. Just so the jury gets a date, when were you arrested by the

HB8AAROS1

Stewart - Cross

1 feds for your drug dealing crime?

2 A. April 2010.

3 Q. And I believe you testified that you decided to cooperate
4 immediately?

5 A. Correct.

6 Q. And the government told you that day, the agents told you
7 that they wanted you, right?

8 A. I don't remember that.

9 Q. You don't remember he was asking you to cooperate that day?

10 A. I thought you said that the agents told me that they wanted
11 me.

12 Q. No. Did the agent ask you to cooperate that day?

13 A. Yeah.

14 Q. And you decided that cooperation was what was best for
15 Mohammed Stewart?

16 A. Correct.

17 Q. So within minutes or hours of being arrested you were
18 already helping them out?

19 A. Correct.

20 Q. So, basically, you had a choice to make that day, either
21 cooperate or fight the case, right?

22 A. Yes.

23 (Continued on next page)

24

25

Hb8nros2

Stewart - cross

1 Q. Basically curtain A was cooperate and curtain B would be
2 fight the case?

3 A. Something like that.

4 Q. You already knew your arrest record, right?

5 A. Yes.

6 Q. You knew this was federal court, and you were facing a lot
7 of time in jail, right?

8 A. Yes.

9 Q. Did you know at that point you were facing life in jail?

10 A. No.

11 Q. But you knew you were facing decades in jail, right?

12 A. Correct.

13 Q. You knew federal court was different than state court,
14 right?

15 A. Correct.

16 Q. So you decided, as you said, to cooperate with the feds?

17 A. Yeah. But those weren't my only reasons. There were more
18 issues even more pressing than that.

19 Q. OK. And, if I'm correct, you go to court at some point
20 that day, right?

21 A. Yes.

22 Q. And you go for a bail hearing, correct?

23 A. No, we went to court shortly after that. I don't remember
24 if it was the same day, the next day.

25 Q. Right. Within 24 hours you went to court, right?

Hb8nros2

Stewart - cross

1 A. A short time. I am not sure.

2 Q. And to see a judge, whether you were going to go home or
3 not, right?

4 A. Yes.

5 Q. But you already knew that the government was going to go
6 into that courtroom and ask the judge to let you go home,
7 right?

8 A. Yes.

9 Q. And that was part of your agreement about deciding to
10 cooperate, that you wouldn't go to jail that night?

11 A. They were going to ask me to get bail.

12 Q. That was part of your agreement that you decided to
13 cooperate, right?

14 A. Yes.

15 Q. You had --

16 A. I think everyone is entitled to bail.

17 Q. Excuse me?

18 A. I think everyone is entitled to bail.

19 Q. But you knew that the government was not going to recommend
20 that you not get bail, correct?

21 A. I don't remember that.

22 Q. You don't remember that?

23 A. No.

24 Q. You remember the government going to court and saying, We
25 want him released on this bail package?

Hb8nros2

Stewart - cross

1 A. I really don't remember details. It was seven years ago.

2 Q. Did you go home that night?

3 THE COURT: Which night?

4 Q. The night you first went to the court hearing, you went
5 home that night, right?

6 A. Yes. I was released on bond, \$500,000 bond.

7 Q. What does that mean? Did you have to put up any money?

8 A. Well, I have collateral. If you don't, they take your
9 collateral.

10 Q. But you didn't have to put up any money that night, right?

11 A. No.

12 Q. You signed a piece of paper that said --

13 A. I don't remember all the details of that night.

14 Q. But you do know you signed a piece of paper that said if
15 you don't show up in court they could come after you for
16 \$500,000?

17 A. I don't remember what it said.

18 Q. And after you decided to cooperate, the government started
19 to talk to you, right?

20 A. Yes.

21 Q. You had proffer sessions?

22 A. Yes.

23 Q. You said close to a hundred of them, right?

24 A. Maybe.

25 Q. During those proffer sessions, the government found out

Hb8nros2

Stewart - cross

1 about more and more crimes that you committed, correct?

2 A. No. They didn't find out. I told them --

3 Q. Right.

4 A. -- everything I committed.

5 Q. Right.

6 A. Let's be clear.

7 Q. I am not arguing about that.

8 You told them about all the crimes you committed,
9 right?

10 A. Correct.

11 Q. They didn't know about all of those before that day, April
12 10, that you got arrested, right?

13 A. No, they didn't know about them.

14 Q. So, as you told them about all these crimes, did the
15 government ever say to you: You know what, we can't take you
16 anymore, we are going to go back and not give you a cooperation
17 agreement?

18 A. No.

19 Q. So, after you told them about shooting after shooting and
20 drug dealing after drug dealing and robberies, the government
21 still said, You're somebody we want on our team?

22 THE COURT: Sustained.

23 Q. You knew when you decided to cooperate that one of the
24 individuals you would be cooperating against was Mr. Rosemond,
25 right?

Hb8nros2

Stewart - cross

1 A. That is incorrect. I actually held back a long time before
2 I gave any information about him --

3 Q. OK.

4 A. -- or his brother or any of the family members.

5 Q. At some point, though, you decided to cooperate against
6 Jimmy also, correct?

7 A. Yeah, because I realized that he's cooperated in the
8 past --

9 Q. I asked you a question, sir.

10 THE COURT: Mr. Touger, you are not to interrupt.

11 Q. At some point --

12 THE COURT: You are not to shout down the witness.

13 Q. Yes or no.

14 Did you at some point decide to --

15 A. Can I finish.

16 Q. -- cooperate against Jimmy? Yes or no?

17 A. Yes.

18 Q. Now, if I am also correct, you haven't spent a day in jail
19 since April '10, have you, because of your crimes here in
20 federal court?

21 A. No. I still haven't been sentenced yet, as we said
22 earlier.

23 Q. So you haven't spent a day in jail yet, though?

24 A. No.

25 Q. Seven years you have been out?

Hb8nros2

Stewart - cross

- 1 A. Correct.
- 2 Q. And your hope is that you will not go to jail, isn't that
3 correct?
- 4 A. Correct.
- 5 Q. And that's why you're here today, right?
- 6 A. Correct.
- 7 Q. You wouldn't be here unless the government was offering you
8 that 5K1 letter, would you?
- 9 A. Yes. Correct.
- 10 Q. You are not doing this out of goodness of your heart. You
11 are doing this because you are going hopefully to get something
12 out of it, right?
- 13 A. I am doing it because I signed the agreement.
- 14 Q. To get something out of it, right?
- 15 A. Yes.
- 16 Q. You don't want to go to jail?
- 17 A. I don't want to do life in prison.
- 18 Q. You like being home in your own bed, don't you?
- 19 A. Absolutely.
- 20 Q. With your wife and two children?
- 21 A. Absolutely.
- 22 Q. You don't want to be barked at by corrections officers and
23 told when to go to the bathroom and told what you can and
24 cannot do, right?
- 25 A. Correct.

Hb8nros2

Stewart - cross

1 Q. Now, you signed your cooperation agreement with the Eastern
2 District of New York, correct?

3 A. Yes.

4 Q. But that doesn't make any difference; the same agreement
5 works with the Southern District of New York. Correct?

6 A. Repeat that.

7 Q. The Southern District of New York is bound by the same
8 agreement that the Eastern District of New York is bound by?

9 A. I'm bound to the same agreement with the Eastern District
10 as I am with the Southern District, correct.

11 Q. Exactly.

12 Before you signed that agreement, you had a lawyer,
13 right?

14 A. Yes.

15 Q. And you went over that agreement with your lawyer?

16 A. Correct.

17 Q. And you read it yourself?

18 A. Correct.

19 Q. And you understood every part of it, right?

20 A. Pretty much, correct.

21 Q. It's probably the most important agreement you've ever
22 signed in your life, right?

23 A. Yes.

24 Q. And you know what you are supposed to do as part of that
25 agreement, right?

Hb8nros2

Stewart - cross

1 A. Yes.

2 Q. One of the things you're supposed to do is what you are
3 doing right now, is testify against Mr. Rosemond?

4 A. Is that a question?

5 Q. Yes.

6 A. Yes.

7 Q. And the government brought out this fact, that you're
8 supposed to tell the truth, right?

9 A. Correct.

10 Q. And if you don't tell the truth, they said to you your
11 agreement gets ripped up, right?

12 A. Yes.

13 Q. Who decides whether you're telling the truth here today
14 according to your agreement?

15 A. What do you mean, who decides?

16 Q. It is the government, isn't it, that decides whether you
17 are telling the truth, right?

18 A. I would think the jury. If it was the government to
19 determine it --

20 Q. You think the jury determines whether you are telling the
21 truth today?

22 A. They hear all the facts.

23 Q. So your testimony is whether you get that 5K1 letter
24 depends on what verdict this jury gives here today?

25 A. Excuse me?

Hb8nros2

Stewart - cross

1 Q. Your getting --

2 THE COURT: Mr. Touger, there is a point to be made
3 here that you are entitled to make, but you are not getting
4 very directly to it. Why don't you back up, slow down, and try
5 again.

6 MR. TOUGER: That is where I am going, your Honor.

7 THE COURT: All right.

8 BY MR. TOUGER:

9 Q. In your cooperation agreement, the government agrees to
10 write a 5K1 letter for you, correct?

11 A. Yes.

12 Q. And they agree to write that if they think you are telling
13 the truth here today, right?

14 A. Repeat that question.

15 Q. The government will write you the 5K1 letter if they decide
16 that you have told the truth here today?

17 A. I don't know if they decide. They write the 5K letter if I
18 do everything that I agree to do.

19 MR. TOUGER: Can you put the cooperation agreement up
20 on the screen.

21 Could you go to the next page. Keep going.

22 Keep going.

23 You are going too quickly. This is an inefficient
24 method.

25 BY MR. TOUGER:

Hb8nros2

Stewart - cross

- 1 Q. If the government thinks you're lying today, are they going
2 to write the 5K1 letter?
- 3 A. No.
- 4 Q. Thank you. There are other requirements built into this
5 cooperation agreement, right?
- 6 A. Yes.
- 7 Q. One of which is that you can't get rearrested?
- 8 A. Correct.
- 9 Q. And you can't commit any new crimes, right?
- 10 A. Correct.
- 11 Q. And what is supposed to happen if you commit a new crime?
- 12 A. I don't know what's supposed to happen. I guess it's at
13 their discretion.
- 14 Q. Isn't it a fact, sir, that if you commit a new crime, the
15 agreement says they have the right to rip up your agreement?
- 16 A. That it can be, yes.
- 17 Q. That's the discretion they have, right?
- 18 A. Yes.
- 19 Q. And if they rip up your agreement and don't write you the
20 5K1 letter, what happens to you?
- 21 A. I get -- can be sentenced -- I will be sentenced between 20
22 to life in prison.
- 23 Q. No ifs, ands, or buts, right?
- 24 A. Correct.
- 25 Q. Now --

Hb8nros2

Stewart - cross

1 A. It also can happen if I don't tell the truth as well.

2 Q. Yes. But we've already been through that, and we've come
3 to the conclusion that it's the government --

4 THE COURT: Sustained.

5 Q. By the way, is Mr. -- excuse me, is Judge Kaplan your
6 sentencing judge?

7 A. I don't know who's going to be my sentencing judge.

8 Q. Who did you plead in front of?

9 A. Judge Garaufis.

10 Q. In the Eastern District of New York, correct?

11 A. Correct.

12 Q. That's where your case is pending, correct?

13 A. Correct.

14 Q. Across the river?

15 A. Correct.

16 THE COURT: For the jury's benefit, the Eastern
17 District of New York consists of Staten Island and all of Long
18 Island.

19 BY MR. TOUGER:

20 Q. Would I be correct in saying that just two weeks after
21 signing this agreement you get arrested in Atlanta?

22 A. I don't know the time.

23 Q. Well, you got arrested in Atlanta on September 1, 2010,
24 correct?

25 A. I'm not sure what date.

Hb8nros2

Stewart - cross

1 Q. OK. But you do remember being arrested in Atlanta?

2 A. Correct.

3 Q. And you do remember that that happened after you signed the
4 cooperation agreement?

5 A. Correct.

6 Q. And the government called you up to New York at that point,
7 didn't they?

8 A. I don't remember.

9 Q. You don't remember coming up to New York and -- do you know
10 Mr. Kaminsky?

11 A. Yes.

12 Q. Who is Mr. Kaminsky?

13 A. That's the prosecutor in the Eastern District.

14 Q. The one that was prosecuting you, correct?

15 A. Correct.

16 Q. And the one that was involved in most of your proffer
17 sessions, correct?

18 A. Correct.

19 Q. And you don't remember him bringing you up to New York and
20 saying, Mr. Stewart, you can't be getting arrested?

21 A. I remember him, I remember him questioning me about it. I
22 remember him scolding me about the incident.

23 Q. Exactly. But he didn't rip up your agreement, did he?

24 A. No.

25 Q. You committed other crimes in Atlanta since you've signed

Hb8nros2

Stewart - cross

1 this cooperation agreement, haven't you?

2 A. Excuse me. Repeat that.

3 Q. You have committed other crimes in Atlanta since you have
4 signed this cooperation agreement, haven't you?

5 A. No.

6 Q. You haven't been conducting drug trafficking between Los
7 Angeles and Atlanta?

8 A. What?

9 Q. You haven't been selling drugs, getting drugs from Los
10 Angeles and selling them in Atlanta?

11 A. You said since I signed my agreement?

12 Q. Yes.

13 A. No.

14 Q. You know Andre Collier, right?

15 A. Yes.

16 Q. He's a good friend of yours, right?

17 A. He was.

18 Q. Isn't it true that at some point after your cooperation
19 agreement was signed you called him down to Atlanta and said:
20 Hey, Andre I got this great deal going with California. I got
21 these cheap drugs. You want to come in with me?

22 A. He actually was in jail by the time I signed my cooperation
23 agreement. He was in jail months before, maybe a year before I
24 was arrested. So your facts are incorrect.

25 Q. Do you know --

Hb8nros2

Stewart - cross

1 THE COURT: So is the answer to the question no or
2 yes?

3 A. No. Incorrect.

4 Q. By the way, do you know who Tut is.

5 A. There are two Tuts, yes.

6 Q. What is his real name?

7 THE COURT: Which one.

8 A. The one that Jimmy blamed for shooting Tupac.

9 Q. No. The one that you said --

10 THE COURT: Stop interrupting the witness.

11 MR. TOUGER: He asked me a question, your Honor.

12 THE COURT: I didn't hear it.

13 MR. TOUGER: He did. He asked him which one I'm
14 talking about?

15 THE COURT: No, I did. Pay attention.

16 Let's move on.

17 BY MR. TOUGER:

18 Q. The one that you said came with Jimmy that Central Park
19 meeting?

20 A. It wasn't the Central Park meeting.

21 Q. I thought you testified yesterday on direct that the day
22 that Jimmy was wearing that hoody was outside of Central Park?

23 A. No, that wasn't outside of Central Park. That was in
24 Midtown by a school, but there are times we've met by Central
25 Park.

Hb8nros2

Stewart - cross

- 1 Q. I am talking about the time he wore the hoody. It was Tut
2 with --
- 3 A. It was a coat with a hoody.
- 4 Q. Was Tut with Jimmy that day?
- 5 A. He was in the car.
- 6 Q. And do you know his real name?
- 7 A. Nope.
- 8 Q. Isn't his real name Walter Johnson?
- 9 A. I don't know his real name.
- 10 Q. Hasn't Walter Johnson been in jail since 1996?
- 11 A. Like I said, there were two Tuts. There were two Tuts.
- 12 Q. Now, can we agree, though, that on January 29, 2015, a man
13 approached you and asked you if you wanted to get involved in a
14 drug business with him, correct?
- 15 A. Can you repeat the question.
- 16 Q. Sure. Can we agree that on January 29, 2015, while you
17 were working in Atlanta, somebody came to your place of
18 business and asked you to get involved in a drug business with
19 him?
- 20 A. No.
- 21 Q. That never happened?
- 22 A. Not that I remember, no.
- 23 Q. You didn't report that to the government and say: Oh,
24 yeah, that happened. I was just trying to get him for you.
- 25 A. What, in particular, are you talking about? Can you give

Hb8nros2

Stewart - cross

1 facts?

2 Q. That you were visited at a car dealership in Atlanta
3 Georgia by someone to buy a mastiff dog from an individual
4 named -- who visited you, and that you said, in sum and
5 substance, This dealership is just my lunch money. I make my
6 real money shipping dope to New York.

7 Do you remember that?

8 A. That never happened.

9 Q. It never happened. You didn't tell the government that?

10 A. I answered you already. That never happened.

11 THE COURT: Did you tell the government it happened,
12 whether or not it happened?

13 THE WITNESS: No.

14 THE COURT: Thank you.

15 BY MR. TOUGER:

16 Q. And the government didn't speak to you about this incident,
17 and you said in sum and substance that he has not sold drugs
18 since his initial arrest in April of 2010, and he did not sell
19 drugs during or after December of 2014?

20 MR. JOHNSON-SKINNER: Objection, Judge.

21 THE COURT: Objection sustained. Form.

22 BY MR. TOUGER:

23 Q. Do you remember telling the government that you were just
24 trying to set that person up for him, for them?

25 A. I don't even know what you are talking about anymore,

Hb8nros2

Stewart - cross

1 honestly. You are all over the place.

2 (Counsel conferred)

3 THE COURT: Mr. Touger, do you have any more
4 questions?

5 MR. TOUGER: Your Honor, I just wanted the government
6 to stipulate that he's lying right at this moment.

7 THE COURT: I am sure you would. I'm sure they would
8 like to stipulate to some other things, too, but I don't think
9 it's very promising.

10 Why don't you ask your questions.

11 The jury will disregard Mr. Touger's comment.

12 BY MR. TOUGER:

13 Q. Did the government ask you about the incident?

14 A. Yes.

15 THE COURT: What incident?

16 MR. TOUGER: In January 29, 2015.

17 A. What was the incident?

18 Q. Did the government ask you about an incident where somebody
19 came and approached you in Georgia in an effort to sell drugs
20 with you?

21 THE COURT: Assume such a thing happened.

22 Do you think you might rephrase the question properly,
23 Mr. Touger.

24 BY MR. TOUGER:

25 Q. Did the government ever call you up to New York after

Hb8nros2

Stewart - cross

1 January 29, 2015, to talk to you about an incident that
2 occurred on that day?

3 A. Sir, I don't remember the dates. People have come to ask
4 me about drugs many times since my arrest. I don't know which
5 particular instance you are referring to at this moment. If
6 you want to give me an idea what you are talking about, what it
7 entailed, I will be glad to tell you all the details.

8 Q. I am going to show you something --

9 THE COURT: We are going to --

10 Q. -- and see if this refreshes your recollection?

11 THE COURT: Excuse me. Don't you talk over me either.

12 MR. TOUGER: I'm sorry, your Honor.

13 THE COURT: We are going to take our morning break
14 here, and maybe everybody will settle down.

15 15 minutes, folks.

16 I think the witness should exit the room while we have
17 this conversation.

18 (Continued on next page)

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Stewart - cross

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(Witness not present)

(Jury not present)

THE COURT: Be seated, folks.

Mr. Touger, I think I know what you are about. You are going to slow down. You are so excited that you've got everybody confused. Just slow down and think about how to put the questions.

OK. We will take our break.

(Recess)

(Witness resumed the stand)

(Continued on next page)

Hb8nros2

Stewart - cross

1 (Jury present)

2 THE COURT: OK.

3 The defendant and the jurors all are present.

4 The witness is reminded he's still under oath.

5 Mr. Touger.

6 MR. TOUGER: Thank you, your Honor.

7 BY MR. TOUGER:

8 Q. Let's start over.

9 Do you remember a man approaching you when you were,
10 working -- did you work at a car dealership?

11 A. Yes.

12 Q. Do you remember a man approaching you asking you to buy a
13 mastiff dog?

14 A. Yes.

15 Q. Do you remember the government calling you up to New York
16 after that incident?

17 A. Yes.

18 Q. And do you remember the government saying to you that that
19 man said you offered him drugs?

20 A. That is not what they said, no.

21 Q. Excuse me?

22 A. No.

23 Q. What did they say?

24 A. They wanted to know about our interaction and what was our
25 meeting for.

Hb8nros2

Stewart - cross

1 Q. What did you say?

2 A. I told them that he randomly called me and said that he
3 found my number online and wanted to buy some of the mastiffs I
4 had.

5 Q. So in your mind there was no discussion about drug
6 trafficking during that time period?

7 A. Correct.

8 Q. We can agree that if that person didn't, other people have
9 approached you about drug dealing?

10 A. Yes.

11 Q. Even though you are not in the business?

12 A. Yes.

13 Q. Now, I want to talk to you a little bit about this incident
14 that happened this past August that you just testified to.

15 Do you remember that incident?

16 A. Yes.

17 Q. And I believe you testified on direct that the complaints
18 were anonymous, correct?

19 A. Yes.

20 Q. Isn't it true that at least one or two of the complaints
21 were made by the 14-year-old girl herself?

22 A. Not that I am aware of.

23 Q. And isn't it also true that when -- what is the child
24 agency called in Atlanta?

25 A. I am not sure right now.

Hb8nros2

Stewart - cross

1 Q. There is a child agency that came to your door, correct?

2 A. Yes.

3 Q. And isn't it also true that they left your house and they
4 were so fearful for their safety that they came back with
5 police at a later time?

6 THE COURT: Sustained as to form. You are asking for
7 him to testify as to what they thought.

8 Q. Did the two child agency workers come to your house?

9 A. Sorry?

10 Q. At some point in time, did two workers from the child
11 agency come to your house.

12 A. They came multiple times in those 30 hours.

13 Q. And at one point, the last time they came escorted by
14 police, correct?

15 A. That was one of the times they came with police, yes.

16 Q. That was the last time, right?

17 A. They came a few times with police in those 30 hours for
18 each allegation -- not all of them, but at least half of them.

19 Q. Isn't it also true that they told you that the 14-year-old
20 girl said that she had been living with you for six years, that
21 she does not want to be in your home anymore and feels unsafe,
22 that she has been physically and mentally abused by you. And
23 the most recent time --

24 MR. JOHNSON-SKINNER: Objection, Judge.

25 Q. -- was a couple of weeks ago --

Hb8nros2

Stewart - cross

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THE COURT: There is an objection, Mr. Touger.
Come to the sidebar.
(Continued on next page)

Hb8nros2

Stewart - cross

1 (At sidebar)

2 THE COURT: What is the objection?

3 MR. JOHNSON-SKINNER: I don't think defense counsel
4 should be allowed to read into the record a hearsay statement
5 of the police of what the cousin said.

6 THE COURT: Mr. Touger.

7 MR. TOUGER: Well, I am reading it so I get it
8 word-for-word correct so that the witness can't say --

9 THE COURT: How does that answer the hearsay?

10 MR. TOUGER: It is not hearsay if he says that he
11 knows that is true, your Honor. That is the complaint that was
12 raised against him. I have to bring out that the complaint was
13 registered against him.

14 THE COURT: Not this way.

15 MR. TOUGER: I have to memorize this whole paragraph
16 you are telling me?

17 THE COURT: It is not a matter of your memory,
18 Mr. Touger. You are trying to put into evidence for the truth
19 of the matter asserted --

20 MR. TOUGER: No, I am not, your Honor.

21 THE COURT: -- a statement made by somebody else
22 elsewhere.

23 MR. TOUGER: That is not what I am trying to do, your
24 Honor.

25 THE COURT: What are you trying to do?

Hb8nros2

Stewart - cross

1 MR. TOUGER: I am trying to ask him, does he remember
2 that this 14-year-old girl made these allegation against him.

3 THE COURT: And that is relevant because?

4 MR. TOUGER: Because it goes to whether he's a man
5 that should be trusted as a witness. It goes to his
6 credibility.

7 THE COURT: So, in other words, if somebody said that
8 you beat dogs, a report that someone said you beat dogs could
9 be offered in evidence at a trial where you were a witness?

10 MR. TOUGER: No. I am not --

11 THE COURT: It is obviously being offered to prove
12 that the 14-year-old girl said this, right?

13 MR. TOUGER: No.

14 THE COURT: You don't care whether she said it?

15 MR. TOUGER: I do care whether she said it.

16 What I am offering it for, your Honor, is that it goes
17 to this man's credibility as a crime that he's committed and
18 you are allowed to cross-examine a witness about crimes that
19 they've committed.

20 THE COURT: That is perfectly absurd. That is exactly
21 why you are offering it for the truth.

22 Objection sustained.

23 MR. TOUGER: Your Honor, let me just -- I --

24 THE COURT: We are done. That is the ruling.

25 MR. TOUGER: I have a question.

Hb8nros2

Stewart - cross

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I can still ask him whether he did in fact hit the
14-year-old child?

THE COURT: I will deal with an objection to that if
as and when.

MR. TOUGER: OK.

(Continued on next page)

Hb8nros2

Stewart - cross

1 (In open court)

2 THE COURT: The objection is sustained.

3 The jury will disregard --

4 BY MR. TOUGER:

5 Q. Mr. Stewart --

6 THE COURT: Excuse me.

7 -- the question.

8 Go ahead.

9 BY MR. TOUGER:

10 Q. Mr. Stewart did you ever hit this 14-year-old girl?

11 A. I told you earlier when I did.

12 Q. Is that the only time you ever hurt her?

13 A. That I remember, yes.

14 Q. You don't remember -- so you could have hit her other
15 times?

16 A. I doubt it. We don't really spank our kids.

17 Q. Did you ever hit her with a TV remote?

18 A. Never.

19 Q. Do you remember the allegations that there were drugs and
20 guns in your home?

21 A. That was one of the phone calls that were made to the
22 police also.

23 Q. And would you agree with me that when the police officers
24 came into your home, you got very upset?

25 A. Yes, of course.

Hb8nros2

Stewart - cross

1 Q. Would you agree with me that you raised your voice to the
2 police officers?

3 A. Correct.

4 Q. And would you agree with me that you stood on the stairwell
5 and tried to stop them from going upstairs to the 14-year-old's
6 bedroom?

7 A. I don't remember trying to stop them. I remember telling
8 them. I don't remember physically trying to stop them. I
9 remember telling them to get out of my house. They don't have
10 a warrant to be in my house. They don't have probable cause to
11 be in my house.

12 Q. And they disagreed with you, correct?

13 A. Correct.

14 Q. And they arrested you for obstructing their actions,
15 correct?

16 A. Later on that night, yes.

17 Q. And they took the 14-year-old girl and your 39-year-old
18 cousin out of your house, correct?

19 A. Correct.

20 Q. And they before they took them out of your house, they
21 spoke to each one of them outside of your presence, correct?

22 A. They didn't do much speaking, they just came, got them.
23 They didn't want to say why they were here.

24 Q. How much in Social Security benefits were they receiving?

25 A. I don't receive it. It goes to another person. I think it

Hb8nros2

Stewart - cross

1 might be about \$600.

2 Q. Now, I believe you said on direct that you actually tried
3 to call the federal authorities when they were in your house,
4 right?

5 A. I didn't try. The minute they were at my door and walked
6 in, within a few minutes later I called to let them know what
7 was going on again.

8 Q. By the way, I believe you testified on direct this isn't
9 your only domestic violence incident in your life, is it?

10 THE COURT: Sustained.

11 Q. I believe you testified --

12 THE COURT: So far you have no domestic violence
13 incident.

14 MR. TOUGER: I will rephrase the question.

15 BY THE WITNESS:

16 Q. In other times in your life, have you been involved in
17 domestic violence incidents?

18 A. With girlfriends, yes.

19 Q. And you have hit them, correct?

20 A. We fought, yes.

21 Q. And I believe you testified on direct that it was a lot of
22 times?

23 A. I can't -- yeah. A few.

24 Q. Do you remember one of these incidents?

25 A. There were a few. I don't want to --

Hb8nros2

Stewart - cross

1 Q. Do you remember one of them?

2 THE COURT: One in particular?

3 MR. TOUGER: Yes.

4 THE COURT: Any one?

5 MR. TOUGER: Any one.

6 A. I am not sure. I don't remember all the details, no.

7 Q. Do you remember why you hit these women? What was the
8 reason?

9 A. It might have been a fight. I am not sure. A long time
10 ago.

11 Q. Was it OK for you to strike these women during this time?

12 A. Absolutely not.

13 Q. I believe you testified on direct that at some point in
14 time you were dating a woman and you went to her house and you
15 saw her sleeping with another individual?

16 A. Correct.

17 Q. And your reaction to that was to go get a gun and shoot at
18 the house?

19 A. Yes.

20 THE COURT: Come to the sidebar, counsel.

21 (Continued on next page)

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Hb8nros2

Stewart - cross

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(At sidebar)

THE COURT: I am not getting an objection to this line of questioning just before the last question, but I do have some responsibility for ensuring a fair trial whether or not there is an objection.

I would like you to explain to me how this excursion into hitting girlfriends and stuff like that is proper examination.

MR. TOUGER: Because it's crimes he's committed, your Honor.

THE COURT: Really?

MR. TOUGER: Yes.

THE COURT: How about this. Rule 608(b). "Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances" --

MR. TOUGER: Exactly.

THE COURT: I understand.

Now, how is this regardless of whether it's extrinsic or not, appropriate cross?

MR. TOUGER: I am bound by his answer. I am allowed to bring out his bad acts of his life.

THE COURT: All of them? Regardless of what they are?

MR. TOUGER: I don't intend to bring out all of them your Honor. There's too many to go into.

Hb8nros2

Stewart - cross

1 I think attacking women -- all of this came out on
2 direct. He said it did it many times on direct.

3 THE COURT: So then it is accumulate.

4 MR. TOUGER: Not, it's not. I have the right to go
5 into the details when they bring something out on direct, your
6 Honor.

7 MR. JOHNSON-SKINNER: He doesn't remember the details.
8 I don't think it's very probative. I don't think there's
9 anything more to do on that line.

10 MR. TOUGER: On that line, we are done.

11 THE COURT: OK. If you're done, you're done.

12 (Continued on next page)

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Hb8nros2

Stewart - cross

1 (In open court)

2 THE COURT: Proceed.

3 BY MR. TOUGER:

4 Q. I believe you testified, too, on direct that there are guns
5 in your home, correct?

6 A. There are guns? No.

7 Q. There were guns in your home at some point after your
8 cooperation agreement?

9 A. Correct.

10 Q. And I also think you testified that there were guns you had
11 access to at work?

12 A. There were guns at work, correct.

13 Q. Now, Mr. Stewart, would I be correct in saying that you've
14 committed perjury in the past in your life?

15 A. Correct.

16 Q. I believe you testified to an incident in the grand jury
17 where you testified to facts that were untrue?

18 A. Correct.

19 Q. You were sworn to tell the truth that day, correct?

20 A. Yes.

21 Q. Just the same oath you took here yesterday, and they remind
22 you of each time you take the stand?

23 A. Yes.

24 Q. You went into that grand jury and told a complete lie?

25 A. Yes.

Hb8nros2

Stewart - cross

1 Q. And you did that for your own benefit, right?

2 A. Correct.

3 Q. And you did that because you didn't want to go to jail?

4 A. Correct. At the advice of my attorney as well.

5 Q. Excuse me?

6 A. At the advice of my attorney as well.

7 Q. The attorney told you to lie?

8 A. Correct.

9 Q. He didn't suggest to you that this is a story you might
10 want to tell? He told you point blank go into that grand jury
11 and lie?

12 A. He created a scenario.

13 Q. And then you adopted that scenario?

14 A. Yes, sir.

15 Q. No attorney told you to lie in court or in the grand jury,
16 did they?

17 A. He told me the story. I don't remember the details. I
18 was, like I said, about 16 or 17 years old. It was a long time
19 ago. But I told the government about it.

20 Q. You did. You told this jury about it, right? Nobody is
21 saying you are hiding anything.

22 When you decided to start to cooperate against
23 Mr. Rosemond, your attorney told you that you had to do that
24 because the government wanted you to, correct?

25 MR. JOHNSON-SKINNER: Objection to what his attorney

Hb8nros2

Stewart - cross

1 told him.

2 THE COURT: Sustained.

3 Q. I believe you testified that at one point you pled guilty
4 to a crime that you did not commit.

5 A. Correct.

6 Q. And you did that, again, because it was in your benefit to
7 do so, correct?

8 A. Correct.

9 Q. Again, you were sworn to tell the truth that day in front
10 of the judge, weren't you?

11 A. Correct.

12 Q. And again you lied right to the judge's face.

13 A. Correct.

14 Q. Because it was in your benefit?

15 A. Correct.

16 Q. So, lying for your benefit is something you have done in
17 your past?

18 A. Correct.

19 Q. But that is not what you are doing here?

20 A. No. What I am supposed to do here is tell the truth. It
21 is my benefit to tell the truth, so that's what I'm doing.

22 MR. TOUGER: Your Honor, I am asking that paragraph
23 13, page 10 of the cooperation agreement be put up on the
24 screen.

25 BY MR. TOUGER:

Hb8nros2

Stewart - cross

1 Q. I am directing you to paragraph 13. Do you see paragraph
2 13?

3 A. Yes.

4 Q. You can read the whole paragraph if you would like, but to
5 the second sentence.

6 "Should it judged by the office that the defendant" --

7 And you are the defendant, correct?

8 A. Correct.

9 Q. -- "has failed to cooperate fully, has intentionally given
10 false or misleading or incomplete information or testimony, has
11 committed or attempted to commit any further crimes" --

12 See that sentence?

13 A. Yes.

14 Q. So isn't it true that your cooperation agreement says that
15 the government is going to judge whether you testified
16 truthfully?

17 THE COURT: Sustained.

18 MR. JOHNSON-SKINNER: Objection, Judge.

19 A. It's not --

20 MR. TOUGER: The agreement speaks for itself.

21 BY MR. TOUGER:

22 Q. We can agree again, Mr. Stewart, that you have committed a
23 lot of crimes in your life?

24 A. Yes.

25 Q. And I believe you stated that you started committing crimes

Hb8nros2

Stewart - cross

1 at around the age of 10?

2 A. Yes.

3 Q. And were shooting people by the time you were a teenager?

4 A. Shooting, shot, yes.

5 Q. Shooting people. Not killing anyone?

6 A. Shooting at people, yes. Don't --

7 Q. You first started selling drugs when you were 16?

8 A. Yes.

9 Q. I believe the first shooting was when you shot at people on
10 Staten Island, correct?

11 A. What?

12 Q. One of the first shootings was when you shot at people on
13 Staten Island, correct?

14 A. Correct.

15 Q. And can we also agree that while you were working --
16 withdrawn.

17 While you knew Jimmy you committed crimes that had
18 nothing to do with Jimmy?

19 A. Correct.

20 Q. And would I also be correct in saying that you had a drug
21 business that had nothing to do with Jimmy?

22 A. Correct.

23 Q. And how large was that drug business?

24 A. It was actually bigger than when I was selling drugs with
25 Jimmy.

Hb8nros2

Stewart - cross

1 Q. So how much money did you make independently in that
2 business?

3 A. I am not sure.

4 Q. But it's hundreds of thousands of dollars, correct?

5 A. Maybe more.

6 Q. Maybe more. Maybe millions.

7 And --

8 THE COURT: The jury will disregard the aside by
9 counsel.

10 Q. Was it more than a million dollars, possibly?

11 A. I am not sure.

12 Q. You had your --

13 A. I was -- I am not sure.

14 Q. You had your own crew of individuals separate and distinct
15 from anything you had relative to Jimmy, correct?

16 A. Correct.

17 Q. And in your crew was your friend Andre Collier, right?

18 A. Yes.

19 Q. And a person named Inky?

20 A. Yes.

21 Q. And a person named PJ?

22 A. Yes.

23 Q. And a person named Deshawn?

24 A. Correct.

25 Q. And all those people worked for Mohammed Stewart?

Hb8nros2

Stewart - cross

1 A. Correct.

2 Q. Were associated with Mohammed Stewart independent of
3 anything you had relative to Jimmy?

4 A. Yes. They also worked with me when I was hustling with him
5 as well.

6 Q. Thank you for volunteering that.

7 By the way, in 2008, can we agree that you were
8 arrested for terrorist threats and threatening to shoot your
9 landlord?

10 THE COURT: Sustained.

11 Q. Were you arrested and prosecuted for that crime?

12 A. I was arrested for terroristic threats.

13 Q. To your landlord, correct?

14 A. To the property manager.

15 Q. Now I believe you testified on direct that there was a
16 shooting in Newark that had to do with you getting beat on a
17 drug deal, correct?

18 A. Correct.

19 Q. And you told the jury those facts so I'm not going to go
20 and repeat them again.

21 But at some point in time you went and got a gun and
22 shot at the people you say ripped you off?

23 A. Correct.

24 Q. And you did that right on a public street in Newark,
25 correct?

Hb8nros2

Stewart - cross

1 A. Correct.

2 Q. And there were innocent bystanders on the street when you
3 started firing, correct?

4 A. I didn't see anyone at that moment.

5 Q. Do you remember testifying in a prior proceeding in this
6 case?

7 A. Yes, two others.

8 Q. Page 479.

9 THE COURT: Excuse me. Is this an exhibit?

10 Are you reading from an exhibit?

11 MR. TOUGER: Yes.

12 THE COURT: Tell me what it is, please.

13 MR. TOUGER: Can we approach, your Honor?

14 THE COURT: No. Just tell me what it is.

15 MR. TOUGER: The second proceeding, your Honor.

16 THE COURT: Pardon me.

17 MR. TOUGER: The second proceeding.

18 THE COURT: No, I need an exhibit number.

19 MR. TOUGER: Oh. 3506-JJJJJ. That is the exhibit
20 number, your Honor.

21 THE COURT: So this is a Defense Exhibit?

22 MR. TOUGER: No, this is government's 3500 material.

23 THE COURT: Which are all designated by the No. 3500
24 and something.

25 MR. TOUGER: 3506-JJJJJ.

Hb8nros2

Stewart - cross

1 THE COURT: We are getting warm maybe.

2 Ms. Hanft, what volume? Do you know?

3 Thank you.

4 You said JJJJJ.

5 MR. TOUGER: JJJJJ, page 479.

6 THE COURT: All right.

7 Line numbers?

8 MR. TOUGER: I didn't hear you, your Honor.

9 THE COURT: Line numbers?

10 MR. TOUGER: 479, line 1.

11 THE COURT: Up to?

12 MR. TOUGER: Line 3.

13 THE COURT: Is there any objection?

14 MR. JOHNSON-SKINNER: No, Judge.

15 THE COURT: All right.

16 The way we do this is as follows: On December 3,
17 2014, you testified as follows, and then you read question and
18 answer and then if you have a question of the witness you ask
19 it.

20 MR. TOUGER: Thank you, your Honor.

21 Q. Do you remember testifying December of 2014 --

22 THE COURT: There was a stenographer there.

23 We are going to skip that question.

24 MR. TOUGER: OK.

25 THE COURT: Unless somebody objects and says, no, no,

Hb8nros2

Stewart - cross

1 you are making it up or some other reason just, read it.

2 Q. Were you asked this question --

3 THE COURT: Mr. Touger which part of "just read it"
4 did I fail to get across?

5 Q. Were other people having nothing to --

6 THE COURT: "Question: Were other people" --

7 BY MR. TOUGER:

8 "Q. Were other people having nothing to do with this drug
9 transaction, were they on the street, correct?

10 "A. Correct."

11 A. Sorry. Repeat the question.

12 THE COURT: He hasn't asked it yet.

13 On December 3, 2014, you testified as follows.

14 Read the question, read the answer. Then ask your
15 question, which will not be do you remember it.

16 MR. TOUGER: It wasn't going to be that question, your
17 Honor.

18 BY MR. TOUGER:

19 Q. On December 3, 2014, you testified as follows:

20 "Q. Were other people having nothing to do with this drug
21 transaction, were they on the street, correct?

22 "A. Correct."

23 THE COURT: Is there a question now?

24 Q. So I ask you again, were innocent bystanders on the street
25 when you fired at these drug dealers?

Hb8nros2

Stewart - cross

1 A. Is that the question?

2 Q. Yes.

3 A. I mean, it was daytime I'm sure there was. I didn't see
4 anybody, but the vehicle that these guys were in got shot into.

5 Q. As I said, you weren't looking out for these other
6 individuals, were you?

7 A. I just focused on the vehicle.

8 Q. You just focused on your revenge on the people in the
9 vehicle?

10 A. Correct.

11 Q. And that shooting, again, had nothing to do with G-Unit?

12 A. No, it didn't.

13 Q. And nothing to do with Jimmy Rosemond?

14 A. We spoke about it and he told me to get some addresses,
15 that he needed the therapy, when they shot up the car my kids
16 were in. So we spoke about it.

17 Q. But --

18 A. But it wasn't his beef.

19 Q. And you testified on direct about a shooting of O.G. Cal,
20 correct?

21 A. Correct.

22 Q. That, again, was your personal dispute with O.G. Cal,
23 right?

24 A. Correct.

25 Q. Had nothing to do with G-Unit?

Hb8nros2

Stewart - cross

1 A. Nothing at all.

2 Q. And would I be correct in saying that you did not intend to
3 kill O.G. Cal that night?

4 A. No, I didn't want to kill him.

5 Q. And would I also be correct in saying, though, that you
6 took your gun and you put it right up against his stomach and
7 you shot into O.G. Cal's stomach?

8 A. That's correct.

9 Q. And you fired more than one bullet into O.G. Cal's stomach?

10 A. Correct.

11 Q. But you did not intend to kill O.G. Cal that night?

12 A. No.

13 Q. And, in fact, O.G. Cal did not die as far as you knew?

14 A. Correct.

15 Q. And I believe you testified that you used a nine-millimeter
16 weapon that night?

17 A. Yes, the one they have.

18 Q. Then you testified on direct about this incident with this
19 individual who owed your girlfriend money, correct?

20 A. That is not what happened. Incorrect.

21 Q. Did you testify about putting somebody into a trunk of your
22 vehicle?

23 A. I didn't put him in there.

24 Q. How did he get -- he went into your trunk?

25 A. You said I testified about being putting him into the

Hb8nros2

Stewart - cross

- 1 vehicle. I didn't put him into the trunk of my vehicle.
- 2 Q. How did he get into the trunk?
- 3 A. I told him to.
- 4 Q. Oh.
- 5 A. There's a difference.
- 6 Q. What was his name?
- 7 A. I don't remember.
- 8 Q. Was it Joell?
- 9 A. I think so.
- 10 Q. Did Joell say, Oh, I'll get into your trunk, Mr. Stewart,
- 11 or did you tell him to get into your trunk?
- 12 A. I told him.
- 13 Q. He felt he had no choice, but to get into your trunk?
- 14 A. Probably.
- 15 Q. And then you drove him to Staten Island, right?
- 16 A. Yes.
- 17 Q. And you did not intend to kill Joell that night either,
- 18 right?
- 19 A. Correct.
- 20 Q. You then took him out of the trunk or asked him to get out
- 21 of the trunk in Staten Island, correct?
- 22 A. No.
- 23 Q. How did he get out of the trunk?
- 24 A. I opened it.
- 25 Q. And did you say what to him?

Hb8nros2

Stewart - cross

- 1 A. He got out on his own.
- 2 Q. And then you and others that you had asked to help you
3 proceeded to beat him up that night?
- 4 A. Yes.
- 5 Q. And we are not talking just about one punch to his face,
6 correct?
- 7 A. They beat him up.
- 8 Q. Pretty badly, right?
- 9 A. He ran. He got beat up.
- 10 Q. What happened?
- 11 A. I didn't see his injuries. I don't know. He ran. He was
12 able to run away, so it wasn't that bad.
- 13 Q. Again, you didn't mean to kill him that night?
- 14 A. No. He didn't die.
- 15 Q. Right. But he could have, right? He could have hit his
16 head in the trunk, right?
- 17 A. Sure.
- 18 Q. He could have had a heart attack when you were beating him
19 up, right?
- 20 A. Sure.
- 21 Q. And those people that you asked to help you, you didn't ask
22 them to help you kill Joell that night, did you?
- 23 A. No, I didn't.
- 24 Q. But if he had fallen on the ground and struck his head --
25

Hb8nros2

Stewart - cross

1 MR. JOHNSON-SKINNER: Objection, Judge.

2 Q. -- on a rock and died, they would have been guilty of
3 murder, right?

4 THE COURT: Sustained.

5 Q. I want to talk about this toll booth incident you testified
6 about.

7 Do you remember that?

8 A. Yes.

9 Q. So a bridge and tunnel officer came and asked you for your
10 license and registration, right?

11 A. Yes.

12 Q. And you didn't have a license?

13 A. Correct.

14 Q. So you decided as he reached in your car to take your keys
15 away from you to pull away and drag this officer along on your
16 vehicle, right?

17 A. Yes.

18 Q. You did not want to kill that officer that night, did you?

19 A. No.

20 Q. You just wanted to get away?

21 A. Yes.

22 Q. But can we agree that officer could have died that night
23 from your actions?

24 A. Yes.

25 Q. And, again, that incident has nothing to do with G-Unit?

Hb8nros2

Stewart - cross

1 A. Correct.

2 Q. And the Joell incident had nothing to do with G-Unit?

3 A. Correct.

4 Q. I want to talk about Baja.

5 Is that how he pronounces his name?

6 A. Baja.

7 Q. Baja.

8 You knew Baja was also a drug dealer, correct?

9 A. At some point I learned that, yes.

10 Q. And you felt that Baja had a reputation as a killer on the
11 street, correct?

12 A. I heard that, yes.

13 Q. And can we agree at some point in time during this feud
14 that you have testified about that the feud between you and
15 Baja became personal?

16 A. Yes.

17 Q. Because of what Baja did to you personally?

18 THE COURT: You have to answer with words?

19 A. Um -- can you repeat that question.

20 Q. You just testified that the dispute between you and Baja at
21 some point in time became personal, correct?

22 A. Correct.

23 Q. And the reason it became personal is because Baja did a lot
24 of things to you personally?

25 A. Within the beef, yeah.

Hb8nros2

Stewart - cross

1 Q. It was Baja you believe who shot at you on certain
2 occasions, right?

3 A. Yeah, him and his crew.

4 Q. And it was Baja who you believe burnt down your barbershop,
5 correct?

6 A. Correct.

7 Q. And at some point you testified that you learned I believe
8 you said from Jimmy that Baja had a contract on your head,
9 right?

10 A. Correct.

11 Q. For \$10,000?

12 A. Correct.

13 Q. And what that means, and correct me if I'm wrong, is that
14 you felt Baja was willing to pay somebody \$10,000 to kill you?

15 A. Or to get me accessible to him.

16 Q. To kill you?

17 A. Correct.

18 Q. And you in turn wanted to put a contract out on Baja?

19 A. Correct.

20 Q. And Jimmy refused to do that?

21 A. Is that a question?

22 Q. Yes. Yes or no, did Jimmy refuse to do that?

23 A. Yes, for that -- when it came time for the price he
24 refused.

25 Q. But you wanted him to still, correct?

Hb8nros2

Stewart - cross

- 1 A. Of course. My life was in jeopardy.
- 2 Q. Right. And you got angry at Jimmy for that, right?
- 3 A. Yes.
- 4 Q. And not just a little bit angry, very angry?
- 5 A. Yeah.
- 6 Q. Because, as you said, it was your life on the line?
- 7 A. For his beef.
- 8 Q. Right. And you felt he wasn't backing you up?
- 9 A. Yes.
- 10 Q. And you, as you testified, were walking around with
- 11 bulletproof vests on at this time?
- 12 A. Correct.
- 13 Q. Would I be also correct in saying that you were mad at
- 14 Jimmy because he wasn't going at G-Unit harder than he was?
- 15 A. I felt like he wasn't doing -- like, not that I wasn't
- 16 going harder, but he was making, he was leaving most of the
- 17 responsibility to bear the burden on us.
- 18 Q. Now, I believe you testified yesterday that you couldn't
- 19 even reach Jimmy to get results, right?
- 20 A. At one time. He always changed his phone number.
- 21 Q. Can we also agree that Jimmy didn't tell you to shoot up
- 22 Tony Yayo's mother's house?
- 23 A. Excuse me.
- 24 Q. Did you shoot up Tony Yayo's mother's house?
- 25 A. No.

Hb8nros2

Stewart - cross

1 Q. You never did?

2 A. I answered that.

3 Q. OK. So Tony Yayo's mother's house was never shot at by
4 Mohammed Stewart?

5 A. Never.

6 Q. Now, I believe you also testified about this shooting of
7 Top Dog and Wayo.

8 Did I pronounce that correct?

9 A. Wayo.

10 Q. Wayo. Did you shoot at those two individuals?

11 A. Yes.

12 Q. And you shot at them because you thought they burglarized
13 your house?

14 A. They didn't burglarize my house, no.

15 Q. Why did you shoot at them? Just for fun?

16 A. I remember -- I think they had burglarized a friend's
17 house. I loosely remember. It was a long time ago.

18 Q. And --

19 A. 20 years ago.

20 Q. What weapon did you use in that shooting?

21 A. I think it might have been a .40 caliber.

22 Q. Can we agree that you shot at Baja on numerous times,
23 right?

24 A. I shot at his house.

25 Q. Numerous times?

Hb8nros2

Stewart - cross

1 A. I shot at his house. I think once I was involved with the
2 other incidents.

3 Q. The time that you say you shot at his house is the time of
4 the Molotov cocktail incident?

5 A. Yes. I think that's the only time I shot at his house
6 myself.

7 Q. Can we agree that you decided to do that shooting on your
8 own?

9 A. Yes, I did.

10 Q. And you called Andre Collier to come help you, right?

11 A. I think I called him for my truck, that he would use my
12 SUV.

13 Q. And what you set out to do that evening was get rid of the
14 bulletproof truck that Baja had?

15 A. Correct.

16 Q. Without going through all the details of the incident over
17 again like you did on direct, in the end, you decided to come
18 up with this idea of throwing a Molotov cocktail at his house
19 and smoking him out?

20 A. Correct.

21 MR. TOUGER: Can you publish the picture of the house,
22 please.

23 BY MR. TOUGER:

24 Q. While this is coming up, a Molotov cocktail is a bottle
25 filled with a flammable liquid with a fuse on top, right?

Hb8nros2

Stewart - cross

1 A. Correct.

2 Q. You were going to throw it at this house that is now being
3 displayed in this picture?

4 A. I was throwing it at the car.

5 Q. And Andre was supposed to throw it at the house, right?

6 THE COURT: Government Exhibit 1001.

7 Q. The idea was to light the house on fire so that he would
8 have to run out of the house and then you could shoot him?

9 A. Yes.

10 Q. And if I'm not mistaken from this picture -- you were
11 there -- all these houses are connected, right?

12 A. Yes.

13 Q. So, if one house goes up in flames, a good chance all these
14 others are going to go up in flames, too, right?

15 A. Correct.

16 Q. But you didn't care about that, did you?

17 A. I didn't even think about it.

18 Q. But you didn't want to kill anybody that night?

19 A. That wasn't my -- I didn't care at that time if Baja was
20 dead, no.

21 Q. You just wanted your revenge, right?

22 A. Correct.

23 Q. And if I'm correct also -- withdrawn.

24 So that's the only time you shot up Baja's house?

25 A. That I remember, yes.

Hb8nros2

Stewart - cross

1 Q. Now I want to bring you to the Hot 97 incident.

2 Do you remember that?

3 A. Which one?

4 Q. Where you went with Game, to meet Game at Hot 97.

5 A. Yes.

6 Q. You were not with Game when he originally went to Hot 97,
7 were you?

8 A. No.

9 Q. You got a call from Jimmy saying could you go please find
10 Game at the Hot 97 office, correct?

11 A. Something like that.

12 Q. And you went to the Hot 97 office, right?

13 A. Yes.

14 Q. And you went there unarmed, correct?

15 A. Yes.

16 Q. You were not going there to shoot anybody that day?

17 A. No.

18 Q. That was never your intention?

19 A. No.

20 Q. Nobody told you to go there and shoot anybody that day?

21 A. Correct.

22 Q. You were there just to be there with Game?

23 A. Correct.

24 Q. Would I be correct in saying that when you found Game --
25 excuse me. Withdrawn.

Hb8nros2

Stewart - cross

1 Before you found Game, shots were fired?

2 A. Yes.

3 Q. And the shots were fired into the vicinity where Game was?

4 A. Yes.

5 Q. And who fired those shots? Do you know?

6 A. I later learned that it was Chris Lighty's security.

7 Q. Members of G-Unit?

8 A. Yes.

9 Q. Did anybody fire at them, that you saw, before they fired
10 at Game's people?

11 A. No one did.

12 Q. And then you say you finally found Game, right?

13 A. Yes.

14 Q. And he was very upset?

15 A. Yes.

16 Q. Almost in tears, right?

17 A. Teary eyed, yep.

18 Q. Excuse me. So at that point you didn't have a weapon on
19 you, right?

20 A. No.

21 Q. You called Andre Collier to come bring you a weapon?

22 A. Correct.

23 Q. And you did not talk to Jimmy before you made that phone
24 call, did you, to Andre Collier?

25 A. I don't remember. I don't remember. I don't think so.

Hb8nros2

Stewart - cross

1 Q. You decided to do the shooting all on your own, right?

2 A. Yes.

3 Q. Jimmy did not tell you to go shoot the office, correct?

4 A. No, he didn't tell me.

5 Q. So Andre Collier comes and he brings you a weapon, right?

6 A. Yes.

7 Q. And you go shoot at the office, which is in the middle of
8 25th Street in Manhattan?

9 A. You said I did? No.

10 Q. You told Andre Collier to?

11 A. We probably collectively agreed.

12 Q. You and Andre Collier?

13 A. Yeah.

14 Q. The reason you shot at that store is because that was 50
15 Cent's place of business, right?

16 A. Yes.

17 Q. And then you say you went and told Jimmy about that
18 incident, right?

19 A. Yes.

20 Q. And Jimmy's initial reaction was that he wasn't happy you
21 did that?

22 A. I don't know.

23 Q. Well, that is what you testified on direct, that he wasn't
24 happy, but he paid you \$2,000 anyway?

25 THE COURT: Was that a question?

Hb8nros2

Stewart - cross

1 MR. TOUGER: Yes.

2 A. I didn't get that he wasn't happy. I took it that he was
3 trying to school me about it.

4 MR. TOUGER: One moment, your Honor.

5 Q. What he told you was you shouldn't be doing that stuff for
6 Game, right?

7 A. He told me don't be doing that stuff for free.

8 Q. Isn't it a fact that he said you shouldn't be doing that
9 stuff for Game?

10 A. I just told you what he said.

11 Q. Excuse me?

12 A. I just told you what he said, that I shouldn't be doing
13 that stuff for free, schooling me to how to deal with rappers
14 and their beefs.

15 MR. TOUGER: That same exhibit, your Honor, page 376.

16 THE COURT: Hold on.

17 3506-JJJJJ?

18 MR. TOUGER: Exactly, your Honor.

19 THE COURT: Lines?

20 MR. TOUGER: The question is at 16, answer through 23.
21 The middle of that page.

22 MR. ENZER: We object to this, Judge.

23 THE COURT: Sustained. No inconsistency.

24 Let's take five minutes.

25 (Recess)

Hb8nros2

Stewart - cross

1 MR. TOUGER: Your Honor, if I could approach.

2 THE COURT: The jury isn't in the room.

3 MR. TOUGER: But the witness is.

4 THE COURT: All right.

5 Come on up.

6 MR. TOUGER: The paragraph I wanted to read to the
7 jury, your Honor, says --

8 THE COURT: "Don't be doing that stuff for free."

9 That's what it says.

10 MR. TOUGER: No. It says before that, "Telling me I
11 shouldn't have did that for Game." That is exactly what I am
12 trying to bring out.

13 THE COURT: The ruling has been made.

14 MR. TOUGER: I wanted to make a record.

15 THE COURT: You have the record. You have the
16 exhibit. OK.

17 MR. TOUGER: That is my objection.

18 THE COURT: With all due respect --

19 MR. TOUGER: You don't have to respect me. I respect
20 you.

21 THE COURT: I definitely respect you, and you are
22 doing a good job.

23 But a ruling is not the beginning of the discussion.
24 It's the end.

25 MR. TOUGER: Thank you, your Honor.

Hb8nros2

Stewart - cross

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(In open court)

THE COURT: Let's get the jury.

(Continued on next page)

Hb8nros2

Stewart - cross

1 (Jury present)

2 THE COURT: OK.

3 The defendant and the jurors are present.

4 Let's continue, Mr. Touger.

5 MR. TOUGER: Thank you, your Honor.

6 BY MR. TOUGER:

7 Q. Mr. Stewart, just so you remember, we were talking about
8 the shooting after the Hot 97 incident.

9 Would I be correct in saying that in your mind that
10 shooting is where the feud began between G-Unit and Violator
11 Records?

12 A. That's when it escalated.

13 Q. Excuse me?

14 A. I think that's -- I don't know if that's what happened
15 first.

16 Q. I am saying in your mind, though, is that where the real
17 feud started, when you shot up that office?

18 A. No.

19 Q. Do you remember speaking to the government in April of
20 2010?

21 A. Which time?

22 Q. There's too many to count there.

23 Do you remember speaking to the government in April of
24 2010?

25 A. Yes.

Hb8nros2

Stewart - cross

1 Q. Do you remember telling them that the G-Unit beef started
2 with the shooting at Hot 97 on that day?

3 A. I am not sure.

4 Q. Did you say that the feud between G-Unit and Jimmy's record
5 company escalated after that?

6 A. Yes.

7 Q. So that shooting was sort of the starting off point of the
8 escalation?

9 A. I don't remember what happened first. Everything happened
10 in levels. It always escalated.

11 THE COURT: I think we ought to move along.

12 MR. TOUGER: I am, your Honor.

13 BY MR. TOUGER:

14 Q. Now, you also testified about when you got arrested going
15 to shoot up Violator Records again.

16 Do you remember that?

17 A. Yes.

18 Q. And I don't know if I heard you correctly on direct, so I
19 just want to go over it. You testified I believe --

20 THE COURT: I'm sorry. We have a transcript. You
21 might consult it.

22 MR. TOUGER: I did, your Honor.

23 BY MR. TOUGER:

24 Q. I just want to make sure your testimony is correct. It was
25 a little confusing. You testified that at points Jimmy would

Hb8nros2

Stewart - cross

1 say he wanted you to shoot up the record company.

2 THE COURT: If you're referring to prior testimony --

3 MR. TOUGER: I am just asking a question, your Honor.

4 THE COURT: The question relates to the prior
5 testimony, right?

6 MR. TOUGER: No, your Honor.

7 I am moving on.

8 THE COURT: OK.

9 BY MR. TOUGER:

10 Q. Did Jimmy at times tell you to shoot up that office again
11 and then at times tell you not to shoot that office up again?

12 A. Yes.

13 Q. Isn't it true that you testified that at some point you
14 finally interpreted that he wanted you to shoot up that office
15 again?

16 A. Yes.

17 Q. So he never actually said to you shoot up that office
18 again? You interpreted what he said meaning to shoot up that
19 office again?

20 A. I don't remember the words, but I know that we had an
21 additional conversation about it.

22 Q. And the night you were arrested you were there in your
23 vehicle, correct?

24 A. Did I bring my vehicle there?

25 Q. Yes.

Hb8nros2

Stewart - cross

- 1 A. Yes.
- 2 Q. And you were inside that vehicle at some point that evening
3 when you drove there, right?
- 4 A. Yes.
- 5 Q. And then you got out of that vehicle at some point, right?
- 6 A. Yes.
- 7 Q. And then you were arrested outside of the vehicle, right?
- 8 A. Yes.
- 9 Q. And then you were brought back to the office by the police
10 officers?
- 11 A. Yes.
- 12 Q. And did they not ask you if that was your car?
- 13 A. Yes.
- 14 Q. And did you tell them that it was not your car?
- 15 A. I think I told them it wasn't my car.
- 16 Q. And that was a lie, right?
- 17 A. Yes.
- 18 Q. And did they not ask you if you were inside that car
19 previously that evening?
- 20 A. I don't recall that.
- 21 Q. Did you not tell them that you were not inside that car?
- 22 A. I told them it wasn't my car.
- 23 Q. So you lied to them?
- 24 A. Yes.
- 25 Q. In an attempt to not get arrested?

Hb8nros2

Stewart - cross

- 1 A. Or for them to search the vehicle, yeah.
- 2 Q. And you lied to them for your benefit?
- 3 A. Yeah.
- 4 Q. Now I want to bring you to the Apollo incident.
- 5 Do you remember that?
- 6 A. Yes.
- 7 Q. First question: Was Khalil Abdullah with you when you
- 8 first went inside the Apollo Theater that night?
- 9 A. Not that I remember, no.
- 10 Q. And you went in with Jimmy, correct?
- 11 A. Yes.
- 12 Q. And who else was there with you and Jimmy?
- 13 A. I think it was his friend Courteney and Teddy.
- 14 Q. As far as you know, none of you were armed that evening?
- 15 A. I wasn't.
- 16 Q. Did everybody go through the metal detectors?
- 17 A. I am not sure. I know -- I think me and Jimmy did.
- 18 Q. OK.
- 19 A. I was close to Jimmy walking in.
- 20 Q. So you and Jimmy went through. There were metal detectors
- 21 there, right?
- 22 A. Correct.
- 23 Q. And you and Jimmy went through them?
- 24 A. Correct.
- 25 Q. At some point you noticed that a G-Unit group came in and

Hb8nros2

Stewart - cross

1 did not go through the metal detectors?

2 A. Well, they bum rushed the metal detectors to not get
3 searched.

4 Q. When you use the slang "bum rushed," it means they avoided
5 going through the metal detectors?

6 A. They went through them. They forced their way through
7 without getting stopped.

8 Q. They went through them, but they didn't stop for anybody
9 who was telling them to stop?

10 A. Correct.

11 Q. You said at some point Jimmy went up to Yayo and greeted
12 him in a polite fashion?

13 A. Yes.

14 Q. There was no aggressiveness in Jimmy's greeting of him
15 whatsoever?

16 A. Correct.

17 Q. And at some point you interpreted Yayo's reaction as
18 aggressive?

19 A. Yes. It was -- it was pressing him. What we would call
20 pressing him.

21 Q. What does that mean?

22 A. Applying pressure.

23 Q. OK.

24 A. With his words.

25 Q. None of you felt that that was a good situation to be in,

Hb8nros2

Stewart - cross

- 1 correct?
- 2 A. Correct.
- 3 Q. Because they had not stopped when they went through the
- 4 metal detectors?
- 5 A. Correct. There was a lot of them.
- 6 Q. Excuse me?
- 7 A. And there was a lot of them.
- 8 Q. How many of them was there?
- 9 A. More than ten.
- 10 Q. OK. You were only you, Jimmy, I think you said Ted and
- 11 Courteney, right?
- 12 A. Yeah.
- 13 Q. So there was only four of you?
- 14 A. Yeah.
- 15 Q. So you went upstairs?
- 16 A. I remember Courteney at some point -- I don't know if he
- 17 was right there with us. I don't remember.
- 18 Q. So there were three or four of you?
- 19 A. Correct.
- 20 Q. So you went upstairs?
- 21 A. Yes.
- 22 Q. If I'm not mistaken, that whole group of 20-odd individuals
- 23 followed you upstairs?
- 24 A. They came up after eventually.
- 25 Q. They followed you up the stairs?

Hb8nros2

Stewart - cross

- 1 A. Yes.
- 2 Q. And again they surrounded you?
- 3 A. Yes.
- 4 Q. And at some point one of the individuals took out a gun,
5 right?
- 6 A. I didn't see him take out a gun.
- 7 Q. OK. Did you later learn that he took out a gun?
- 8 A. I later learned that they had guns inside and he had a gun.
- 9 Q. And at that point you decided it was best to get out of
10 there, right?
- 11 A. Yes.
- 12 Q. And you grabbed Jimmy and you went down the side steps and
13 left the Apollo?
- 14 A. Yes.
- 15 Q. It's at that point that Mr. Abdullah appears?
- 16 A. Yes.
- 17 Q. After Mr. Abdullah appears, you got separated from Jimmy?
- 18 A. Not immediately.
- 19 Q. OK. At some point you got separated from Jimmy?
- 20 A. Correct.
- 21 Q. And Jimmy left the Apollo Theater without you?
- 22 A. We left the Apollo Theater together.
- 23 Q. OK. Left the area of the Apollo Theater without you?
- 24 A. That's when we were in the car, yes.
- 25 Q. He drove away in a different car?

Hb8nros2

Stewart - cross

- 1 A. He got out on foot. I don't know what he did.
- 2 Q. So you didn't see him get into another vehicle?
- 3 A. No.
- 4 Q. OK. Did you get into a vehicle?
- 5 A. We both got into the same vehicle. He exited the vehicle.
- 6 I don't know where he went.
- 7 Q. OK. Did you leave the area at that time?
- 8 A. I stood in the vehicle, the parked vehicle, and waited for
- 9 him to come back.
- 10 Q. OK. Now, at some point you owned a barbershop in Staten
- 11 Island?
- 12 A. Correct.
- 13 Q. What years was that?
- 14 A. Maybe -- I was about 22 when I bought it, maybe around '02,
- 15 '03 maybe. I am not sure.
- 16 Q. Until when?
- 17 A. Until I moved out of New York, until about 2009 or '10.
- 18 Q. OK. And what was the name of barbershop?
- 19 A. Mo Cuts.
- 20 Q. And you had employees there?
- 21 A. Yes.
- 22 Q. About five?
- 23 A. Yeah, give or take, sometimes.
- 24 Q. But you also had some problems there, right?
- 25 A. Yes.

Hb8nros2

Stewart - cross

- 1 Q. You knew a person named Flex, Michael Defay?
- 2 A. Yes.
- 3 Q. And at some point he worked for you at the barbershop,
- 4 right?
- 5 A. Yes.
- 6 Q. And at some point your barbershop was burglarized, right?
- 7 A. Correct.
- 8 Q. And stuff was stolen out of your barbershop?
- 9 A. Correct.
- 10 Q. Equipment was stolen out of your barbershop, right?
- 11 A. Yes.
- 12 Q. And shortly after that Flex, Mr. Defay opened a barbershop
- 13 of his own, right?
- 14 A. Yes.
- 15 Q. You felt that he had stolen your equipment and used it to
- 16 open up his own barbershop, right?
- 17 A. He did.
- 18 Q. Excuse me?
- 19 A. He did.
- 20 Q. He did?
- 21 A. He stole it.
- 22 Q. And at some point Michael Defay was murdered, right?
- 23 A. Yes.
- 24 Q. By two individuals who came to his barbershop and shot him?
- 25 A. Yes.

Hb8nros2

Stewart - cross

- 1 Q. Anything to do with that?
- 2 A. I'm sorry.
- 3 Q. Did you have anything to do with that?
- 4 A. Absolutely not.
- 5 Q. Did you ever get any revenge on flex for burglarizing your
- 6 barbershop?
- 7 A. Didn't get to, no.
- 8 Q. Excuse me?
- 9 A. I didn't get to, no.
- 10 Q. Andre Collier didn't shoot Flex, did he?
- 11 A. Not that I am aware of.
- 12 Q. So I have this right, you shot at Top Dog and Wayo because
- 13 they burglarized a friend's of yours house?
- 14 A. Yes.
- 15 Q. Now, you also had guns in your barbershop, right?
- 16 A. Yes.
- 17 Q. And at some point in time one your guns was stolen, right?
- 18 A. Yes.
- 19 Q. And you believe that was stolen by one of the kids in the
- 20 neighborhood, right?
- 21 A. Yes.
- 22 Q. Isn't it true that that young man was found dead in a
- 23 dumpster in Staten Island?
- 24 A. I don't know where he was found. I heard he was killed.
- 25 Q. You had nothing to do with that either?

Hb8nros2

Stewart - cross

1 A. Correct.

2 Q. And you didn't take any revenge on him either?

3 A. No.

4 Q. Now, let's move back to your cooperation.

5 At some point you began to cooperate against Jimmy,
6 right?

7 A. Correct.

8 Q. And you began to tape telephone conversations with you and
9 Jimmy, right?

10 A. Correct.

11 Q. Not just one, more than one, right?

12 A. I don't remember how many.

13 Q. And would I be correct in saying that you started to tape
14 them somewhere in April of 2010, continuing into 2011?

15 A. I don't remember when.

16 Q. Would you agree with me that in none of those telephone
17 conversations is the Fletcher incident discussed?

18 A. I'm not sure. We didn't speak directly about names and --

19 Q. Isn't it also a fact that you even taped Jimmy when you
20 went to his mother's funeral?

21 A. I don't remember.

22 Q. You don't remember whether you taped him or not at his
23 mother's funeral?

24 THE COURT: That's what he said.

25 A. I don't remember us speaking.

Hb8nros2

Stewart - cross

1 THE COURT: That wasn't a question.

2 MR. TOUGER: Excuse me.

3 THE COURT: That wasn't a question, Mr. Stewart.

4 BY MR. TOUGER:

5 Q. You also testified that some point after the Fletcher
6 homicide you came up to New York City?

7 A. Yes.

8 Q. And this was after Mr. Fletcher was shot?

9 A. Yes.

10 Q. And this is the first you hear of Fletcher being shot,
11 right?

12 A. Yes.

13 Q. And you testified that you met Jason Williams, right?

14 A. Yes.

15 Q. You and Jason had a discussion about the Fletcher shooting,
16 right?

17 A. We didn't have a discussion about it.

18 Q. You said he showed you the obituary notice?

19 A. Yeah, I met him. He called me a few times to come to New
20 York, said Dude wanted to talk to me, referencing Jimmy. I
21 came to New York. After he kept calling me so much and --

22 Q. Mr. Stewart, if I can just interrupt you. Did he hand you
23 a piece of paper at that meeting?

24 THE COURT: You can't interrupt. No.

25 Finish your answer.

Hb8nros2

Stewart - cross

1 MR. TOUGER: OK.

2 A. When I came into New York, I went to meet him on the Lower
3 East Side, and he asked me how I was doing, how things are
4 going, he hasn't seen me in a while. And I don't know what, he
5 just passed me an obituary.

6 Q. That was my question.

7 So he handed you the obituary?

8 A. Yes.

9 Q. And then Jimmy came out and told you, among other things,
10 told you that your archenemy had moved to Atlanta, Georgia,
11 also, correct?

12 A. Yes.

13 Q. He told you that's why he wanted you to come up, so he
14 could tell you that, that he had moved to Atlanta, Georgia,
15 right?

16 A. Yes.

17 Q. And can we agree that you testified now on direct that you
18 had some conversation with Jimmy about the Fletcher shooting at
19 that point in time?

20 A. Sorry?

21 Q. You had a conversation with Jimmy about the Fletcher
22 shooting at that point in time?

23 A. No. We didn't have a conversation of the actual shooting.

24 Q. OK. Now, did the shooting come up at all in the
25 conversation?

Hb8nros2

Stewart - cross

1 A. No.

2 Q. By the way, how did you get to New York for that meeting?

3 A. I flew.

4 Q. Under your own name?

5 A. I'm not sure.

6 Q. Did you ever provide the government with any proof that you
7 flew to New York that day?

8 A. No.

9 Q. That's really your only involvement with the Fletcher
10 incident at all, correct?

11 A. Yeah.

12 Q. By the way, I believe you learned at some point that a
13 .22-caliber was used in the Fletcher shooting, correct?

14 A. No, I didn't know that.

15 Q. You don't know that?

16 A. I don't think I've learned that.

17 Q. OK. Can we agree that Jimmy had told you in the past that
18 he didn't like that gun, that it was too small?

19 A. In that conversation that we spoke about, yeah.

20 Q. Now, I want to move to the point in time where you first
21 come to speak to Jimmy when you get out of jail, OK?

22 A. Correct.

23 Q. At that point Jimmy had a business, a music business,
24 right?

25 A. Yes.

Hb8nros2

Stewart - cross

- 1 Q. You wanted to get into the music business, right?
- 2 A. No. Not at that time, no.
- 3 Q. Why did you meet Jimmy?
- 4 A. What do you mean? He lived there in the same house.
- 5 Q. Did you ever ask him --
- 6 A. We lived in the same house together.
- 7 Q. OK. Did you ever ask him to go to work at his business?
- 8 A. No, he used to like keep me around, and he would tell me,
9 Come on, let's go.
- 10 Q. OK. That jacket you showed the jury yesterday, that was a
11 promotional jacket, right?
- 12 A. It was a jacket for people in the office to represent the
13 team I guess.
- 14 Q. But you had no desire to enter the music business at that
15 time?
- 16 A. When he gave the jacket out, or when I first associated
17 with him in 2001 or '2?
- 18 Q. Let's go to the point when he gave the jacket out.
- 19 A. That's about '06. At that time I was interested in being
20 in the music business.
- 21 Q. OK. And you also had a card made up for you, correct?
- 22 A. No, I didn't have a card made up for me. Jason had --
23 anytime Jason spent money on anything in the office, he went to
24 Jimmy about it.
- 25 Q. You didn't ask Jason for that card because you wanted to

Hb8nros2

Stewart - cross

1 give yourself some legitimacy?

2 A. I don't remember that.

3 Q. OK. Now, moving on to a different subject.

4 You testified yesterday about a line that Jimmy said
5 that I believe G-Unit wouldn't be happy until they carried a
6 coffin or words to that effect, right?

7 A. Something like that.

8 Q. And isn't it a fact, sir, that Jimmy always said that he
9 didn't want Chris Lighty killed?

10 A. Yes.

11 Q. And would you agree with me that when Jimmy said that to
12 you he said it more out of frustration that this feud was going
13 on and on and never ending?

14 THE COURT: Sustained.

15 Q. Did you understand it to be said out of frustration because
16 the feud was going on and on?

17 A. No.

18 MR. JOHNSON-SKINNER: Objection.

19 THE COURT: Sustained the answer is stricken.

20 MR. TOUGER: Were you frustrated.

21 THE COURT: Excuse me counsel.

22 The jury will disregard the answer.

23 BY MR. TOUGER:

24 Q. Were you frustrated that the feud was going on and on and
25 never seemed to end?

Hb8nros2

Stewart - cross

- 1 A. Yes, I was.
- 2 Q. You were so frustrated that you actually moved out of New
3 York, right?
- 4 A. Correct.
- 5 Q. To avoid this feud?
- 6 A. Yes.
- 7 Q. And I believe you also testified that, you said that Jimmy
8 couldn't sleep over the fact that his son was assaulted, right?
- 9 A. I feel that he lost sleep behind it, yeah.
- 10 Q. Did Jimmy ever say that to you? Not what you feel.
- 11 A. He said, We all can sleep now.
- 12 Q. Now --
- 13 A. He said he can sleep now, something to that effect.
- 14 Q. At this time, when Jimmy's son was assaulted, do you
15 remember that time period?
- 16 A. Yes.
- 17 Q. I think you testified yesterday you were upset at Jimmy,
18 right?
- 19 A. Yes.
- 20 Q. And you were upset at him, as we discussed before, because
21 you felt he wasn't taking it to G-Unit hard enough, right?
- 22 A. No. You are mixing two things.
- 23 Q. OK.
- 24 A. I was upset at him about something totally different.
- 25 Q. OK.

Hb8nros2

Stewart - cross

1 A. And his son hadn't been assaulted yet.

2 Q. OK. You knew his son, right?

3 A. Yes.

4 Q. You had a personal, your own relationship with his son,
5 right?

6 A. I guess.

7 Q. You knew him?

8 A. I mean, he's --

9 Q. He lived in the house that you lived?

10 A. -- at that time 13 years old. When I lived there he was
11 about five, four.

12 Q. But you knew who he was?

13 A. Yeah.

14 Q. You were upset personally when he got attacked, right?

15 A. Yes.

16 Q. Of course, when you got to the office after the attack,
17 Jimmy was upset when his son got attacked --

18 A. Yes.

19 Q. -- right?

20 And everybody in the office was upset when his son got
21 attacked?

22 A. I think anybody would be.

23 Q. Exactly. I mean his son is 13, 14 years old, attacked by
24 three grown men?

25 THE COURT: Enough.

Hb8nros2

Stewart - cross

1 Q. -- with a weapon?

2 THE COURT: Mr. Touger, move along.

3 Q. Now, if I remember what you testified to correctly, at some
4 point a group of you leave the office after the attack, right?

5 A. Yes.

6 Q. And you see Chris Lighty's brother on the street, right?

7 A. Yes.

8 Q. Prior to seeing Chris Lighty's brother, when you left the
9 office everybody was still quite upset, right?

10 A. Yes.

11 Q. People hadn't calmed down yet, right?

12 A. I don't know.

13 Q. Well, you had --

14 A. Jimmy wasn't displaying much emotion. You can see it in
15 his face, he was angry. He didn't say much.

16 Q. OK. The moment you saw Chris Lighty's brother -- do you
17 know his name by the way?

18 A. No.

19 Q. The moment you saw Chris Lighty's brother you started
20 looking for a gun, right?

21 A. I don't know. No. I don't think so.

22 Q. Well, you said, We should attack him, Chris Lighty's
23 brother, right?

24 A. Something like that.

25 Q. And Jimmy said no?

Hb8nros2

Stewart - cross

- 1 A. Yes.
- 2 Q. And that got you upset, right?
- 3 A. A little bit.
- 4 Q. And Jimmy said -- not only did he say no, he said, No, that
5 guy had nothing to do with the incident, right?
- 6 A. Something like that.
- 7 Q. And then you got into an argument with Jimmy, right?
- 8 A. No, it wasn't an argument.
- 9 Q. But you started looking for something to slash or attack
10 Chris Lighty's brother with, right?
- 11 A. I asked -- yeah.
- 12 Q. And you got this -- what did you get?
- 13 A. A razor blade.
- 14 Q. And who did you get it from?
- 15 A. I think, if I remember correctly, Little D gave it to Jimmy
16 and Jimmy passed it to me.
- 17 Q. That's what you think happened?
- 18 A. Yeah.
- 19 Q. Have you ever testified to that before?
- 20 A. I can't remember everything that happened, but that's the
21 way I remember it.
- 22 Q. Did you remember it better back in 2014 when you testified
23 to it?
- 24 A. I am sure I would. It's three years from now, and the
25 incident was seven, eight years ago.

Hb8nros2

Stewart - cross

1 Q. So, in 2014 isn't it a fact that you never said Jimmy gave
2 you the weapon?

3 A. I don't remember. I'm going off my memory now. We are
4 talking about eight-plus years ago.

5 Q. Let's go over it.

6 THE COURT: Let's find out an estimate of how much
7 longer, Mr. Touger?

8 MR. TOUGER: After this it shouldn't be that much
9 longer.

10 THE COURT: That doesn't help me.
11 How much longer?

12 Mr. Touger, how much longer?

13 MR. TOUGER: I would say probably a half hour.

14 THE COURT: All right.
15 We'll break here for lunch.

16 2 o'clock, folks.

17 (Luncheon recess)

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HB8AAROS3

Stewart - Cross

1 AFTERNOON SESSION

2 2:00 p.m.

3

4 THE COURT: OK. Just before we bring the jury in
5 look, Mr. Touger, I'm not suggesting --

6 MR. TOUGER: I have five minutes left, your Honor.

7 THE COURT: Just so we're clear as to why I asked you
8 before, yesterday you told me you'd be less than an hour and
9 we're now past two, I believe two hours. So when you told me
10 you were almost done I began to wonder.

11 MR. TOUGER: I have five minutes, judge.

12 THE COURT: That's OK.

13 MR. JOHNSON-SKINNER: If the Court's interested in an
14 update on the witnesses.

15 THE COURT: Oh, yes, I'm eager.

16 MR. JOHNSON-SKINNER: The parties have agreed to
17 stipulations for Witnesses Eight and Nine on the Court's list.

18 THE COURT: So they're off?

19 MR. JOHNSON-SKINNER: We will not be calling them.

20 We've also moved Witness 14 to a later date because we may be
21 able to enter into a stipulation.

22 As to Number 13, we tried to enter into a stipulation
23 but we couldn't get there. So we plan today to call 10, 11,
24 12, 13 and probably start with number 15.

25 THE COURT: OK. Let's move it along. So we're on

HB8AAROS3

Stewart - Cross

1 pretty good track for next week maybe?

2 MR. JOHNSON-SKINNER: Yes.

3 (Jury present)

4 THE COURT: Defendant and the jurors are present.

5 You may continue, Mr. Touger.

6 MR. TOUGER: Thank you, your Honor.

7 BY MR. TOUGER:

8 Q. Good afternoon, Mr. Stewart.

9 A. Good afternoon.

10 Q. I want to move to the time when you took your plea over in
11 the Eastern District?

12 A. Yes.

13 Q. And do you remember when you took your plea the prosecution
14 telling the judge that, asking you to remain out on bail and
15 that you would be monitored by DEA agents while you were out on
16 bail?

17 A. A little bit.

18 Q. "A little bit", what does that mean?

19 A. I remember being out on bail. I'm not sure if they said
20 I'd be monitored by DEA agents.

21 MR. TOUGER: Your Honor, may I just approach the
22 witness and have him read?

23 THE COURT: No. What difference does it make? Let's
24 move on.

25 MR. TOUGER: I think it makes a big difference, sir.

HB8AAROS3

Stewart - Cross

1 THE COURT: Let's continue.

2 Q. So was anybody monitoring you at that time?

3 A. I had to report to the probation department and I had
4 constant contact with the agents.

5 Q. And that died down after a while, correct?

6 A. Yes.

7 Q. And for the last four years you haven't been being
8 monitored, have you?

9 A. No, not constantly, no.

10 Q. And nobody's watching you in Georgia, right?

11 A. I'm still under the same conditions.

12 THE COURT: You ought to be a little more specific.

13 Nobody's watching him? Who is "nobody"?

14 Q. You are not checking in with any agents on an everyday
15 basis are you?

16 A. Not everyday but I do speak to handling agents often.

17 Q. On the phone, correct?

18 A. Pretty much, the same as from the beginning.

19 Q. Right. You haven't been reporting in person to any agents
20 in Atlanta, have you?

21 A. No.

22 Q. And nobody's told you where you can and can't go in
23 Atlanta, right?

24 A. No.

25 Q. You're free to travel all over the city, right?

HB8AAROS3

Stewart - Cross

1 A. I can travel in the city, yes.

2 Q. And all over the state, correct?

3 A. For the most part, yeah.

4 Q. And do you know Khalil Abdulla?

5 A. Yes.

6 Q. And do you know him well?

7 A. I knew him well.

8 Q. Right. You knew him very well prior to 2010?

9 A. For a period of time, yes.

10 Q. And would I be correct in saying that you do not believe
11 he's a very truthful person?

12 THE COURT: Sustained.

13 Q. Do you have an idea as far as you are concerned whether
14 Mr. Abdullah is a truthful person?

15 MR. JOHNSON-SKINNER: Objection.

16 THE COURT: Sustained.

17 Q. Now, did there come a point in time when you decided that
18 you wanted to write a book about your information on Jimmy?

19 A. The book that I was thinking about writing wasn't about
20 Jimmy. It was about things and knowledge that I had in hip hop
21 and this was a part of it.

22 Q. And you consulted with a man named Chuck Philips, correct?

23 A. I didn't consult with him.

24 Q. Well, you e-mailed back and forth about writing this book,
25 correct?

HB8AAROS3

Stewart - Cross

1 A. No -- if it was about the book but I know we did speak
2 briefly a couple times.

3 Q. And you sent e-mails to each other, correct?

4 A. I remember him sending me on e-mail maybe responding but it
5 wasn't conversation, constant conversation through e-mail or
6 nothing like that.

7 Q. You don't remember a whole e-mail trail about the book and
8 what you should write?

9 A. I remember us speaking briefly through e-mail like I said,
10 responding back and forth but I don't remember the details of
11 the e-mail again.

12 Q. OK. Do you remember him telling you in an e-mail that he
13 sent you on December 11, 2010 at 3:41 a.m., you see the thing
14 is most people --

15 MR. JOHNSON-SKINNER: Judge, objection.

16 THE COURT: Sustained.

17 Q. Do you remember getting that e-mail from him?

18 A. I don't even know what e-mail you are talking about.

19 MR. TOUGER: Can I show him the e-mail to refresh his
20 recollection, your Honor?

21 THE COURT: There's been no failure of his
22 recollection.

23 Q. Do you remember getting that e-mail?

24 A. I don't know what e-mail you are talking about.

25 MR. TOUGER: May I show him the e-mail to refresh his

HB8AAROS3

Stewart - Cross

1 recollection, your Honor?

2 THE COURT: Yes. What's the exhibit?

3 MR. TOUGER: 3506-XXXX, four Xes, page three of three.

4 (Pause)

5 Q. Does that refresh your recollection that you had an e-mail
6 from Mr. Phillips on December 11, 2010?

7 A. Well, I know we were e-mailing but I don't that vaguely. I
8 never thought about that again.

9 Q. Do you remember in that e-mail him saying to you --

10 THE COURT: Sustained.

11 MR. JOHNSON-SKINNER: Objection.

12 THE COURT: Back to the lectern. And remember Rule
13 802?

14 MR. TOUGER: May we approach, your Honor, so I can
15 explain why?

16 THE COURT: Yes.

17 (Continued on next page)

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HB8AAROS3

Stewart - Cross

1 (Side bar)

2 MR. TOUGER: The reason I believe it fits, your Honor,
3 is it says: You see the thing is most people have no idea who
4 Jimmy is or who he represents. But think about it, what
5 exactly do you want to discuss --

6 THE COURT: I read it.

7 MR. TOUGER: I just want the record.

8 THE COURT: It's a marked exhibit.

9 MR. TOUGER: OK. In there it says --

10 THE COURT: I know what it says.

11 MR. TOUGER: To push the envelope, your Honor, I
12 believe that that's what he is doing here. He is pushing the
13 envelope and it says in there, particularly, that's for the
14 government that's best interest to do that for the government.
15 That way you can try to promote what you and the government
16 want to do.

17 THE COURT: It's ridiculous.

18 MR. JOHNSON-SKINNER: What a book publisher or
19 whatever this person is said is not relevant to Mr. Stewart's
20 testimony.

21 MR. TOUGER: I'm just asking if he got that advice.

22 MR. EDELSTEIN: How it influenced him is relevant.

23 MR. JOHNSON-SKINNER: He doesn't remember getting
24 these e-mails.

25 MR. EDELSTEIN: He's had his recollection refreshed.

HB8AAROS3

Stewart - Cross

1 MR. JOHNSON-SKINNER: I don't think so. He said he
2 remembers there was some conversation but he doesn't remember
3 anything about that.

4 MR. TOUGER: Your Honor, it is our argument that he is
5 taking certain instances that occurred and pushing the envelope
6 and adding facts to them. That's exactly what he was told to
7 do in this e-mail and he was doing since December of 2010 for
8 the times he's testified whether he remembers getting that
9 advice now is not important. What's important, your Honor?

10 THE COURT: You see if you can establish that he's
11 operating in a situation where there's a possibility of a book
12 deal now on this witness stand today.

13 MR. TOUGER: No, your Honor. What's important is he's
14 already testified to the fact, your Honor, that he didn't start
15 off telling anything about Jimmy. He's already said that, then
16 he decided to do it.

17 THE COURT: When did he decide to do it?

18 MR. TOUGER: I believe in April of 2010.

19 MR. JOHNSON-SKINNER: And he explains why he decided
20 to do it.

21 THE COURT: So seven months before the date of this
22 e-mail?

23 MR. TOUGER: The point is if you look at his 3506
24 reports as he gets more and more --

25 MR. ENZER: It even passed 2010, more and more details

HB8AAROS3

Stewart - Cross

1 of the incidents came out that are different from what he
2 originally said. And that's exactly what this man tells him to
3 do.

4 THE COURT: When did this book possibility end?

5 MR. TOUGER: Right after this Mr. Kaminsky finds out
6 about this, calls him up and says stop, don't do this.

7 THE COURT: If this e-mail provides a motive to
8 embellish, the motive to embellish from by reason of this
9 e-mail ended in a short time after December 11, 2010; is that
10 right?

11 MR. TOUGER: Not at all because it says to do what the
12 government wants you to do also. He continues to do what the
13 government wants you to do. The government says you can't
14 write a book but it doesn't say we can't have you testify.

15 THE COURT: I'm not allowing it because you have no
16 idea what that reference to the government is to. You have
17 cross-examined the guy for hours. He's a cooperator. You've
18 done the whole standard cooperator cross. He's looking at 20
19 years to life without a 5K letter and he's trying to walk
20 himself out and he's hoping the testimony will result in a
21 walk. This is confusing. It's cumulative. It's not logical
22 and it's time consuming and we're just not doing it.

23 MR. TOUGER: What's important, your Honor, is he only
24 has one item of evidence and it is important about the Lowell
25 Fletcher situation. In all this cooperation --

HB8AAROS3

Stewart - Cross

1 THE COURT: I've been here.

2 MR. TOUGER: My point, your Honor, is what that story,
3 the Lowell Fletcher story has changed over time.

4 THE COURT: Look. You go ahead if you want to try to
5 develop the changes, tie it into a timeline with this e-mail
6 and maybe you'll have something to talk about.

7 MR. TOUGER: I don't want to waste all that time to do
8 that, your Honor.

9 THE COURT: Look, Mr. Touger, you can't have it every
10 which way. You've got here by a very conservative estimate
11 about four thousand pages of 3500 material. Not all of it
12 pertaining to this witness but a lot of it pertaining to this
13 witness, right?

14 MR. TOUGER: About 25 percent.

15 THE COURT: Now, you tell me that this e-mail which so
16 far as it relates to the government is first of all, the
17 opinion of a book publisher; second, totally ambiguous; third,
18 seven years old; fourth, by your admission, any possibility of
19 a book deal involving this guy was dead shortly after
20 December 10th or 11th, 2010. And when you put all that
21 together it's a nothing burger.

22 MR. TOUGER: You mean where is the beef, your Honor?

23 THE COURT: If you want to try, take another couple
24 days to go through the 3500 material, I'll listen. But what
25 you've given me now, zip. It's not coming in now on the record

HB8AAROS3

Stewart - Cross

1 I have before me.

2 MR. TOUGER: OK.

3 THE COURT: Now you do what you want with it but in
4 the sense of with your cross, the fact of the matter is if you
5 want my opinion you started off like gang busters on this cross
6 and you have been putting the jury to sleep for the last hour
7 or two. But if you want to try and do it, I'm not going to
8 stop you. You can try.

9 (Continued on next page)

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HB8AAROS3

Stewart - Cross

1 (In Open Court)

2 THE COURT: Next question.

3 MR. TOUGER: Thank you, your Honor.

4 Q. Now, Mr. Stewart, did you agree with me that in your
5 opinion everything you've said here over the past day and a
6 half has been true?

7 A. Yes.

8 Q. And would you agree with me also that for almost all of it
9 there's no physical evidence to back up anything you're saying?

10 MR. JOHNSON-SKINNER: Objection, judge.

11 THE COURT: Sustained.

12 MR. TOUGER: I'll withdraw that question.

13 Q. There is no tape recordings of any meetings, for instance,
14 the meeting you had with Mr. Rosemond and Jason Williams when
15 you went up and got the obituary; there is knew tape recording
16 of that meeting, correct?

17 A. Not that I'm aware of.

18 Q. And you've never supplied any airplane tickets to support
19 that you flew up to New York?

20 MR. JOHNSON-SKINNER: Objection.

21 THE COURT: Sustained; asked and answered.

22 Q. There is no video of that meeting, correct?

23 A. Not that I'm aware of.

24 Q. And would you also agree with me though that there have
25 been times in your life that you've lied in the court for your

HB8AAROS3

Stewart - Redirect

1 benefit?

2 A. Yes.

3 Q. And you've done that to judges, correct?

4 A. Yes.

5 Q. To grand jurors?

6 A. Yes.

7 Q. To police officers?

8 A. Yes.

9 Q. And to parole officers?

10 A. Yes.

11 MR. TOUGER: Nothing further, your Honor.

12 THE COURT: Thank you.

13 Mr. Johnson-Skinner.

14 MR. JOHNSON-SKINNER: Thank you, judge.

15 REDIRECT EXAMINATION

16 BY MR. JOHNSON-SKINNER:

17 Q. Mr. Stewart, let's just pick up with that last topic. You
18 were asked questions on cross-examination about lying when it
19 benefited you, right?

20 A. Yes.

21 Q. And defense counsel actually asked you about that time that
22 you got arrested at Violator Records when you had entered in
23 the car that had a gun in it, correct?

24 A. Yes.

25 Q. Why didn't tell the police that you had just been in that

HB8AAROS3

Stewart - Redirect

1 car and that it was your car?

2 A. I didn't want -- I didn't want to get arrested.

3 Q. By the way, did you have a cooperation agreement with the
4 government at the time that you testified in that grand jury on
5 the shoplifting case?

6 A. Talking about in high school?

7 Q. Correct.

8 A. No.

9 Q. What about when you pled guilty to a robbery you didn't do?

10 A. No.

11 Q. What about when you told that officer that you hadn't just
12 exited that car?

13 A. No.

14 Q. Would it benefit you today if you lied?

15 A. Not at all.

16 Q. Why not?

17 A. Cause then I'll be facing life in prison.

18 Q. What about the mandatory minimum sentence, would you still
19 be facing that?

20 A. Yes, mandatory minimum for 20 years.

21 Q. Do you remember being asked questions on cross-examination
22 about the government learning of your crimes?

23 A. Yes.

24 Q. When you were arrested by the government about April of
25 2010, what were you charged with then?

HB8AAROS3

Stewart - Redirect

- 1 A. I was only charged with drug crimes at the time.
- 2 Q. Was there any violence charged against you then?
- 3 A. No.
- 4 Q. Did you tell the government about violence you committed
5 after you were charged with the drugs?
- 6 A. Eventually, I told them of all my crimes that they knew
7 nothing about. Because I didn't want anyone to be able to use
8 things I've done against me, so I just wanted to be completely
9 honest.
- 10 Q. Did you tell them about crimes you had never even been
11 caught or arrested for?
- 12 A. I told them about everything that I've ever done.
- 13 Q. Do you remember being asked questions about your proffer
14 sessions with the government?
- 15 A. Yes.
- 16 Q. And you eventually provided information about Jimmy but not
17 the fist right?
- 18 A. Yes.
- 19 Q. Did you provide information about other people besides
20 Jimmy during the course of your proffers?
- 21 A. Yes.
- 22 Q. How many other people about?
- 23 A. Initially, it was only two.
- 24 Q. What about as time went on?
- 25 A. As time when on I told about, I provided information about

HB8AAROS3

Stewart - Redirect

1 everything that I was involved in with whoever I was involved
2 in it.

3 Q. If the government asked you to, would you be required to
4 testify at trials of other people that you knew information
5 about?

6 A. I think so.

7 Q. Do you remember you were asked questions about whether the
8 verdict in this case affected you?

9 A. This verdict doesn't affect me, only my testimony that I
10 tell the truth or not.

11 Q. If you tell the truth today but the defendant's found not
12 guilty, do you still get that 5K letter?

13 A. Yes, I do.

14 Q. If you lie but the defendant's found guilty, do you get the
15 5K letter?

16 A. No.

17 Q. You still face that 20 year mandatory minimum sentence?

18 A. Yes.

19 Q. Do you remember you were asked questions about the
20 defendant not wanting Chris Lighty to be killed?

21 A. Yes.

22 Q. Remind us who is Chris Lighty?

23 A. Chris Lighty was the manager of 50-cent and other rappers.

24 Q. Did he own a business?

25 A. Yes.

HB8AAROS3

Stewart - Redirect

1 Q. What was the business?

2 A. Violator.

3 Q. So as the owner of Violator and the manager of 50 Cent, was
4 he well-known in the music industry?

5 A. Yes.

6 Q. Did Lodi Mack own his own music management company?

7 A. No.

8 Q. By the way, how did Jimmy make clear to you that he didn't
9 want Chris Lighty to be killed?

10 A. He is like, "don't kill the man". Those was his words.

11 Q. He said that to you, "Don't kill the man"?

12 A. "Don't kill the man".

13 Q. Do you remember you were asked questions on
14 cross-examination about times that you have ordered other
15 people to shoot at houses or even other people?

16 A. Yes. I remember the question.

17 Q. What times do you remember ordering people to shoot at a
18 house or a car?

19 A. The only time I remember ordering one to shoot at a house
20 was for Baja's situation, the situation with Baja.

21 Q. What about, do you remember any times when you ordered
22 somebody to shoot at another person?

23 A. No, I don't remember that.

24 Q. All right. Let's just talk about times you've ordered
25 someone to shoot at the house. Did you recruit a team of

HB8AAROS3

Stewart - Redirect

1 people to help you do that?

2 A. To shoot up the house?

3 Q. Yes.

4 A. Yeah.

5 Q. How many people have you used?

6 A. To shoot the house, when I did it, it was just me and Andre
7 that did it.

8 Q. What about the time when you sent Lighty?

9 A. Yeah, but I didn't do it with him.

10 Q. Did you have a backup team in place for that shooting at
11 the house?

12 A. No.

13 Q. Did you pay him \$30,000 for that shooting at the house?

14 MR. TOUGER: Objection, your Honor.

15 THE COURT: What's the objection?

16 MR. TOUGER: No relevance, whatsoever.

17 THE COURT: Overruled.

18 Q. Do you remember questions on cross-examination about
19 whether had you a conversation with Jimmy about the shooting of
20 Lowell Fletcher?

21 A. Sorry.

22 Q. Do you remember questions on cross about whether you had
23 conversations with Jimmy about the shooting of Lowell Fletcher?

24 A. Yes.

25 Q. Do you remember how you testified about getting that

HB8AAROS3

Stewart - Redirect

1 obituary from Jason?

2 A. Yes.

3 Q. And then Rosemond came outside, right?

4 A. Yes.

5 Q. What did you say to Rosemond after you were handed that
6 obituary?

7 A. When he came out I said to him, "so we all can sleep now"?

8 Q. What did he say in response?

9 A. He was like, yeah, I can finally sleep, something like that
10 and --

11 Q. What did you understand him to be talking about?

12 MR. TOUGER: Objection, your Honor.

13 THE COURT: Side bar.

14 (Continued on next page)

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HB8AAROS3

Stewart - Redirect

1 (Side bar)

2 THE COURT: Objection what's your objection?

3 MR. TOUGER: If I can understand the question
4 correctly, he was asking of this witness to read the mind of
5 Jimmy.

6 MR. JOHNSON-SKINNER: The reason I'm asking the
7 question is because on cross you asked him, did you ever talk
8 to Jimmy about the shooting of Lowell Fletcher?

9 MR. TOUGER: And he said "no".

10 MR. JOHNSON-SKINNER: I want to make clear to the
11 Jimmy what Mr. Stewart understood that conversation to be
12 about. I think that he was interpreting your question very
13 particular precise manner about the details of the shooting.

14 MR. TOUGER: I don't know what he was doing. I asked
15 him a question and he said "no".

16 THE COURT: I think you should try it another way
17 first. I think you should at least exhaust the question of
18 what the relationship between the inquiry was and what has been
19 referred to as the obituary. If he shows him, for example,
20 this witness shows Rosemond the obit and asks the question, I
21 don't think you need to go the next step. I prefer to go that
22 way before making a ruling on the next step.

23 MR. TOUGER: I agree.

24 MR. JOHNSON-SKINNER: I think the testimony is going
25 to be that he did not show the Rosemond the obituary, that he

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Stewart - Redirect

1 does not know whether Rosemond saw that Jason handed him the
2 obituary.

3 THE COURT: So I guess we're up to the next. So now
4 I'll hear argument on the question on that assumption.

5 MR. EDELSTEIN: Goes to speculation regarding what
6 Rosemond's state of mind was when he said something.

7 MR. JOHNSON-SKINNER: I think the defense opened the
8 door when I asked him, did you ever talk to Rosemond about the
9 shooting of Lowell Fletcher. I think the witness should have
10 the opportunity to fully answer that question.

11 MR. TOUGER: I didn't ask what he thought Jimmy was
12 talking about or anything like that. I said did you have a
13 conversation with Jimmy about the shooting of Lowell Fletcher.
14 His answer was "no".

15 MR. EDELSTEIN: His attention was not directed to that
16 conversation.

17 THE COURT: This not a seminar in law school. One
18 lawyer on each side. Let's have a little order here.

19 OK. Now --

20 MR. JOHNSON-SKINNER: I just wanted to say that
21 Mr. Touger's question that we're talking about came after a
22 series of questions about whether he was present at the
23 shooting of Lowell Fletcher, whether he discussed the details
24 of the shooting with Jimmy. So the context that it came on
25 cross, I think he should have a chance with an open ended

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Stewart - Redirect

1 question to describe what he thought that conversation was
2 about.

3 MR. TOUGER: What he thought, that's he fine. That's
4 not what Jimmy thought.

5 THE COURT: I must say that, although, it doesn't
6 control the result one way or the other, Mr. Touger, you were
7 considerably less scrupulous about this point when you were
8 asking the questions.

9 MR. TOUGER: I didn't cross on this.

10 THE COURT: You're missing my point.

11 I think, Mr. Johnson-Skinner, you've got to lay
12 something of a foundation. It's a lay opinion question and
13 that requires that the testimony be rationally based on the
14 witness's perception, that it be helpful to clearly
15 understanding his testimony or determining a fact in issue and
16 the third criteria isn't relevant here. It's not based on
17 scientific -- so forth.

18 The cases in our circuit are shall we say, perhaps not
19 entirely consistent but I think you have to at least try to lay
20 some kind of a foundation for this.

21 MR. JOHNSON-SKINNER: For whether he had an
22 understanding for what Jimmy meant?

23 THE COURT: For, well, this was necessary clearly to
24 understand his testimony. Obviously, it's irrelevant to
25 determining a fact that it is. I think the case law --

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Stewart - Redirect

1 MR. JOHNSON-SKINNER: (Inaudible). I don't know how
2 he got the full opportunity to explain what he thinks that
3 conversation was about.

4 MR. TOUGER: Mine was an open-ended question. He
5 could have said "yes". He said "no".

6 THE COURT: Yes, but apparently, his view is there was
7 not a conversation.

8 MR. TOUGER: OK. So then there wasn't a conversation.

9 THE COURT: So he couldn't have said "yes".

10 MR. TOUGER: Well, he could have if there --

11 THE COURT: Listen, he could have said "dirigible" if
12 it had popped into his mind.

13 MR. TOUGER: He's trying to make out that this
14 conversation had to do with Lowell Fletcher being killed. He
15 said "no" to that question.

16 THE COURT: He said there wasn't a conversation.

17 MR. TOUGER: A conversation is me asking you
18 something.

19 THE COURT: Try and focus on what I was saying to you
20 a minute ago. Try and focus. It's a lay opinion question.

21 MR. TOUGER: Right. And there's no foundation for it.

22 THE COURT: In what respect?

23 MR. TOUGER: I don't want to repeat what the Court
24 said. This is what the Court said, your Honor. The case law
25 is pretty clear.

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Stewart - Redirect

1 THE COURT: Really? What are the cases?

2 MR. TOUGER: I don't know the name of the cases. I've
3 never been able to remember names of cases. I just can't do
4 that.

5 THE COURT: Well, I've actually looked at the case law
6 and I tell you it is not pretty clear.

7 MR. TOUGER: OK.

8 THE COURT: Because I anticipated this.

9 Let's send the jury out.

10 (Continued on next page)

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Stewart - Redirect

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(In Open Court)
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Hb8nros4

1 (In open court)

2 THE COURT: Members of the jury, we have a point we
3 have to deal with here, and I will ask you to step into the
4 jury room.

5 (Jury not present)

6 (Witness not present)

7 MR. TOUGER: Your Honor, I can elaborate on my
8 argument.

9 THE COURT: Not right now.

10 I will give you a chance, but not this minute.

11 The witness is out of the room, right?

12 MR. ENZER: Yes, your Honor.

13 THE COURT: The first question, remind me, please, as
14 to the precise factual context where this event is alleged to
15 have occurred. The witness had come to New York. Where was
16 it? Who was there? What was it all about, according to the
17 evidence?

18 MR. JOHNSON-SKINNER: So the first thing is that Jason
19 Williams had been trying to reach this defendant for a period
20 of time, saying the dude wants to talk to you. He would
21 testify that "dude," I think he has testified "dude" is the
22 defendant James Rosemond.

23 He finally came up after being summoned by
24 Mr. Rosemond to New York. He went to Alphabet City, where he
25 met Jason Williams outside a restaurant I believe.

Hb8nros4

1 Jason Williams gave him the obituary. If he's asked
2 more questions about that, he would say that he said something
3 like, Word, Word, and Jason made a face at him. He looked at
4 the obituary.

5 THE COURT: I don't understand the connection.

6 MR. JOHNSON-SKINNER: Don't worry about that. It is
7 not relevant.

8 Jason made a face at Mr. Stewart when he handed that
9 obituary. That's Government Exhibit 1110.

10 THE COURT: Jason made a face and Jason showed the
11 document?

12 MR. JOHNSON-SKINNER: Correct.

13 That is the testimony from this witness.

14 THE COURT: Where was the defendant at the time this
15 happened?

16 MR. JOHNSON-SKINNER: He was inside a restaurant or
17 building at the time.

18 THE COURT: How close in time between the shooting
19 and/or the funeral and this meeting?

20 MR. JOHNSON-SKINNER: We don't know the exact date,
21 but not more than a month.

22 THE COURT: Is there any evidence as to what the
23 purpose of the defendant was in asking that Stewart come up to
24 New York?

25 MR. JOHNSON-SKINNER: There's some. I think it is

Hb8nros4

1 important to this question, because I think it shows this is
2 not just lay opinion testimony. It also affects what this
3 witness did after that.

4 The defendant not only made that comment about, Yes,
5 we can sleep now. He also said, By the way, you should know
6 that Baja, the kind of muscle for 50 Cent and for G-Unit, moved
7 to Atlanta, where this witness was living at the time.

8 And the defendant said, You guys can coexist, but I
9 wanted you to know that Baja was there.

10 MR. TOUGER: Your Honor, it is a little bit more than
11 that.

12 THE COURT: Just a minute. I am not done.

13 MR. TOUGER: It goes to your question, your Honor.

14 THE COURT: I know. But that doesn't mean you get to
15 interrupt the conversation I am having with your adversary any
16 more than it gives the government the right to interrupt when
17 you and I are having a discussion. I know you are excited.
18 Just take it easy.

19 MR. TOUGER: It is just that there is another fact
20 that he didn't tell you.

21 THE COURT: In due course you will tell me. You don't
22 jump up in the Court of Appeals in the middle of the other
23 side's argument to say, Oh, judges, there is another fact, do
24 you?

25 MR. TOUGER: No, your Honor.

Hb8nros4

1 THE COURT: Don't do it in my courtroom.

2 MR. JOHNSON-SKINNER: The fact that the defendant is
3 telling the witness about Baja being in Atlanta, the thing that
4 he said to the witness about, We can all sleep now, that
5 informed the witness's own mind about the fact that the feud
6 was over, that Lodi Mack had been killed. That affects what
7 this witness can do in Atlanta with respect to Baja, who is now
8 living with him in the same city. So for that reason it is not
9 just --

10 THE COURT: So what you draw from that is that the
11 witness's opinion as to what the defendant meant is based on
12 the temporal proximity, it's based on the conjunction of the
13 opinion with the statements about Baja and how they could now
14 live together, which is probative of whether the feud was over
15 or not, just as the Fletcher killing is just as that is.

16 MR. JOHNSON-SKINNER: This witness, in fact, testified
17 that he wasn't aware of any acts of violence after that
18 Fletcher murder. So that fact plus this all informs this
19 witness's own mind about what he can do with respect to the
20 ongoing feud with G-Unit.

21 THE COURT: All right.

22 Now, Mr. Touger. Thank you.

23 MR. TOUGER: Your Honor, the witness testified on
24 cross when I asked him, I said, After Mr. Rosemond told you
25 about the fact that Baja had moved to Atlanta, did you think

Hb8nros4

1 that was the purpose of him calling you up to New York?

2 He said yes. So he's already testified that his
3 purpose of coming up to New York was so Jimmy could tell him
4 that Baja was living in Atlanta, Georgia. Furthermore, your
5 Honor.

6 THE COURT: Let's pause right there.

7 MR. TOUGER: OK.

8 THE COURT: Assuming for the sake of discussion that
9 that was the testimony, the opinion that that was the reason --

10 MR. TOUGER: It wasn't opinion. He said Jimmy told
11 him that is why he brought him to New York.

12 THE COURT: I don't believe that is what you said 20
13 seconds ago.

14 MR. TOUGER: That is the testimony, your Honor.

15 THE COURT: Sam, read what Mr. Touger just said.

16 (Record read)

17 MR. TOUGER: I misspoke, your Honor.

18 THE COURT: Yes, you did.

19 MR. TOUGER: The testimony is that Jimmy told him the
20 reason he brought him up to from Atlanta, Georgia, to New York
21 City was so that he could tell him that Baja was living in
22 Atlanta. If you go back to that part of the cross, that is
23 what you will see.

24 THE COURT: That is not what you just represented to
25 me. That was just wrong.

Hb8nros4

1 MR. TOUGER: I am not perfect.

2 THE COURT: None of us is.

3 You are right about what he said earlier, but you are
4 not right about what you just said to me.

5 Now continue.

6 MR. TOUGER: What is important is I am right about
7 what I said earlier.

8 The next thing, your Honor, is for the government to
9 say that this witness was going to be influenced by his actions
10 by what -- that the effect, I think the word they use, would
11 affect the way he dealt with Baja in Atlanta is quite frankly
12 ridiculous.

13 This witness has testified already that he did things
14 against Baja without Jimmy telling him to do, because the feud
15 between him and Baja had gotten personal. He said he went to
16 his house without Jimmy telling him to on his own volition to
17 try to burn it down and shoot him when he came out.

18 THE COURT: How does that connect to this --

19 MR. TOUGER: They are arguing now that somehow that
20 Mr. Stewart was supposed to get the idea that he couldn't touch
21 Baja in Atlanta because Jimmy's calling off the feud. If that
22 is the argument, I don't understand how they are making it.

23 THE COURT: I don't think that is the argument they
24 are making.

25 The argument that I understand them to be making is

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1 this: The witness's opinion as to what Rosemond meant in the
2 interchange about, We can sleep tonight, or sleep, is
3 rationally based on the evidence because, among other things,
4 it's within a month of the Fletcher killing, and it is
5 indicative because of Rosemond's statements about Baja of
6 whether Rosemond thought it was safe for this witness to
7 coexist in Atlanta with Baja, which is this "the feud's over"
8 concept.

9 It seems to me that that may well be helpful to
10 understanding what this witness was trying to say or said in
11 relation to the exchange between him and the defendant on this
12 occasion in Alphabet City and what the defendant meant.

13 Is that the argument essentially?

14 MR. JOHNSON-SKINNER: Yes, Judge.

15 THE COURT: OK.

16 MR. TOUGER: Your Honor, the fact sequence, as we
17 learned at the bench, is that Mr. Stewart doesn't even know --
18 excuse me, that Mr. Rosemond, I made another mistake --
19 Mr. Rosemond doesn't even know that Mr. Stewart has been shown
20 the obituary.

21 That is what the government said at the bench
22 conference.

23 THE COURT: Yes. But he obviously does know that
24 Fletcher is dead.

25 MR. TOUGER: Who knows that?

Hb8nros4

1 THE COURT: Your client.

2 MR. TOUGER: Right.

3 What he doesn't know is that Mr. Stewart has had any
4 conversations with Mr. Williams about the Fletcher shooting.

5 THE COURT: That's the way I understand it.

6 MR. TOUGER: So, Mr. Rosemond walks out. I guess the
7 witness's testimony is that he's happy in some type of
8 strutting way, and the first thing out of his mouth is, I guess
9 we can sleep.

10 THE COURT: The first thing out of --

11 MR. TOUGER: Mr. Stewart's mouth.

12 THE COURT: -- Stewart's mouth.

13 MR. TOUGER: I guess we can sleep.

14 Mr. Rosemond allegedly then says, Yes, we can sleep.

15 For the Court to assume that it is within a month,
16 there is no reason for that assumption. There is no proof when
17 this happened at all.

18 THE COURT: What is the evidence on the timing?

19 MR. TOUGER: There is no evidence.

20 THE COURT: Excuse me. Mr. Johnson-Skinner?

21 MR. JOHNSON-SKINNER: Judge, the obituary itself is
22 dated October 3, 2009. We don't have definitive proof of how
23 long it was after that. We would argue that, given the fact
24 that Jason still has that paper obituary in his hand not very
25 much time has passed from the murder of Lodi.

Hb8nros4

1 THE COURT: What about that, Mr. Touger?

2 MR. TOUGER: Your Honor, the fact that he had that in
3 his hand has no bearing on when this happened. He's being
4 called to New York. The only evidence we have from his mouth,
5 from Mr. Stewart's mouth is so that Mr. Rosemond can tell him
6 about Baja. We have no knowledge from this, taking the
7 evidence in the best light possible even to the government, we
8 have no knowledge that Mr. Rosemond has any knowledge about the
9 conversation even got to Fletcher or showing to Fletcher.

10 THE COURT: I got that point. I understand that.

11 MR. TOUGER: So the fact that Mr. Williams, who is a
12 perpetrator of this crime, had on his person the obituary does
13 not demonstrate -- even if you take their word for it, that it
14 is a month away, right --

15 THE COURT: Do you know anybody other than a spouse
16 perhaps who has walked around with a funeral program in their
17 pocket for months at a time?

18 MR. TOUGER: That is exactly my point, your Honor.
19 Even if it is a month away, which is their argument, there is
20 no reason for Jason Williams to have it on him at that point.
21 There is no ever reason for Jason Williams to walk around with
22 this. So the fact that he is walking around with it cannot be
23 used to prove a time period. Why would he have it three days
24 later?

25 THE COURT: Goodness gracious.

Hb8nros4

1 Do you think there is a difference with respect to
2 time if Mr. Johnson-Skinner happened to have in his pocket a
3 funeral program from a death of one of the poor people who got
4 shot in Texas this week, as distinguished from the funeral
5 program from when President Roosevelt was buried?

6 Do you think there is a difference?

7 MR. TOUGER: Your Honor, you can exaggerate the facts
8 that way, but what I am saying --

9 THE COURT: The answer is -- excuse me, the answer is
10 obviously yes. Yes?

11 MR. TOUGER: Yes.

12 THE COURT: OK.

13 MR. TOUGER: I don't think --

14 THE COURT: Do not shout over me.

15 MR. TOUGER: I am not trying to shout --

16 THE COURT: If you do it the next time, there will be
17 sanctions. Do you understand that?

18 MR. TOUGER: I understand that, your Honor.

19 THE COURT: Now control yourself.

20 MR. TOUGER: All I am saying, your Honor, is there is
21 a difference. Once you get by the three-day period, there is
22 no difference for Mr. Williams to have that obituary one week
23 after or one month after or two months after. There I don't
24 see a difference.

25 THE COURT: How about nine months?

Hb8nros4

1 MR. TOUGER: Once we get -- what I am saying, what I
2 am arguing to the Court.

3 THE COURT: I know what you are arguing.

4 How about nine months?

5 MR. TOUGER: It doesn't make a difference, because if
6 he had it for more than a week after, there's no reason for him
7 to have it. I think the Court would agree with that statement.

8 THE COURT: So maybe it is a lot closer to the date of
9 funeral.

10 MR. TOUGER: Then he might remember that. He doesn't
11 remember that, your Honor. We are making --

12 THE COURT: It is years ago.

13 MR. TOUGER: He never has remembered it, your Honor.
14 Whenever he's been asked about this, he's never remembered this
15 date. You know what, there's a very simple way to solve this.
16 If it actually did happen, which we are saying it never
17 happened, but if it actually did happen, all you have to do is
18 go back and look at the plane flights from that month. Nobody
19 has ever done that here.

20 THE COURT: What plane flights?

21 MR. TOUGER: All you had to do was subpoena the plane
22 records of Mohammed -- the tickets for the flight from Atlanta
23 to New York. He said he flew under his own name, so if there
24 is a ticket for Mohammed Stewart from September 27, or
25 September 29 or September 30, or October 1, then it happened.

Hb8nros4

1 THE COURT: This is Mr. Touger, expert on record
2 retention of tickets by airlines?

3 MR. TOUGER: They keep those records, your Honor.

4 THE COURT: I am sure we will swear you in and you can
5 testify to that.

6 You could have subpoenaed them too. You knew this was
7 coming.

8 MR. TOUGER: No, your Honor. I don't think they have
9 the records from seven years ago.

10 THE COURT: Oh.

11 MR. TOUGER: They could have subpoenaed them back when
12 they first got his cooperation back in 2010.

13 THE COURT: Ah, OK. All right. It seems to me that a
14 logical starting point --

15 MR. TOUGER: Your Honor, if I may add one point.

16 THE COURT: No.

17 MR. TOUGER: I don't mean to interrupt.

18 THE COURT: Of course you meant to interrupt me. That
19 is exactly what you meant to do.

20 MR. TOUGER: I wanted to add one fact.

21 THE COURT: Yes, I know. That's always the reason.
22 But that is what you meant to do.

23 Now just wait.

24 It seems to me that the logical starting point is for
25 the government to inquire with respect to the meaning of the

Hb8nros4

1 witness's testimony, his understanding of the question, and,
2 therefore, the meaning of his testimony when Mr. Touger asked
3 him if he had a conversation with Rosemond on this occasion.

4 Because I mean, he may very well say, well, what I
5 understood that to mean and the way in which I answered it, was
6 did I speak words to Rosemond or did he speak words to me about
7 Fletcher.

8 Well, that's one thing.

9 He may answer it a different way. I don't know how
10 he's going to answer it. You guys probably do because you have
11 tried this case before, but I don't.

12 Then we will move from there.

13 And we are going to take a break for about ten
14 minutes. I am going to reread a case or two, and if counsel
15 are interested and can do it in the time, I am not going to
16 take a long recess, it seems to me that the critical cases are,
17 interestingly enough, *United States v. Kaplan*, 490 F.3d 110;
18 *United States v. Tsekhanovich*, 507 F.3d 127, and *United States*
19 *v. Garcia*, 291 F.3d 217.

20 I will see you in about ten minutes.

21 (Recess)

22 (Witness present)

23 THE COURT: Hold off on the jury for a moment.

24 MR. JOHNSON-SKINNER: Do you want the witness to stay
25 outside?

Hb8nros4

1 THE COURT: Yes. Just for a minute. Step out,
2 please.

3 THE WITNESS: Yes, sir.

4 THE COURT: We will be back to you in a minute.

5 (Witness not present)

6 THE COURT: I have had one further thought about how
7 to handle this. I think we should do the brief amplification
8 once we get the jury back that I talked about before, about
9 what was the interchange.

10 But rather than have the jury go in and out, the way I
11 would like to handle it is we will put the witness on the stand
12 out of the presence the jury, the government can ask him if he
13 has an opinion as to what Rosemond was referring to on that
14 occasion.

15 I will let you ask the opinion out of the presence of
16 the jury, and then you can ask him what the basis for the
17 opinion is. Then I will be in a better position than I am now
18 to rule on it.

19 MR. JOHNSON-SKINNER: OK.

20 THE COURT: OK. Let's bring him back.

21 (Witness present)

22 MR. JOHNSON-SKINNER: Judge, I will also do those
23 amplification questions now?

24 THE COURT: I think those you can do later with the
25 jury present.

Hb8nros4

Stewart -

1 MR. JOHNSON-SKINNER: OK.

2 THE COURT: Mr. Stewart, you are going to be asked
3 some questions before the jury comes back to enable me to make
4 a ruling on a point of law.

5 THE WITNESS: OK.

6 THE COURT: Go ahead, counselor.

7 BY MR. JOHNSON-SKINNER:

8 Q. Mr. Stewart, we were talking about how Jimmy said, Yes, we
9 can all sleep now.

10 Do you remember that?

11 A. Yes.

12 Q. Do you have an opinion of what Jimmy meant when he said
13 that?

14 A. Yes.

15 Q. What is your opinion of it?

16 A. That the beef was over.

17 Q. Why was the beef over?

18 A. Because Lowell Fletcher was dead.

19 Q. What is the basis for your opinion that is what Jimmy was
20 talking about?

21 A. Well, that Jason had gave me the obituary, that that's how
22 I came to that.

23 Q. About how long was it between when Jason gave you the
24 obituary and when Jimmy came out of that restaurant?

25 A. Maybe five -- three to five minutes, shortly.

Hb8nros4

Stewart -

1 Q. Where was the obituary at the time that you were talking to
2 Jimmy?

3 A. I had gave it back to Jason.

4 Q. Where was Jason at that time?

5 A. Standing off to the side.

6 Q. About how far away from you?

7 A. Ten feet, eight feet.

8 Q. And you were arrested in April 2010, right?

9 A. Yes.

10 Q. About how far before when you arrested was this
11 conversation with Jimmy?

12 A. It was within a year.

13 Q. A long time before?

14 A. No, not really.

15 Q. I just didn't hear what you said.

16 A. I said within a year.

17 Q. Within a year. Was it more than a month?

18 A. Yes.

19 Q. More than two months?

20 A. Yes.

21 Q. More than three months?

22 A. From when I was arrested to when we had the conversation?

23 Q. What is your best estimate of how many months?

24 A. I'm thinking about six months.

25 THE COURT: Excuse me.

Hb8nros4

Stewart -

1 THE WITNESS: Sorry.

2 THE COURT: The conversation was first and then the
3 arrest was later.

4 THE WITNESS: Yes.

5 THE COURT: You said about six months?

6 THE WITNESS: Yes, I guess.

7 MR. JOHNSON-SKINNER: That is all I have right now,
8 Judge.

9 THE COURT: When Jason gave you the obituary where was
10 Jimmy?

11 THE WITNESS: I'm sorry?

12 THE COURT: When Jason gave you the obituary outside
13 the restaurant, where was Jimmy?

14 THE WITNESS: Jimmy was still in the restaurant when
15 he passed it to me.

16 THE COURT: When he came out, where was the obituary?

17 THE WITNESS: Jason had it back.

18 THE COURT: Where exactly did he have it?

19 THE WITNESS: Jason?

20 THE COURT: Yes.

21 THE WITNESS: I'm not sure.

22 I'm not sure what he did with it.

23 THE COURT: Was it in your sight?

24 THE WITNESS: No.

25 Because when Jimmy came out the restaurant, I started

Hb8nros4

Stewart -

1 talking to him. I turned to him.

2 THE COURT: OK. Did you have any reason to believe
3 that Jimmy knew when he got out on to the sidewalk that Jason
4 had given you the obituary?

5 THE WITNESS: No.

6 THE COURT: All right.

7 Do you want to inquire further?

8 MR. JOHNSON-SKINNER: Just one moment, Judge.

9 BY MR. JOHNSON-SKINNER:

10 Q. Remind us what you know about Jason's relationship to
11 Jimmy, if anything.

12 A. Jason was Jimmy's driver, office manager.

13 Q. How often did you see Jason around Jimmy?

14 A. Pretty much every day.

15 Q. Do you think that Jason would have an obituary about a
16 G-Unit guy without Jimmy having given it to him?

17 MR. TOUGER: Objection, your Honor.

18 THE COURT: Sustained.

19 I will hear the answer. There is no jury. Go ahead.

20 A. Could you repeat the question?

21 Q. Do you think Jason would have an obituary from a person
22 affiliated with G-Unit without Jimmy knowing about it?

23 A. Would he have an obituary without Jimmy knowing he had the
24 obituary?

25 Q. Yes, would Jason have it without Jimmy knowing?

Hb8nros4

Stewart -

1 A. I think Jimmy would know that he had the obituary.

2 Q. Why do you think that?

3 A. He was his driver. They see each other all the time.

4 THE COURT: Anything else?

5 MR. JOHNSON-SKINNER: That's it.

6 THE COURT: Any questions, Mr. Touger?

7 MR. TOUGER: No, your Honor.

8 THE COURT: I am going to sustain the objection.

9 Later in the day, out of the presence of the witness,
10 I will explain why.

11 OK. Let's bring back the jury. You can explore the
12 point about the meeting.

13 MR. JOHNSON-SKINNER: Thank you.

14 (Continued on next page)

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Hb8nros4

Stewart - redirect

1 (Jury present)

2 THE COURT: OK. You may continue,

3 Mr. Johnson-Skinner.

4 Thanks, members of the jury, for bearing with us.

5 MR. JOHNSON-SKINNER: Thank you, Judge.

6 BY MR. JOHNSON-SKINNER:

7 Q. Mr. Stewart, do you remember on cross-examination you were
8 asked questions about whether you were present for the shooting
9 of Lowell Fletcher?

10 A. Yes.

11 Q. And do you remember you were asked questions about whether
12 you discussed with Jimmy the planning of that shooting?

13 A. Yes.

14 Q. Do you remember you were then asked on cross-examination if
15 you had a conversation with Jimmy about the shooting of
16 Fletcher?

17 A. Yes.

18 Q. What did you mean when you said no to that question?

19 A. That I didn't help plan it. We didn't talk about the
20 actual act of what was going to happen when it happened.

21 Q. Before the shooting?

22 A. Of the shooting itself.

23 Q. Now, Mr. Stewart, do you remember you were asked questions
24 on cross-examination about any personal dispute you had with
25 Baja?

Hb8nros4

Stewart - redirect

- 1 A. Yes.
- 2 Q. Who asked you to get someone to shoot at Baja's house in
3 Staten Island?
- 4 A. Jimmy.
- 5 Q. Who paid you for that shooting?
- 6 A. Jimmy.
- 7 Q. Who asked you to get someone to shoot at Baja's sister's
8 house in Staten Island?
- 9 A. Jimmy.
- 10 Q. Who did you meet at Baja's house when you decided not to
11 shoot because of that girl inside?
- 12 A. Jimmy.
- 13 Q. Who gave you the gun that day?
- 14 A. Jimmy.
- 15 Q. Who was disappointed when you didn't shoot that day?
- 16 A. Jimmy.
- 17 Q. Do you remember being asked questions about Jimmy's
18 demeanor when he first meet Yayo at the Apollo Theater?
- 19 A. Yes.
- 20 Q. Who told you that they had shot up Yayo's Bentley right
21 after that event at the Apollo Theater?
- 22 A. Jimmy.
- 23 Q. Do you remember you were asked questions about whether you
24 shot at Yayo's mom's?
- 25 A. Yes.

Hb8nros4

Stewart - recross

1 Q. Who told you that he shot at Yayo's mom's house?

2 A. Jimmy.

3 MR. JOHNSON-SKINNER: No further questions, Judge.

4 THE COURT: Thank you. Mr. Touger?

5 RECROSS EXAMINATION

6 BY MR. TOUGER:

7 Q. One of the shootings that you did at Baja's house happened
8 while Jimmy was in Saudi Arabia, correct?

9 A. I am not sure where he was.

10 Q. He was out of town, correct?

11 A. That I did or that --

12 Q. That you directed somebody to do.

13 A. He was out of town.

14 Q. And would I be correct in saying that he went on this trip
15 out of town just one month after his son was attacked?

16 A. I don't know -- I don't remember what time he went out of
17 town.

18 Q. When he was out of town -- do you remember if he was out of
19 the country?

20 A. I know he said he was going out of the country.

21 Q. Excuse me?

22 A. I know he said he was going out of the country when he
23 wanted these two things to happen.

24 Q. And did you have any conversations with Jimmy when he was
25 out of the country?

Hb8nros4

Bernard - direct

1 A. I don't think so.

2 MR. TOUGER: Nothing further, your Honor.

3 THE COURT: Thank you.

4 MR. JOHNSON-SKINNER: No questions, Judge.

5 THE COURT: All right.

6 Thank you, the witness is excused.

7 (Witness excused)

8 THE COURT: Next witness.

9 MR. ENZER: When the witness is out of earshot I will
10 say the name, your Honor.

11 THE COURT: Yes.

12 MR. ENZER: The government calls Valerie Bernard.

13 VALERIE BERNARD,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ENZER:

18 THE COURT: You may proceed, Mr. Enzer.

19 Q. How old are you, ma'am?

20 A. I'm sorry?

21 Q. How old are you?

22 A. 42.

23 Q. Where did you grow up?

24 A. Jamaica, Queens.

25 Q. Do you have any siblings?

Hb8nros4

Bernard - direct

1 A. Yes, I do.

2 Q. What are their names?

3 A. James Bernard, Marvin Bernard.

4 MR. ENZER: Can we please publish Government Exhibit
5 19.

6 Q. Do you recognize the person shown in this photograph?

7 A. Yes.

8 Q. Who is that?

9 A. My brother.

10 Q. Which brother?

11 A. Marvin.

12 Q. Does he have any nicknames?

13 A. Yes, he does.

14 Q. What are his nicknames?

15 A. Rap name?

16 Q. Yes.

17 A. Tony Yayo.

18 Q. What does your brother do for a living?

19 A. He is a rapper.

20 Q. Is he affiliated with a rap group?

21 A. Yes, he is.

22 Q. What group?

23 A. G-Unit.

24 Q. Do you have any children, ma'am?

25 A. I do.

Hb8nros4

Bernard - direct

1 Q. How many?

2 A. One.

3 Q. Boy or girl?

4 A. Daughter.

5 Q. What is her name?

6 A. Do I have to give you that? I would just like to keep her
7 protected, her name protected.

8 Q. That's fine. I won't ask you her name. How old is she?

9 A. She's 12.

10 Q. Let me direct your attention to April of 2007.

11 A. Uh-huh.

12 Q. Where did you live in April of 2007?

13 A. The exact address you are looking, you are asking for?

14 Q. Yes.

15 A. 140-16 159th Street.

16 Q. What borough?

17 A. Jamaica, Queens.

18 Q. At the time, did you live there alone?

19 A. No, I did not.

20 Q. Who else lived there? You don't have to name names, just
21 relationships?

22 A. My mother and my daughter.

23 Q. I am going to show you on your screen alone what has been
24 premarked for identification as Government Exhibit 635A.

25 Do you recognize what is shown in this photo?

Hb8nros4

Bernard - direct

1 A. Yes, I do.

2 Q. What is that?

3 A. That's my mother's home.

4 MR. ENZER: The government offers Government Exhibit
5 635A.

6 THE COURT: Received.

7 (Government's Exhibit 635A received in evidence)

8 MR. ENZER: Can we please publish that.

9 BY MR. ENZER:

10 Q. For the jury, which of the homes in this picture was your
11 mother's home?

12 A. The brick, the red brick.

13 Q. Let me direct your attention to April 18, 2007. Did there
14 come a time on or about April 18, 2007, when an act of violence
15 occurred at your mother's house?

16 A. Yes, it did.

17 Q. Where were you at the time?

18 A. In the back room, in the home, upstairs part of the home.

19 Q. Were you alone in the house at the time?

20 A. No. I was with my daughter.

21 Q. How old was your daughter at the time?

22 A. Two.

23 Q. What time of day was the act of violence?

24 A. I can't say accurately. It was dark outside. I would say
25 maybe 8 o'clock, or it could have been a little later than that

Hb8nros4

Bernard - direct

1 in the evening.

2 Q. How long had you been in the house when the act of violence
3 occurred?

4 A. I mean, usually like my routine would be -- coming home
5 from work, I would pick my daughter up from day care, we would
6 eat dinner in the kitchen. But for some reason I just decided
7 not to, but I don't know -- I'm not sure. Just we decided to
8 take her upstairs and maybe like settle down and watch TV.

9 Q. What I'm asking you is between the time when you got
10 home --

11 A. Right.

12 Q. -- and the time when the act of violence occurred, had you
13 been in the house for a long time or had you just gotten home?

14 A. We were there for a while, yeah.

15 Q. What happened?

16 A. Like I said, we were in the room, and my daughter's sitting
17 on the -- and I'm standing up, and I heard like a really, what
18 sounded like a really loud bang. And then like I heard it
19 again, and I heard it a couple of times after that, and I just,
20 I grabbed her and threw her down on the floor and I laid on top
21 of her.

22 Q. When you heard the loud bang, what did you believe was
23 happening?

24 A. That there were gunshots.

25 Q. How many shots did you hear?

Hb8nros4

Bernard - direct

1 A. I heard one initially, and then after that it was like a
2 rapid, like rapid sounds, like it was continuous. It wasn't
3 ending.

4 Q. Did you call the police after?

5 A. I was able to grab my cell phone and I dialed 911, yes.

6 Q. Following the shooting, did you see any signs of damage in
7 the house?

8 A. No. I just stayed down because I wasn't sure, like, if it
9 was going to be over or not. So I just, like I just stayed
10 down on the ground and covered my daughter.

11 Q. Did anyone get hurt?

12 A. No.

13 Q. Did you later, after the coast had cleared, walk around the
14 house, see any damage?

15 A. I didn't walk around -- I mean, the house, not technically.
16 I just waited until the police came, but, yes, I did see the
17 damage that was done to the home, yes.

18 Q. Can you describe the damage.

19 A. There were bullet holes that went through the main front
20 window, and they went -- they broke a chandelier, went past the
21 dining room wall into the bathroom wall. Also, there were
22 bullet holes through the front door that went into the kitchen.

23 Q. Following the shooting, did the police come to the house?

24 A. Yes, they did.

25 Q. And did you speak with the police?

Hb8nros4

Bernard - cross

1 A. When they got -- they basically walked in at the same time
2 that my mom was walking in, when she was coming from work.
3 Someone told her what happened, and they walked in at the same
4 time. So I really didn't get up until I heard her voice. But,
5 yes, uh-huh.

6 Q. Ma'am, last few questions.

7 Before today, you and I have never met, is that right?

8 A. No, sir.

9 Q. And are you testifying --

10 THE COURT: Is it right that you've never met?

11 Q. Is it correct that you and I never met before today?

12 A. No. I've never met you before.

13 Q. And are you testifying here today voluntarily, or were you
14 compelled to testify by subpoena?

15 A. I was compelled to testify through subpoena.

16 MR. ENZER: No further questions.

17 THE COURT: Thank you.

18 Mr. Touger.

19 CROSS EXAMINATION

20 BY MR. TOUGER:

21 Q. Ms. Bernard, taking you back to April of 2007 --

22 A. Uh-huh.

23 Q. -- would you agree with me that you did not have a
24 relationship with your brother Marvin Bernard at that time?

25 A. I don't understand what you mean by that. Like I do have a

Hb8nros4

Bernard - cross

1 relationship with him because he is my brother.

2 Q. He's your brother?

3 A. Yes.

4 Q. Would you agree with me that you hadn't spoken to him since
5 April of 2006?

6 A. Honestly, I mean, my daughter was two years old, and my
7 life kind of consisted of being a new mom, working and taking
8 care of her. Like we didn't have a falling-out, if that's what
9 you are asking. I don't -- I am not sure.

10 Q. You remember talking to the police that night, correct?

11 A. When they came, yes.

12 Q. And do you remember telling the police that your brother
13 does not come around the house and has not been there in over a
14 year?

15 A. He didn't live there.

16 Q. Do you remember being spoken to on the phone the next day
17 by another detective?

18 A. No.

19 MR. TOUGER: May I approach the witness, your Honor.

20 THE COURT: Yes.

21 Tell me what you are showing her.

22 Which exhibit?

23 MR. TOUGER: 3544-A. Page 15 of 17 it says on top.

24 THE COURT: I'm sorry. I couldn't understand what you
25 said.

Hb8nros4

Bernard - cross

1 MR. TOUGER: Page 15 of 17 it says on the top.

2 Q. I would just like you to read this, and see if that
3 refreshes your recollection.

4 THE COURT: Read it to yourself.

5 MR. TOUGER: Yes, to yourself.

6 Q. Does that refresh your recollection that you had a
7 telephone call with the police?

8 A. No.

9 Q. Do you have any memory of telling the police that you don't
10 want to be around your brother because of the problems he's
11 caused?

12 A. No, not at all.

13 MR. TOUGER: No further questions, your Honor.

14 THE COURT: Thank you.

15 Anything else?

16 MR. ENZER: Nothing further.

17 THE COURT: All right.

18 Ms. Bernard, you're excused. Thank you.

19 THE WITNESS: OK. Thank you.

20 (Witness excused)

21 THE COURT: Next witness?

22 MR. JOHNSON-SKINNER: The government calls Theresa
23 Buckson.

24 THERESA BUCKSON,

25 called as a witness by the Government,

Hb8nros4

Buckson - direct

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. JOHNSON-SKINNER:

4 THE COURT: You may proceed, counselor.

5 Q. Good afternoon, Dr. Buckson.

6 A. Good afternoon.

7 Q. What do you do for a living?

8 A. I am an OB/GYN physician.

9 Q. Where do you live now?

10 A. In Maryland.

11 Q. Where did you live in about 2009?

12 A. In Maryland.

13 Q. Do you recognize anyone sitting in the courtroom today?

14 A. Yes, I do.

15 Q. Who do you recognize?

16 A. James Rosemond.

17 Q. Could you identify where he's sitting and describe an
18 article of clothing he's wearing.

19 A. He's sitting in the second row with a gray suit and white
20 shirt.

21 Q. Which seat in the second row with A gray suit and white
22 shirt?

23 A. Sorry. Middle seat, second row.

24 MR. JOHNSON-SKINNER: For the record reflecting that
25 the witness has identified the defendant James Rosemond.

Hb8nros4

Buckson - direct

1 THE COURT: Yes.

2 BY MR. JOHNSON-SKINNER:

3 Q. How long have you known Mr. Rosemond for?

4 A. About 28 years.

5 Q. What was the nature of your relationship with Mr. Rosemond?

6 A. We have been really good friends.

7 Q. Did there come a time when you purchased something for

8 Mr. Rosemond?

9 A. Yes, I did.

10 Q. What did you purchase for him?

11 A. An iPhone.

12 Q. Why did you buy him the iPhone?

13 A. It was just a gift.

14 Q. When was it approximately that you bought him the iPhone?

15 A. In 2008. I don't know exactly when in 2008, but sometime
16 in 2008.

17 Q. Do you know exactly the date and year you bought it?

18 A. I'm pretty sure it was 2008. I just don't know exactly
19 what month it was, but I'm pretty confident it was 2008.
20 Possibly 2009, but right in that time frame.

21 Q. What was the service provider for that iPhone?

22 A. It was AT&T.

23 Q. When you purchased it, who did you list as the user of the
24 phone?

25 A. I listed myself.

Hb8nros4

Buckson - direct

1 Q. Did you ever actually use that phone yourself?

2 A. No, I didn't.

3 Q. What did you do with it?

4 A. It was a gift for Mr. Rosemond, so I gave it to him.

5 Q. Who paid the bills for that phone?

6 A. I did.

7 Q. Do you remember for how long you paid the bills?

8 A. For sometime in between one year and two years. I don't
9 know exactly how long, though.

10 Q. The phone number that you personally use, did you use that
11 phone number in 2009 as well?

12 A. Say that one more time.

13 Q. It was a bad question.

14 Do you have a personal phone number right now that you
15 use?

16 A. Yes, I do.

17 Q. Is that the same phone number that you used yourself in
18 2009?

19 A. Yes, it is.

20 Q. What was the area code for that phone number?

21 A. The one I currently -- the one you're referring to.

22 Q. Yes.

23 A. 202.

24 Q. That's the same one that you used in 2009?

25 A. Correct.

Hb8nros4

Buckson - direct

1 Q. 202?

2 A. Uh-huh.

3 Q. Based on your relationship with Jimmy, do you know if he
4 ever traveled?

5 A. Yes, he traveled I would say extensively.

6 Q. About how often?

7 A. Probably about once a week he traveled.

8 Q. Where are some of the places that you know of him traveling
9 to?

10 A. So, Miami, Los Angeles, Atlanta, Las Vegas.

11 Q. Do you know where Jimmy lived in about 2009?

12 A. In New York.

13 Q. Do you know where in New York?

14 A. On I guess it's West Side Highway or West Side -- I don't
15 know -- West Side Highway maybe. The street -- and then -- or
16 the highway and then in the 50s or 60s.

17 Q. Is that in Manhattan?

18 A. Yes, in Manhattan.

19 Q. And let me show you what's in evidence as Government
20 Exhibit 54.

21 Who is that?

22 A. That's me.

23 MR. JOHNSON-SKINNER: Would you publish that to the
24 jury very briefly.

25 I think that's already in evidence, I think. If not

Hb8nros4

Buckson - cross

1 we offer it at this time?

2 THE COURT: I believe it is, subject to connection.

3 MR. JOHNSON-SKINNER: Now we offer it.

4 THE COURT: You still haven't quite connected it, but
5 let's move on.

6 MR. JOHNSON-SKINNER: Understood.

7 No further questions.

8 THE COURT: Thank you.

9 Mr. Touger.

10 MR. TOUGER: Thank you, your Honor.

11 CROSS EXAMINATION

12 BY MR. TOUGER:

13 Q. Good afternoon, Ms. Buckson.

14 A. Good afternoon.

15 Q. Dr. Buckson. I'm sorry.

16 A. Theresa is fine.

17 Q. Good afternoon. So you know Jimmy for 20 years
18 approximately?

19 A. About 28, 29 years.

20 Q. OK. And I want to bring you to the period of 2007, 2005,
21 2009, that period.

22 A. OK.

23 THE COURT: I'm sorry. What period exactly?

24 MR. TOUGER: I am going to withdraw that question.

25 Q. Do you know Jimmy to run a music company?

Hb8nros4

Buckson - cross

1 A. Yes.

2 Q. And do you know the name of the music company?

3 A. Czar Entertainment.

4 Q. Did you know Jimmy to travel extensively as part of running
5 that music company?

6 A. Yes, he did.

7 Q. Did you know some of the artists that Jimmy managed?

8 A. Yes, I do.

9 Q. Just briefly some of the artists that he managed?

10 A. So, Jayceon Taylor, The Game. And I don't know if you call
11 it managed or just was either managed or produced or something
12 along those lines. Sean Kingston and Brandi and --

13 Q. That is --

14 A. I am just blanking right now.

15 Q. You also knew Jimmy to produce movies?

16 A. Yes.

17 Q. And as a matter of fact he's produced movies in Miami,
18 correct?

19 A. Absolutely, yes.

20 Q. Who are some of the stars that he worked with producing
21 movies?

22 A. Queen Latifah, and I don't know if you would call it movies
23 or just a series of television, "The Wire" with Michael
24 Williams.

25 Q. And -- sorry I didn't mean to interrupt you.

Hb8nros4

Buckson - cross

1 A. Sorry. I was saying "The Wire" with Michael K. Williams.

2 Q. You would travel around the country and meet him in these
3 various cities sometimes?

4 A. Sometimes, yes.

5 Q. Now, isn't it also true that he and Queen Latifah were
6 invited to President Obama's inauguration?

7 MR. JOHNSON-SKINNER: Objection to this, Judge.

8 THE COURT: Sustained.

9 Q. Did you attend the inauguration --

10 MR. JOHNSON-SKINNER: Objection.

11 THE COURT: Sustained.

12 MR. TOUGER: Nothing further, your Honor.

13 THE COURT: Thank you.

14 Anything else, Mr. Johnson-Skinner?

15 MR. JOHNSON-SKINNER: No, Judge.

16 THE COURT: You are excused Dr. Buckson. Thank you.

17 THE WITNESS: Thank you.

18 MR. TOUGER: I did have one. I'm sorry. I just have
19 one further question.

20 THE WITNESS: OK.

21 BY MR. TOUGER:

22 Q. This phone that you gave to Mr. Rosemond, did Mr. Rosemond
23 ask you to get him this phone?

24 A. No, I purchased it as a gift. I just was trying to think
25 of a present and that was one that --

Hb8nros4

Maldonado - direct

1 Q. Jimmy never even suggested that idea to you?

2 A. No, he did not.

3 Q. You guys exchanged gifts routinely?

4 A. Sometimes, yes.

5 MR. TOUGER: Nothing further, your Honor.

6 THE COURT: All right. Thank you.

7 MR. TOUGER: This time I mean it.

8 THE COURT: You are excused.

9 (Witness excused)

10 THE COURT: Next witness.

11 MR. ENZER: The government calls Rafael Maldonado.

12 RAFAEL MALDONADO,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ENZER:

17 THE COURT: You may proceed, Mr. Enzer.

18 Q. Where do you work, sir?

19 A. Manhattan Parking Systems.

20 Q. Where is that?

21 A. 25th Street between Broadway and Sixth Avenue.

22 Q. What do you do there?

23 A. I am a parking attendant.

24 Q. What kind of establishment is that?

25 A. It is a parking lot.

Hb8nros4

Maldonado - direct

1 Q. Is it a parking lot that is open air or like a garage that
2 you go into?

3 A. It is an outside parking lot.

4 Q. How long have you worked there?

5 A. 16 years.

6 Q. Do you see anyone in this courtroom who used to park a car
7 at your parking lot?

8 A. Yes.

9 Q. Who do you see?

10 A. Jimmy Henchmen.

11 Q. Can you point him out and describe what he's wearing.

12 A. A white shirt and gray suit.

13 Q. Which table is he sitting at? The second or the first?

14 A. The second.

15 Q. Is he the -- which of the --

16 MR. TOUGER: Indicating the defendant, your Honor.

17 A. He's in the middle.

18 THE COURT: I'm sorry. I can't hear you, Mr. Touger.

19 MR. TOUGER: Indicating the defendant.

20 THE COURT: Indicating the defendant. OK.

21 BY MR. ENZER:

22 Q. Directing your attention to March 20, 2007, do you remember
23 witnessing a violent incident that day?

24 A. Yes.

25 Q. What did you see?

Hb8nros4

Maldonado - direct

1 A. I saw three men approach a young child and one man smack
2 him.

3 Q. Did you recognize those men?

4 A. No.

5 Q. Can you describe them?

6 A. They all had hoodies on, so --

7 Q. How tall were they?

8 A. They were taller than the child. They were men.

9 Q. Could you catch their ethnicity?

10 A. No, because they had the hoodies on, so I really couldn't
11 see.

12 Q. Did you hear any words exchanged?

13 A. No.

14 Q. When you saw this, what did you do?

15 A. When I saw them slap the child, I screamed out.

16 Q. Why did you do that?

17 A. Because I knew who he was.

18 Q. Who was he?

19 A. Jimmy's son.

20 Q. Had you met Jimmy's son prior to that?

21 A. Once or twice.

22 MR. ENZER: Please publish Government Exhibit 1008.

23 Q. Do you recognize the person in that photo?

24 A. Yes.

25 Q. Who is that?

Hb8nros4

Maldonado - direct

- 1 A. His son.
- 2 Q. Whose son?
- 3 A. Jimmy's son.
- 4 Q. Is that the person who was being attacked?
- 5 A. Yes.
- 6 Q. Now, at the time of this incident, how old was Jimmy's son?
- 7 A. I'm not sure. 10, 12. I really don't know about his age.
- 8 Q. How tall was he?
- 9 A. He wasn't that tall.
- 10 Q. After you screamed, what happened?
- 11 A. The three guys, they ran into a black truck.
- 12 Q. Can we please publish Government Exhibit 600Y.
- 13 Mr. Maldonado, what street is shown in this photo?
- 14 A. 25th Street.
- 15 Q. Can you see the parking lot where you work in this
- 16 photograph?
- 17 A. Yes.
- 18 Q. Which side of the screen?
- 19 A. On the right side.
- 20 Q. OK. Where it says "Park"?
- 21 A. "Park," yeah.
- 22 Q. And on which side of the street was Jimmy's son when he was
- 23 attacked?
- 24 A. On the left side.
- 25 Q. So across the street from you?

Hb8nros4

Maldonado - direct

- 1 A. Across the street.
- 2 Q. Where on the left side of the screen?
- 3 A. Right in front -- it says Dog Spa. The sign is not there
- 4 right now, like in the middle of the street. Right in front of
- 5 my garage.
- 6 Q. So in this photograph, there's like a red awning right
- 7 across from the parking lot?
- 8 A. Yes.
- 9 Q. You say it is around where the red awning was roughly?
- 10 A. Yes. The black one. You see the black? The black awning.
- 11 Q. I see. The black awning, past the red awning you just
- 12 talked about?
- 13 A. Past the red awning.
- 14 Q. Where were you when you saw the men attacking Jimmy's son?
- 15 A. Right across the street.
- 16 Q. At your lot?
- 17 A. At my lot.
- 18 Q. Where were the men when they attacked Jimmy's son?
- 19 A. Right in front of that spot right there.
- 20 Q. And the vehicle that they got into, where was the vehicle?
- 21 A. It was more over to the, farther down from that spot.
- 22 Q. Like down into the back of the photo --
- 23 A. No, no.
- 24 Q. -- or towards the front?
- 25 A. To the -- like right here in the building -- the car was

Hb8nros4

Maldonado - direct

1 parked over here, like on the street.

2 Q. After you saw this attack, did you talk to anybody about
3 what you saw?

4 A. A few people.

5 Q. Did you speak to the police?

6 A. Yes.

7 Q. Did you speak to Jimmy, the kid's father?

8 A. Yes.

9 Q. Did you speak to anybody else?

10 A. Chris Lighty.

11 Q. Who is Chris Lighty?

12 A. He used to be a record producer.

13 MR. ENZER: Please publish Government Exhibit 18.

14 Q. Do you see there?

15 A. Chris Lighty.

16 Q. That's the person you spoke with?

17 A. Yeah.

18 Q. Are you testifying here today voluntarily, or are you under
19 subpoena?

20 A. Under subpoena.

21 Q. Sir, have you ever been convicted of any crimes?

22 A. Yes.

23 Q. What was the last time you were convicted of a crime?

24 A. When I was a teenager.

25 Q. What was that for?

Hb8nros4

Maldonado - cross

1 A. Grand larceny.

2 Q. And more recently, in approximately 2007, were you arrested
3 for something?

4 A. Yeah, a DUI --

5 Q. And --

6 A. -- and a weapons charge.

7 Q. Did you plead guilty in that case?

8 A. Yes.

9 Q. What did you plead to?

10 A. Driving while intoxicated.

11 Q. OK. Have you had other run-ins with the law in your life?

12 A. No.

13 MR. ENZER: No further questions.

14 THE COURT: Thank you.

15 Cross-examination.

16 MR. TOUGER: Thank you, your Honor.

17 CROSS EXAMINATION

18 BY MR. TOUGER:

19 Q. Good afternoon, Mr. Maldonado.

20 A. Good afternoon.

21 Q. Would I be correct in saying that Jimmy's son at that
22 period of time was a very small child?

23 A. Yes.

24 Q. Forget his age. He was a small-built child?

25 A. Yes.

Hb8nros4

Maldonado - cross

1 Q. Would I also be correct in saying that the three men who
2 attacked him were large male individuals?

3 A. Yes, grown men, yes.

4 Q. And they were not small little guys, right?

5 A. No.

6 Q. They were bigger than me?

7 A. Yes, of course, yeah.

8 Q. Would I also be correct in saying, although you might not
9 want to admit it, that Yayo was one of the persons assaulting
10 him?

11 A. That is what I heard. I didn't see no faces.

12 Q. You didn't recognize --

13 A. No, the faces were covered.

14 THE COURT: Strike what he heard.

15 MR. TOUGER: Strike that.

16 Q. I just wanted to know if you knew that, if you saw that?

17 A. I didn't see no faces. I just --

18 Q. Mr. Rosemond used your parking lot a lot, correct?

19 A. Yes.

20 Q. And Mr. Lighty used your parking lot a lot?

21 A. No, not that often.

22 Q. Mr. Rosemond's office was on that street?

23 A. Yes.

24 Q. And Mr. Lighty's office was on that street?

25 A. Yes.

Hb8nros4

Maldonado - cross

1 Q. Do you know which office was established on that street
2 first? Mr. Rosemond or Mr. Lighty's?

3 A. No, I'm not sure about that.

4 Q. They both ran music companies, correct?

5 A. Yes.

6 THE COURT: Counselor, the scope of the direct.

7 Q. I think you said you spoke to Mr. Rosemond about the
8 assault?

9 A. He asked me what happened.

10 Q. And when did that occur?

11 A. Afterwards.

12 Q. That day or --

13 A. The same day.

14 Q. OK.

15 A. The same day.

16 Q. Was Mr. Rosemond visibly upset at that point?

17 A. I suppose so. His son got hit, yes.

18 MR. TOUGER: Nothing further.

19 THE COURT: Anything else?

20 MR. ENZER: Nothing.

21 THE COURT: The witness is excused.

22 Thank you, Mr. Maldonado.

23 (Witness excused)

24 THE COURT: Next witness.

25 MR. JOHNSON-SKINNER: The government calls Detective

Hb8nros4

Masi - direct

1 Kevin Masi.

2 KEVIN MASI,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JOHNSON-SKINNER:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Where do you work?

10 A. Chief of detectives office.

11 Q. Is that part of the NYPD?

12 A. Yes.

13 Q. And you are a detective yourself?

14 A. Yes, sir.

15 Q. How long have you worked for the NYPD?

16 A. 23 years.

17 Q. In about February 2006, what was your position then?

18 A. I was assigned to Manhattan South Borough Crime.

19 Q. What is Borough Crime?

20 A. It is an anticrime unit.

21 Q. And what area does Manhattan South cover?

22 A. From 14th street all the way up to 59th Street, river to
23 river.

24 Q. Directing your attention on February 9, 2006, were you
25 working that day?

Hb8nros4

Masi - direct

- 1 A. Yes, sir.
- 2 Q. What were your hours that day about?
- 3 A. 5:30 p.m. TO 0200, 2 a.m.
- 4 Q. 2 a.m. the next day?
- 5 A. Yes.
- 6 Q. Did you have any partners that day?
- 7 A. Yes.
- 8 Q. What was your assignment that day?
- 9 A. We were assigned to the 13th Precinct.
- 10 Q. About what area is that?
- 11 A. That would be 14th Street to 28th Street, 29th Street from
- 12 the east side to the west side.
- 13 Q. Were you on foot or in a car?
- 14 A. In a car.
- 15 Q. What type of car was it?
- 16 A. It was a yellow taxicab.
- 17 Q. Was it actually a police car?
- 18 A. Yes.
- 19 Q. An undercover police car?
- 20 A. Yes.
- 21 Q. Were you and your colleagues in uniform?
- 22 A. No.
- 23 Q. Did there come a time that night when you made arrests?
- 24 A. Yes.
- 25 Q. How many people did you arrest?

Hb8nros4

Masi - direct

- 1 A. Two.
- 2 Q. Who did you arrest?
- 3 A. Mohammed Stewart and Andre Collier.
- 4 Q. I'll show you what's in evidence as Government Exhibit 10.
- 5 Do you recognize that person?
- 6 A. Yes, sir.
- 7 Q. Who is that?
- 8 A. Mohammed Stewart.
- 9 Q. Then I'll show you what's in evidence as Government Exhibit
- 10 21.
- 11 Who is that?
- 12 A. Andre Collier.
- 13 Q. Was it day or nighttime when you encountered them first?
- 14 Light or dark?
- 15 A. Dark.
- 16 Q. Where did you first see them?
- 17 A. On 26th Street.
- 18 Q. Where were they?
- 19 A. They were inside a vehicle.
- 20 Q. What kind of vehicle?
- 21 A. Infiniti.
- 22 Q. Was the vehicle stopped or moving?
- 23 A. Stopped.
- 24 Q. What did you see happening inside the vehicle?
- 25 A. Two people moving around in the vehicle in the front seat.

Hb8nros4

Masi - direct

1 It look like actually they were breaking in the car doing
2 something.

3 Q. What did you do next?

4 A. I told my partners, and we stopped about 50, 60 feet up and
5 we walked back on the car.

6 Q. What happened when you walked back to the car?

7 A. When we got back there, the passenger was out of the
8 vehicle. The driver was in the vehicle. I stayed with the
9 driver.

10 Q. Do you remember who the driver was?

11 A. The driver was Andre Collier.

12 Q. And who was the passenger?

13 A. Mohammed Stewart.

14 Q. I'll show you what's in evidence as Government Exhibit
15 600B. I'm sorry, B, like boy.

16 Do you recognize that picture?

17 A. Yes.

18 Q. What does that show?

19 A. About the location where we stopped them.

20 Q. Do you recognize what street this is here?

21 A. 26th Street.

22 Q. Is it possible this is 25th Street?

23 A. I'm sorry. This is 25th Street.

24 Q. Where did you actually stop them?

25 A. On 26th Street.

Hb8nros4

Masi - direct

- 1 Q. And relative to this picture where is 26th Street?
- 2 A. The next block over.
- 3 Q. Where is it relative to that church?
- 4 A. Through the courtyard. There's a courtyard.
- 5 Q. Where did you see Mr. Stewart go, if you saw him go
- 6 anywhere, when he got out of the car?
- 7 A. He went into the courtyard, the alley. I don't know what
- 8 you want to call it, but it's a walkway through the church, and
- 9 it leads over to 25th Street.
- 10 Q. At some point what happened when you were at the car with
- 11 Mr. Collier?
- 12 A. I spoke to him. I told him to put the car in park. The
- 13 car was in gear. He refused at first. And, I, you know, told
- 14 him I go put the car in park, and he finally put the car in
- 15 park.
- 16 Q. What happened next?
- 17 A. I asked for the keys. I put the keys on top of the car.
- 18 At that point my partner and my supervisor came back walking
- 19 with Mohammed Stewart.
- 20 Q. What did you do when they came back with Mr. Stewart?
- 21 A. I took Andre Collier out of the vehicle and brought him to
- 22 the front of the vehicle, and we put Mohammed Stewart in the
- 23 front of the vehicle also and we were speaking with them.
- 24 Q. Did you find anything in that car?
- 25 A. Yes.

Hb8nros4

Masi - direct

1 Q. What did you find in it?

2 A. A firearm.

3 Q. Where was the gun?

4 A. It was on the rear passenger's seat.

5 Q. Do you remember what kind of gun it was?

6 A. It was a .38-caliber revolver.

7 Q. Was it loaded or unloaded?

8 A. Loaded.

9 Q. I'll show you what's been marked for identification as
10 Government Exhibit 1402.

11 Do you recognize that?

12 A. Yes.

13 Q. What is that?

14 A. That's the firearm.

15 Q. That you recovered from that car?

16 A. Yes, sir.

17 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
18 1402.

19 THE COURT: The photograph or the weapon?

20 MR. JOHNSON-SKINNER: The photograph, Judge.

21 THE COURT: Received.

22 (Government's Exhibit 1402 received in evidence)

23 MR. JOHNSON-SKINNER: If we can publish that.

24 BY MR. JOHNSON-SKINNER:

25 Q. And then I'll show you what's been marked for

Hb8nros4

Masi - direct

1 identification as Government Exhibit 1403.

2 By the way, as I'm doing that, did you find anything
3 else in this car besides the gun?

4 A. I found some gloves and masks, a couple of masks.

5 Q. What's in 1403?

6 A. It would be a picture of the gloves and three masks.

7 MR. JOHNSON-SKINNER: We will offer that, Government
8 Exhibit 1403.

9 THE COURT: Received.

10 (Government's Exhibit 1403 received in evidence)

11 BY MR. JOHNSON-SKINNER:

12 Q. Where were the gloves and the masks?

13 A. They were top of the firearm.

14 Q. You said Mr. Stewart and Mr. Collier were arrested?

15 A. Yes.

16 Q. After they were arrested, did you testify at any court
17 proceedings regarding their case?

18 A. Yes.

19 Q. What was the court proceeding?

20 A. It was an evidence hearing.

21 Q. What happened to the gun at the evidence hearing?

22 A. It was suppressed.

23 Q. What does it mean for evidence to be suppressed?

24 A. The case was basically thrown out.

25 Q. Did you have any further role in the case after that?

Hb8nros4

Masi - cross

1 A. I'm sorry?

2 Q. Did you have any further role in this case after that?

3 A. No.

4 MR. JOHNSON-SKINNER: No further questions, Judge.

5 THE COURT: Thank you.

6 Cross-examination.

7 MR. TOUGER: Thank you, your Honor.

8 CROSS EXAMINATION

9 BY MR. TOUGER:

10 Q. Good afternoon, Detective.

11 A. Sir, good afternoon.

12 Q. During this time period, late at night, would 25th Street
13 become almost desolate?

14 A. No. There's some people out.

15 Q. Was it an active street?

16 A. No. That night it was quiet.

17 Q. I am talking in general. Was it an active street on a
18 weekday night?

19 A. I can't say for sure, you know, every single night.

20 Q. On the night of the incident, did you speak with
21 Mr. Stewart?

22 A. Yes.

23 Q. Did you find out who owned that car?

24 A. I'm not -- we probably did, yes, but at this point I don't
25 recall.

Hb8nros4

Masi - cross

1 Q. Did you find out that Mr. Stewart owned the car?

2 A. I am not -- I can't say. I don't remember.

3 Q. Did Mr. Stewart admit to owning the car that night itself?

4 A. I can't -- I don't recall that.

5 Q. Did you see Mr. Stewart inside that car?

6 A. Yes.

7 Q. When Mr. Stewart was apprehended, he was outside the
8 vehicle?

9 A. Yes.

10 Q. Do you remember asking Mr. Stewart whether he was ever
11 inside that car that night?

12 A. I don't -- I -- um, I think I did, yes.

13 Q. And do you remember Mr. Stewart denying that he was inside
14 that car that night?

15 A. I'm not sure. I can't -- I am not sure.

16 Q. Would your grand jury testimony refresh your recollection?

17 A. Yes.

18 Q. You are free --

19 THE COURT: Didn't Mr. Stewart say he told the police
20 he didn't own the car, and that wasn't true?

21 MR. TOUGER: Yes, he did testify that. He did not
22 testify that he denied being inside the car, your Honor.

23 THE COURT: So what exhibit are you showing the
24 witness?

25 MR. TOUGER: His grand jury testimony, your Honor.

Hb8nros4

Masi - cross

1 THE COURT: What is the exhibit number?

2 MR. TOUGER: 3537-C.

3 THE COURT: C as in Charlie?

4 MR. TOUGER: C as in Charlie.

5 BY MR. JOHNSON-SKINNER:

6 Q. You can read whatever you would like but I direct you to
7 the top of page 5?

8 A. OK.

9 THE COURT: Read it to yourself, please.

10 THE WITNESS: Sure.

11 THE COURT: Question?

12 MR. TOUGER: I'm waiting.

13 Q. Are you finished?

14 A. Yes.

15 Q. Does that refresh your recollection that you asked
16 Mr. Stewart whether he had been in the car, and he denied
17 having been inside the car?

18 A. Well, over here it's Mr. Collier. It's not Mr. Stewart.

19 THE COURT: Detective, just please answer the question
20 yes or no.

21 Q. Does that refresh your recollection?

22 A. Yes.

23 MR. TOUGER: Nothing further, your Honor.

24 THE COURT: All right. Thank you.

25 MR. JOHNSON-SKINNER: Nothing further.

Hb8nros4

Masi - cross

1 THE COURT: Thank you Detective.

2 You're excused.

3 THE WITNESS: Your Honor, thank you, sir.

4 (Witness excused)

5 MR. JOHNSON-SKINNER: Judge, at this point we would
6 like to read two stipulations to the jury.

7 THE COURT: Members of the jury, stipulations are an
8 agreement between the lawyers and the parties as to certain
9 facts.

10 are these, counselor, stipulations of fact or
11 testimony?

12 MR. JOHNSON-SKINNER: They are testimonial
13 stipulations.

14 THE COURT: So there are two kinds. They're really
15 closely related.

16 One kind is an agreement as to a fact or a whole bunch
17 of facts. As to that you must accept the facts to be what they
18 have stipulated.

19 There is another kind, in which they agree that if a
20 particular witness was called to testify, the witness would
21 tell you A, B, C, D.

22 You must assume that the witness, if called to
23 testify, would have testified to that. Whether you believed
24 it, whether you think it's important or relevant, that is all
25 up to you.

Hb8nros4

Masi - cross

1 Go ahead, counselor.

2 MR. JOHNSON-SKINNER: Thank you.

3 The first one is marked as Government Exhibit 1376.

4 I am only going to read this part once.

5 It's hereby stipulated and agreed by and between the
6 United States of America by Joon H. Kim, acting United States
7 Attorney, Samson Enzer, Drew Skinner and Elizabeth Hanft e --

8 THE COURT: Skip all that part.

9 MR. JOHNSON-SKINNER: OK.

10 That if called to testify, Detective Christina Aigotti
11 would testify that:

12 Aigotti is a detective with the New York City Police
13 Department and has been employed by the NYPD since
14 approximately 2005. She is currently assigned to the Queens
15 Warrant Squad.

16 As of February 2005, Aigotti was working patrol for
17 the Sixth Precinct, which covers the southwestern neighborhoods
18 of Greenwich Village and the West Village in Manhattan.

19 On February 28, 2005, at approximately 9:54 p.m.,
20 Aigotti responded to a call that shots had been fired in front
21 of a building located at 395 Hudson Street in Manhattan, New
22 York.

23 Offices for the Hot 97 radio station are located in
24 395 Hudson, which is depicted in Government Exhibit 645A.

25 Aigotti arrived at 395 Hudson at approximately 9:58

Hb8nros4

Masi - cross

1 p.m.

2 When Aigotti arrived at location, she smelled
3 gunpowder and encountered a large group of people, between
4 approximately 50 and approximately 100, running around.

5 Aigotti saw a man later identified as Kevin Reed
6 kneeling on the ground pointing below his waist and exclaiming
7 that he had been shot while on a cellular phone.

8 Aigotti told Reed to put the phone down, and Reed
9 responded to the effect that he was the victim and that he had
10 been shot. Aigotti subsequently called Emergency Medical
11 Services and Kevin Reed was taken to St. Vincent's Hospital.

12 Aigotti remained at the scene to investigate.

13 Evidence Collection arrived and collected evidence,
14 which was subsequently provided to Aigotti. Aigotti vouchered
15 that evidence.

16 The evidence collected consists of three .22-caliber
17 shell casings, one .45-caliber shell casing, one black jacket,
18 and one white tissue with blood.

19 Aigotti left the scene at approximately 1:45 a.m. the
20 next day and had no further role in the investigation of this
21 case.

22 It is further stipulated and agreed that this
23 stipulation as Government Exhibit 1376 is admissible in
24 evidence as a government exhibit at trial.

25 THE COURT: 1376 is received.

Hb8nros4

Masi - cross

1 (Government's Exhibit 1376 received in evidence)

2 MR. JOHNSON-SKINNER: Thank you.

3 The next one is marked as Government Exhibit 1377.

4 Police officer Yvette Oquendo would testify that
5 Oquendo was a police officer with the New York City Police
6 Department and has been employed by the NYPD since
7 approximately 2001. She is currently assigned to the evidence
8 collection team.

9 In February 2005, she was working as a police officer
10 in the NYPD's 13th Precinct, which covers, among other areas,
11 Chelsea and Manhattan.

12 On February 28, 2005, while on patrol, Oquendo
13 responded with a partner to a radio call at approximately 11:56
14 p.m. regarding shots fired at an office building located at 36
15 West 25th Street.

16 The building is depicted in Government Exhibit 600C.

17 Mr. Pavlis, if we could put that up.

18 Oquendo arrived at the building at approximately
19 midnight.

20 When Oquendo arrived, she observed multiple bullet
21 holes in the glass front door of the building along with
22 shattered glass.

23 Oquendo subsequently secured the location and remained
24 on the scene until approximately 5:15 a.m. the next day, at
25 which time she returned to the 13th Precinct.

Hb8nros4

Masi - cross

1 Oquendo had no further role in the investigation of
2 this case.

3 It is further stipulated and agreed that this
4 stipulation as Government Exhibit 1377 is admissible in
5 evidence as a government exhibit at trial.

6 THE COURT: Thank you.

7 MR. JOHNSON-SKINNER: We offer this exhibit.

8 THE COURT: It is received.

9 (Government's Exhibit 1377 received in evidence)

10 THE COURT: Next witness.

11 MS. HANFT: The government calls Khalil Abdullah.

12 MR. TOUGER: May we approach for a minute before the
13 witness starts?

14 THE COURT: All right.

15 (Continued on next page)

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Hb8nros4

Masi - cross

1 (In open court)

2 MR. TOUGER: This is just a housekeeping question.

3 Do we plan to stop at 4:30? If not, I need to go to
4 the bathroom.

5 THE COURT: My hope is it's not a housekeeping
6 question.

7 We are going to stop at 4:30, maybe a few minutes
8 earlier if you play your cards right.

9 (Continued on next page)

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Hb8nros4

Abdullah - direct

1 (In open court)

2 THE COURT: You may proceed, Ms. Hanft.

3 MS. HANFT: Thank you, your Honor.

4 Q. Good morning, Mr. Abdullah.

5 Mr. Abdullah, if you could lean and speak into the
6 microphone.

7 A. Good afternoon.

8 Q. Would you please state and spell your name for the record?

9 A. Khalil Abdullah, K-h-a-l-i-l A-b-d-u-l-l-a-h.

10 THE COURT: The interruption meant that Andy hasn't
11 sworn the witness.

12 KHALIL ABDULLAH,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. HANFT:

17 THE COURT: Let's go.

18 Q. A moment ago, before you were sworn, you spelled your name
19 for the record.

20 Has that always been your name?

21 A. No.

22 Q. What name were you given at birth?

23 A. Craig Woodley.

24 Q. Why did you change your name?

25 A. Religious reasons.

Hb8nros4

Abdullah - direct

1 Q. Approximately when did you change your name?

2 A. About 2000.

3 Q. How old are you, Mr. Abdullah?

4 A. 44.

5 Q. Where were you born?

6 A. Cleveland, Ohio.

7 Q. Where did you grow up?

8 A. Ohio and Brooklyn and Queens.

9 Q. How far did you go in school?

10 A. GED, three years of college.

11 Q. Where were you when you got your GED?

12 A. Rikers Island.

13 Q. Have you committed crimes in your life?

14 A. Yes.

15 Q. Generally speaking, what types of crimes?

16 A. Robbery, drug dealing, assault, shooting.

17 Q. I'm going to ask you about some of those crimes in more
18 detail a bit later.

19 What do you currently do for a living?

20 A. A contract truck driving company.

21 Q. For how long have you done that?

22 A. A little more than a year.

23 Q. What were you doing prior to that?

24 A. In prison.

25 Q. Where were you in prison?

Hb8nros4

Abdullah - direct

1 A. Brooklyn, Metropolitan Detention Center.

2 Q. Were you in state prison or federal prison?

3 A. Federal.

4 Q. When were you arrested?

5 A. April 2011.

6 Q. What crimes did you commit that caused you to be arrested
7 and incarcerated in Brooklyn as you said?

8 A. Conspiracy to distribute narcotics, money laundering.

9 Q. What is conspiracy to distribute narcotics?

10 A. Working with some people to sell drugs.

11 Q. What type of drugs?

12 A. Cocaine.

13 Q. Do you see anyone in the courtroom today that you sold
14 drugs with?

15 A. Yes.

16 Q. Can you please point that individual out and identify a
17 piece of clothing that he's wearing?

18 A. Jimmy, James. Gray jacket and white shirt.

19 MS. HANFT: Can the record please reflect that the
20 witness has identified the defendant.

21 THE COURT: So stipulated.

22 MS. HANFT: Please publish Government Exhibit 1.

23 BY MS. HANFT:

24 Q. Who is this?

25 A. Jimmy.

Hb8nros4

Abdullah - direct

- 1 Q. Since you called him Jimmy, that's how I will refer to him.
2 What was Jimmy's role in selling drugs?
- 3 A. He had the line with the connect. He coordinated, you
4 know, who we was buying from, how much.
- 5 Q. Yes or no. Do you know if the defendant has ever had
6 anyone killed?
- 7 A. Yes.
- 8 Q. How do you know that?
- 9 A. From him telling me.
- 10 Q. Do you know who he had killed?
- 11 A. He had the dude Lodi Mack knocked off.
- 12 Q. Do you recall approximately when that was?
- 13 A. Around '09 I think.
- 14 Q. Backing up a little bit, Mr. Abdullah, what year did you
15 first meet Jimmy?
- 16 A. Around '98, '99.
- 17 Q. How did you meet him?
- 18 A. Mutual acquaintance.
- 19 Q. Who was that mutual acquaintance?
- 20 A. A religious adviser.
- 21 Q. At the time you met him, what were you doing for a living?
- 22 A. I owned a security company, real estate investment.
- 23 Q. And what type of security company did you say?
- 24 A. Special events, unarmed security, residential.
- 25 Q. Did you begin working with the defendant when you met him

Hb8nros4

Abdullah - direct

- 1 at that time?
- 2 A. No.
- 3 Q. Have you had other jobs?
- 4 A. No, uh-huh.
- 5 Q. What line of work was Jimmy in when you met him in 1998?
- 6 A. Music, entertainment business.
- 7 Q. To your knowledge, did he stay in that business from 1998
- 8 through the date of your arrest?
- 9 A. Yes.
- 10 Q. When was the date of your arrest?
- 11 A. April 2011. I don't remember the exact date.
- 12 Q. Could you name some of the artists that Jimmy managed?
- 13 A. I don't know them all. The Game, Sharissa, Guerilla Black
- 14 are some of them.
- 15 Q. Did there come a time when you began to work with Jimmy
- 16 with respect to your security company?
- 17 A. I just did one off an event. I really didn't work for
- 18 him -- I just hired some people down in DC for him, some armed
- 19 security personnel.
- 20 Q. What did you hire them to do?
- 21 A. Protect one of his artists.
- 22 Q. Approximately when was that?
- 23 A. I don't know. Maybe '05, '06, something like that.
- 24 Q. Did there come a time when you began committing crimes with
- 25 Jimmy?

Hb8nros4

Abdullah - direct

1 A. Yes.

2 Q. What crimes?

3 A. Sold drugs.

4 Q. Approximately when did that start?

5 A. '07.

6 Q. Describe for the jury how that began.

7 A. I approached him. I took a hit in the real estate industry
8 kind of bad. I needed to get liquid, so I approached him.

9 Q. When you approached him, what did you ask him?

10 A. Just asked him could I get in.

11 Q. How did you know the defendant was involved in drug
12 dealing?

13 A. He needed me to clean some money up for him one time. And
14 at that moment I wasn't liquid enough to do it, about 270
15 grand, 275 something like that he needed me to write a check
16 for. And we had a conversation about it.

17 Q. Let me just ask, I believe you just testified that he
18 needed you to clean money. What do you mean by that?

19 A. He needed me to make dirty money clean, make it legitimate.

20 Q. What makes money dirty?

21 A. If you've got it through some type of illegal means.

22 Q. And where did you understand he had gotten that money from?

23 MR. TOUGER: Objection, your Honor.

24 THE COURT: Sustained in that form.

25 Q. Did you know why the defendant needed you to clean the

Hb8nros4

Abdullah - direct

1 money?

2 A. He just told me he would be in and out in. He just needed
3 me to clean it up.

4 Q. When you say in and out, what are you referring to?

5 A. In and out of hustling.

6 Q. Directing your attention to April of 2007, did you take a
7 trip with Jimmy?

8 A. Yeah.

9 Q. Where to?

10 A. Religious trip, me, him, and a few friends, few associates.

11 Q. Where did you take that trip to?

12 A. We went to Mecca and Medina.

13 Q. And who was there?

14 A. Me, him, and a few friends.

15 Q. What was the purpose of the trip?

16 A. Spiritual trip.

17 Q. Now, you testified previously that there came a time you
18 began selling drugs with the defendant.

19 When again did that start approximately?

20 A. Sometime in 2011. I don't remember exactly.

21 THE COURT: 2011?

22 THE WITNESS: 2007. I'm sorry.

23 BY MS. HANFT:

24 Q. Approximately when did that end?

25 A. About the end of 2010.

Hb8nros4

Abdullah - direct

1 Q. Can you describe the types of things you did.

2 A. Everything. Catch money, catch drugs, organize the
3 shipment of the money and the location of where it was going to
4 be shipped to. Organize the shipment of the drugs and where it
5 was going to be shipped to in New York. Pack the money, pack
6 bad drugs if they had to go back to LA, things of that nature.

7 Q. You just said catching. What do you mean by catching?

8 A. I just being at a location and receive the money or the
9 drugs when it came in.

10 Q. And where were the drugs being shipped from?

11 A. LA.

12 Q. And where were they being received?

13 A. New York.

14 Q. Can you estimate for us approximately the quantity of drugs
15 that you sold with the defendant during that time period, which
16 you just testified was approximately 2007 to approximately
17 2010?

18 A. I don't know. It was a lot.

19 Q. Approximately how many kilos of cocaine per week?

20 A. It varied, 60, 70.

21 Q. During that same period, approximately how much were you
22 paying for a kilo of cocaine?

23 A. It depends on the numbers, 17 to 21 thousand.

24 Q. Approximately how much were you selling it for?

25 A. 23 to -- 23 to sometimes 30 grand, depending on what the

Hb8nros4

Abdullah - direct

1 numbers were on the street.

2 Q. What types of things did the defendant do in the
3 organization?

4 MR. TOUGER: Objection.

5 Asked and answered, your Honor.

6 THE COURT: Overruled.

7 BY MS. HANFT:

8 Q. What types of things did the defendant do for the
9 organization?

10 A. Like I said, he just coordinated who the drugs was going to
11 be purchased from and who -- how much they were going to be
12 purchased for, the prices, things of that nature.

13 Q. Who decided what sort of quantities you dealt in?

14 A. Repeat the question.

15 Q. Who decided what sort of quantities the organization dealt
16 in?

17 A. Well, however much money we had, and I told Jimmy I would
18 send him back. He would tell people on the west coast what we
19 were buying and how much. So he decided that.

20 Q. During the period we are talking about, how often did you
21 communicate with the defendant?

22 A. Every day.

23 Q. How did you communicate with him?

24 A. Face to face, BlackBerry Messenger, PGP encrypted
25 BlackBerry.

Hb8nros4

Abdullah - direct

1 Q. Could you explain what a PGP encrypted BlackBerry is?

2 A. A 140-bit encrypted BlackBerry with no backdoor access. It
3 doesn't do phone calls. It is just a secure way to
4 communicate.

5 Q. At its peak approximately how many people worked for the
6 organization?

7 MR. TOUGER: Objection, your Honor.

8 THE COURT: Overruled.

9 A. About 10, 12 I think.

10 Q. Where were those people?

11 A. New York, LA.

12 Q. Who was the head of the organization?

13 A. I ran everything on a day-to-day operation, and I answered
14 to Jimmy.

15 MS. HANFT: Can we put up what's in evidence as
16 Government Exhibit 4.

17 Q. Do you recognize this photograph?

18 A. Yes.

19 Q. Who is this?

20 A. It's me.

21 MS. HANFT: Can we publish Government Exhibit 2.

22 Q. Do you recognize this photograph?

23 A. Yes. That's Toree.

24 Q. Does Toree have any other names?

25 A. Rodney Johnson.

Hb8nros4

Abdullah - direct

1 Q. Was Toree involved in the organization?

2 A. Yes.

3 Q. Generally speaking, what was his role?

4 A. Toree used to really just sell drugs. Then when the stash
5 house got raided, I started using his stash house out at
6 Queens, Bayside, and he got me a catcher, his man B Love, and
7 they used to handle all the catching for me in the stash house.

8 THE COURT: We are going to stop right there for the
9 evening.

10 9:30 tomorrow morning, ladies and gentlemen.

11 We are making good progress as I understand it from
12 the lawyers.

13 I think we have a good chance to finish next week.

14 THE DEPUTY CLERK: Will the jury please come this way.

15 (Continued on next page)

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Hb8nros4

Abdullah - direct

1 (Jury not present)

2 THE COURT: Be seated.

3 I would just appreciate an update on how we are doing
4 on the clock.

5 MS. HANFT: Your Honor, we are generally on the same
6 schedule that Mr. Skinner mentioned earlier. We still believe
7 that tomorrow we can have witnesses No. 16 -- obviously we
8 would finish No. 15, and we believe we can get up to and
9 possibly through witness No. 18.

10 THE COURT: OK.

11 Then next week? What are we looking at? Two days,
12 three days of testimony?

13 MR. ENZER: I think at most three.

14 THE COURT: Witness No. 20 we expect will take the
15 stand Monday. I think it will take more than a day for him,
16 but I do think we can finish the testimony by the end of
17 Wednesday.

18 OK.

19 Then we have partial day Thursday, right?

20 MR. TOUGER: A partial day Tuesday, your Honor.

21 THE COURT: But not Thursday, right.

22 OK. Then we are off for a week. OK.

23 MR. TOUGER: I believe the way the schedule works is
24 we probably sum and charge that Monday after Thanksgiving.

25 THE COURT: That Monday is now going to be dark, so it

Hb8nros4

Abdullah - direct

1 will be Tuesday.

2 MR. TOUGER: Tuesday, your Honor.

3 THE COURT: OK. Thank you, folks.

4 MR. TOUGER: Your Honor, if I could approach the bench
5 for a second.

6 THE COURT: We have another note.

7 Don't go away.

8 Be seated folks.

9 You first, Mr. Touger.

10 MR. TOUGER: It didn't have to be in open court, your
11 Honor.

12 THE COURT: OK.

13 This one will be Court Exhibit D. Juror No. 10 says,
14 "I want to make you aware of a situation." We don't like
15 situations, do we.

16 "On November 30, I need to be at something starting 11
17 on that day. I cannot get out of it. Sorry for any
18 inconvenience. Thank you and have a nice day."

19 THE COURT: We will deal with it if we get there.

20 OK.

21 Mr. Touger, do you want to come to the sidebar?

22 MR. TOUGER: Yes, your Honor.

23 (At sidebar).

24 MR. TOUGER: I just wanted to apologize to the Court
25 for speaking over the Court during the last argument.

Hb8nros4

Abdullah - direct

1 THE COURT: Duly noted and accepted.

2 MR. TOUGER: Thank you, your Honor.

3 THE COURT: You have been before me many times over
4 the years. I have only favorable views. Everybody has his own
5 way of trying cases and asking questions. I am just doing the
6 best I can.

7 MR. TOUGER: Thank you, your Honor.

8 THE COURT: All right. Thank you.

9 (In open court)

10 THE COURT: We are adjourned for the day.

11 (Adjourned to Thursday, November 9, 2017, at 9:30
12 a.m.)

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HB9NROSF-Corrected2

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 431 (LAK)

5 JAMES J. ROSEMOND,

6 Defendant.

7 -----x
8 New York, New York
9 November 9, 2017
9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14
15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: SAMSON ENZER
DREW JOHNSON-SKINNER
ELIZABETH HANFT
Assistant United States Attorneys

19 DAVID TOUGER
20 JONATHAN EDELSTEIN
Attorneys for Defendant

21 ALSO PRESENT:

22 NYPD Detective Steven Smith
23 Nicholas Pavlis, Paralegal (USAO)

HB9NROSF-Corrected2

1 (Trial resumed; jury not present)

2 THE COURT: Good morning, everybody.

3 MR. ENZER: Good morning, your Honor.

4 THE COURT: Any reason not to bring the jury right in?

5 MR. ENZER: Just a few quick corrections to the

6 transcript.

7 THE COURT: OK.

8 MR. ENZER: We have brought each of these to the

9 attention of defense counsel.

10 THE COURT: Mr. Enzer, I need the transcript first.

11 MR. ENZER: OK.

12 THE COURT: Thank you. OK.

13 MR. ENZER: First, page 265.

14 THE COURT: Yes.

15 MR. ENZER: I'm sorry. 277, line 14.

16 THE COURT: Yes.

17 MR. ENZER: The transcript says answer "no."

18 It should be "yes."

19 THE COURT: Is that agreed Mr. Touger?

20 MR. TOUGER: I have no objection, your Honor.

21 I have gone over all the corrections. I have no

22 objection.

23 THE COURT: So you stipulate to that change?

24 MR. TOUGER: Yes.

25 THE COURT: I am going ask you on each one.

HB9NROSF-Corrected2

1 MR. TOUGER: OK.

2 MR. ENZER: Next, page 388, line 17.

3 THE COURT: Yes.

4 MR. ENZER: It should say "information about Jimmy,
5 but not at first, right?"

6 THE COURT: Did you say page 387, line 17?

7 MR. ENZER: 388, line 17.

8 THE COURT: All right. I am with you now.

9 MR. ENZER: It should be "but not at first, right," as
10 opposed to "not the first."

11 THE COURT: So stipulated, Mr. Touger?

12 MR. TOUGER: Yes, your Honor.

13 MR. ENZER: The same page, line 25, it should say "as
14 time went on."

15 THE COURT: So stipulated, Mr. Touger?

16 MR. TOUGER: Yes, your Honor.

17 THE COURT: Thank you.

18 MR. ENZER: The last one, page 473, line 14.

19 THE COURT: Yes.

20 MR. ENZER: It should say -- the Court did not make
21 the remark designated to the Court. That was me speaking. So
22 the reference to the Court before "Witness No. 20" should be
23 stricken.

24 THE COURT: So stipulated, Mr. Touger?

25 MR. TOUGER: Yes, your Honor.

HB9NROSF-Corrected2

1 MR. ENZER: I forgot one, Judge, page 470, line 18, it
2 should say send it back, not send him back.

3 THE COURT: So stipulated, Mr. Touger?

4 MR. TOUGER: Yes, your Honor.

5 MR. ENZER: That is it.

6 THE COURT: Those corrections are to be made,
7 including on the updated electronic version.

8 MR. TOUGER: Your Honor, can we approach the bench on
9 a personal matter?

10 THE COURT: All right.

11 (At sidebar)

12 MR. TOUGER: I just wanted to inform the Court that
13 yesterday about 9 o'clock I got hit with a migraine. I get
14 migraine headaches. They tend to make me a little nauseous.
15 That means I need a break, or else we will have a housekeeping
16 issue.

17 THE COURT: Are you all right this morning?

18 MR. TOUGER: I am going to go through it. I am not
19 going to delay a court date.

20 THE COURT: If you are not physically able to go
21 forward, you have to tell us.

22 MR. TOUGER: No. I am physically able to go forward.

23 THE COURT: OK.

24 (Continued on next page)

25

Hb9nros1

Abdullah - direct

1 (In open court)

2 KHALIL ABDULLAH, resumed.

3 (Jury present)

4 THE COURT: Good morning, everybody.

5 JURORS: Good morning.

6 THE COURT: The defendant and the jurors all are
7 present. The witness is on the stand.

8 Mr. Abdullah, I remind you you are still under oath.

9 Ms. Hanft.

10 MS. HANFT: Thank you, your Honor.

11 DIRECT EXAMINATION (Continued)

12 BY MS. HANFT:

13 Q. Good morning, Mr. Abdullah.

14 A. Good morning.

15 Q. This time it's actually morning. Before we ended
16 yesterday, Mr. Abdullah, I believe you testified that Jimmy had
17 the dude Lodi Mack knocked off.

18 What did you mean by that?

19 A. Had him killed.

20 Q. Do you know Lodi Mack's real name?

21 A. Lowell Fletcher.

22 Q. We had a picture up, I believe it was Government Exhibit 2.

23 MS. HANFT: Can we publish Government Exhibit 2.

24 Q. Can you remind the jury who that is?

25 A. Toree.

Hb9nros1

Abdullah - direct

1 Q. And does Toree have another name?

2 A. Rodney Johnson.

3 MS. HANFT: Can we show Government Exhibit 6.

4 Q. Do you recognize this individual?

5 A. Jason.

6 Q. What is Jason's last name, if you know?

7 A. Jason Williams.

8 Q. Did he have a role in the drug organization?

9 A. Jason would drop off money to FedEx, UPS locations that I
10 told him to.

11 Q. Did he work for the defendant in any other capacity, to
12 your knowledge?

13 A. He was his driver.

14 MS. HANFT: Can we publish Government Exhibit 8.

15 Q. I'm showing you what's been marked for identification as
16 Government Exhibit 8.

17 Do you recognize this individual?

18 A. Yeah. That's B Love.

19 Q. Does B Love have another name?

20 A. Brian, Brian something.

21 Q. Did he have a role in the drug organization?

22 A. That was Toree's home boy that he brought in to catch.

23 MS. HANFT: The government offers Government Exhibit
24 8.

25 THE COURT: Received.

Hb9nros1

Abdullah - direct

1 (Government's Exhibit 8 received in evidence)

2 BY MS. HANFT:

3 Q. When you say Toree's home boy, who he brought in to catch,
4 what do you mean by that?

5 A. He would go to locations that I told Toree that some drugs
6 were being -- that were being shipped to, and he would catch
7 them, be there to receive them.

8 Q. I'm showing to show you what's been marked for
9 identification as Government Exhibit 11.

10 Do you recognize this individual?

11 A. Yes, that's D.

12 Q. Do you know D's name?

13 A. Derrick English.

14 Q. Could you say that again?

15 A. Derrick English.

16 Q. Did he have a role in the drug organization?

17 A. He sold drugs.

18 MS. HANFT: The government offers Government Exhibit
19 11.

20 THE COURT: Received.

21 (Government's Exhibit 11 received in evidence)

22 BY MS. HANFT:

23 Q. Showing you what's been marked for identification as
24 Government Exhibit 13, do you recognize this individual?

25 A. Yeah, Winston.

Hb9nros1

Abdullah - direct

1 Q. Did Winston have a role in the drug organization?

2 A. Yeah. He sold drugs.

3 Q. What was Winston's last name, if you know?

4 A. Harris.

5 MS. HANFT: The government offers Government Exhibit
6 13?

7 THE COURT: Received.

8 (Government's Exhibit 13 received in evidence)

9 BY MS. HANFT:

10 Q. I am going to show you what's been marked for
11 identification as Government Exhibit 25.

12 Do you recognize this individual?

13 A. Yes. Black.

14 Q. Do you know Black's full name?

15 A. Henry Butler.

16 Q. Did he have a role in the drug organization?

17 A. He supplied.

18 Q. Supplied what?

19 A. Drugs, cocaine.

20 MS. HANFT: The government offers Government Exhibit
21 25.

22 THE COURT: Received.

23 (Government's Exhibit 25 received in evidence)

24 BY MS. HANFT:

25 Q. Showing you now what's been marked as Government Exhibit

Hb9nros1

Abdullah - direct

1 27, do you recognize this individual?

2 A. Yeah, Mark.

3 Q. Do you know Mark's last name?

4 A. Samedi or something like that.

5 Q. Did Mark have a role in the drug organization?

6 A. Catcher.

7 Q. Could you remind us briefly what a catcher would do.

8 A. Be at a location and receive the drugs.

9 MS. HANFT: The government offers Government Exhibit
10 27.

11 THE COURT: Received.

12 (Government's Exhibit 27 received in evidence)

13 BY MS. HANFT:

14 Q. Finally, I'm showing you Government Exhibit 29.

15 Do you recognize this individual?

16 A. Kez.

17 Q. Do you know Kez's full name?

18 A. Kesner Rosemond.

19 Q. Did he have a role in the drug organization?

20 A. Yes.

21 Q. What was that role?

22 A. Managed the stash house.

23 MS. HANFT: The government offers Government Exhibit
24 29.

25 THE COURT: Received.

Hb9nros1

Abdullah - direct

1 (Government's Exhibit 29 received in evidence)

2 BY MS. HANFT:

3 Q. Mr. Abdullah, yesterday you were telling us a little bit
4 about the drug organization. To the best of your knowledge,
5 what was the most cocaine that the organization received in one
6 week approximately?

7 MR. TOUGER: Objection, your Honor. This was all gone
8 over yesterday.

9 THE COURT: I don't think so.

10 Not exactly. Go ahead.

11 A. About a hundred kilos.

12 Q. Could you remind us where the cocaine was coming from and
13 where it was being shipped?

14 A. LA to New York.

15 Q. Just an overview, how was it shipped?

16 A. In boxes, be sealed, vacuum sealed, double vacuum sealed
17 with some type of condiment packed inside of another box that
18 looked like it was inside of a box that was some type of
19 electrical equipment. That box would be shrink wrapped, put
20 inside another box with a custom foam, and then some type of
21 label would be put on it.

22 Q. Could you describe what type of label?

23 A. A shipping label, sometimes with an invoice, a fictitious
24 invoice shipped to an office that was over here that I had set
25 up.

Hb9nros1

Abdullah - direct

- 1 Q. Was it, in fact, an office?
- 2 A. No. It would be a virtual office.
- 3 Q. What do you mean by a "virtual office"?
- 4 A. Just one of those companies that you pay to have mail sent
- 5 there, and they have a phone number for you.
- 6 Q. You mentioned condiments. What's the purpose of
- 7 condiments?
- 8 A. To conceal the smell.
- 9 Q. What happened when the packages arrived?
- 10 A. Picked up, brought to the stash house, counted and
- 11 disseminated.
- 12 Q. Did there come a time when the method you just described of
- 13 shipment changed?
- 14 A. Yes.
- 15 Q. Can you explain how it changed?
- 16 A. Too many packages were getting caught, people got arrested.
- 17 So Jimmy had known this dude who had a shipping account, an
- 18 associate of his, and him and the dude ended up brokering some
- 19 type of deal that allowed for us to ship the coke through his
- 20 cargo shipment account.
- 21 Q. When you say "cargo shipment account," what do you mean by
- 22 that? What type of cargo?
- 23 A. Rehearsal equipment.
- 24 Q. Could you explain just briefly how that would work?
- 25 A. Drugs would be sealed and packed and put inside these

Hb9nros1

Abdullah - direct

1 cases, disguised as rehearsal equipment. I would rent a
2 rehearsal studio over here upon like any name, and the drugs
3 would be shipped there. And I would go to the rehearsal
4 studio, receive the drugs out of the cargo, put them in some
5 type of suitcase, and leave the rehearsal studio.

6 Q. During the period of time we are talking about, which you
7 testified yesterday was approximately 2007 to approximately
8 2010, approximately how much total profit was the organization
9 making per week?

10 A. I don't know. I would need a calculator for that.

11 Q. Approximately how much was the cocaine selling for on the
12 street?

13 A. Probably net about seven grand a key.

14 Q. Could you remind us how much cocaine approximately on an
15 average week the organization dealt in?

16 A. 60, 70 kilos a week.

17 Q. Where was the cocaine kept?

18 A. In the stash house.

19 Q. Where was the stash house?

20 A. 90th Street, 65th Street, or in Queens, Bayside.

21 Q. Was anything else kept in those stash houses?

22 A. Money counter, boxes to pack money, condiments to seal the
23 money when you packed it, rubber bands, sealing machines.

24 Toree kept a Mac with a silencer that I facilitated the
25 purchase of with Winston at the joint in Queens.

Hb9nros1

Abdullah - direct

- 1 Q. When you say a Mac with a silencer, what is that?
- 2 A. A machine gun, a Mac machine gun.
- 3 Q. You said Toree kept it at the joint in Queens I believe.
- 4 What do you mean by that?
- 5 A. The stash house in Queens.
- 6 Q. Could you remind us where in Queens that stash house was?
- 7 A. Bayside.
- 8 Q. Did the organization keep guns anywhere else?
- 9 A. Out in LA, kept a few in the car. Jimmy had a 300 and a
- 10 Dodge and we kept a couple in the car in the stash box in the
- 11 car.
- 12 Q. When you say "stash box," what do you mean by that?
- 13 A. A hidden compartment in the car.
- 14 Q. Have you personally owned guns?
- 15 A. Yes, several.
- 16 Q. During the period when you were selling drugs with Jimmy,
- 17 did you have any guns?
- 18 A. Yeah.
- 19 Q. Where did you keep those guns?
- 20 A. I kept them in Atlanta; I kept them in New York.
- 21 Q. When you kept them in New York, where did you keep them?
- 22 A. I kept them at a friend's house of mine.
- 23 Q. What was the name of that friend?
- 24 A. Akbar. I would keep them in his house.
- 25 Q. Were any of those guns legally owned and maintained?

Hb9nros1

Abdullah - direct

1 A. No.

2 Q. You testified yesterday that the defendant was in the music
3 business.

4 Did you come to learn of a feud that the defendant was
5 involved in?

6 A. Yes.

7 Q. Who was the feud with?

8 A. Dudes from G-Unit that one of his artists was signed to.

9 Q. Who is that artist?

10 A. Game.

11 Q. What is G-Unit?

12 A. It is a music group.

13 Q. Who are the members of that music group?

14 A. 50 Cent, Tony Yayo, Lloyd Banks, a few other dudes.

15 Q. Do you know who the manager of G-Unit was?

16 A. At that time, if I recall, Chris Lighty.

17 MS. HANFT: Can we put up what is in evidence as
18 Government Exhibit 18.

19 Q. Who is this?

20 A. That's Chris Lighty.

21 Q. Government Exhibit 20?

22 A. That's 50 Cent.

23 Q. Do you know 50 Cent's real name?

24 A. Curtis Jackson.

25 Q. Was he a part of G-Unit?

Hb9nros1

Abdullah - direct

1 A. Yes.

2 Q. Government Exhibit 30. Who is this?

3 A. Game.

4 Q. Do you know his real name?

5 A. Jason something. I don't know his full name.

6 Q. Do you know how the feud started?

7 A. No.

8 Q. How did you learn about the feud?

9 A. On the Internet.

10 MS. HANFT: We can take that down.

11 Q. Directing your attention to December of 2006, do you recall
12 an incident that took place when you were with Jimmy?

13 A. Yes.

14 Q. Describe that incident.

15 A. I was in my office. Jimmy had called me and told me that
16 he was going to be in Manhattan at the Apollo Theater for a
17 function. He said if I was around to come through. After I
18 finished up my work, I came down there and met him in front of
19 the Apollo Theater.

20 Q. Where is the Apollo Theater?

21 A. On 125th Street.

22 Q. Do you know what event was going on?

23 A. Some time of mix tape DJ awards, something like that.

24 Q. What time of day was the show?

25 A. It was in the evening. It was dark outside.

Hb9nros1

Abdullah - direct

1 Q. Did you go to the Apollo?

2 A. Yes.

3 Q. What happened when you arrived?

4 A. Nothing. It was cold. We were chilling. He was waiting
5 for someone before we went inside. And it was taking a while,
6 so he just told me, Tef, and the dude that was his driver,
7 Let's go inside and wait for him inside.

8 Q. So I'm going to stop you for a moment.

9 When you arrived, was the defendant already there?

10 A. Yes.

11 Q. Was he with anyone?

12 A. Yes, Tef and this dude that was his driver.

13 MS. HANFT: Could we please publish Government Exhibit
14 10.

15 Q. Who is this?

16 A. Tef.

17 Q. Is that the same Tef you're referring to?

18 A. Yes.

19 Q. Do you know his full name?

20 A. Mohammed Stewart.

21 Q. You can take that down. You also said that the defendant's
22 driver was there. Is that the driver you mentioned before?

23 A. No, uh-uh.

24 Q. So at this time, in 2006 when you attend this event, how
25 long had you known the defendant for approximately?

Hb9nros1

Abdullah - direct

1 A. I think about seven years; six, seven years.

2 Q. Had you begun dealing drugs with the defendant yet?

3 A. No.

4 MS. HANFT: Let's publish Government Exhibit 650A.

5 Q. Do you recognize this photograph?

6 A. Yes, the Apollo Theater.

7 MS. HANFT: And 650G.

8 Q. How about this photograph?

9 A. That's the entrance to the Apollo.

10 Q. Is that where you met the defendant?

11 A. Yes.

12 Q. Can you describe what happened once you went inside the
13 Apollo that night.

14 A. We went through the -- was going through the metal
15 detectors to get searched, and I heard a whole, a lot of
16 commotion going through -- the Unit, the Unit's in the
17 building, the Unit with Tony Yayo, about 15 kids, young dudes.
18 And we went through the metal detector and Jimmy approached
19 Tony Yayo to shake his hand and Yayo began questioning Jimmy.

20 Q. I'm going to stop you for a moment.

21 You said we went through the metal detector who was
22 that?

23 A. Me, Jimmy, Tef.

24 Q. And Tef, by the way, had you known him before that evening?

25 A. No, that was my first night meeting him.

Hb9nros1

Abdullah - direct

1 Q. Did you come to learn after that whether he received drugs
2 from the defendant's drug organization?

3 A. Yeah. That was down the road, though. Yeah.

4 Q. Say that again?

5 A. Yes.

6 Q. What was his relationship with Jimmy?

7 A. They were cool, he hustled, errand boy. You know, if he
8 needed something done, Tef would do it. Enforcer, whatever.
9 He was like a Swiss knife.

10 Q. When you went through the metal detector, what happened
11 after that?

12 A. Just a bunch of commotion with these dudes, and dude Yayo
13 was like, Yo, what's up with this dude 50 -- I mean Game
14 talking reckless about my brother 50.

15 Jimmy looked at him a little bewildered.

16 All these dudes is making all this noise in the
17 background, I guess trying to prove their commitment to Yayo or
18 whatever.

19 Q. Who was saying this?

20 A. Yayo.

21 MS. HANFT: Can we show Government Exhibit 19, please.

22 A. Yeah. That's him. Tony Yayo.

23 Q. So you testified the defendant and Tony Yayo were having a
24 conversation. Describe that conversation.

25 A. It was regular conversation. He was just asking, Yo,

Hb9nros1

Abdullah - direct

1 what's up with Game talking reckless about my brother 50?

2 Tef interjected and was like, Yo, that's between two
3 rappers. He a manager. When you see Game, you need to
4 question him about that.

5 The conversation was short.

6 We went upstairs to the mezzanine to wait for whoever
7 Jimmy was there to see.

8 While we were waiting, some of them followed us
9 upstairs to the mezzanine. One of the dudes pulled out a
10 pistol, put it to his side, was like, Yo, give me the word,
11 give me the word.

12 Tef slid off to the bar, grabbed a bottle, like he was
13 going to attempt to hit the dude with it.

14 Q. What was your understanding of "give me the word"?

15 A. He was waiting for the word to bust a shot.

16 Q. What do you mean by that?

17 A. Shoot.

18 Q. And what did you say Tef was doing?

19 A. He slid off by the bar and grabbed a bottle.

20 Q. What did you do next?

21 A. Pointed to the mezzanine. I was familiar with the Apollo
22 Theater, so I pointed to the exit door. And I was like, Yo,
23 that exit leads out to a -- out to this back, 126th Street.

24 I was like, My car is parked on that block anyway,
25 let's just spread up by there, because this don't look good for

Hb9nros1

Abdullah - direct

1 us right now. And we left out.

2 Q. And did you go outside?

3 A. Yes.

4 Q. What did you do after that?

5 A. We went to my car.

6 Q. And what type of car were you driving at the time?

7 A. I was driving a black, all black Escalade.

8 Q. And who was the "we" who went to your car?

9 A. Me, Jimmy and Tef.

10 Q. Did you, in fact, enter the car?

11 A. Yes.

12 Q. What happened inside the Escalade?

13 A. Nothing. I was just like, Wow, I can't believe that
14 nonsense that just took place.

15 I said, You deal with this type of stuff all the time?

16 He was just like, That's all right, man. I'll deal
17 with it later on.

18 Q. Who said that?

19 A. Jimmy. I was like, Well, I'm going to deal with it right
20 now.

21 I made a call, called Akbar, told him to bring me some
22 situations over. I had a problem.

23 Q. Let me stop you for one moment. You said Akbar?

24 A. Yeah.

25 Q. Is that the individual you mentioned previously?

Hb9nros1

Abdullah - direct

- 1 A. Yes.
- 2 Q. I'm going to show you what's in evidence as Government
3 Exhibit 26.
- 4 A. Yeah. That's Akbar.
- 5 Q. Is that the Akbar you then called that night outside the
6 Apollo?
- 7 A. Yes.
- 8 Q. OK. What did you say to Akbar?
- 9 A. Just told him to bring me my situations over.
- 10 Q. What did you mean by that?
- 11 A. My guns.
- 12 Q. Why were you asking for guns?
- 13 A. Because I intended on using them.
- 14 Q. How did you know Akbar at that time?
- 15 A. He worked for me.
- 16 Q. Did Jimmy ask you to call Akbar?
- 17 A. No.
- 18 Q. Did Akbar arrive?
- 19 A. Yes.
- 20 Q. When he arrived, where were you?
- 21 A. I was sitting in my car.
- 22 Q. And who was in the car with you, if anyone?
- 23 A. Jimmy and Tef.
- 24 Q. When Akbar arrived, did he bring anything?
- 25 A. Yeah, he brought me my guns.

Hb9nros1

Abdullah - direct

1 Q. What happened next?

2 A. I looked at the guns.

3 Q. By the way, when you said guns, what kinds of guns?

4 A. There was a few, a couple of pistols, I think it was a
5 nine, a .40-caliber, I think a little tech machine gun. It was
6 about three or four guns.

7 Q. Were those your guns or Akbar's guns?

8 A. Mine.

9 Q. And what happened next?

10 A. I told him to call another associate of mine, Abdul, and I
11 told him to tell him to come through, meet me in Harlem.

12 He came through. Jimmy made a call to somebody that
13 was in the Apollo still, asked him where Yayo and them was at.
14 He said they was leaving out.

15 He told Tef to go get with his driver and just wait
16 for him in Harlem. And I proceeded to drive around the corner
17 to the front of the Apollo and double parked.

18 Saw Yayo's white Bentley in the front. They was
19 coming out of the Apollo, him and his entourage. He got in his
20 Bentley, and they got in some other cars and they drove off,
21 and I proceeded to follow.

22 Q. Did you have an understanding of why Jimmy told Tef to
23 leave?

24 A. Yeah. Tef had just came home from jail.

25 MR. TOUGER: Objection.

Hb9nros1

Abdullah - direct

1 THE COURT: Sustained.

2 MR. TOUGER: Move to strike the answer, your Honor.

3 THE COURT: The answer is stricken.

4 BY MS. HANFT:

5 Q. Mr. Abdullah, can you continue telling us what happened?

6 A. Just drove down, followed Yayo in the Bentley and his crew
7 down 125th Street.

8 Q. Which car were you in at this point?

9 A. I was in my black Escalade.

10 Q. And who else was with you?

11 A. Just me and Jimmy.

12 Q. So the individuals that you said arrived, Akbar and Abdul,
13 where were they, if you know?

14 A. I don't know. They were following, but I don't know
15 exactly where they were at.

16 Q. And what happened next?

17 A. We were headed east on 125th. I told Jimmy, I said it
18 looked like they headed to Queens. It's the way to the Triboro
19 Bridge, and they have to get on the highway.

20 They made a left on Madison Avenue, and then they
21 stopped on Madison between 126th and 127th.

22 Q. I'm going to show you what's marked for identification as
23 Government Exhibit 651E.

24 Do you recognize this photograph?

25 A. Yes. That's Madison.

Hb9nros1

Abdullah - direct

1 Q. Can you orient the jury.

2 Which direction is this photograph facing?

3 A. North.

4 Q. And can I also show you what's been marked for
5 identification as Government Exhibit 651G.

6 How about this photograph?

7 A. Yeah, the same thing, Madison facing north.

8 Q. And what street is intersecting in this photograph at the
9 bottom, going through the bottom of the photograph?

10 A. That's 126, 127.

11 Q. Do these two photographs fairly and accurately depict the
12 area where you were that night?

13 A. Yes.

14 MS. HANFT: The government offers Government Exhibit
15 651E and 651G.

16 THE COURT: They are received.

17 (Government's Exhibits 651E and 651G received in
18 evidence)

19 MS. HANFT: Can we publish Government Exhibit 651G,
20 please.

21 BY MS. HANFT:

22 Q. Mr. Abdullah, can you describe where your car pulled over
23 and stopped that night?

24 A. It pulled over on Madison between 125th and 126th in the
25 middle of the block on the west side of the street.

Hb9nros1

Abdullah - direct

1 MS. HANFT: Can we publish 651E, please.

2 Q. Is there somewhere on this photograph that you can indicate
3 where you pulled over?

4 A. Yeah. Probably behind that white van right there.

5 Q. Indicating the white van on the left side?

6 A. Yes.

7 Q. And where was what you referred to as Yayo's Bentley?

8 A. On the next block.

9 MS. HANFT: Can we show 651G, please.

10 A. On the right side. He was parked like right in front of
11 that church right there.

12 Q. Are you indicating on the church that is all the way to the
13 right?

14 A. Yeah.

15 Q. What happened at that point?

16 A. I was like -- they had got out. They was talking to each
17 other.

18 So I was like, Well, this is perfect.

19 So I made a call. I told Abdul, I said, Yo put some
20 shots into that white Bentley.

21 Q. You made a call to whom?

22 A. Abdul. I told him to clap the white Bentley up.

23 Q. When you say "clap the white Bentley up," what do you mean?

24 A. Shoot it up.

25 Q. What happened?

Hb9nros1

Abdullah - direct

1 A. Shot the Bentley up. We heard some shots, about five, six,
2 seven rounds. The dudes that was outside the car laughing hit
3 the ground. The Bentley took off, skirted off, and I left. I
4 made a left on 126th Street and I dropped Jimmy to his driver.

5 Q. Was anyone else with Jimmy's driver at that point when you
6 dropped Jimmy off?

7 A. Yeah, Tef.

8 Q. And before Jimmy got out of the car, did you discuss what
9 had just happened?

10 A. Not -- I was just like hopefully that will teach them not
11 to pull out a gun out on nobody and not use it.

12 Q. When you ordered Abdul to clap the Bentley up, do you know
13 if anyone was shot?

14 A. I found out later that a passenger in the car was shot.

15 Q. How did you find that out?

16 A. Jimmy had a dude that used to hang with Yayo and them that
17 was kind of on his knuckles. He was broke, and he was hitting
18 them all for money and he was giving back information on them.
19 And he told him that that night somebody in the Bentley got
20 shot.

21 Q. Whose decision was it to, as you say, clap the Bentley up
22 that night?

23 A. Mine.

24 Q. Why?

25 A. Huh?

Hb9nros1

Abdullah - direct

- 1 Q. Why did you do that?
- 2 A. Because the guy pulled a gun out on me.
- 3 Q. Moving forward in time, are you aware of a meeting that
- 4 occurred after that time that related to the feud?
- 5 A. The only meeting I know Jimmy and Chris Lighty had.
- 6 Q. How do you know that?
- 7 A. Jimmy told me.
- 8 Q. And what did he tell you happened?
- 9 A. They just had a meeting about this situation, and he said
- 10 Chris Lighty was asking why he went to that ghetto event
- 11 anyway. And they exchanged words, and it got out of hand, and
- 12 Chris mused him in the face.
- 13 Q. What do you mean by "mused"?
- 14 A. Pushed him with his hand in the face.
- 15 Q. And what happened after that?
- 16 A. Nothing. Except Puffy broke the meeting up.
- 17 Q. Who is Puffy?
- 18 A. Puffy, Diddy. Whatever his name is now.
- 19 Q. Is that another musician?
- 20 A. Yes.
- 21 Q. Did Jimmy tell you what he was doing at that meeting?
- 22 A. He said they had a meeting to talk about the situation, to
- 23 squash whatever beef it was.
- 24 Q. And why Puffy was there?
- 25 A. To mediate the meeting.

Hb9nros1

Abdullah - direct

1 Q. Did the meeting end after that point?

2 A. Yes, as far as I know.

3 Q. I am going to move you forward a few months again.

4 Did there come a time when you learned of an incident
5 involving Jimmy's son?

6 A. Yes.

7 Q. What happened?

8 A. He called me and said dudes just smacked my son. I said,
9 All right, let me know if you need anything.

10 Q. Where were you when he called you?

11 A. I was at my office.

12 Q. Do you know what year this occurred?

13 A. Sometime in '07.

14 Q. Do you know what month?

15 A. No.

16 Q. OK. When he called you, what did he say?

17 A. He just said, Dudes smacked my son.

18 I said, OK, let me know if you need anything.

19 He was like, All right. I gotta go.

20 And we hung up.

21 Q. How long was that conversation?

22 A. About a minute.

23 Q. And at that time had you already begun dealing drugs with
24 Jimmy?

25 A. No.

Hb9nros1

Abdullah - direct

1 Q. Did he say who had done it, who had smacked his son?

2 A. No.

3 Q. Eventually, did you learn who had smacked his son?

4 A. Yes.

5 Q. How did you learn?

6 A. We met face to face and he told me what happened.

7 Q. Who did you meet with face to face?

8 A. Jimmy.

9 Q. Tell us about that meeting.

10 A. He just told me that his son was walking up the block and
11 Yayo and two dudes approached him. One reached in his waist
12 like he had a pistol, gun, another one grabbed him, and they
13 smacked him.

14 Q. Did he say who was behind it?

15 A. He just said Yayo and two dudes.

16 Q. Did he say who those two dudes were?

17 A. No.

18 Q. Did Jimmy tell you if he did anything to retaliate?

19 A. Tef was there that day. He said he sent Tef down the
20 block, and Tef cut somebody in the face. I think it was
21 supposed to be Chris Lighty's brother or someone related to
22 Chris Lighty.

23 Q. What do you mean by "cut"?

24 A. With a razor, cut him in the face.

25 Q. At this time had you met Jimmy's son?

Hb9nros1

Abdullah - direct

1 A. Yes.

2 Q. I'm going to show you what's in evidence as Government
3 Exhibit 22. It is actually in evidence as Government Exhibit
4 1008.

5 Do you recognize the photograph?

6 A. Uh-huh.

7 Q. Who is this?

8 A. Jimmy's son.

9 Q. Do you know his name?

10 A. Jimmy.

11 Q. Do you know his full name?

12 A. Jimmy Rosemond, Jr.

13 Q. Do you know where Jimmy's office was located at the time?

14 A. 25th between I think Sixth and Broadway.

15 Q. What was the name of his company?

16 A. Czar Entertainment.

17 Q. Do you know the name of the company that managed G-Unit?

18 A. Yeah, Violator.

19 Q. Where was that company located?

20 A. The same block, right across the street.

21 Q. I'm going to show you a few photographs.

22 Government Exhibit 600A, marked for identification as
23 Government Exhibit 600A, do you recognize this photograph?

24 A. Yeah.

25 Q. What is it?

Hb9nros1

Abdullah - direct

1 A. Can you zoom it in a little bit. Yeah.

2 Q. What is this photograph?

3 A. It's the entrance to the office.

4 Q. Which office?

5 A. Czar.

6 Q. I'm going to show you 600C. This is in evidence.

7 What is this photograph?

8 A. That's the entrance to Violator.

9 Q. I'm going to show you what's been marked for identification
10 as Government Exhibit 600S.

11 Do you recognize this?

12 A. Yes. It's 11 West. That's Czar Entertainment's office.

13 Q. I'm going to also show you what's been marked for
14 identification as Government Exhibit 600T.

15 A. That's the block, 25th Street.

16 Q. 25th Street. And do you see where it says 11?

17 A. Yeah.

18 Q. What is that?

19 A. That's 11. That's the Czar Entertainment office. That's
20 the church.

21 Q. Can we go back for a moment to Government Exhibit 600A,
22 which is in evidence.

23 Is that the same building?

24 A. No. That's not the same one.

25 Q. Do you have an understanding of what building this is?

Hb9nros1

Abdullah - direct

1 MR. TOUGER: Objection.

2 Asked and answered, your Honor.

3 A. Yeah. Because I can't really tell from that view. I don't
4 know what building that is right there.

5 MR. TOUGER: Your Honor, I made an objection.

6 THE COURT: Thank you, Mr. Touger.

7 MS. HANFT: I'm happy to move on, your Honor.

8 THE COURT: Yes.

9 MS. HANFT: Can we take that down, please.

10 BY MS. HANFT:

11 Q. I direct your attention to the spring of 2007.

12 Do you recall an incident where Jimmy was involved in
13 a shooting?

14 A. I don't know if I would classify it as involved in a
15 shooting, but he was at the -- a banquet, it was at National
16 Action Network banquet. Me, Jason, Teddy, a few other people
17 was at the table. He was like, Yo if anybody ask for me, I
18 went to the bathroom. And he said he got a line on Yayo mom's
19 house.

20 Q. I'm going to stop you for a moment.

21 What was the banquet you were at, if you recall?

22 A. National Action Network. It was in Times Square.

23 Q. Who else attended that function?

24 A. Jason, Teddy, me, a few other people, I can't recall.

25 Q. Who was Teddy?

Hb9nros1

Abdullah - direct

- 1 A. Teddy was the guy who worked for Jimmy.
- 2 Q. Do you know his last name?
- 3 A. Coleman.
- 4 Q. Who was Jason?
- 5 A. Jimmy's driver.
- 6 Q. And what was Teddy's relationship to Jimmy?
- 7 A. He worked for him.
- 8 Q. Where?
- 9 A. At Czar, Czar Entertainment.
- 10 Q. Was he involved in the drug operation?
- 11 A. No.
- 12 Q. Showing you what's in evidence as Government Exhibit 6, who
- 13 is that?
- 14 A. Jason.
- 15 Q. Can you describe for the jury what happened at that event?
- 16 A. He's just like, Yo, I got a line on Yayo mom's crib.
- 17 He said, Jason going to drive me out there.
- 18 He said that, If anybody ask for me, I'm in the
- 19 bathroom.
- 20 He left. We stayed at the banquet. He came back some
- 21 time later,.
- 22 Q. I'm going to stop you for a moment. Who left?
- 23 A. Jimmy did.
- 24 Q. Did anyone leave with him?
- 25 A. Jason.

Hb9nros1

Abdullah - direct

- 1 Q. And who was it who stayed?
- 2 A. Me, Teddy, and other people that was at the table.
- 3 Q. And approximately how long was he gone for?
- 4 A. I don't know. It wasn't that long.
- 5 Q. More than an hour?
- 6 A. If that, yeah. If that.
- 7 Q. What, if anything, did he tell you when he returned to that
- 8 banquet?
- 9 A. He got back to the banquet. After the banquet, we went
- 10 outside, and he was just telling me that he let off like close
- 11 to 30 rounds in Yayo mom's crib.
- 12 Q. When you say "crib," what are you referring to?
- 13 A. House. Yayo mom's house.
- 14 Q. Did he say more about that?
- 15 A. He said, He didn't hear nothing, because he had the
- 16 silencer. He said but at the end the silencer started making
- 17 some clunk clunk noise, so he said he can't use it no more.
- 18 Q. What is a silencer?
- 19 A. A suppressor, so the gun won't make no sound.
- 20 Q. Did he say what gun he used?
- 21 A. He said his Mac. I don't know which one. I never saw it.
- 22 Q. Whose gun was that?
- 23 A. Jimmy's.
- 24 Q. How do you know?
- 25 A. From him telling me.

Hb9nros1

Abdullah - direct

- 1 Q. So what, if anything, did he say he wanted to do?
- 2 A. He said he needed to replace it.
- 3 Q. Replace what?
- 4 A. The gun.
- 5 Q. Why was that?
- 6 A. Because it started making noise.
- 7 Q. By that time had you begun selling drugs with the
- 8 defendant?
- 9 A. I don't know. I can't recall.
- 10 Q. Did you participate yourself in any other acts of violence
- 11 against members of G-Unit?
- 12 A. I had one of their Jeeps burnt, their bulletproof Jeeps.
- 13 Q. When did that take place?
- 14 A. It was in 2007. Jimmy hit me. Told me he had an address
- 15 on one of their Jeeps out in Jersey not too far from where I
- 16 live. He said if I could get somebody to burn it for him.
- 17 Q. When did you say that was?
- 18 A. Sometime in '07.
- 19 Q. Was it before or after the banquet you just described?
- 20 A. I can't recall.
- 21 Q. So what did the defendant tell you he had?
- 22 A. He had an address on one of their bulletproof Jeeps.
- 23 Q. So what did you do?
- 24 A. I sent someone out there to set it on fire.
- 25 Q. Where did he say these Jeeps were?

Hb9nros1

Abdullah - direct

1 A. In Jersey. It was Englewood or Teaneck, one or the other.

2 Q. You said you sent someone, who did you send?

3 A. I sent Aziz out there. He set it on fire.

4 Q. In relation to when Jimmy's son was slapped which you told
5 us about earlier, was this before or after that?

6 A. This was after that.

7 Q. And the defendant you said had an address. Did he give you
8 that address?

9 A. Yes.

10 Q. How did he give it to you?

11 A. You know, I can't recall. It was either through the
12 BlackBerry or face to face. I can't recall.

13 Q. And what did you do when you got the address?

14 A. Sent him out there to burn it. I just told Aziz, I said,
15 pour some gasoline on it and light it on fire for me and I'll
16 give you five grand.

17 Q. Do you know if Aziz, in fact, did that?

18 A. Yes.

19 Q. How do you know?

20 A. He came back and told me. I told Jimmy.

21 He said, All right he going to send Jason out there to
22 look at it. Jason went out there and looked at it and
23 confirmed it.

24 Q. What did he confirm?

25 A. That it was burnt.

Hb9nros1

Abdullah - direct

1 Q. Did you, in fact, pay Aziz \$5,000?

2 A. Yeah, I gave him five grand.

3 Q. Could you say that again.

4 A. Yes, I gave him five grand.

5 Q. Were you reimbursed for that five --

6 A. I had owed Jimmy some money, so I just took it out of that.

7 Q. You took it out of the money you owed Jimmy?

8 A. Yeah.

9 Q. I think you said it, but what is Aziz's full name?

10 A. Ronald Ashby.

11 Q. How do you know him?

12 A. We grew up in the same neighborhood. We was in jail
13 together.

14 Q. Did there come a time when you learned of any other acts of
15 violence similar to that one?

16 A. Tef, Tef had burnt and shot a Jeep up out in Staten Island.

17 MR. TOUGER: Objection, your Honor.

18 THE COURT: What is the objection?

19 MR. TOUGER: Does he have firsthand knowledge of it?

20 MS. HANFT: I am about to establish it.

21 THE COURT: Mr. Touger, I can't understand you.

22 MR. TOUGER: Does he have firsthand knowledge of this,
23 or is he testifying that somebody told him or did he get it on
24 the Internet?

25 THE COURT: Lay a foundation.

Hb9nros1

Abdullah - direct

1 BY MS. HANFT:

2 Q. Yes or no, did there come a time when you learned of that?

3 A. Yes.

4 Q. And how did you learn about that?

5 A. From Jimmy and Tef.

6 Q. And did you learn about it in any other way?

7 A. I saw it on the Internet.

8 Q. What did you see on the Internet?

9 A. The incident that transpired in Staten Island.

10 Q. What transpired?

11 A. Tef shooting up --

12 MR. TOUGER: Objection, your Honor.

13 The Internet was the supplier of the source or --

14 THE COURT: Lay a proper foundation.

15 BY MS. HANFT:

16 Q. Did you speak to Tef about that incident?

17 A. Yes.

18 Q. What did Tef tell you?

19 A. Tef told me he shot up the house, this dude Baja's house,
20 shot up the Jeep, and burnt it.

21 Q. Did he say where Baja's house was?

22 A. It was in Staten Island.

23 Q. Do you know Baja?

24 A. No.

25 Q. Do you know how he was involved, if you know?

Hb9nros1

Abdullah - direct

1 A. I just heard that he was at the scene.

2 Q. Do you know if that in fact happened?

3 A. Yes.

4 Q. How do you know that?

5 A. I saw the article on the Internet.

6 Q. Did anyone else tell you about it?

7 A. And me and Jimmy discussed it.

8 Q. Do you know if Tef did that by himself or with anyone else?

9 A. I don't know if he did it with anyone else. I just know
10 that he got arrested leaving the scene.

11 Q. You said that Jimmy initially told you that Yayo and two
12 dudes smacked his son.

13 Did he later tell you who the other dudes were?

14 A. Um, just found out after the dude Lodi Mack got arrested,
15 he was one of the ones.

16 Q. So did there come a time when you learned about those
17 arrests?

18 A. Yes.

19 Q. How did you learn about them?

20 A. Jimmy told me about them.

21 Q. What did he say?

22 A. He said that he was having his son's ma press charges, and
23 the dude Lodi Mack and Yayo got arrested for it.

24 (Continued on next page)

25

HB9AAROS2

Abdullah - Direct

1 BY MS. HANFF:

2 Q. Pressed charges about what?

3 A. For the assault on his son.

4 Q. Do you know who got arrested, if anyone?

5 A. Yayo and Lodi Mack.

6 Q. Do you know Lodi Mack's real name?

7 A. Lowell Fletcher.

8 Q. Did anything else happen with respect to the slap?

9 MR. TOUGER: Objection.

10 THE COURT: Sustained.

11 Q. You mentioned that Jimmy had his son's mother press
12 charges. What did you mean by that?

13 A. He had him press charges against the dudes who assaulted
14 his son.

15 Q. Criminal charges?

16 A. Criminal.

17 Q. Were there any other charges?

18 A. A lawsuit was filed.

19 Q. Do you know what happened to that lawsuit?

20 A. It was dismissed.

21 Q. Now you testified previously that Chris Lighty was the
22 manager of G-Unit. Have you ever seen Chris Lighty in person?

23 A. Yes.

24 Q. When did you see him?

25 A. Last time was at a New Year's eve party we was all at some

HB9AAROS2

Abdullah - Direct

- 1 hotel in Miami.
- 2 Q. When was that? Obviously, New Year's eve, but do you know
3 what year?
- 4 A. '07 going to '08, I think.
- 5 Q. Who was at that party?
- 6 A. Just a bunch of family and friends.
- 7 Q. Was Jimmy there?
- 8 A. Yes.
- 9 Q. Anyone else that you recall?
- 10 A. Teddie, his son, his family and friends.
- 11 Q. And what happened when you saw Chris Lighty at that New
12 Year's party?
- 13 A. Nothing really. Went and shook somebody's hand that was
14 with us. And me and Jimmy was standing there, so he said there
15 go that clown right there. And Chris walked away.
- 16 Q. Now prior to this incident that night, where were you?
- 17 A. We were at Jimmy house having dinner.
- 18 Q. I'm going to show you what's been marked for identification
19 as Government Exhibit 50. Do you recognize this photograph?
- 20 A. Yeah, on the patio.
- 21 Q. Who is this?
- 22 A. That's me and Jimmy.
- 23 Q. Which one is you?
- 24 A. The one on the right.
- 25 Q. And the left?

HB9AAROS2

Abdullah - Direct

1 A. Is Jimmy.

2 Q. Where was this photograph taken?

3 A. On his patio.

4 MS. HANFF: Government offers Government Exhibit 50.

5 THE COURT: Received.

6 (Government's Exhibit 50 received in evidence)

7 Q. Moving forward a little bit if time, did there come a time
8 when you spoke to Jimmy about action he wanted to take against
9 Chris Lighty?

10 A. Chris had some dude that was supposed to be allegedly a
11 friend of his and he had told Jimmy he'll give him a address of
12 where him and Chris was meeting at. He said but just don't
13 kill him.

14 Q. Who was this who said this?

15 A. Some guy that was supposed to be a friend of Chris.

16 Q. How did you learn about it?

17 A. From Jimmy.

18 Q. So what did Jimmy tell you, if anything, he wanted to do?

19 A. Said he just wanted to give Chris a leg shot.

20 Q. What's a leg shot?

21 A. Have him shot in the leg.

22 Q. So did the defendant ask you to do anything in relation to
23 this?

24 A. One night he hit me up on the Blackberry and was like, Yo,
25 light-skinned dude gonna be at this restaurant in midtown

HB9AAROS2

Abdullah - Direct

1 somewhere in Manhattan. He said, See if you can get somebody
2 to come through and handle that.

3 Q. Did you know who he meant when he said "light-skinned
4 dude"?

5 A. Yeah, Chris Lighty.

6 Q. What was he telling you to do?

7 A. Have somebody come through and give him a leg shot.

8 Q. You mentioned he said this to you on a Blackberry. Was
9 that your encrypted Blackberry?

10 A. Yes.

11 Q. Where did he say Chris Lighty would be?

12 A. At some restaurant in Manhattan.

13 Q. And what did you do, if anything?

14 A. I said "OK" and put the phone down, kept watching TV, hit
15 him back a few minutes later and was like, yo, wait for my guy
16 to hit me back but I don't think it's gonna happen. Then he
17 hit me back asking me what's up and I was like, naw, I don't
18 think he gon be able to come through and then he was like "all
19 right".

20 Q. Where were you at this time?

21 A. I was at home.

22 Q. Where was home?

23 A. It was in jersey.

24 Q. And when you responded to the defendant, what were you
25 telling him?

HB9AAROS2

Abdullah - Direct

1 A. I was telling him that I couldn't get nobody to do it.

2 Q. Did you look for somebody to do it?

3 A. Naw. I told him it was a bad idea.

4 Q. Why did you think it was a bad idea?

5 A. It was gon all point back to us. By that time a dude, Lodi
6 Mack, had got knocked off. So I was gonna paper. It was a lot
7 going on with the drugs. You know, stash house had got raided.
8 It was just too much going on to be having Chris clapped in the
9 leg. Chris was a square. His father was ex-law enforcement.
10 Nobody had time for that nonsense, man. So, it's like, Abdul,
11 this shit is a bad idea right now.

12 Q. When said Chris was a square, what do you mean by that?

13 A. He wasn't in the street, man. He had no street
14 affiliation. Who gonna just walk up and just shoot him in the
15 leg for no reason?

16 Q. Do you remember, approximately, when this is?

17 A. Probably had went to '09.

18 Q. Did you speak with Jimmy about this afterwards?

19 A. Yeah, we spoke. He was just like, it could have got done.
20 I was like how, bro? I said a loud shot in midtown Manhattan,
21 somebody going to jail, bro. And he was like look it could
22 have got done. If I was around I could have did it myself.

23 Q. Did you have any other conversations with Jimmy about Chris
24 Lighty?

25 A. Naw. Another time Toree was setting up on him down at this

HB9AAROS2

Abdullah - Direct

- 1 restaurant, Houston's. The same dude who is supposed to be
2 Chris friend was lining him up again. And Toree was sitting on
3 him down at Houston's. And I found out about it, hit Toree up.
- 4 Q. What is Houston's?
- 5 A. A restaurant.
- 6 Q. Where?
- 7 A. They have them all before over but this one was down on
8 Park and in the 20s.
- 9 Q. So what did the defendant tell you Toree was doing?
- 10 A. Was sitting on Chris down there.
- 11 Q. What does that mean?
- 12 A. Sitting there waiting for him to come out of Houston's to
13 put this leg shot in him.
- 14 Q. And so what event -- you said you contacted Toree; is that
15 correct?
- 16 A. Yeah. Toree as like, Yo, it don't look good down here.
17 There's a police car in front of Houston's. I was like, all
18 right, bro. You need to just spread out then just go ahead and
19 leave. He said yeah, that's what I'm gon do.
- 20 Q. What did you mean by spread out?
- 21 A. Leave.
- 22 Q. What did Toree tell you he was there to do?
- 23 A. Give him a leg shot.
- 24 Q. Give who a leg shot?
- 25 A. Chris Lighty.

HB9AAROS2

Abdullah - Direct

1 Q. Did Toree say whether he was by himself or with others?

2 A. He said he had his shooter with him.

3 Q. And how was it, if you know, that the defendant was getting
4 information about the location of Chris Lighty?

5 A. Somebody that was cool with Chris Lighty.

6 THE COURT: How do you know that?

7 THE WITNESS: From the defendant, from Jimmy.

8 Q. What did he tell you?

9 A. He said he had somebody who was cool with Chris Lighty
10 giving him information.

11 Q. Did you ever talk with the defendant about any other
12 members of Chris Lighty's family?

13 A. One time we were at leaving S.O.B.s from a function. He
14 had Jason drive him in this red Expedition that "D" had.

15 Q. Whose red expedition?

16 A. "D". It was a older Expedition. Jason was driving him in
17 it.

18 Q. And then where were you?

19 A. We was downtown Manhattan at this spot called S.O.B.s.

20 Q. What kind of spot is S.O.B.s?

21 A. Like a bar/lounge entertainment. And we were leaving there
22 and he said he had a line on Chris Lighty brother that live up
23 in Westchester and he was going up there to check it out and
24 was gon have Jason drive him. Spoke to him afterward and said
25 he seen the dude up there. He sat on him for a while and he

HB9AAROS2

Abdullah - Direct

1 let some shots off at him. He said he think he hit him. He
2 don't know he said but he let a few rounds off on him with his
3 .22 with a silencer.

4 Q. So you had a conversation with the defendant outside of
5 S.O.B.s; is that correct?

6 A. Yes.

7 Q. And was anyone else present for that conversation?

8 A. It was just me and him talking. It was other people there
9 but it was just him and I talking.

10 Q. Did he leave?

11 A. Yeah, him and Jason left.

12 Q. Did you see him leave with Jason?

13 A. Yes.

14 Q. And then afterwards you said had you a conversation about
15 what had happen?

16 A. Yes.

17 Q. What did Jimmy say he had done?

18 A. He said he sat up there for a while, sat on him, saw the
19 dude and he let some rounds off at him.

20 Q. What gun did you say he had?

21 A. His .22 with a silencer.

22 Q. Did he talk about other members of G-Unit at this time?

23 A. No.

24 Q. Now I am going to direct your attention to August of 2009.
25 Did you have any conversations with Jimmy related to G-Unit

HB9AAROS2

Abdullah - Direct

1 feud at that time?

2 A. We was going down to Miami for the weekend, Kez birthday.
3 We was throwing him a party and we was all going down there.
4 He met me uptown by the barbershop cause we had to talk about,
5 I was asking him his opinion. I was like, Yo, should I still
6 mail this, ship this work in or just wait until we get back
7 from Miami?

8 Q. You said a "barbershop", what barbershop was that?

9 A. It was a barbershop I used to get my haircut in Harlem on
10 145 between Amsterdam and Broadway.

11 Q. You met with the defendant there?

12 A. Yes.

13 Q. What were you talking about?

14 A. I was asking his opinion. I was just like, Yo, y'all gon
15 be out of town in Miami. I said should I just have this work
16 shipped in cause he was leaving on a Thursday. I know I was
17 leaving on a Thursday. I said so should I have it shipped in,
18 just held at the stash house or just wait till we get back?

19 Q. What was the "it"?

20 A. The coke. We had some work coming in from LA. So we was
21 going over that. And so it was a side bar. He was like, Yo,
22 when you see Toree, man, tell him to give Slim some money.
23 Slim told me they only gave him a grand and he just came home
24 and that ain't no money. Dude making money right now. Tell
25 him give him more than that. Slim wasn't just working for me.

HB9AAROS2

Abdullah - Direct

- 1 I was like, all right. He said, by the way --
- 2 Q. Can I stop you for one moment. Who is Slim?
- 3 A. Slim, Jimmy homeboy. I don't know him.
- 4 Q. Have you ever met him?
- 5 A. Naw.
- 6 Q. You ever spoken to him?
- 7 A. No.
- 8 Q. You knew him as Jimmy's friend?
- 9 A. Yes.
- 10 Q. What did he tell you about Slim?
- 11 A. Tell Toree to give him some money. He just came home.
- 12 Q. Did he say where he had just come home from?
- 13 A. Yeah, from jail.
- 14 Q. And why did he say you should tell Toree to give him money?
- 15 A. He said tell him that Slim wasn't just working for me. He
- 16 was working for him too. Then he said, by the way, Slim was
- 17 locked up with the dude, Lodi Mack. And the dude didn't know
- 18 that that Jimmy and Slim was cool. He have said Lodi Mack was
- 19 up there bragging about smacking his son. You know, just
- 20 talking reckless. He said him and Slim still in contact. Slim
- 21 befriended the dude. And Lodi Mack on his way home he said, so
- 22 Slim gon stay in touch with him so he gon possibly line him up
- 23 when he get home. He said because these dudes ain't gon be
- 24 happy until they go to a funeral.
- 25 Q. So what did the defendant say he was having Slim do with

HB9AAROS2

Abdullah - Direct

1 respect to Lodi Mack?

2 A. He didn't say he was having Slim do nothing. Slim was
3 taking this initiative on his own. He like, Yo, I'm cool with
4 the dude. And Slim is staying in touch with him. He said Slim
5 would possibly line him up for me when he get home.

6 Q. Directing your attention to September --

7 THE COURT: Just a moment.

8 (Pause)

9 THE COURT: Go ahead.

10 MS. HANFF: Thank you, your Honor.

11 Q. -- to September of 2009. Did there come that time when you
12 went to Atlanta?

13 A. Yes.

14 Q. Why?

15 A. Go to Atlanta every other week. That was my visitation
16 situation with my kids and my birthday was around that time
17 also.

18 Q. Is Atlanta where your kids were living?

19 A. Yes.

20 Q. When is your birthday?

21 A. September 28.

22 Q. So when did you go to Atlanta in September of 2009?

23 A. That week of my birthday I went that, my birthday was on
24 the weekend and so I think I went down there that
25 Monday/Tuesday.

HB9AAROS2

Abdullah - Direct

1 Q. So at that time that you went down to Atlanta in
2 September 2009, what was going on with the drug business,
3 generally speaking?

4 A. It was a little static. We had a stash house that got
5 raided. About two main catchers that got arrested. We didn't
6 know whether or not it was due to an investigation or just a
7 regular impromptu bust. So we kind of had to shutdown all of
8 our Fed Ex accounts, UPS accounts on both sides, get new forms
9 of communication.

10 Q. Who did you say had been arrested?

11 A. Two main catchers over there.

12 Q. Who were they?

13 A. Mark and Akbar.

14 Q. I show you what's in evidence as Government Exhibit 26.
15 Can you remind us who that is?

16 A. Akbar.

17 Q. And Government Exhibit 27.

18 (Pause)

19 A. Mark.

20 Q. What were they arrested for?

21 A. They got arrested for like 10/15 kilos picking up.

22 Q. While you were in Atlanta, did you have any communication
23 with Jimmy?

24 A. Yeah, regularly.

25 Q. Regular communication?

HB9AAROS2

Abdullah - Direct

1 A. Um-hmm.

2 Q. Do you remember any particular communication?

3 A. One night he hit me up and was like, Yo, tell Truck to hit
4 the driver up ASAP.

5 Q. When was this?

6 A. It was at night, I think a Sunday night or something like
7 that.

8 Q. Why do you think it might have been a Sunday night?

9 A. I was watching football.

10 Q. And you received a mess -- you said the defendant "hit you
11 up", what did you mean by that?

12 A. Hit me up on the Blackberry and he was like, Yo, tell Truck
13 to hit the driver up ASAP.

14 Q. Did you know what he meant?

15 A. Yeah, tell Toree to hit Jason.

16 Q. And what did you do in response?

17 A. I hit Toree up and was like, Yo, dude said hit his driver
18 up ASAP. Toree hit me back and was like "OK".

19 Q. Where was Jimmy at that time?

20 A. He was in Miami.

21 Q. Did you have an understanding of why Jimmy would need to
22 tell you to have Toree get in touch with Jason?

23 MR. TOUGER: Objection, your Honor.

24 THE COURT: Sustained.

25 Q. Did the defendant ever ask you to facilitate communication

HB9AAROS2

Abdullah - Direct

1 between different people?

2 A. Yeah.

3 Q. And why was that?

4 MR. TOUGER: Objection, your Honor. His opinion or --

5 MS. HANFF: Based on a fact.

6 THE COURT: Come to side bar.

7 (Continued on next page)

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HB9AAROS2

Abdullah - Direct

1 (side bar)

2 THE COURT: You are asking his opinion, right?

3 MS. HANFF: No, your Honor. This witness will testify
4 that he knew the defendant's Blackberry did not always hit
5 everyone else's. He had multiple phones which he said before.

6 THE COURT: So elicit facts. Don't ask him why
7 something was happening, OK?

8 MS. HANFF: OK.

9 (Continued on next page)

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HB9AAROS2

Abdullah - Direct

1 (In open court)

2 THE COURT: Objection sustained.

3 Proceed.

4 Q. Mr. Abdullah, did Jimmy have one phone or multiple phones?

5 A. Multiple.

6 Q. I believe you testified that some of those were encrypted
7 Blackberries; is that correct?

8 A. Yes.

9 Q. Did the encrypted Blackberries communicate? Did they all
10 communicate with other numbers?

11 MR. TOUGER: Objection.

12 Q. Let's talk about your encrypted Blackberry.

13 A. Yes.

14 Q. Did you have one or multiple?

15 A. I had a couple.

16 Q. Were you able to contact anyone you wanted from any of
17 those Blackberries?

18 A. The way I had it set up I had a Blackberry that I just
19 communicated to Jimmy and one other person on the west coast.
20 Then I had my other Blackberry that I communicated to everybody
21 else.

22 Q. When Jimmy called you did he always call you from the same
23 number?

24 MR. TOUGER: Objection. I think it's -- call, your
25 Honor.

HB9AAROS2

Abdullah - Direct

1 THE COURT: Sustained.

2 Q. When Jimmy --

3 THE COURT: Sustained. Just a minute.

4 Were you able to send and to have received by the
5 person at the other end encrypted messages from your Blackberry
6 if the person at the other end didn't have a compatible device,
7 a device that could read the encryption?

8 THE WITNESS: No.

9 THE COURT: Let's start from there.

10 Q. Did the defendant communicate with you from more than one
11 phone?

12 A. Yes.

13 Q. And did the defendant sometimes not have all his phones
14 with him to your knowledge?

15 MR. TOUGER: Objection.

16 THE COURT: Overruled.

17 A. Yes.

18 Q. So is it possible that the defendant would have a phone
19 that would not communicate based on your relationship with the
20 defendant and your knowledge of your own Blackberry and the
21 defendant's Blackberry that would not communicate with someone
22 else?

23 MR. TOUGER: Objection, your Honor. Anything's
24 possible.

25 THE COURT: Sustained as to form. This isn't that

HB9AAROS2

Abdullah - Direct

1 hard, I think.

2 Are you able to tell us, sir, if an encrypted
3 Blackberry sending out an encrypted message can communicate
4 with another mobile device that does not have encryption
5 capability?

6 THE WITNESS: No, it can't.

7 THE COURT: Were there times when you received
8 encrypted messages from the defendant on your encrypted
9 Blackberry?

10 THE WITNESS: Yes.

11 THE COURT: And were there times you received messages
12 from the defendant sent on unencrypted devices that you
13 received on unencrypted devices of yours?

14 THE WITNESS: Yes.

15 THE COURT: Take it from there, please.

16 Q. Do you know whether the defendant's Blackberry communicated
17 with Toree's Blackberry?

18 MR. TOUGER: Objection.

19 THE COURT: Overruled.

20 Do you know?

21 A. If -- at times if Toree and them had they were connected
22 via encrypted or Blackberry messages. Those were our two forms
23 of communication.

24 Q. OK. What did you do in response to that message you
25 received, tell Toree to hit the driver ASAP?

HB9AAROS2

Abdullah - Direct

1 A. I hit Toree up and said, Yo, dude said hit his driver up
2 ASAP. Toree responded back, "OK".

3 Q. While you were in Atlanta did you have any other
4 communications with the defendant?

5 A. Regular communication. Then the next day he hit me up and
6 was like, Yo, that bitch is out of here.

7 Q. When you say he'd hit you up, how did he hit you up?

8 A. Blackberry, encrypted Blackberry.

9 Q. When you said he said, the bitch is out of here, at the
10 time what did you believe that meant?

11 A. That our work was being mailed.

12 Q. What do you mean by "work"?

13 A. Work, coke was being mailed from LA.

14 Q. And did that understanding later change?

15 A. Yes.

16 Q. We'll come back to that in a moment. Did there come a time
17 when you returned to New York from Atlanta?

18 A. Yes.

19 Q. Do you recall when that was? What day of the week?

20 A. It was that Monday or Tuesday of the next week.

21 Q. Did there come a time when you met with Jimmy after you
22 returned to Atlanta?

23 A. Yes.

24 Q. Describe what happened.

25 A. He hit me up, asked me if I still wanted to buy the watch

HB9AAROS2

Abdullah - Direct

1 from him. I told him "yeah". He told me he was coming back
2 into town, let's meet up at Mobay.

3 Q. You said you were buying a watch from the defendant?

4 A. Yeah. I was buying a Cartier watch from him. He is
5 selling me this watch he had for like 25 grand. So I told him
6 I'll buy it from him.

7 Q. And then where did you say he suggested you meet up?

8 A. On 125 Street at this restaurant Mobay. So he told me what
9 time. It was in the evening. I went there to meet him. When
10 I got there he wasn't there. He had -- Teddie was there.
11 Teddie had just got back from LA. Me and him was just kicking
12 it.

13 Q. Is that the Teddie you referred to previously?

14 A. Yes.

15 Q. So when you arrived there, was Jimmy there?

16 A. Naw, he wasn't there yet.

17 Q. Did he arrive?

18 A. Yes.

19 Q. Did he arrive with anyone else?

20 A. Jason drove him there.

21 Q. And what happened when Jimmy arrived?

22 A. When he came he handed me a watch. I gave, I said where do
23 you want me to put the money? He said put it in the backseat.
24 Jason is in the car. Opened up the backseat of the car, said
25 something to Jason, had the 25 grand in a little bag. I said,

HB9AAROS2

Abdullah - Direct

1 Yo, this is for dude. He said "all right". Put it on the back
2 seat.

3 Q. You said what to Jason?

4 A. I told him what's up. I said, Yo, this is for dude.

5 Q. Who did you mean by "this is for dude"?

6 A. For Jimmy.

7 Q. And then what did you do?

8 A. Closed the door and me, Jimmy and Teddie walked across the
9 street to Mobay to see how long the wait was. We walked across
10 the street. They told us to wait. It was long as usual. And
11 we stood outside talking.

12 Q. And what did he say to you?

13 A. Jimmy, so he is like, the dude, Lodi Mack, came home and he
14 was on his knuckles. He was broke. Told Slim that Yayo and
15 them wasn't looking out for him. He didn't have no money. He
16 was staying at his sister house in the Bronx. And Slim told
17 him, well, I'm doing well for myself right now. I'm all right.
18 I'm doing OK. I'll pull up on you and lookout for you. Drop
19 some paper on you.

20 Q. What does "drop some paper" mean?

21 A. Give him some money. He said once that was situated he had
22 told Jason.

23 Q. Who is "he"?

24 A. Jimmy said he told Jason to bring Slim .22 with a silencer
25 up there to Slim for when Slim meet up with the dude Lodi Mack.

HB9AAROS2

Abdullah - Direct

1 He said, that's why I hit you and told you to tell Toree to hit
2 Jason up because I had Toree up there as the back-up shooter.
3 And I was like "back-up shooter"? He is like "yeah". And
4 Jason was up there and he said cause when the dude came to meet
5 Slim, Slim man came from out of no where, started clapping the
6 dude up and the dude ran. He said, so I ain't know what
7 happened.

8 Q. You testified that he had previously messaged you "the
9 bitch is out of here". Did you discuss that message during
10 that conversation?

11 A. Yeah. He told me, he said that's why I hit you up. He
12 said, that's why the bitch is out of here. I was like, Yo,
13 dude I thought you was talking about that they mailed work from
14 LA. He was like, naw, the dude died. I was like, Yo, don't
15 think that's gon come back on you, you just coming home and
16 all? He was like, naw. He's a gang banger. He's a known gang
17 banger. Could be a gang-related killing. Then Teddie
18 interjected and was like, oh shit, it don't matter that it come
19 back on him or not. It already done. So if it come back on
20 him or not there's nothing he can do about it. He just got to
21 hold it. I was like, yeah, I guess.

22 Q. Did Jimmy tell you how the shooting had taken place?

23 A. Naw. I just told you that. When dude came to meet Lodi
24 Mack. Lodi Mack man came from out of where ever he was hiding,
25 started shooting.

HB9AAROS2

Abdullah - Direct

1 MR. TOUGER: Are we going through the story again he
2 just said two minutes ago.

3 THE COURT: Just have a seat.

4 Continue, please.

5 A. That where ever he came from when he came to meet Slim to
6 get the money, Slim man came from where ever he was hiding at
7 and started hitting him up with the .22.

8 Q. Just to summarize, who was there?

9 A. Oh, man, Jason, Toree, his shooter, Slim, Slim man, about
10 five people there for that one dude.

11 Q. And I believe you testified that he said he had Jason bring
12 a .22?

13 A. Yeah.

14 Q. Do you know did he say whether that had in fact happened?

15 A. Yeah. That's where he was shot.

16 Q. Whose gun was that?

17 A. That was Jimmy's gun.

18 Q. How do you know?

19 A. Jimmy said it was his gun.

20 Q. Did he ever say he used that gun before?

21 A. It was the same .22 he supposedly used on Chris Lighty
22 brother.

23 Q. Is that the incident you mentioned previously?

24 A. Yeah.

25 Q. Did you participate in the planning of the murder of Lowell

HB9AAROS2

Abdullah - Direct

1 Fletcher?

2 A. No.

3 Q. Did you participate in the murder?

4 A. No.

5 Q. You mentioned at that day when you met up with the
6 defendant you purchased a watch from him?

7 A. Yes.

8 Q. Did you get the watch?

9 A. Yeah, yeah. He gave it to me that day.

10 Q. Have you ever worn the watch?

11 A. Yeah.

12 Q. I'm going to show you what's been marked for identification
13 as Government Exhibit 1006.

14 (Pause)

15 Q. Do you recognize that photograph?

16 A. Yes.

17 Q. Who is in the photograph?

18 A. Me, Teddie and Shawn.

19 Q. Which one is you?

20 A. In the middle.

21 Q. What are you wearing in this photograph?

22 A. That's the watch right there.

23 MS. HANFF: Government offers Government Exhibit 1006.

24 THE COURT: Received.

25 (Government's Exhibit 1006 received in evidence)

HB9AAROS2

Abdullah - Direct

1 MS. HANFF: Could we please publish that.

2 (Pause)

3 Q. Is that the watch you purchased from the defendant that
4 night?

5 A. Yes.

6 Q. Did there come a time when you had a conversation with
7 Jimmy about Slim after Lowell Fletcher was murder?

8 A. Later on that week we was transaction, business transaction
9 he told me to tell Toree to pass Slim one of them things. At
10 the end of the week we were counting up, going through the
11 numbers of the money that had to be sent back to LA. When I
12 told him how much I had sent back he was like, Yo, seem like
13 the numbers is a little off. I was like, Don't forget you told
14 me to have Toree give Slim one of them things. He was like,
15 Oh, yeah. That was for the Bronx shit. I got to give him two
16 keys for it. I was like, He wanted to get paid in drugs? He
17 was like, Yeah, that's what he wanted. I was like, That's
18 crazy.

19 Q. What did you do in response to "one of them things"?

20 A. I told -- I hit Toree up, told him to give Slim the key.

21 Q. When you say a "key", what are you referring to?

22 A. A kilo of cocaine.

23 Q. About how much was a kilo of cocaine worth at that time on
24 the street?

25 A. Going for about 30, 30 grand.

HB9AAROS2

Abdullah - Direct

1 Q. Do you know if Toree, in fact, did?

2 A. Yeah. He give gave him one.

3 Q. How do you know that?

4 A. Toree hit me up and was like, Yo, I gave that to Slim.

5 Q. And then you said there is a conversation after that; is
6 that correct?

7 A. Yes.

8 Q. And you referred to "the Bronx shit"?

9 A. Yeah.

10 Q. What did the defendant say about the Bronx shit?

11 A. He said I had to give him, Toree wanted two keys -- I mean
12 Slim wanted two keys for it.

13 Q. Did there come a time when Toree was arrested?

14 A. Yes.

15 Q. When did that occur?

16 A. About April, 2010.

17 Q. And after Toree was arrested, did to there come a time when
18 you had a conversation with Jimmy about the murder in the
19 Bronx?

20 A. Yes.

21 Q. Can you describe for the jury how that came about?

22 A. I had asked him what's going on with Toree case. Kicking
23 it. I said why they didn't give him a offer yet because it's
24 kind of strange this dude got caught in a stash house with
25 drugs and guns. This is a knockdown case. He should have got

HB9AAROS2

Abdullah - Direct

1 a offer yet.

2 Q. What did you mean by "offer"?

3 A. A plea should have been offered to him yet. And he was
4 like, Yeah, they didn't give him the offer yet. I said, The
5 dude that flipped on him, his man, I said I think that was the
6 same dude that he had with him in the Bronx that night.

7 Q. Who were you referring to when you said "the dude who
8 flipped on him"?

9 A. The dude Be Love.

10 Q. Is that the same B-Love you referred to previously?

11 A. Yes.

12 Q. What was it that you were saying B-Love had done.

13 A. He had flipped on Toree.

14 Q. And so why was that relevant?

15 A. So I was like, Yo, he might have been the dude that Toree
16 had with him in the Bronx. I said that's the case, then he
17 told on drugs, you know he had to tell on the murder. So he
18 was like, Well, I don't know that dude. He don't know me. So
19 it really can't bother me. The only person that can hurt me in
20 this thing is Slim. And I had told Slim to lay low just in
21 case.

22 Q. Going to direct your attention to December of 2010. Did
23 there come a time when you contacted law enforcement agencies?

24 A. Yes.

25 Q. Had you been arrested at that point?

HB9AAROS2

Abdullah - Direct

1 A. Nope.

2 Q. Without telling us how, were you made aware of the
3 investigation into your participation in cocaine tracking?

4 A. Yes.

5 Q. Yes or no, did you receive information that members of the
6 organization had been arrested and were cooperating?

7 A. Yes.

8 Q. Did you receive information that the defendant was possibly
9 cooperating?

10 A. Yes.

11 Q. As a result of learning that information, what did you
12 decide to do?

13 A. He had some money that was going back to LA. I had my man
14 Rudy pack it and I had it up in the rehearsal studios. I had
15 left, flew back to Atlanta and so when some of this information
16 came back to me I hit Rudy up and was like, Yo, do me a favor.
17 Go back to Smash studios, take out about four of those
18 envelopes and just hold it for me until I get back into town.

19 Once he hit me and told me that he took the money out
20 the rehearsal studio I told him leave it unlocked. Don't even
21 lock it back. He took the money out and put it up for me.

22 Q. You just referred to a friend. Who was that friend?

23 A. Rudy.

24 Q. What is Rudy's last name?

25 A. Fernandez.

HB9AAROS2

Abdullah - Direct

1 Q. What did you tell Rudy to do?

2 A. Go there and take some money out.

3 Q. Where was he to take money out?

4 A. Out this rehearsal studio case that we had at Smash
5 studios.

6 Q. What was that money from?

7 A. Drugs, drug proceeds.

8 Q. Do you know how much money was there?

9 A. A little more than a million dollars.

10 Q. And the rehearsal studio, do you know what rehearsal studio
11 that was?

12 A. Smash studios.

13 Q. You had Rudy take that money. How much did you have him
14 take?

15 A. I don't know. About four or five, a little more than four
16 hundred thousand, close to five.

17 MS. HANFF: Your Honor, if it's convenient for the
18 Court this would be a good time for a morning break.

19 THE COURT: OK. Fifteen minutes, folks.

20 (Jury not present)

21 (Recess)

22

23

24

25

Hb9nros3

Abdullah - direct

1 THE COURT: Let's get the jury.

2 (Jury present)

3 THE COURT: The defendant and the jurors all are
4 present. You may continue.

5 BY MS. HANFT:

6 Q. Mr. Abdullah, a few of the things we talked about before
7 the break I just want to clarify.

8 You mentioned when your birthday was. Can you remind
9 us?

10 A. September 28.

11 Q. You mentioned I believe that you went to Atlanta around the
12 time of your birthday, is that right?

13 A. Yes.

14 Q. Approximately how long before your birthday on September 28
15 did you go to Atlanta in 2009?

16 A. Maybe about five days before my birthday.

17 Q. And the Sunday night when you said you believed you were --
18 it was a Sunday night when you received a message from the
19 defendant, Tell truck to hit the driver up, is that right?

20 A. Yes.

21 Q. Was that Sunday night towards the end of your trip to
22 Atlanta or the beginning?

23 A. No, towards the end.

24 Q. When you received that message, how did you receive it?

25 A. On a BlackBerry, PGP.

Hb9nros3

Abdullah - direct

- 1 Q. That's the encrypted BlackBerry?
- 2 A. Yes.
- 3 Q. When you received the message the next day, "The bitch is
4 out of here," how did you receive that message?
- 5 A. Encrypted BlackBerry.
- 6 Q. You mentioned when you returned home meeting the defendant
7 outside a restaurant called Mobay, is that right?
- 8 A. Yes.
- 9 Q. When you met him there, did you know where he was coming
10 from?
- 11 A. Yes.
- 12 Q. Where was he coming from?
- 13 A. Miami.
- 14 Q. You spoke about the defendant, you were discussing
15 accounting for drug proceeds, and you believed it was -- there
16 was maybe something a little off, is that right?
- 17 A. Yes.
- 18 Q. What did you say the defendant said?
- 19 A. That was -- that was for that shit in the Bronx. I had to
20 give someone two keys for it.
- 21 Q. What did the Bronx shit refer to?
- 22 A. The Lodi Mack joint getting knocked off.
- 23 Q. When you say knocked off, what do you mean?
- 24 A. Getting killed.
- 25 Q. We talked about incidents regarding attempts on Chris

Hb9nros3

Abdullah - direct

1 Lighty, is that right?

2 A. Yes.

3 Q. Do you know exactly when those incidents were?

4 A. Not too long after the Lodi Mack situation.

5 Q. Are you sure they were after the Lodi Mack situation?

6 MR. TOUGER: Objection, your Honor.

7 THE COURT: Overruled.

8 A. About, if I remember correct, I think they were about --
9 after the Lodi Mack situation.

10 Q. The question is are you sure? Are you positive?

11 MR. TOUGER: Objection, again, your Honor.

12 THE COURT: Overruled.

13 A. I mean, I'm not going to say a hundred percent positive my
14 memory recollects that's what --

15 Q. Moving on, we were talking about your friend Rudy
16 Fernandez.

17 A. Yes.

18 Q. Could you briefly remind us what you told Rudy Fernandez to
19 do?

20 A. Go into -- Rudy had packed some money from -- at Smash
21 Studios. He had the key to the room, when I got some
22 information that you had asked me about previously, I hit Rudy
23 back, I said, Yo, do me a favor. Go to Smash Studios. I need
24 you to take some money out for those envelopes that you sealed
25 up, take it out, put it in a bag for me.

Hb9nros3

Abdullah - direct

1 Q. About how much money did you believe was in those four
2 envelopes?

3 A. Each one usually hold about a hundred, a hundred and
4 something thousand, if he packed it right.

5 Q. So what were you having him take the money to do with it?

6 A. Hold it for me.

7 Q. What did you do with the rest of the money?

8 A. I kept it in the case.

9 Q. And then after that, what did you do?

10 A. Once he confirmed to me that he took the money out,
11 contacted the agencies that once I found out was investigating
12 us and I told them that the money was in the Smash Studios.

13 Q. Did there come a time when you learned what happened to the
14 money?

15 A. Yes.

16 Q. What happened?

17 A. Me, Jimmy and Lamont had called Smash Studios on a
18 three-way call asking them where the money was at, and they
19 told us that the money was taken by law enforcement, by the
20 police.

21 Q. After that incident did you continue to sell drugs?

22 A. No.

23 Q. How did you support yourself?

24 A. I had money stashed, I had that money.

25 Q. When you say "that money," are you referring to the money

Hb9nros3

Abdullah - direct

1 from Smash Studios?

2 A. Yes.

3 Q. Did there come a time when you were approached by law
4 enforcement?

5 A. Yes.

6 Q. Approximately when?

7 A. March of 2011.

8 Q. What did they ask you?

9 A. They stopped me. They came to my house one day. They was
10 like: Yo, we know about the money. We know about the facts.
11 We know you know about what's happening with the case and
12 people involved, so it's just a matter of time. So we are
13 going to give you a chance think about it. Have your lawyer
14 contact Kaminsky and figure it out.

15 They searched my car. I had like close to 40 grand in
16 it. They took the money, confiscated the money.

17 Q. Who was Kaminsky, just generally speaking?

18 A. Who was who?

19 Q. Who was Kaminsky?

20 A. He was the U.S. attorney who had our case in the Eastern
21 District.

22 Q. That day that law enforcement approached you, was anything
23 seized from you?

24 A. Yeah. Like I just said, they took \$40,000 out my car.

25 Q. Where was that money kept?

Hb9nros3

Abdullah - direct

- 1 A. It was in the trunk of my car.
- 2 Q. Where was it from?
- 3 A. From the Smash Studios.
- 4 Q. And what was the money -- what was the money from? Where
- 5 had the --
- 6 A. It was drug -- it was drug proceeds.
- 7 Q. Were you arrested that day?
- 8 A. No.
- 9 Q. When were you arrested?
- 10 A. Probably about a month later.
- 11 Q. Approximately when was that?
- 12 A. April 2011.
- 13 Q. And did there come a time when you decided to cooperate
- 14 with law enforcement?
- 15 A. Yes.
- 16 Q. What did you do to cooperate?
- 17 A. I had my attorney reach out to the U.S. attorney, and he
- 18 set up a meeting.
- 19 Q. So you met with the government?
- 20 A. Yes.
- 21 Q. And when you met with the government, was that a few weeks
- 22 after your arrest?
- 23 A. Yes.
- 24 Q. So you said your arrest was April 2011?
- 25 A. Yes.

Hb9nros3

Abdullah - direct

1 Q. Was it approximately May 2011 when you first met with the
2 government?

3 A. I can't recall the first date. It was a couple of weeks
4 afterwards.

5 Q. When you first met with the government, did you tell the
6 government the truth?

7 A. No.

8 Q. In what way?

9 A. I didn't tell them how much money I took, I didn't tell
10 them the length or the extent of my involvement in the drugs.

11 Q. What do you mean by not telling them the extent of your
12 involvement in the drugs?

13 A. Downplayed my role.

14 Q. Did you later correct that?

15 A. Yes.

16 Q. Did you tell the government how much money you had taken?

17 A. Yes.

18 Q. And did you tell the government the extent of your role?

19 A. Yes.

20 Q. Did you tell the government about all of your crimes?

21 A. Yes.

22 Q. Did that include crimes you were already charged with?

23 A. Yes.

24 Q. We referred to some of the crimes that you have been
25 charged with at the beginning of your testimony. I want to

Hb9nros3

Abdullah - direct

1 take a few minutes now to go over them in some more detail.

2 You testified earlier that you possessed firearms, is
3 that right?

4 A. Yes.

5 Q. Have you ever fired those guns?

6 A. Yes.

7 Q. Were there occasions that guns were shot in your presence
8 and with your involvement?

9 A. Yes.

10 Q. I want to refer to two specific incidents.

11 Directing your attention to May of 2008, were you
12 involved in a shooting?

13 A. Yes.

14 Q. Tell us about that shooting.

15 A. A guy who used to work for me, I fired him, security
16 company. He sent some words, some verbal threats towards me.
17 I had some extra time on my hands. I went out there to see
18 him. I had called Aziz up. He was kicking it in Brooklyn.

19 Q. Who was the guy who used to work for you?

20 A. This guy named Shaka.

21 Q. What was he doing?

22 A. What do you mean what was he doing?

23 Q. What did you hear that he had done?

24 A. Yeah, he had sent some verbal threats towards me. So I
25 went to see Shaka, confronted him about the threats. Our

Hb9nros3

Abdullah - direct

1 conversation got animated, Shaka pulled out a bat, and Aziz
2 clapped him up for me on the spot.

3 Q. Who was Aziz?

4 A. A guy who used to work for me.

5 Q. What's his full name?

6 A. Ashby, Ronald.

7 Q. Was he there?

8 A. Yes.

9 Q. And why did you contact him?

10 A. He's like a go-to guy for me, errand boy, enforcer, stuff
11 like that, anything I needed done.

12 Q. You said Shaka pulled a bat out on you. What did you do in
13 response?

14 A. Shot him.

15 Q. Who shot him?

16 A. Aziz.

17 Q. Did you have a gun that day?

18 A. No.

19 Q. Do you know if Shaka was hit?

20 A. Yeah, several times.

21 Q. Did he survive?

22 A. Yes.

23 Q. Did there come a time when you met Shaka again?

24 A. Yes.

25 Q. What happened?

Hb9nros3

Abdullah - direct

1 A. I had this lawyer put together an affidavit for me saying
2 that I wasn't involved in the shooting. I wasn't there. A
3 bunch of stuff the affidavit said.

4 Q. Was the affidavit true?

5 A. No. I contacted Shaka's home boy, somebody that I also
6 knew, but he was closer to Shaka, told him, Tell Shaka I'll
7 give him 25 grand if he sign this affidavit.

8 I knew Shaka would sign it because he ain't never seen
9 that type of money at one time in his life.

10 So I met up with him and Shaka at this Twin Donuts in
11 the Bronx, passed him the affidavit.

12 He read it. Gave the dude the money. He went in the
13 bathroom and counted it. He came out told Shaka it was
14 correct. Shaka signed the affidavit. We spoke. He was just
15 like, you know, I wish it didn't have to go this route and so
16 on and so forth.

17 And that was that. I took the affidavit, and Shaka
18 went his way and I went my way.

19 Q. Did there come a time when you were arrested in connection
20 with that shooting?

21 A. Yes.

22 Q. When was that?

23 A. I was coming back from the Dominican Republic, Labor Day
24 weekend of 2008 if I'm correct.

25 Q. And so after you were arrested, did you contact Shaka at

Hb9nros3

Abdullah - direct

1 some point?

2 A. Yeah.

3 Q. What did you say?

4 A. I just told him, I said, Yo, dude, I paid you this money,
5 you did this affidavit. I said, Man, it is in your best
6 interest to do the right thing.

7 Q. What did you mean by "do the right thing"?

8 A. Make sure that no charge -- that this don't get no further
9 than this arrest right here.

10 Q. What happened to your case?

11 A. Dismissed.

12 Q. Have you yourself ever shot a gun at a person?

13 A. Yes.

14 Q. Tell us about that incident.

15 A. Dude had a situation with a friend of mine, and approached
16 him about it. The conversation got a little animated. He
17 tried to get tough, pulled out a gun smacked him in the head
18 with it, went off, grazed him in the head.

19 Q. So who was the person who got hit in this incident?

20 A. This guy named O.

21 Q. What had O done?

22 A. He was with a friend of mine that got beat up. He didn't
23 help, so I was talking to him about the situation. I was like
24 caught in the middle. The guy that beat him up and my friend,
25 they were -- you know, I was cool with both parties, and the

Hb9nros3

Abdullah - direct

1 conversation just didn't go right with me and O. So that's
2 what happened.

3 Q. You said the conversation got out of hand. And what
4 happened?

5 A. I hit him in the head with the gun.

6 Q. Was he hit?

7 A. Yes.

8 Q. Were there other times that you've shot a gun?

9 A. In the air, target practice, stuff like that.

10 Q. Was your involvement with the defendant the first time you
11 were involved in the drug business?

12 A. No.

13 Q. When did you start selling drugs?

14 A. About 14 years old.

15 Q. Where did you sell drugs?

16 A. New York, Baltimore, Detroit.

17 Q. What kind of drugs were you selling at the time?

18 A. Crack cocaine.

19 Q. About how much money were you making per week selling crack
20 cocaine?

21 A. Thousands.

22 Q. How long did you sell crack cocaine for?

23 A. Until about 18, 19 years old.

24 Q. And for about how long?

25 A. Maybe five years.

Hb9nros3

Abdullah - direct

1 Q. Why did you stop?

2 A. Went to jail.

3 Q. What did you get arrested for?

4 A. Robbery.

5 Q. Approximately how many robberies have you committed in your
6 life?

7 A. A lot.

8 Q. Who did you rob?

9 A. Drug dealers, hustlers.

10 Q. During some of those robberies, did you carry a firearm?

11 A. Yes.

12 Q. Have you ever been convicted for robbery of an automobile?

13 A. Yes.

14 Q. Had the automobile been stolen?

15 A. Yes.

16 Q. What happened?

17 A. At a dice game with some friends I had lost a lot of money,
18 and I wanted to go get some more to come back. Some dudes had
19 a car. I said let me have this car, I'm just running a few
20 blocks to get some money. My man was like, Yo, you know this
21 car is stolen. I'm like, All right, It's cool. I am just
22 running back.

23 I got like a block or two away and got pulled over by
24 the police. I had a girl in the car with me at the time, and I
25 didn't want to get into no chase with her in the car. So I was

Hb9nros3

Abdullah - direct

1 just telling her I was, Like, yo, this car is stolen, so I'm
2 going to get arrested.

3 You know, just tell them, when you get back on the
4 block, tell them I got arrested. That's what happened.

5 Q. Did you plead guilty?

6 A. Yes.

7 Q. What did you plead guilty to?

8 A. I was on probation at the time, so I pled guilty to
9 robbery, stolen property, and a probation violation. Got seven
10 years. They ran it all concurrent.

11 Q. So you pled guilty to stealing the car?

12 A. Yes.

13 Q. Had you stolen the car?

14 A. No.

15 Q. What were you doing with the car?

16 A. I was driving it.

17 Q. Why did you plead guilty to stealing the car?

18 A. I knew it was stolen. You know, they told me it was
19 stolen. My man told me it was stolen, so I knew what it was
20 already.

21 Q. You mentioned your sentence. Did you say you were on
22 probation at the time?

23 A. Yes.

24 Q. Did that affect your decision to plead?

25 A. Yes.

Hb9nros3

Abdullah - direct

1 Q. In what way?

2 A. I went back in front of the judge who gave me probation,
3 and he had told me when he gave it to me if I get arrested
4 again he was going to throw the book at me.

5 So my lawyer worked out a plea to where all of my time
6 ran concurrent instead of consecutive, if I would have just
7 took the plea.

8 Q. Have you committed any assaults in your life?

9 A. Yes.

10 Q. Were you convicted of any assaults?

11 A. Yes.

12 Q. Approximately when?

13 A. The assault I was convicted of, that was in the late '90s.

14 Q. What did you do to commit that crime?

15 A. This dude was selling like used lemon cars to people at the
16 mosque I was going to, and me and a few brothers went up there
17 to talk to him. I knew the dude because he had sold me a car.

18 I was like, I'll go mediate with him. I'm cool with
19 him.

20 And we went up there, and it got out of hand. He got
21 whipped pretty bad. I let the dudes whip on him for a minute,
22 and then I intervened and stopped it.

23 He was upset with me that I came up there with them
24 and let them whip on him in the first place. So when he went
25 to the hospital, the police came to visit him, he told them

Hb9nros3

Abdullah - direct

1 that I was the one that assaulted him. So I got arrested for
2 attempted murder, robbery, assault, a bunch of stuff.

3 Q. Had you, in fact, assaulted him?

4 A. I actually stopped it. It could have been worse than what
5 it was.

6 Q. Did you stop it right away?

7 A. No, no, I let it go down for a minute.

8 Q. What was the result of that arrest?

9 A. I got bailed out and I was looking to take a plea,
10 something light, but the prosecutor was -- he was talking, the
11 numbers were just, didn't make sense to me, like twelve and a
12 half to twenty-five, so I took it to trial.

13 Q. What happened at trial?

14 A. The prosecutor offered me three years' probation and no
15 jail time like the third day of trial.

16 Q. So did you plead guilty?

17 A. Yeah.

18 Q. What was your ultimate sentence?

19 A. Three year's probation.

20 Q. Were you --

21 A. Misdemeanor assault, pled guilty to a misdemeanor assault.
22 Three years' probation.

23 Q. You testified previously that there came a time when you
24 decided to cooperate with the government.

25 A. Yes.

Hb9nros3

Abdullah - direct

1 Q. Did you plead guilty to charges pursuant to an agreement
2 between you and a U.S. Attorney's Office?

3 A. Yes.

4 Q. What crimes did you plead guilty to?

5 A. Obstruction of justice and conspiracy to distribute
6 narcotics.

7 Q. The narcotics charge, is that related to the activities
8 you've already testified about?

9 A. Yes.

10 Q. Before you pled guilty, did you tell the government about
11 your crimes related to your distribution of cocaine?

12 A. Yes.

13 Q. Did you also tell the government about other crimes you've
14 committed?

15 A. Yes.

16 Q. Does that include the crimes we just spoke about?

17 A. Yes.

18 Q. You testified that you had an agreement between yourself
19 and a U.S. Attorney's Office. Which U.S. Attorney's Office?

20 A. In Brooklyn, Eastern District.

21 Q. When you pled guilty, did you plead guilty in a courtroom
22 in this building?

23 A. No.

24 Q. Where did you plead guilty?

25 A. Brooklyn in front of Judge Gleeson.

Hb9nros3

Abdullah - direct

1 Q. As part of your cooperation and guilty plea, did you agree
2 to testify as a witness for the government?

3 A. Yes.

4 Q. I'm going to show you what's been marked for identification
5 as Government Exhibit 3505-F. If you want to take a look,
6 Mr. Abdullah, it's in a folder in front of you. It is also on
7 the screen.

8 A. Yes.

9 Q. Do you recognize this document?

10 A. Uh-huh.

11 Q. Can we turn to the last page of the document, please. Is
12 that your signature on the document?

13 A. Yes.

14 Q. Just for the record, I believe I said 3505-F, but it's
15 3505-FF.

16 What did you say this document is?

17 A. Yes. That's the cooperation agreement.

18 MS. HANFT: The government offers Government Exhibit
19 3505-FF.

20 THE COURT: Received.

21 (Government's Exhibit 3505-FF received in evidence)

22 MS. HANFT: We can take that down.

23 BY MS. HANFT:

24 Q. What was the maximum sentence you faced on the counts you
25 pled guilty to?

Hb9nros3

Abdullah - direct

1 A. Life.

2 Q. Do any of the charges you pled guilty to carry a mandatory
3 minimum sentence?

4 A. Yes.

5 Q. What is that mandatory minimum sentence?

6 A. Ten years.

7 Q. As part of your cooperation, have you previously testified?

8 A. Yes.

9 Q. Have you been sentenced in your case in the Eastern
10 District of New York?

11 A. Yes.

12 Q. When you were sentenced, did you receive anything from the
13 Eastern District of New York U.S. Attorney's Office in exchange
14 for your cooperation?

15 A. Yes.

16 Q. What did you receive?

17 A. They wrote a 5K1 motion.

18 Q. Who is they?

19 A. The U.S. attorney in Brooklyn.

20 Q. What is a 5K1 motion?

21 A. Authorizes the judge to sentence me below the guidelines.

22 Q. What information is provided in that letter?

23 A. The crimes I committed and my cooperation.

24 Q. To your knowledge, did that letter, the 5K1, include your
25 cooperation in this case concerning the death of Lowell

Hb9nros3

Abdullah - direct

- 1 Fletcher?
- 2 A. No, it didn't.
- 3 Q. In that 5K letter, did the government recommend any
- 4 specific sentence to the judge?
- 5 A. No.
- 6 Q. When were you sentenced?
- 7 A. January 2014.
- 8 Q. Who sentenced you?
- 9 A. Judge Gleeson.
- 10 Q. Is that a judge in the Eastern District?
- 11 A. Yes.
- 12 Q. What were you sentenced to?
- 13 A. Eight years.
- 14 Q. Did you continue to have obligations to cooperate after you
- 15 were sentenced?
- 16 A. Yes.
- 17 Q. What are you obligated to do?
- 18 A. Tell the truth, don't commit no more crimes.
- 19 Q. And did there come a time when you violated an obligation
- 20 of that agreement?
- 21 A. Yes.
- 22 Q. What did you do?
- 23 A. I had a knife in jail.
- 24 Q. Did there come a time when your cooperation was required
- 25 again?

Hb9nros3

Abdullah - direct

1 A. Yes.

2 Q. Did you receive anything from the Southern District of New
3 York U.S. Attorney's Office in exchange for your cooperation in
4 that later case?

5 A. Yes.

6 Q. What did you receive?

7 A. They wrote a Rule 35(b) motion.

8 Q. Who is "they"?

9 A. The U.S. attorney in the Southern District.

10 Q. And what is a Rule 35?

11 A. It just allows the judge to resentence me.

12 Q. Did the government recommend a specific reduction in your
13 sentence?

14 A. No.

15 Q. Was your sentence reduced?

16 A. Yes.

17 Q. What was it reduced to?

18 A. Time served.

19 Q. So about how much time did you end up serving in total?

20 A. About four years.

21 Q. Have you finished your prison sentence?

22 A. Yes.

23 Q. Are you now on supervised release?

24 A. Yes.

25 Q. Just generally, what's supervised release?

Hb9nros3

Abdullah - direct

- 1 A. Probation.
- 2 Q. About how long --
- 3 A. Five years.
- 4 Q. -- were you sentenced to supervised release for?
- 5 A. Five years.
- 6 Q. And about how much more time do you have on supervised
- 7 release?
- 8 A. Two and a half, a little more than two and a half.
- 9 Q. What are your obligations on supervised release?
- 10 A. Stay out of trouble.
- 11 Q. In connection with your testimony today, do you have an
- 12 agreement with the government?
- 13 A. The same agreement.
- 14 Q. What is the agreement?
- 15 A. Tell the truth, don't commit no more crimes.
- 16 Q. What do you get in response?
- 17 A. A Rule 35(b) motion.
- 18 Q. What is your understanding of what the Rule 35(b) motion
- 19 would ask?
- 20 A. To tell the truth about the case.
- 21 Q. And if you do that, what has the government agreed to do?
- 22 A. Write a Rule 35(b) motion on my behalf.
- 23 Q. And would that motion be to reduce your term of supervised
- 24 release?
- 25 A. Yes.

Hb9nros3

Abdullah - direct

1 Q. Does the government decide whether your supervised release
2 will be reduced as a result of your testimony?

3 A. No.

4 Q. Who decides whether to grant a reduction in your supervised
5 release?

6 A. The judge.

7 Q. And do you believe that the outcome of this case has any
8 effect on whether you will receive any benefit?

9 A. No.

10 Q. If you don't tell the truth today, what happens to that
11 motion?

12 A. I won't get it.

13 Q. Would you get a supervised release reduction?

14 A. No.

15 Q. What else could happen?

16 A. A new charge.

17 Q. What kind of charge?

18 A. Perjury.

19 Q. Just a few final questions, Mr. Abdullah.

20 I'm going to show you what's been marked or what's in
21 evidence as Government Exhibit 54.

22 Do you recognize this individual?

23 A. There's nothing up yet. No.

24 Q. We can take that down.

25 Mr. Abdullah, when is the last time you saw Tef?

Hb9nros3

Abdullah - cross

1 A. About two -- sometime in 2010 or '11.

2 Q. When's last time you spoke to him?

3 A. That same time.

4 Q. When was the last time you saw Jason Williams?

5 A. He came to my house in 2011, not too long before I got
6 arrested.

7 Q. When was the last time you spoke to him?

8 A. That same day.

9 Q. Have you ever met Slim?

10 A. No.

11 Q. Have you ever spoken to him?

12 A. No.

13 MS. HANFT: May I have one moment, your Honor?

14 THE COURT: Yes.

15 MS. HANFT: No further questions, your Honor.

16 THE COURT: Thank you.

17 Cross-examination.

18 Mr. Touger.

19 MR. TOUGER: Thank you, your Honor.

20 CROSS EXAMINATION

21 BY MR. TOUGER:

22 Q. I guess it's good afternoon now, Mr. Abdullah.

23 A. Yeah.

24 Q. If at any time you don't understand one of my questions,
25 just tell me, and I'll try to rephrase it.

Hb9nros3

Abdullah - cross

- 1 A. OK.
- 2 Q. Were you present at the shooting of Lowell Fletcher?
- 3 A. No, I wasn't.
- 4 Q. And were you present when Slim, Mr. McCleod, and others
- 5 went to the Bronx to pick a location for that incident?
- 6 A. No. I don't even know nothing about that.
- 7 Q. You don't know anything about that, right?
- 8 A. No.
- 9 Q. Were you present in Queens when McCleod and Jason first
- 10 tried to meet Mr. Fletcher before he got shot?
- 11 A. Say that again.
- 12 Q. Were you present in Queens when McCleod and Jason, the
- 13 driver, tried to meet Mr. Fletcher before he got shot?
- 14 A. I don't even know nothing about that.
- 15 Q. You don't know anything about that either, right?
- 16 A. No.
- 17 Q. Were you present for any conversations between Jimmy and
- 18 Jason wherein Lowell Fletcher was discussed before he got shot?
- 19 A. No.
- 20 Q. And were you present with any conversations between Jimmy
- 21 and McCleod about Lowell Fletcher?
- 22 A. No.
- 23 Q. And were you present when anything happened about this
- 24 incident prior to the incident happening?
- 25 A. No.

Hb9nros3

Abdullah - cross

1 Q. And if I'm correct, you just testified that you don't --
2 you've never even met Slim?

3 A. I don't even know him.

4 Q. So would I be correct in saying that you have no eyewitness
5 knowledge of this event whatsoever?

6 A. No, I don't.

7 Q. Everything you know about this shooting, including the
8 planning and everything else, happens from what people told
9 you?

10 A. What Jimmy told me.

11 Q. He is a person, right?

12 A. Yeah.

13 Q. Other people told you things or just Jimmy?

14 A. And what Toree mentioned to me.

15 Q. OK. Did you do anything on the Internet about this
16 incident?

17 A. I mean, I saw it, when it came out in the newspaper.

18 Q. Can we agree that you had no role in arranging for any of
19 the participants in this shooting?

20 A. Yes. We can agree on that.

21 Q. Did you ever have your own independent drug business from
22 Jimmy?

23 A. Yeah.

24 Q. When were those businesses?

25 A. What do you mean?

Hb9nros3

Abdullah - cross

1 Q. When did you your own independent drug business?

2 A. When I was younger, while we was together.

3 Q. So, even when you were working with Jimmy, you had your own
4 independent drug business?

5 A. Yes.

6 Q. Now, you testified that at some point prior to your arrest
7 the government came to your house, correct?

8 A. Yes.

9 Q. And they said you should go get a lawyer, right?

10 A. Yes.

11 Q. Did you go get a lawyer?

12 A. I already had a lawyer.

13 Q. And who was that lawyer?

14 A. I had two lawyers at the time.

15 Q. Did you contact them, as the government told you to?

16 A. Yes.

17 Q. And you knew your arrest was imminent at that point,
18 correct?

19 A. Yes.

20 Q. And had you made plans at that point to cooperate once you
21 got arrested?

22 A. Well, my lawyers were giving -- both of them were giving me
23 the options.

24 Q. And they explained to you the options of whether to
25 cooperate or plead guilty or go to trial, correct?

Hb9nros3

Abdullah - cross

1 MS. HANFT: Objection, your Honor, to what his lawyers
2 explained to him.

3 THE COURT: I will allow that question.

4 A. Can you repeat it.

5 Q. They said basically you had three options: You could plead
6 guilty without cooperation, you could plead guilty with
7 cooperation, or you could go to trial, right?

8 A. I mean, they gave me options. They just -- some of that,
9 and they mentioned other things to me too.

10 Q. And then at some point you were actually arrested?

11 A. Yes.

12 Q. By the way, just going back to that previous date, you said
13 they took \$40,000 from your car?

14 A. Yes.

15 Q. And when you were arrested you were held without bail?

16 A. Yes.

17 Q. Because you had not informed the government that you wanted
18 to cooperate at that point, right?

19 A. Yes.

20 Q. And when you were arrested you finally saw the actual
21 charges, your lawyer described to you what your penalties that
22 you were facing, right?

23 A. Yes.

24 Q. And they explained to you --

25 MS. HANFT: Objection, your Honor.

Hb9nros3

Abdullah - cross

1 THE COURT: Sustained.

2 BY MR. TOUGER:

3 Q. And you learned that you were facing life in jail at that
4 point?

5 A. Well, I didn't know exactly the time guidelines. They just
6 told me what the potential was.

7 Q. Was the potential that you could spend the rest your life
8 in jail?

9 A. No, they didn't mention life to me.

10 Q. How many decades did they mention?

11 A. They just said --

12 MS. HANFT: Objection, your Honor.

13 THE COURT: I let you have one question. I made clear
14 it was one question, and now you are trying to drive a train
15 through the little crack in the door.

16 BY MR. TOUGER:

17 Q. How many decades did you feel you were facing at that point
18 in time?

19 A. They just told me what my mandatory minimum was. They
20 didn't tell me how much in years.

21 Q. When you decided to cooperate, had you known at that point,
22 did you know how many years you were facing?

23 A. Again they just told me my mandatory minimum.

24 Q. Did they tell you your maximum? Did you learn your
25 maximum?

Hb9nros3

Abdullah - cross

1 THE COURT: Asked and answered.

2 Move along.

3 Q. Did you know you could face life in jail?

4 A. Yes.

5 Q. You decided to cooperate because you didn't even want to do
6 ten years in jail, right?

7 A. I decided to cooperate because --

8 Q. Let me rephrase that question.

9 THE COURT: Remember about not interrupting the
10 witness. Please answer.

11 A. I decided to cooperate -- well, I knew I was going to
12 cooperate. Let me say this. It wasn't that I decided to
13 cooperate then. I knew I was going to cooperate.

14 It was just me and my lawyer working out the best
15 avenue to pursue it. Once we found out that certain people
16 were cooperating, and once we found out that someone else had
17 previously cooperated and lied to me about it, my lawyer said
18 it's best -- in my best interest to pursue that. So I knew I
19 was going to cooperate, but we were just figuring out the best
20 legal way for me to go that route.

21 Q. Would I be correct in saying that you did not want to do
22 ten years in jail, though?

23 A. You would be correct to say what I just said.

24 Q. Did you want to do ten years in jail?

25 THE COURT: Enough already.

Hb9nros3

Abdullah - cross

- 1 Q. And you were in jail when you decided to cooperate?
- 2 A. Yes.
- 3 Q. And you stayed in jail even as you started to proffer with
- 4 the government?
- 5 A. Yes.
- 6 Q. But now you are out of jail, correct?
- 7 A. Yes.
- 8 Q. And you have been out of jail how long?
- 9 A. About two years.
- 10 Q. And you testified on direct that you were originally
- 11 sentenced to eight years in jail?
- 12 A. Yes.
- 13 Q. When did you get that sentence?
- 14 A. January 2014.
- 15 Q. And were you happy with that eight-year sentence?
- 16 A. At that moment, no.
- 17 Q. You were quite unhappy, weren't you?
- 18 A. Yes.
- 19 Q. You even actually wrote the government about how angry you
- 20 were about that sentence, correct?
- 21 A. Yes.
- 22 Q. And at some point you then testified in a proceeding in
- 23 this courthouse, correct?
- 24 A. Yes.
- 25 Q. And that proceeding had to do with this case, correct?

Hb9nros3

Abdullah - cross

- 1 A. Yes.
- 2 Q. And then you got what you call the Rule 35 motion, right?
- 3 A. Yes.
- 4 Q. And at that point you got resentenced, correct?
- 5 A. Yes.
- 6 Q. And you got time served?
- 7 A. Yes.
- 8 Q. If I'm correct, you said on direct that the original
9 sentence there was no -- well, I will withdraw that question.
- 10 So you were resentenced and got time served after you
11 testified in a proceeding about this case in this courthouse?
- 12 A. Yes.
- 13 Q. And I would say you were probably happy about that
14 sentence, weren't you?
- 15 A. Yes, I was.
- 16 Q. And that resentencing saved you I believe you testified
17 approximately four years in jail?
- 18 A. Yes.
- 19 Q. And I believe you just testified you have been out of jail
20 for now over two years?
- 21 A. Yes.
- 22 Q. Do you like being out of jail better than being in jail?
- 23 A. Yes.
- 24 Q. It's better to be free than behind bars, right?
- 25 A. I just answered you.

Hb9nros3

Abdullah - cross

1 Q. And would I be correct in saying that, in your mind, if you
2 refused to testify here today, that the government would make
3 an application to put you back in jail?

4 A. Yes.

5 Q. And you could possibly go back in jail for at least the
6 ten-year mandatory minimum, correct?

7 A. No. Where do you get that from?

8 Q. Well, if they tore up your cooperation agreement, you would
9 get the ten-year mandatory minimum, correct?

10 A. No.

11 Q. What do you think would happen to you if you refused to
12 testify here today?

13 A. Possibly a new charge, but there's no retro on the
14 cooperation agreement. You just made that up.

15 Q. You think so?

16 A. Yeah. You just made that up, man.

17 Q. You don't think that your cooperation agreement requires
18 you to testify here today?

19 A. I can get -- if I get subpoenaed and then I get a new
20 charge or a fine, but I can't -- I can't get resentenced --
21 first of all Judge Gleeson ain't even a judge no more, so they
22 can't take me back in front of him and say, You, resentence
23 him. No, brother. That ain't how that go. You're freestyling
24 right now.

25 Q. You're sure about that?

Hb9nros3

Abdullah - cross

1 A. I'm telling you, you're freestyling right now.

2 Q. You are sure about that?

3 A. Yeah. Positive, man.

4 Q. So you think you could walk out of the courtroom right now
5 and say I'm not testifying and nothing wouldn't happen to you?

6 THE COURT: That is not what he said.

7 A. That is not what I said. You are not listening --

8 THE COURT: That's not what he said.

9 Just move on.

10 Q. Now, when you first spoke to the prosecution, after you got
11 arrested, your first proffer sessions, I think you just
12 testified that you lied to them about your role and what you
13 have done?

14 A. Yes.

15 Q. And you did that to try to protect yourself, right?

16 A. It was like a -- you know, like a meet and greet. You
17 don't know what's happening, so you are not going to put all
18 your cards out there.

19 Q. You were trying to get away with as little as possible?

20 A. No. I was trying to figure out how this whole thing went.
21 I never had had experience like some people did sitting down
22 with prosecutors. So I didn't that have experience.

23 Q. So we can agree that in your cooperation agreement it says
24 you can't do any more crimes, right?

25 A. Yes.

Hb9nros3

Abdullah - cross

1 Q. What's supposed to happen if you do any crimes?

2 A. I could lose my cooperation agreement.

3 Q. That you are sure about, right?

4 A. Yes.

5 Q. And if you lose your cooperation agreement, what happens?

6 A. I don't know what happens because I didn't lose it, so I
7 couldn't tell you.

8 Q. Your cooperation agreement gets ripped up, right?

9 A. Yes.

10 Q. What does that mean if your cooperation agreement gets
11 ripped up?

12 A. I get sentenced to the maximum of my plea agreement.

13 Q. And so, for instance, if you went out tonight and committed
14 a robbery and got arrested and convicted of that robbery, do
15 you think your cooperation agreement would get ripped up?

16 A. I assume so.

17 Q. And they could put you back in jail, right?

18 A. Yes.

19 Q. So they can go retroactive for that, right?

20 A. No.

21 THE COURT: Sustained.

22 Q. Now, as you just testified on direct, you told the
23 government during your proffer sessions that you had a knife in
24 jail, right?

25 A. Yes.

Hb9nros3

Abdullah - cross

1 Q. That's a crime, right?

2 A. I mean, I don't know the crime for it. It's jail. I had a
3 knife.

4 Q. Are you allowed to have a knife in jail?

5 A. No, that's why I went to the box for it.

6 Q. You know that you committed a crime when you had the knife
7 in jail?

8 THE COURT: Sustained.

9 Q. As a matter of fact, the government didn't rip up your
10 agreement after you told them that, right?

11 A. No.

12 Q. They didn't even ask you for the knife, did they?

13 A. No.

14 THE COURT: Did you, in fact, have a knife in jail?

15 THE WITNESS: I had a jail knife. I went to the box
16 for it.

17 THE COURT: And what happened to the knife when you
18 went to the box?

19 THE WITNESS: The officers took it.

20 THE COURT: OK.

21 So you didn't have it later on?

22 THE WITNESS: Exactly.

23 BY MR. TOUGER:

24 Q. When you told the prosecutor, didn't you tell them that you
25 still know where you could get a knife in jail?

Hb9nros3

Abdullah - cross

- 1 A. I just told them if I wanted to buy one I could buy one.
- 2 Q. Anytime you wanted, right?
- 3 A. Anytime.
- 4 Q. You could get a knife?
- 5 A. Yes.
- 6 Q. And they didn't ask you where you could get those knives,
- 7 did they, or who you could get those knives from, did they?
- 8 A. No.
- 9 Q. Now, can we also agree that your cooperation agreement
- 10 calls for you to pay the government \$100,000 in forfeiture
- 11 money?
- 12 A. Yes.
- 13 Q. And can you explain what that means, the idea of
- 14 forfeiture?
- 15 A. It means that you have to give up a certain amount of
- 16 money.
- 17 Q. And you, according to this cooperation agreement, have to
- 18 give up \$100,000?
- 19 A. Yes.
- 20 Q. Now, have you paid that \$100,000?
- 21 A. No.
- 22 Q. And that's a term of your cooperation agreement, correct?
- 23 A. No, that was what the judge had sentenced me to.
- 24 Q. So it's an order from a judge?
- 25 A. Yeah.

Hb9nros3

Abdullah - cross

1 Q. For a hundred thousand dollars?

2 A. Yes.

3 Q. You still haven't done it?

4 A. No.

5 Q. Now, that is a condition of your cooperation agreement
6 also, it's not just an order from the judge, it's also a
7 condition of your cooperation agreement, the hundred thousand
8 dollars, right?

9 A. Um -- I couldn't intelligently answer -- I can't really
10 give you an informed answer to that, because I don't know. I
11 just know it was part of my judgment and commitment after I got
12 sentenced.

13 MR. TOUGER: 3505-PPPP, page 237.

14 THE COURT: Lines?

15 MR. TOUGER: Lines 19, your Honor. Actually it starts
16 a little before that.

17 You can just put up the cooperation agreement, page 6
18 of the cooperation agreement, paragraph 7.

19 BY MR. TOUGER:

20 Q. Do you have paragraph 7 before you, Mr. Abdullah.

21 A. Yes, I see it.

22 Q. Isn't it true, right there in your cooperation agreement,
23 that you have to pay \$100,000?

24 A. Yes.

25 THE COURT: No, actually it doesn't.

Hb9nros3

Abdullah - cross

1 And this line of examination is off the trail, too.

2 What it actually says is that he consents to the entry
3 of a judgment, which is what he said. It doesn't say, I hereby
4 agree to pay it, which is what you said.

5 Now, let's please focus.

6 MR. TOUGER: OK.

7 If you continue reading, your Honor, to the end of
8 that paragraph, "Payment of a forfeiture money judgment shall
9 be made by certified or bank check payable to the United States
10 Marshals Service."

11 THE COURT: Look, Mr. Touger. Come to the sidebar we
12 are not going to do this anymore.

13 (Continued on next page)

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Hb9nros3

Abdullah - cross

1 (At sidebar)

2 THE COURT: You know as a lawyer, as any first-year
3 law student would know, that there is a difference between, A,
4 an agreement which says I hereby contract and agree that I
5 shall do X, case one; and an agreement that says I will consent
6 to the entry of a judgment that says, I have an obligation to
7 do X, case two; and, case three, an agreement that says the
8 manner in which payment will be made on the judgment is by
9 check or whatever it is.

10 MR. TOUGER: This is before sentencing, your Honor.
11 That's all I want to bring out.

12 MS. HANFT: It says before sentencing or else interest
13 will accrue.

14 THE COURT: You are done with this.

15 You are doing this consistently through your cross.
16 You get in your head some twist on what the testimony was, what
17 the document says, and then you just go with the false
18 assumption. It's got to end. I mean, it's perfectly
19 appropriate to cross-examine a cooperator about what his
20 obligations are and so on, but you really can't, as he put
21 it -- what was his phrase?

22 MR. ENZER: Freestyle.

23 THE COURT: Freestyle.

24 MR. TOUGER: Your Honor, you know full well that I am
25 not freestyling at the point where he said I'm freestyling,

Hb9nros3

Abdullah - cross

1 that if he refused to testify today that his cooperation
2 agreement was going to get ripped up. You know that and I know
3 that and everybody in this courtroom knows that.

4 THE COURT: But what does it mean?

5 MR. TOUGER: I wasn't freestyling. Don't tell me I'm
6 freestyling then, because I wasn't.

7 THE COURT: No, you were. He had you right.

8 (Continued on next page)

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Hb9nros3

Abdullah - cross

1 (In open court)

2 BY MR. TOUGER:

3 Q. You testified to some statements that Jimmy made to you at
4 the Mobay Restaurant, correct?

5 A. Yes.

6 Q. And would I be correct in saying that there are no tapes of
7 that conversation?

8 A. Yes, you would be correct to say that.

9 Q. Would I be correct in saying that there are no pictures of
10 that meeting?

11 A. Yes, you would be correct.

12 Q. Would I be correct in saying there are no videos of that
13 meeting?

14 A. As far as I know you would be correct to say that.

15 Q. Would I be correct in saying that there are no telephone
16 records that demonstrate the contents of that meeting?

17 MS. HANFT: Objection, your Honor.

18 THE COURT: On the ground?

19 MS. HANFT: How would this defendant be aware?

20 THE COURT: He's answering to the extent of his
21 knowledge.

22 BY MR. TOUGER:

23 Q. Yes, always to the extent of your knowledge.

24 As far as you know, there are no telephone records
25 that verify the content of these conversations?

Hb9nros3

Abdullah - cross

1 A. As far as I know.

2 Q. As far as you know, there are no airplane records that
3 confirm your coming to New York on that date?

4 A. I know the airline I used has to have a record.

5 Q. Did you ever show those to the government?

6 A. No.

7 Q. And there are no written records that were made
8 contemporaneous with that meeting, were there, as far as you
9 know?

10 A. No.

11 Q. And so your statement about what happened at that meeting,
12 the jury just has to trust you to be telling them the truth?

13 MS. HANFT: Objection.

14 THE COURT: Argumentative.

15 Sustained as to form.

16 BY MR. TOUGER:

17 Q. As you testified on direct, you've lied at times in your
18 life to get out from underneath criminal trouble, correct?

19 A. Yes.

20 Q. For instance, we have the Shaka incident that you spoke
21 about, right?

22 A. Yes.

23 Q. I am not going to go through all the details of the
24 shooting. You already did. But in the end, you paid \$25,000
25 to the man who got shot so he wouldn't prosecute you?

Hb9nros3

Abdullah - cross

- 1 A. Yes, that's correct.
- 2 Q. You got out from that trouble?
- 3 A. Yes. That's correct.
- 4 Q. And so you got somebody to lie for your benefit so that you
- 5 wouldn't go to jail?
- 6 A. That's correct.
- 7 Q. By the way, you didn't want to kill Shaka that day, did
- 8 you?
- 9 A. No.
- 10 Q. Now, then we have the Shabbaz incident in the Bronx?
- 11 A. Yes.
- 12 Q. That's the used car seller?
- 13 A. Yes.
- 14 Q. And it is your testimony again that you had nothing to do
- 15 with that assault on the used car dealer, right?
- 16 A. Yes.
- 17 Q. But you went into court under oath and told a judge that
- 18 you did?
- 19 A. Yes, I did.
- 20 Q. And you did that for your own personal benefit, right?
- 21 A. Yes.
- 22 Q. And, by the way, the people who were beating up Shabbaz
- 23 that day had no desire to kill him that day, did they?
- 24 A. No.
- 25 Q. Now --

Hb9nros3

Abdullah - cross

1 MS. HANFT: Objection, your Honor.

2 THE COURT: Sustained.

3 The answer is stricken.

4 BY MR. TOUGER:

5 Q. Now, by the way, when you were in Queens, that's where
6 the -- you took a plea in Queens also, correct?

7 A. Yes.

8 Q. You lied to that judge about what you did so you could get
9 to your personal interest, right?

10 A. What do you mean? Taking seven years?

11 Q. Right.

12 A. Yes. I mean if that's personal interest, I guess.

13 Q. It's better than going to jail for 14 years, right?

14 A. Yes.

15 Q. And you were under oath when you did that, right?

16 A. Yes.

17 Q. Same oath you are under here?

18 A. Yes.

19 Q. And you lied?

20 A. Yes.

21 Q. Now, by the way, when the agents first approached you on
22 the street that time they took the \$40,000 from you --

23 A. Yes.

24 Q. -- you lied to them also, right?

25 A. About what?

Hb9nros3

Abdullah - cross

1 Q. About the source of the \$40,000.

2 A. I can't recall that they even asked me about the source of
3 the money. If they did, I wouldn't have told them it was drug
4 proceeds, so --

5 MR. TOUGER: Page 457 of Exhibit 3505-QQQQ.

6 THE COURT: What are the lines?

7 MR. TOUGER: To give you the context, it's line 1, and
8 turning to 458 to line 2.

9 THE COURT: Just a minute.

10 MR. TOUGER: Ending at 458, line 2.

11 THE COURT: You have to give me a minute. I have to
12 get to it. I wish it were easier, but it isn't.

13 OK. Go ahead.

14 MR. TOUGER: Do you want me to start at the top of
15 457?

16 THE COURT: You read anywhere within that -- and do it
17 at the lectern -- within that that you want to read it. This
18 is testimony given by the witness on a prior occasion, and then
19 you will frame whatever question you want to frame.

20 Q. Do you remember testifying approximately February 12,
21 2014 --

22 THE COURT: Please, Mr. Touger.

23 MR. TOUGER: That is what you made me do yesterday.

24 THE COURT: No. That is what I made you not do
25 yesterday. I just did it. He's given prior testimony.

Hb9nros3

Abdullah - cross

1 BY MR. TOUGER:

2 Q. Line 8:

3 "Q. And you proceeded to have a conversation with these law
4 enforcement agents at that time, correct?

5 "A. They were asking me questions and I was listening.

6 "Q. Well, do you recall among the questions they asked you,
7 sir, is what's with this \$37,000 in cash sitting in the
8 passenger's side of this 7 series BMW?

9 "A. They asked me, What is this money for? They didn't phrase
10 it the way you phrased it.

11 "Q. Well, in substance they said what's with the cash here,
12 right?

13 "A. Yes.

14 "Q. And you proceeded to tell them, Oh, that's -- that's money
15 from -- that's legitimate money, right?

16 "A. Yes, I did.

17 "Q. You said that's -- that's for a wig business I'm involved
18 in, correct?

19 "A. Yes. That's what I told them.

20 "Q. And, of course, we have it from your testimony that was a
21 lie, correct?

22 "A. Yes, it was."

23 Do you remember being asked those questions --

24 A. Yeah.

25 Q. -- and giving those answers?

Hb9nros3

Abdullah - cross

1 A. Yes. Yes, I do remember that.

2 Q. And so, in fact, you did lie to the agents when they came
3 to you that day?

4 A. Yes, yes, I did. Definitely.

5 Q. And lying for you is not a very difficult thing to do, is
6 it?

7 A. At times if it benefited me, yes, I did it.

8 Q. So we have agreed that you've lied to a judge in Queens,
9 right?

10 A. Yes.

11 Q. You've lied to a judge in the Bronx?

12 A. Yes.

13 Q. You've lied to federal agents?

14 A. Yes.

15 Q. You have lied to federal prosecutors?

16 A. Yes.

17 Q. And you've lied many other times throughout your life?

18 A. Many times.

19 Q. And would I be correct in saying that if you had to lie for
20 your freedom you would do that?

21 MS. HANFT: Objection.

22 THE COURT: Overruled.

23 A. What are you talking about? I'm free.

24 Q. If you had to lie to walk out of jail, would you do that?

25 A. I don't understand the question. What are you talking

Hb9nros3

Abdullah - cross

1 about? Give me an example. Be specific. Because this is
2 hypothetical.

3 Q. OK. I will give you a question.

4 If you could tell a lie that would allow you to walk
5 out of jail to freedom, would you tell that lie?

6 MS. HANFT: Objection, your Honor.

7 A. What do you mean?

8 THE COURT: Overruled.

9 A. You are giving me a hypothetical question.

10 Q. Yes.

11 A. That's up in the air. You got -- there has to be a context
12 related to that question. You just throwing me out a
13 hypothetical question.

14 Q. You testified --

15 A. Because lying is in my interest, right?

16 Q. Yes.

17 A. What you got to say is this, because if I lie it's in my
18 interest. You follow what I'm saying, that means if it could
19 help me.

20 If telling the truth is going to help me, then I am
21 going to tell the truth. You have to understand the situation.
22 You are giving me a hypothetical question, so I can't really
23 answer it.

24 Q. I will change the hypothetical.

25 If you could lie in a courtroom in your personal

Hb9nros3

Abdullah - cross

1 interest, and it would not hurt you, to walk yourself out of
2 jail, would you do that?

3 A. What do you mean walk? Like if I'm --

4 Q. Freedom?

5 A. If I'm in jail. Let's get the whole hypothetical.

6 Q. If you're in jail.

7 A. If I am in jail.

8 Q. And you could come into a courtroom.

9 A. And I could come into a courtroom.

10 Q. Testify in front of a front of a jury?

11 A. Testify in front of a jury.

12 Q. And lie in your interest so that you would walk out the
13 front door --

14 A. At that very moment?

15 Q. At that very moment.

16 A. At that very moment.

17 Q. Would you do it?

18 A. Huh?

19 Q. Would you do it?

20 A. And there will be a Rolls Royce probably waiting outside.

21 Let's add more to the hypothetical, because I mean that's what
22 you are doing right now. You're giving me a hypothetical, bro,
23 like that don't make no sense.

24 Q. Do you remember testifying in the Eastern District in a
25 matter?

Hb9nros3

Abdullah - cross

1 A. Yes. On a hypothetical question, he said if I lied right
2 now and I could walk out that door, would I walk out? Yes.
3 And guess what? I told the truth. If I would have told a lie
4 and then I could walk out the door at that very moment, that
5 was the context in which he asked my that question.

6 Q. That's the same question I'm asking you.

7 A. If you asked me that question, at that moment, that was it.
8 But this ain't the moment right now. I am not in jail. Your
9 question is not relevant to how he was asking me at that
10 moment.

11 Q. I'm asking you if you were in jail, would you lie to get
12 out of jail?

13 A. You're giving me a hypothetical question. But I mean I
14 don't really know how to answer that.

15 Q. How did you answer that question in the Eastern District?

16 A. I answered it. I told the man yes.

17 MS. HANFT: Objection.

18 THE COURT: Sustained.

19 BY MR. TOUGER:

20 Q. By the way during this 2007, 2009 period you were living in
21 New Jersey I believe you said?

22 A. Yes.

23 Q. How much was your home worth approximately?

24 A. I think I paid \$1.3 million for it.

25 (Continued on next page)

HB9AAROS4

Abdullah - Cross

- 1 BY MR. TOUGER:
- 2 Q. And what were you driving at that time?
- 3 A. I don't know. I have several cars.
- 4 Q. What were they?
- 5 A. S550, CL550.
- 6 Q. Are those Mercedes?
- 7 A. Yeah. Escalades.
- 8 Q. And what was your wife driving?
- 9 A. A Range Rover.
- 10 Q. These are all very expensive cars, right?
- 11 A. Yeah.
- 12 Q. And you had enough money to spend \$25,000 on a watch from
- 13 Mr. Rosemond, right?
- 14 A. Yes.
- 15 Q. And you stole \$400,000 right before you got arrested,
- 16 right?
- 17 A. Yes.
- 18 Q. All that money is gone now?
- 19 A. Yeah, for the most part.
- 20 Q. What do you mean "for the most part"?
- 21 A. Yes.
- 22 Q. How much money do you have left of all that drug money?
- 23 A. None.
- 24 Q. Excuse me?
- 25 A. None.

HB9AAROS4

Abdullah - Cross

1 Q. Now, I believe you said at some point you met Jimmy in the
2 year 2000, right?

3 A. Yes.

4 Q. And you met him through a religious leader?

5 A. Yes.

6 Q. An imam?

7 A. Yes.

8 Q. Introduced the two of you?

9 A. Yes.

10 Q. And you had, at that point you say, a legitimate security
11 business?

12 A. Yes.

13 Q. You were making money from that I presume?

14 A. Yes.

15 Q. Making a lot of money?

16 A. Um-hmm.

17 Q. Hundreds of thousands of dollars a year?

18 A. Me personally or the company?

19 Q. Well, the company and you.

20 A. Yeah. I mean, I personally I was making a now hundred
21 thousand a year.

22 Q. You had over four hundred people working for you, right?

23 A. Yes.

24 Q. And you got to know Jimmy because he was in the music
25 business, right?

HB9AAROS4

Abdullah - Cross

- 1 A. Yes.
- 2 Q. And Jimmy would travel around all over the country?
- 3 A. Yes.
- 4 Q. For the music business?
- 5 A. Yes.
- 6 Q. And at times you would give security for some of his actors
- 7 or singers, performers?
- 8 A. I don't know what he was doing with them.
- 9 Q. Would he hire you to do security?
- 10 A. No.
- 11 Q. Did you ever do security for Jimmy?
- 12 A. One time.
- 13 Q. And would I also be correct that in '07 you went to Mecca
- 14 with Jimmy?
- 15 A. Yes.
- 16 Q. And you and Jimmy were together for two weeks in Saudi
- 17 Arabia?
- 18 A. About a week, about eight days.
- 19 Q. Did Jimmy go home with you?
- 20 A. No.
- 21 Q. He went to continue his trip in other places?
- 22 A. Yes.
- 23 Q. Do you know where he went?
- 24 A. To Africa.
- 25 Q. He was gone for a longer time than you were gone for?

HB9AAROS4

Abdullah - Cross

1 A. Yes.

2 Q. And during that time that was after his son had got
3 assaulted?

4 A. Yes.

5 Q. Try to refresh your recollection; about a month after?

6 A. Yes.

7 Q. Excuse me?

8 A. Yes.

9 Q. And wasn't Jimmy trying to find some peace at that time?

10 MS. HANFF: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. Did Jimmy speak to you why he went on that trip?

13 A. Trip was planned.

14 THE COURT: The question was, Did he speak to you?

15 THE WITNESS: Yes.

16 THE COURT: Next question.

17 Q. Now, and during the actual trip, those eight days you spent
18 together was very important to the two of you, correct?

19 A. Yeah.

20 Q. You spoke to Jimmy during that trip?

21 A. Yeah.

22 Q. Did Jimmy tell you during that trip --

23 THE COURT: Sustained.

24 Q. By the way, no one forced Jimmy to go on that trip, right?

25 MS. HANFF: Objection.

HB9AAROS4

Abdullah - Cross

1 THE COURT: Sustained.

2 Q. That you know of?

3 THE COURT: Sustained.

4 Q. As far as you know, did Jimmy go on that trip voluntarily?

5 MS. HANFF: Objection.

6 THE COURT: Sustained.

7 Q. Did you see Jimmy communicating with people back in the
8 United States a lot during that trip?

9 A. Yeah.

10 Q. Now, let's go to the time period which you first found out
11 about this feud that you spoke about, OK.

12 A. Um-hmm.

13 Q. Did you think when you first found out about the feud, did
14 you think it was serious?

15 A. From some things I heard happen, yes.

16 Q. And did you think it was only between 50 Cent and Game when
17 you first found out about it?

18 A. I really didn't try to inquire about all of the details who
19 it was between.

20 Q. Now at some point you spoke about this incident that
21 happened at the Apollo Theater?

22 A. Yes.

23 Q. Would I be correct in saying that you met up with Jimmy and
24 Mohammed Stewart outside of the Apollo Theater before you went
25 in?

HB9AAROS4

Abdullah - Cross

1 A. Yes.

2 Q. There's no doubt that you were with Mohammed Stewart before
3 you went into the Apollo Theater?

4 A. Yes.

5 Q. Now, and I believe you testified that there was another
6 individual there?

7 A. Yes.

8 Q. And who was that?

9 A. I don't know the guy. It was Jimmy's driver at the time.

10 Q. Was his name "Mega"?

11 A. I don't know. I don't know. He is not a friend of mine.

12 Q. Was there another individual?

13 A. I can't recall honestly.

14 Q. Now, and at some point did G-Unit members bum rushed the
15 entrance, correct?

16 A. Yes.

17 Q. They go right through the metal detectors without stopping?

18 A. Yes.

19 Q. Would I be correct in saying that -- well, you were not
20 armed at that date, right?

21 A. No.

22 Q. Would I be correct in saying you didn't think anybody else
23 was armed that day?

24 A. Yes.

25 Q. And Jimmy goes up to Yayo and says "hello", correct?

HB9AAROS4

Abdullah - Cross

1 A. Yes.

2 Q. And there was no aggression in Jimmy at that point, was
3 there?

4 A. None at all.

5 Q. And it was Yayo that became aggressive, correct?

6 A. Yes.

7 Q. And the people who were around with him were sort of egging
8 that on, right?

9 A. Yes.

10 Q. And you decided this is not a good situation to be in so
11 you said, let's go up to the mezzanine, correct?

12 A. Yes.

13 Q. And at some point that whole crew followed up to the
14 mezzanine?

15 A. Yes.

16 Q. And it's still just you three or four individuals and 15 to
17 20 of them, right?

18 A. That's correct.

19 Q. So you are outnumbered considerably?

20 A. Yes.

21 Q. And you have no weapons?

22 A. Yes.

23 Q. And one of them takes out a gun, correct?

24 A. Yes.

25 Q. And he starts saying just give me the word, give me the

HB9AAROS4

Abdullah - Cross

- 1 word, right?
- 2 A. Yes.
- 3 Q. And you think you are gonna get shot at that point?
- 4 A. Possibility.
- 5 Q. And you say to Jimmy, "let's go"?
- 6 A. Yes.
- 7 Q. Cause you know the Apollo, you got an escape route down to
- 8 the outside to the street?
- 9 A. Correct.
- 10 Q. And at that point you said, "We got to do something". They
- 11 came up on us, threatened us with a gun and Jimmy says "No,
- 12 don't do anything", correct?
- 13 A. Like I previously said, Jimmy was like, well, it ain't
- 14 nothing. Don't worry about it. I'll take care of it later.
- 15 Then I said, I'll take care of it now.
- 16 Q. Right. And then you called your associate, right?
- 17 A. Yes.
- 18 Q. And told him to bring weapons?
- 19 A. Yes.
- 20 Q. And then your associate came with the weapons?
- 21 A. Correct.
- 22 Q. When I say "weapons" I mean guns?
- 23 A. Correct.
- 24 Q. And then at some point you -- how many cars were you
- 25 following, by the way?

HB9AAROS4

Abdullah - Cross

- 1 A. I think about three cars.
- 2 Q. And they at some point stopped and you tell your associate
3 to go up and I believe you say "clap up the Bentley"?
- 4 A. Correct.
- 5 Q. You were not intending to kill anybody that night, were
6 you?
- 7 A. No.
- 8 Q. And I believe you testified quite clearly on direct that
9 this was your idea, not Mr. Rosemond's idea?
- 10 A. Correct.
- 11 Q. Now, at some point you talked to Jimmy about an incident
12 with Chris Lighty at a restaurant, right?
- 13 A. Correct.
- 14 Q. And Jimmy had set up this meeting or this meeting was setup
15 as a peace offering, correct?
- 16 A. Yeah, I guess so.
- 17 Q. And Jimmy told you that at that meeting and this is at a
18 public restaurant?
- 19 A. I don't know where it was at. I didn't say where it was
20 at. I never said.
- 21 Q. Do you know where it was at?
- 22 A. No.
- 23 Q. Do you know if was in public?
- 24 A. I don't know where it was at.
- 25 Q. But at that meeting Chris Lighty I think you said mused

HB9AAROS4

Abdullah - Cross

- 1 Jimmy's face?
- 2 A. Yes.
- 3 Q. By that you mean he rubbed his hand --
- 4 A. Pushed his faces with his hand.
- 5 Q. That's pretty disrespectful, right?
- 6 A. Yes.
- 7 Q. And Jimmy said he didn't do anything at that point, did he?
- 8 A. No.
- 9 Q. And this New Year's eve party that you spoke about in Miami
- 10 that was after this incident?
- 11 A. Yes.
- 12 Q. Would I be correct in saying Jimmy as little bit drunk at
- 13 that party?
- 14 A. Yes.
- 15 Q. Would I be correct to say that other people were drunk at
- 16 that party?
- 17 A. Yes.
- 18 Q. Would I also be correct in saying that Chris Lighty was at
- 19 that party?
- 20 A. Yes.
- 21 Q. Did Jimmy do anything to Chris Lighty at that party?
- 22 A. No.
- 23 Q. Did Jimmy tell anybody to do anything to Chris Lighty at
- 24 that party?
- 25 A. Not at all.

HB9AAROS4

Abdullah - Cross

1 Q. And when this whole incident about shooting Chris Lighty
2 came up, Jimmy made it quite clear that Chris Lighty was not to
3 be killed, right?

4 A. Yes.

5 Q. And this incident that happened with Jimmy's son getting
6 assaulted; do you remember that?

7 A. Yes.

8 Q. And Jimmy called you, right?

9 A. Yes.

10 Q. You were not at the office?

11 A. No.

12 Q. And this happened after the Apollo incident?

13 A. Yes.

14 Q. And Jimmy did not ask you to bring some guys with guns, did
15 he?

16 A. No.

17 Q. By the way, I believe you testified that Violator Records,
18 their office is on the same block as Jimmy's was?

19 A. Yes.

20 Q. And you've been to that block numerous times, I presume?

21 A. Yes.

22 Q. Have you been there late at night?

23 A. Yes.

24 Q. And is the street crowded late at night?

25 A. Not really, unless it's something going on.

HB9AAROS4

Abdullah - Cross

1 Q. Now, you've testified about an incident that happened at
2 the national, the banquet that you went to?

3 A. Yes.

4 Q. And that Jimmy said he's leaving to go shoot up Yayo's
5 mother's house, right?

6 A. Yes.

7 Q. He didn't say he was going to there to kill anybody, did
8 he?

9 A. No.

10 Q. He did not to want to kill --

11 MS. HANFF: Objection.

12 THE COURT: Sustained.

13 Q. Did he say to you ever that he wanted to kill anybody that
14 night?

15 A. No.

16 Q. When he came back he didn't say he'd killed anybody, right?

17 A. No.

18 Q. He wasn't upset about not killing anybody, right?

19 MS. HANFF: Objection.

20 THE COURT: Sustained.

21 Q. I believe you testified that Jimmy had you burn a jeep?

22 A. Yes.

23 Q. Just burned the jeep, right?

24 A. Yes.

25 Q. Not kill anyone, right?

HB9AAROS4

Abdullah - Cross

1 A. No.

2 Q. Did you know, your own personal knowledge, did you know
3 that at some point there was a personal feud between Mohammed
4 Stewart and Tony Yayo?

5 THE COURT: Sustained.

6 Q. Or Baja?

7 A. No.

8 Q. Now, I believe you testified to the fact that Jimmy told
9 you that he went up to Westchester County at some point and
10 shot at a relative of Chris Lighty, right?

11 A. Yes.

12 Q. Did he say he killed anybody?

13 A. No.

14 Q. Did he say he went to kill anybody?

15 A. No.

16 Q. Did he say I'm upset that I didn't kill anybody?

17 A. No.

18 Q. Now you testified that at some point Jimmy said -- and
19 correct me if I'm wrong -- they are "they" being G-Unit, right,
20 aren't going to be happy until they go to a funeral?

21 A. Yes.

22 Q. And that's the line you heard him say?

23 A. Yes.

24 Q. They aren't going to be happy till they go to a funeral?

25 A. Yes.

HB9AAROS4

Abdullah - Cross

1 Q. And the "they" in that sentence is G-Unit?

2 A. Yes.

3 MS. HANFF: Objection, your Honor. There was more
4 than one "they" in that sentence and it's unclear.

5 THE COURT: Sustained. Stricken.

6 The jury will disregard the answer as to form.

7 Q. OK. The line is:

8 They weren't going to be happy until they go to a
9 funeral, right?

10 A. Grammatically, I don't recall the whole thing but the idea
11 they not going to be happy until they go to a funeral.

12 Q. The "they" that he is referring to is the G-Unit?

13 A. Yes.

14 Q. And G-Unit kept attacking members of Jimmy's company,
15 correct?

16 A. When?

17 Q. Mr. Stewart was attacked, shot at?

18 A. Yeah, that's it.

19 Q. His son was attacked?

20 A. Whose son?

21 Q. Jimmy's son?

22 A. Oh, yeah.

23 Q. Forgot about that?

24 A. Yeah.

25 Q. Jimmy was mused in the face?

HB9AAROS4

Abdullah - Cross

1 A. Yeah, yep.

2 MR. TOUGER: Your Honor, this would be a good time to
3 break if you'd like.

4 THE COURT: Yeah, but it isn't quite yet. So let's go
5 a little longer.

6 Q. Now, you never heard Jimmy order anyone to be killed, did
7 you?

8 A. No.

9 Q. And as a matter of fact, the whole time you knew Jimmy you
10 never saw him kill anybody?

11 A. No.

12 Q. And when you had this conversation at the Mobay Restaurant
13 do you remember that conversation?

14 A. Yeah.

15 Q. You said Jimmy said that the "bitch is gone" was referring
16 to the Lowell Fletcher homicide?

17 A. Yes.

18 Q. Did Jimmy say at that point that he ordered Lowell Fletcher
19 dead?

20 A. No. Just told me what happened.

21 Q. Just told you what happened?

22 A. Exactly.

23 Q. And I believe you testified that you spoke to Toree about
24 the shooting also, right?

25 A. Yes.

HB9AAROS4

Abdullah - Cross

1 Q. And that was at a restaurant called Slates?

2 A. Yes.

3 MS. HANFF: Objection, your Honor.

4 THE COURT: We're going to break right here.

5 See you at 2:10.

6 (Jury not present)

7 (Luncheon Recess)

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HB9AAROS4

Abdullah - Cross

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AFTERNOON SESSION

2:10 p.m.

(Jury present)

THE COURT: The defendant and the jurors all are present.

The witness is reminded you are still under oath.

Let's continue, Mr. Touger.

MR. TOUGER: Thank you, your Honor.

BY MR. TOUGER:

Q. Good afternoon, Mr. Abdullah.

A. Good afternoon.

Q. Would I be correct in saying that Toree also had his own independent drug business from Jimmy's operation that you testified about?

A. Yes.

Q. Now, I believe on direct you testified about conversations about the payment for what happened in the Bronx?

A. Yes.

Q. And you testified that it was one or two kilos?

A. Yes.

Q. And how much was a kilo -- withdrawn.

How much was were you paying for a kilo at that time?

A. I think about 20/21.

Q. And obviously, a kilo sold for more than that on the street, correct?

HB9AAROS4

Abdullah - Cross

1 A. Yes.

2 Q. So if in fact Jimmy was paying Slim with one kilo that was
3 costing you about 20 or \$21,000?

4 A. Yes.

5 Q. Now, you testified that you had a meeting with Jimmy at
6 Mobay Restaurant; do you remember that testimony?

7 A. Yes.

8 Q. Do you remember when that happened? Do you have any clear
9 memory of when exactly that happened?

10 A. First couple of days of October, last couple of days of
11 September, something like that.

12 Q. So you only remember a period?

13 A. Yes.

14 Q. And I want to talk to you about the \$500,000 or the four
15 hundred to five hundred thousand dollars at Smash Studios?

16 A. Yes.

17 Q. Basically, you stole that money, correct?

18 A. Yes.

19 Q. You kept it for yourself?

20 A. Yes.

21 Q. Did you give your associate any money?

22 A. Yes.

23 Q. How much did you give him?

24 A. About 50 something thousand.

25 Q. So you cleared about \$400,000?

HB9AAROS4

Abdullah - Cross

- 1 A. Yes.
- 2 Q. Now, you also testified on direct about your prior criminal
3 history, correct?
- 4 A. Yes.
- 5 Q. Would it be fair to say that you started committing crimes
6 when you were a teenager?
- 7 A. Yes.
- 8 Q. And as you started to commit crimes they got more and more
9 serious?
- 10 A. Yes.
- 11 Q. And you became a drug dealer?
- 12 A. Yes.
- 13 Q. And you started robbing people?
- 14 A. Yes.
- 15 Q. And you carried guns when you robbed people?
- 16 A. Yes.
- 17 Q. And you carried guns when you were a drug dealer?
- 18 A. Yes.
- 19 Q. And did you ever pistol whip somebody?
- 20 A. Yes.
- 21 Q. And what does that mean?
- 22 A. Hit them with a gun.
- 23 Q. And I believe you testified to an incident with somebody
24 named "O"?
- 25 A. Yes.

HB9AAROS4

Abdullah - Cross

1 Q. And after the gun went off during that incident, right?

2 A. Yes.

3 Q. And by the way, you never intended to kill "O" during that
4 incident, right?

5 A. No.

6 Q. And you've also testified that you've shot at people,
7 right?

8 A. Yeah.

9 Q. And when you shot at people you shot at you didn't intend
10 to kill them, right?

11 A. No.

12 Q. You've ordered people to shoot at other people, right?

13 A. Yes.

14 Q. You never intended to kill those people, right?

15 A. No.

16 Q. And you said to those people "go shoot that guy"?

17 THE COURT: No, it's not right or no, you didn't
18 intend to kill them?

19 A. No, I didn't intend to kill them.

20 Q. When you wanted somebody to shoot at somebody you would say
21 something like "clap them up", right?

22 A. Yes.

23 Q. You wouldn't say "clap them up but don't kill"?

24 A. I mean, I've never said that.

25 Q. That's my point.

HB9AAROS4

Abdullah - Redirect

1 A. Yeah.

2 Q. And you've also taken out guns at times just for fear
3 factor, correct?

4 A. Yes.

5 Q. And obviously at those times you didn't intend to kill
6 anybody, right?

7 A. No.

8 Q. Sometimes the gun has gone off even when you didn't even
9 intend to use it as in the "owe cal" incident, correct?

10 A. Yes.

11 MR. TOUGER: Nothing further, your Honor.

12 THE COURT: Thank you. Any redirect?

13 MS. HANFF: Yes, your Honor.

14 REDIRECT EXAMINATION

15 BY MS. HANFF:

16 Q. Mr. Abdullah, you were asked some questions on cross
17 examination about the shooting at Apollo Theater, right?

18 A. Yes.

19 Q. When you called people that day what instructions did you
20 give them?

21 A. Bring me the guns.

22 Q. And defense counsel asked whether you intended to kill
23 someone that day. Did you hire someone somebody to lure Yayo
24 to you that day?

25 A. No.

HB9AAROS4

Abdullah - Redirect

- 1 Q. Did you recruit a crew of five people that day?
- 2 A. No.
- 3 Q. Did you scout the location ahead of time?
- 4 A. No.
- 5 Q. You have other people scout a location ahead of you time?
- 6 A. No.
- 7 Q. Did you hire a back-up team?
- 8 A. No.
- 9 Q. Did you tell them to get rid of the guns they had used?
- 10 A. No.
- 11 Q. Did you pay \$30,000 to them?
- 12 A. No.
- 13 Q. Defense counsel asked you just now on cross whether Jimmy
- 14 told you he ordered Lowell Fletcher to die; do you recall that?
- 15 A. Yes.
- 16 Q. In that meeting at Mobay what did Jimmy tell you about the
- 17 murder?
- 18 A. He told me exactly what happened that day, that the events
- 19 that transpired, the sequence of events.
- 20 Q. Did he tell you he had Jason bring the .22?
- 21 A. Yes.
- 22 Q. Did he say it was a .22 with a silencer?
- 23 A. Yes.
- 24 Q. Did he tell you that Slim was involved as well?
- 25 A. Yes.

HB9AAROS4

Abdullah - Redirect

1 Q. Did he tell you that Slim had a man who was doing the
2 shooting?

3 A. Yes.

4 Q. Did he tell you he had a backup there?

5 A. Yes.

6 Q. Did Slim have a relationship with Jimmy?

7 A. Yes.

8 Q. What was it?

9 A. They were cool. That was his man. He used to work for
10 him.

11 MR. TOUGER: Objection, your Honor. He's never seen
12 Slim.

13 Q. How do you know that?

14 A. Jimmy told me.

15 MS. HANFF: Can I proceed, your Honor?

16 THE COURT: Absolutely.

17 Q. Did Jason have a relationship with Jimmy?

18 A. Yes.

19 Q. Did Toree have a relationship with Jimmy?

20 A. Yes.

21 Q. To your knowledge, did any of them have a beef with Lodi
22 Mack?

23 A. Not that I know of.

24 Q. Did Jimmy have beef with Lodi Mack?

25 A. Yeah. He had an issue with him.

HB9AAROS4

Abdullah - Redirect

1 Q. Now you were asked some questions on cross-examination
2 about whether you've seen phone or airline records in this
3 case.

4 A. Yes.

5 Q. Did the government show you its evidence in this case?

6 A. No.

7 Q. Did the government tell you who its witnesses are?

8 A. No.

9 Q. The government tell you what the witnesses would say?

10 A. No.

11 Q. The government show you phone records?

12 A. No.

13 Q. Did anyone show you phone records?

14 A. No.

15 Q. Did anyone tell you whether the government has phone
16 records?

17 A. No.

18 Q. You were also asked about a message that you've received,
19 tell Truck to hit the driver ASAP?

20 A. Yes.

21 Q. At the time you got that message did you believe --

22 MR. TOUGER: Objection, your Honor. It was not gone
23 into on cross.

24 THE COURT: What about it, Ms. Hanft? He is saying it
25 it's outside the scope of the cross.

HB9AAROS4

Abdullah - Redirect

1 MS. HANFF: That's fine, your Honor. I'll proceed.

2 THE COURT: OK.

3 Q. Do you recall being asked questions on cross-examination
4 about times you've lied?

5 A. Yes.

6 Q. When you pled guilty to a robbery you didn't commit, why
7 did you do that?

8 A. Cause I knew my current situation in terms of with the
9 probation and the judge, so it was in my best interests just
10 take that plea.

11 Q. So you believed it was in your best interests to lie?

12 A. I mean, yeah. I didn't look at it as lying at the time. I
13 just took a plea. I was in a stolen car.

14 Q. Did you have a cooperation agreement?

15 A. I knew it was taken in a robbery, so.

16 Q. Did you have a cooperation agreement with the government at
17 that time?

18 A. No. It was a state case.

19 Q. When you pled guilty to an attempted murder you didn't
20 commit, why did you do that?

21 A. I was on trial. The way the trial was looking it was like
22 I was gone lose. The guy had just testified against me. So I
23 was already expecting to take the hit for 12 to 25 years. So
24 when the prosecutor offered us probation, it was like a
25 no-brainer.

HB9AAROS4

Abdullah - Redirect

1 Q. So did you believe it was in your best interests to do
2 that?

3 A. Yes.

4 Q. Did you have a cooperation agreement with the government
5 then?

6 A. No.

7 Q. When you paid Shaka to drop charges against you, why did
8 you do that?

9 A. So I could get out of that case.

10 Q. Did you believe that it was in your best interest --

11 A. I wasn't even arrest rested then. That was just in case I
12 get arrested.

13 Q. Did you have a cooperation agreement with the government at
14 that time?

15 A. No.

16 Q. Do you believe it's in your best interests to lie today?

17 A. No.

18 Q. Why not?

19 A. Ain't gon do nothing but catch a new charge.

20 Q. So you were asked a question about a prior proceeding where
21 you answered if you could walk out a free man you would tell a
22 lie. At the time you were asked that question did you believe
23 you could lie and get away with it?

24 A. No.

25 Q. Why not?

HB9AAROS4

Abdullah - Redirect

1 A. Cause that would have violated my agreement and I knew was
2 a hypothetical question but I told the truth if that
3 hypothetical question was true.

4 Q. Would you be able to lie now to get out of prison?

5 A. No.

6 Q. Why not?

7 A. Cause y'all know the case already, man. Y'all know what's
8 going on with this.

9 Q. Are you in prison now?

10 A. No.

11 Q. What would happen if you lie now?

12 A. Catch a new charge.

13 Q. When you were sentenced, did the government recommend a
14 specific sentence?

15 A. No.

16 Q. Who decided your sentence the first time you were sentence?

17 A. A judge.

18 Q. Who decided it the second time you were sentenced?

19 A. The judge.

20 MS. HANFF: One moment, your Honor.

21 (Pause)

22 Q. Mr. Abdullah, when you were sentenced in the Eastern
23 District of New York, did the judge know about the crimes you'd
24 been charged with?

25 A. Yes.

HB9AAROS4

Abdullah - Recross

1 Q. Did the judge know about the crimes you hadn't been charged
2 with?

3 A. Yes.

4 Q. And was that information provided to the judge in your 5K?

5 A. Yes.

6 Q. When you were resentenced did the judge know about the
7 shank you had possessed in jail?

8 A. Yes.

9 MS. HANFF: No further questions, your Honor.

10 MR. TOUGER: Very briefly, your Honor.

11 THE COURT: Yes.

12 CROSS-EXAMINATION

13 BY MR. TOUGER:

14 Q. Ultimately, you got arrested for the Shaka incident,
15 correct?

16 A. Yeah.

17 Q. And you called up Shaka and you said remember that 25 grand
18 I gave you, you got to do what you got to do, right?

19 A. Yes.

20 Q. And Shaka went and lied in the affidavit and the case got
21 dismissed?

22 A. Yes.

23 Q. Because you paid him 25 grand?

24 A. Yes.

25 Q. And I believe you testified now on redirect that Toree was

HB9AAROS4

Abdullah - Recross

1 a backup, right?

2 A. Yes.

3 Q. He wasn't there as an observer. He is there to pack
4 backup, right?

5 A. Yeah.

6 Q. Different roles, right?

7 A. Yes.

8 Q. And didn't Toree also tell you that he saw Mr. Fletcher?

9 MS. HANFF: Objection.

10 THE COURT: Sustained. Rule 802.

11 Q. Did Jimmy tell you what Toree told him about the condition
12 of Lowell Fletcher after he got shot?

13 THE COURT: Yes or no?

14 A. Say that again.

15 Q. Did Jimmy tell you what Toree told him about seeing
16 Mr. Fletcher after he got shot?

17 MS. HANFF: Objection, your Honor.

18 THE COURT: Sustained on quite a few counts.

19 MR. TOUGER: Nothing further, your Honor.

20 THE COURT: All right. Thank you.

21 Anything else?

22 MS. HANFF: No, your Honor.

23 THE COURT: All right. The witness is excused.

24 Thanks, witness.

25 MR. JOHNSON-SKINNER: Judge, at this time I'd like

HB9AAROS4

Abdullah - Recross

1 read two stipulations.

2 THE COURT: The jury will remember my instructions
3 yesterday about stipulations.

4 MR. JOHNSON-SKINNER: The first one is marked as
5 Government Exhibit 1375.

6 It's stipulated that if called to testify, Detective
7 Raymond Watts would testify that he's a retired detective with
8 the New York Police Department where he worked for over 27
9 years.

10 On December 7, 2006 at approximately one a.m.
11 Detective Watts responded to North General Hospital Emergency
12 Room located near Madison Avenue and 121st Street in Manhattan.
13 At the hospital Detective Watts spoke to Sergio Pettiford who
14 had been shot in the upper torso. Mr. Pettiford did not say
15 who had shot him much. As a result of his conversation with
16 Mr. Pettiford, Detective Watts went to the following locations
17 to investigate the shooting.

18 Lenox Avenue between 125 and 126 Street; Fifth Avenue
19 between 125 and 126 streets and Madison Avenue between 125 and
20 126 Streets in Manhattan.

21 Detective watts did not find any shell casings or
22 other evidence of a shooting at those locations.

23 The Apollo Theater is locate on 125 Street between
24 Seventh Avenue and Eighth Avenue in Manhattan which is
25 approximately two blocks from the locations that Detective

HB9AAROS4

Abdullah - Recross

1 Watts searched.

2 It's further stipulated and agreed that this
3 stipulation as Government Exhibit 1375 is admissible in
4 evidence as a Government Exhibit at trial.

5 We offer that stipulation 1375.

6 THE COURT: 1375 is received.

7 (Government's Exhibit 1375 received in evidence)

8 MR. JOHNSON-SKINNER: The next one is marked as
9 Government Exhibit 1378.

10 It is hereby stipulated that if called to testify
11 Detective Robert Campbell would testify that Campbell is a
12 detective with the New York Police Department and has been
13 employed by the NYPD for approximately 18 years. He is
14 currently assigned and has been assigned since approximately
15 2007 to the Staten Island Night Watch Squad which responds to
16 major crimes that happen between approximately 11:45 p.m. and
17 8 a.m.

18 On January 8, 2018 Campbell responded to an incident
19 at a residential home located a 35 Tappen Court which location
20 is depicted in Government Exhibit 1001. Campbell arrived at
21 the home at approximately ten minutes before five o'clock in
22 the morning.

23 When Campbell arrived at the home NYPD units and the
24 Fire Department were on the scene. The Fire Department was
25 finishing up putting out a small fire that was in front of the

HB9AAROS4

Abdullah - Recross

1 home. Campbell observed that a garbage on the sidewalk outside
2 the home appeared to be on fire. Campbell also observed
3 numerous shell casings in the street, as well as broken glass
4 in the driveway of the home.

5 Campbell also observed a dark colored sports utility
6 vehicle that had been parked across the street. Campbell
7 observed that the vehicle's windshield was cracked from what
8 appeared to be bullet holes. He also observed a deformed
9 bullet recovered from the vehicle dashboard. Campbell observed
10 that the vehicle was heavily armored based on the heavy weight
11 of its doors. He observed that the vehicle bore a Connecticut
12 license plate.

13 Campbell also saw that the house next to the home
14 located at 33 Tappan Court had a bullet hole through its front
15 door. Campbell entered the home at 35 Tappen Court and
16 interviewed complainant, an individual who gave his name as
17 Bajar Walter, B-A-J-A-R Walter. Campbell remained on the scene
18 for a little over one hour. Campbell had no further role in
19 the investigation of this case.

20 It is further stipulated and agreed that this
21 stipulation is Government Exhibit 1378 is admissible in
22 evidence as a Government Exhibit at trial and we offer that.

23 THE COURT: It's received.

24 (Government's Exhibit 1378 received in evidence)

25 MS. HANFF: The government calls Sergeant Burt

HB9AAROS4

Antoine - Direct

1 Antoine.

2 BURT ANTOINE,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. HANFF:

7 Q. Good afternoon, Sergeant Antoine.

8 Where do you work?

9 A. I work in the 101 Detective Squad, Far Rockaway Queens.

10 Q. Is that part of the New York Police Department?

11 A. Yes.

12 Q. Before you worked there, what was your position with the
13 New York Police Department?

14 A. Before that I was in the Missing Person's Squad, the 113
15 squad, the 75 Precinct and actually the 113 Precinct as a
16 police officer and the 100 Precinct as a police officer.

17 Q. The 113 Precinct, what area does that cover?

18 A. South Jamaica, Queens.

19 Q. And approximately, what period were you in the 113
20 Precinct?

21 A. I was in the 113 from '07 to -- 2007 to 2011.

22 Q. During your career at the NYPD have you received any
23 draining relating to firearms and ammunition?

24 A. Yes, I have.

25 Q. Do you have experience using firearms or ammunition?

HB9AAROS4

Antoine - Direct

1 A. Yes.

2 Q. And during the time you've worked at the NYPD have you
3 responded to incidents involving firearms and ammunitions?

4 A. Yes.

5 Q. Have you had an opportunity to examine shell casings and
6 ballistics?

7 A. Yes.

8 Q. Now I'm going to direct your attention to April of 2007,
9 where were you working at that time?

10 A. I was in the 113 Precinct.

11 Q. You said that's Jamaica, Queens?

12 A. Correct.

13 Q. Where were your responsibilities?

14 A. At the time I was doing patrol which is responding to radio
15 runs put over by our central dispatchers and also just
16 observing quality of life issues and just answering to any
17 community needs.

18 Q. Briefly, what is a radio run?

19 A. A radio run is pretty much any, when a 911 caller calls
20 over our central division they put it over our radio and we
21 responded to whatever location was put over.

22 Q. Let me direct your attention to April 18, 2007, were you
23 working that day?

24 A. Yes, I was.

25 Q. From when to when?

HB9AAROS4

Antoine - Direct

1 A. I was working three p.m. to 11:35 p.m.

2 Q. Alone or with a partner?

3 A. With a partner.

4 Q. Did you respond to any radio runs that day?

5 A. Yes, I did.

6 Q. What did you respond to?

7 A. In particular on that day at 8:44p.m. I responded to 140-16
8 159 Street to call of a "shots fired".

9 Q. And did you end up going to that address 140-16 159 Street?

10 A. Yes, I did.

11 Q. What borough is that in?

12 A. Queens.

13 Q. What kind of location is it?

14 A. It's a residential house.

15 Q. I'm going to show you what's in evidence as Government
16 Exhibit 635A. Do you recognize this?

17 A. Yes.

18 Q. What is it?

19 A. That's the location that I responded to.

20 MS. HANFF: Could we please publish Government Exhibit
21 635A.

22 (Pause)

23 Q. What did you see when you responded to that location?

24 A. When I responded to location there were me and my partner
25 pulled up, got out of the vehicle. There were shell casings on

HB9AAROS4

Antoine - Direct

1 the ground in the street of the location. As we approached the
2 household we were met by the 911 caller. There were clear
3 visible bullet holes into the residence at that time from the
4 outside.

5 Q. When you say "bullet holes into the residence", where?

6 A. In the structure of the housing.

7 Q. You mentioned encountering a 911 caller, who was that?

8 A. A Ms. Valerie Bernard.

9 Q. What happened next?

10 A. She had stated that she was in her household with her
11 daughter at the time. They were in the household by themselves
12 and then shots just began to come through the house.

13 Q. Did you come to enter the house?

14 A. Yes, I did.

15 Q. Did you see damage inside the house?

16 A. Yes, I did.

17 Q. What kind of damage?

18 A. It was damage along the walls, some going through the walls
19 into the bathroom, into the bedroom, also into the kitchen.
20 One went into the oven and some of the ballistics were stuck
21 within those walls and also in the oven.

22 Q. Was anyone else in the house when you arrived?

23 A. Yes. Valerie's daughter.

24 Q. How old did that daughter appear to be?

25 A. She was, she appeared to be two years old, approximately.

HB9AAROS4

Antoine - Direct

1 Q. Was anyone in the house injured?

2 A. No, not at the time.

3 Q. Was anything recovered from the house?

4 A. Yes. There was -- well, besides the shell casings that
5 were outside of house, when we first appeared there were also
6 some bullets extracted from the walls of the location.

7 Q. Besides Valerie Bernard, did you speak to anyone else?

8 A. Well, later during the time that -- we have to normally
9 during those, during shootings incidents wait for the evidence
10 collection team. While we were waiting there was the owner of
11 the house who showed up, a Ms. Ilda Bernard.

12 Q. Approximately, how old did Ms. Ilda Bernard appear to be?

13 A. She seemed to be in her mid 60s.

14 Q. I am showing you what's in evidence as Government Exhibit
15 19. Do you recognize this individual?

16 A. Yes.

17 Q. Who is it?

18 A. Tony Yayo.

19 Q. In the course of performing your duties that day did you
20 come to learn the relationship between this individual and the
21 people in the house?

22 A. Yes.

23 Q. What was it?

24 A. It seemed to be that he was Ilda's son and Valerie's
25 brother.

HB9AAROS4

Antoine - Direct

1 Q. Was any evidence collected that day?

2 A. The shell casings and also the bullets.

3 Q. What happened to it after it was collected?

4 A. I vouchered them at the precinct. They are -- first, they
5 are processed by the evidence collection team who they take
6 took it out the wall, they process it into little bags, seal it
7 off and then I bring it back, bring them to the precinct, put
8 them inside of a sealed plastic security envelope and also
9 document everything that's in that bag.

10 Q. I am showing you what's been marked as Government Exhibit
11 1406. Can you open up that envelope please, Sergeant Antoine.

12 A. Yep.

13 (Pause)

14 Q. Did you have an opportunity to examine this exhibit before
15 testifying today?

16 A. Yes, I did.

17 Q. Do you know what's inside it?

18 A. Yes, the shell casings and bullets that were found at the
19 location.

20 Q. How do you recognize it to be what you've examined?

21 A. I initialed and signed the bag.

22 Q. Have you opened them yet?

23 A. Yes. I just looked at them.

24 Q. Are they in substantially the same condition now as when
25 they were retrieved?

HB9AAROS4

Antoine - Direct

1 A. Yes.

2 MS. HANFF: The government offers Government Exhibit
3 1406.

4 THE COURT: Received.

5 (Government's Exhibit 1406 received in evidence)

6 Q. If you could just pull out a bullet and a shell casing and
7 hold it up for the jury, Sergeant Antoine.

8 A. Yes.

9 (Pause)

10 Q. Thank you. Did you do anything else at the precinct?

11 A. I prepared the complaint report for the incident.

12 Q. Did you learn who fired shots at the house that day?

13 A. No, I did not.

14 Q. To your knowledge was anyone ever arrested for that crime?

15 A. No, I do not know.

16 Q. Did you have any further involvement in the case after that
17 day?

18 A. No.

19 MS. HANFF: No further questions, your Honor.

20

21 THE COURT: Thank you.

22 Any cross?

23 MR. TOUGER: Can I see the evidence? May I approach?

24 THE COURT: Approach.

25 (Pause)

Antoine - Direct

Fox - Direct

1 CROSS-EXAMINATION

2 BY MR. TOUGER:

3 Q. One obvious question are .45 caliber bullets bigger than
4 .22 caliber bullets?

5 THE COURT: Sustained.

6 MR. TOUGER: He has the training in ballistics.

7 THE COURT: Look, you've already had this testimony.
8 It's outside the scope of direct. You want to call an expert,
9 get yourself an expert. Let's get on with it.

10 MR. TOUGER: No further questions, your Honor.

11 THE COURT: OK. You are excused.

12 Thank you.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: Next witness.

15 MS. HANFF: The government calls Detective John Fox.

16 JONATHAN FOX,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. HANFF:

21 Q. Good afternoon, Detective Fox?

22 A. Good afternoon.

23 Q. Where do you work?

24 A. New York City Police Department.

25 Q. What your current position?

Antoine - Direct

Fox - Direct

1 A. I am a firearms examiner for operability and microscopy at
2 the police laboratory.

3 Q. How long have you worked there?

4 A. I've worked at the police laboratory since July 2004.

5 Q. What are your responsibilities and duties in the firearms
6 analysis section?

7 A. I test firearms and ammunition operability. I also
8 microscopically examine ballistics evidence such as cartridge
9 casings, bullets and bullet fragments.

10 Q. Can you please explain what cartridge casing, a bullet and
11 bullet fragment is?

12 A. A cartridge casing essentially consists of four components
13 before it's fired which is a live cartridge. It consists of
14 the bullet, the cartridge inside the cartridge goes to the
15 gunpowder over the propellant. And at the base of the
16 cartridge is what's called a primer. When a cartridge is fired
17 out of a revolver or semiautomatic handgun, the cartridge
18 casing is ejected out of the semiautomatic gun. So what's left
19 is a shell casing.

20 Ballistics evidence as a bullet or bullet fragment,
21 that's what comes out of a cartridge when it's fired.

22 Sometimes when a bullet strikes an object that's harder than
23 that bullet, the bullet could fragment into different pieces
24 hence, having a bullet fragment.

25 Q. So you received specialized training to perform your

Antoine - Direct

Fox - Direct

1 current duties?

2 A. Yes.

3 Q. What does that training involve?

4 A. Briefly, when I was first assigned to the Firearms Analysis
5 Section I was trained for six months on test firing firearms.
6 Any time a firearm or ammunition comes into the police
7 laboratory we must identify to see if that firearm is operable
8 or inoperable. After six months of that training and a
9 competency test and proficiency test I was able to perform
10 firearms examination. After doing that for a year or two I
11 then went to the microscopic training portion of the
12 laboratory. This training lasted 18 months. We are trained
13 under AFFE.

14 MR. TOUGER: I'll stipulate that he is an expert.

15 THE COURT: All right. Proceed.

16 MS. HANFF: The government offers Detective Fox as
17 an --

18 THE COURT: Not necessary. Go on.

19 BY MS. HANFF:

20 Q. Could you explain what microscopic comparison is?

21 A. Where we use a comparison microscope. It's a microscope
22 that's combined through an optical bridge. It allows me to
23 look at two different pieces of evidence at the same exact
24 time. I'm looking for the individual characteristics that are
25 left behind on a weapon from the manufacturing process. These

Antoine - Direct

Fox - Direct

1 individual characteristics are left on a bullet and cartridge
2 casing. If I have a sufficient agreement of individual
3 characteristics by using my comparison microscope and comparing
4 these individual characteristics I can say that two bullets or
5 two cartridge cases were fired from the same firearm. If I
6 have sufficient disagreement, I could say they're fired from
7 different firearms.

8 Q. Did you say you could do that for both cartridge casings
9 and for bullets?

10 A. That's correct.

11 Q. Did you examine evidence in connection with the homicide of
12 Lowell Fletcher?

13 A. Yes, I did.

14 Q. What kind of evidence?

15 A. I received cartridge casings and bullets to be examined
16 microscopically.

17 Q. Did you examine them microscopically?

18 A. Yes, I did.

19 Q. I am going to show you what's been marked as Government
20 Exhibit 100. To save time I'm also going to bring up to you
21 Government Exhibit 101. Have you had a chance to examine these
22 exhibits prior to today?

23 A. Yes, I have.

24 Q. How do you know that that's what you've examined?

25 A. These white envelopes contain evidence that I examined in

Antoine - Direct

Fox - Direct

1 this particular case. I recognize it because I created the
2 envelopes. My initials and date of the examination are on the
3 back of both envelopes.

4 Q. Government Exhibit 100, what is inside there?

5 A. There are seven .22 caliber cartridge casings, five of
6 which made by Winchester and two of which made by Remington.

7 Q. What are the condition of the casings?

8 A. When I examined the casings initially, they were damaged,
9 appeared to have been either stepped on or ran over. They were
10 flattened. The casings, some parts of the casings were
11 flattened.

12 MS. HANFF: The government offers Government Exhibit
13 100.

14 THE COURT: Received.

15 (Government's Exhibit 100 received in evidence)

16 Q. Based on your training and experience were you able to
17 determine the caliber of gun that those cartridge casings came
18 from?

19 A. A .22 caliber semiautomatic handgun.

20 Q. Can you briefly explain how you determined that?

21 A. I determined that the casings were .22 caliber. Being that
22 there's deformed cartridge casings recovered from the crime
23 scene, it is my opinion they were fired from a semiautomatic
24 handgun being that every time you fire a semiautomatic handgun
25 it'll discharge the casings after it's fired leaving the

Antoine - Direct

Fox - Direct

1 casings where ever the gun is fired. As opposed to a revolver,
2 the casings remain in the cylinder after you're done firing the
3 weapon.

4 Q. What is a silencer?

5 A. It's what is put at the end of the barrel of firearm. The
6 basic design of a silencer is to significantly muffle the sound
7 of the firearm. Any time the gases escape the firearm or the
8 explosion created during the firing of the weapons, those gases
9 create a large sound like a fire cracker going off. The
10 silencer is designed to silence that noise so that it would be
11 not heard. You are going to hear the sound out of it but it's
12 not going to be as loud as when it's being fired without the
13 silencer.

14 Q. Do you have a way of telling whether the silencer was used
15 based on those shell casings?

16 A. I do not know.

17 Q. Based on your training and experience, were you able to
18 tell whether those casings were all from the same gun?

19 A. Yes.

20 Q. How did you make that determination?

21 A. Based on my microscopic comparison I determined that all
22 seven cartridge casings were fired from the same firearm based
23 on sufficient agreement of the individual characteristics of
24 the firing pin impression.

25 Q. You have up there what's been marked for identification as

Antoine - Direct

Fox - Direct

1 Government Exhibit 101.

2 A. Yes.

3 Q. Have you examined that prior to today?

4 A. Yes, I have.

5 Q. How do you know whether this is what you examined?

6 A. I created the envelope. Inside this envelope is evidence I
7 examined. I recognize it cause I initialed and signed the
8 envelope, as well as the evidence has my initials and unique
9 lab number as well.

10 Q. Where are these bullets from?

11 A. Recovered from the OCME office.

12 MS. HANFF: The government offers Government Exhibit
13 101?

14 THE COURT: Received.

15 (Government's Exhibit 101 received in evidence)

16 Q. Based on your training and experience were you able to tell
17 the caliber of the bullets?

18 A. Yes. I received five deformed pieces of evidence. Four of
19 these deformed pieces of evidence were four .22 caliber bullets
20 and one was a deformed piece of led.

21 Q. Were you able to compare the bullets recovered from -- the
22 bullets you recovered to cartridge casings from the crime
23 scene?

24 A. You're not able to compare bullets to a cartridge casing
25 being that we look for individual characteristics and there's

Antoine - Direct

Fox - Direct

1 no individual characteristics inside the casings that would be
2 left on the bullet for me to compare it to. And if there were,
3 once the bullet travels down the barrel of a firearm any of
4 those individual characteristics would be removed from the
5 landing groove impressions from inside the barrel.

6 Q. Based on your training and experience, were you able to
7 determine whether all five of those bullets were fired from the
8 same gun?

9 A. I was able to determine microscopic comparison that, I'd
10 have to see my report to be more specific which bullets came
11 from the same firearm. But I determined that three of these
12 bullets came from the same firearm and two were inconclusive to
13 the firearm.

14 Q. Why might bullets be inconclusive?

15 A. As I stated earlier when a bullet strikes an object that's
16 harder than that bullet they become deformed. Sometime bullets
17 can hit objects such as bone. It could skip off of pavement.
18 Any time I'm examining a bullet, I'm looking for individual
19 characterization that are left. If the bullet is deformed in
20 nature, some of those characteristics are not left. I can't
21 determine that it was fired from the same firearm.

22 However, based on the condition of these bullets, I
23 could say they have the same characteristics. Meaning that
24 they were .22 caliber bullets. They had the same width landing
25 groove impression but there wasn't enough individual

Antoine - Direct

Fox - Direct

1 characteristics left on the bullet to say definitively if they
2 were from the same firearm or different firearms

3 Q. And that you said was the case for two of them; is that
4 correct?

5 A. Yes.

6 Q. And the other three, what was your conclusion?

7 A. That they were fired from the same firearm.

8 Q. Were you ever provided with a firearm to compare with the
9 casings or bullets you examined in connection with this case?

10 A. I was not, no.

11 Q. If a firearm were ever recovered in New York City that
12 would matched those bullets or casings, would you have a way of
13 knowing?

14 A. It's possible that we would know based on the fact that
15 every firearm that we test fire from a semiautomatic firearm,
16 those test fires are entered into a computer system and those
17 computer systems analyze the firing pin and breach face
18 impression and they give you possible matches throughout the
19 city and national now of possible matches to that particular
20 firearm. To this date I received no test fires to compare to
21 these casings.

22 Q. I am going to turn briefly to another subject. I want to
23 show you what's been marked as Government Exhibit 1406.

24 (Pause)

25 Q. Have you ever looked at this exhibit before?

Antoine - Direct

Fox - Direct

1 A. Briefly, yes.

2 Q. How do you know that's what you looked at briefly?

3 A. It's evidence that I looked at a couple days ago in
4 connection with this case.

5 Q. Do you have that open?

6 A. Yes, I do.

7 Q. What's inside there?

8 A. There's various forms of ballistics such as bullets casings
9 and bullet fragments. I have five bullets, one bullet fragment
10 and two cartridge casings.

11 Q. Based on your training and experience are you able to
12 determine to say what the caliber of these bullets are?

13 A. Based on my training and experience and looking at the
14 bullets, it is my opinion that these are .45 caliber bullets.

15 Q. How about the shell casings?

16 A. These cartridge casings are .45 auto caliber.

17 MS. HANFF: No further questions, your Honor.

18 THE COURT: May I see the exhibit? Did you offer
19 1406?

20 MS. HANFF: It was in, your Honor.

21 THE COURT: May I see them?

22 THE WITNESS: Sure.

23 (Pause)

24 THE COURT: Can I see the previous exhibit with the
25 .22s in it?

Antoine - Direct

Fox - Direct

1 (Pause)

2 THE COURT: They're not loose, are they?

3 THE WITNESS: No. The casings may be and some of the
4 bullets.

5 THE COURT: I'll save us all the trouble by asking
6 Mr. Touger's questions.

7 MR. TOUGER: Go right ahead.

8 THE COURT: Is there a difference in size between the
9 .22 caliber and .45 caliber bullets?

10 THE WITNESS: Yes. A significant size difference.
11 That being said, a .45 caliber bullet could way 230 grains
12 where a .22 caliber bullet could weight anywhere between 30 and
13 40 grains.

14 THE COURT: And the diameter?

15 THE WITNESS: The diameter of a .22 caliber bullet is
16 .22 and the diameter of a .45 caliber is .450. I'm sorry. One
17 bullet, the .22 is one of the smallest caliber rounds as
18 opposed to for a handgun the .45 caliber revolver is one of the
19 largest.

20 THE COURT: OK.

21 Anything?

22 MR. TOUGER: You did a great job.

23 THE COURT: I was mistaken in thinking you got the
24 testimony yesterday. You tried but you didn't.

25 OK. The witness is excused. Thank you.

HB9AAROS4

Williams - Direct

1 THE WITNESS: Thank you.

2 MR. ENZER: Your Honor, the government calls Jason
3 Williams. Mr. Williams is in custody. I think this would be a
4 good time for a short break to get him situated.

5 THE COURT: OK. Thank you.

6 (Jury not present)

7 (Recess)

8 THE COURT: OK. We're waiting on the witness now.

9 MR. ENZER: Correct. I believe the marshals are back
10 there getting him.

11 THE COURT: We're going to stop a little before 4:30,
12 just a few minutes.

13 MR. ENZER: Whatever you want, judge.

14 (Jury present)

15 THE COURT: The defendant and the jurors all are
16 present.

17 Let us proceed. Your witness is?

18 MR. ENZER: Jason Williams.

19 JASON WILLIAMS,

20 called as a witness by the Government,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ENZER:

24 Q. Mr. Williams, how old are you, sir?

25 A. 35.

HB9AAROS4

Williams - Direct

1 Q. Where were you born?

2 A. Bronx, New York.

3 Q. If you don't mind, pull the mic a little closer. Make sure
4 everybody can hear you.

5 How far did you go in school?

6 A. I did a year at college.

7 Q. Are you currently in federal custody?

8 A. Yes.

9 Q. Where?

10 A. In GEO, Queens Detention Center.

11 Q. What is "GEO"?

12 A. It's a jail.

13 Q. Is that a state jail or a federal jail?

14 A. Federal.

15 Q. When were you arrested on federal charges?

16 A. 2012, February.

17 Q. And how long have you been in prison?

18 A. Since then.

19 Q. What crimes did you do, did you commit that caused you to
20 be detained in federal custody?

21 A. Drug crimes and murder.

22 Q. When did the murder occur, approximately?

23 A. 2009, September.

24 Q. And where did the murder occur?

25 A. In the Bronx, New York.

HB9AAROS4

Williams - Direct

- 1 Q. If you know, who was the victim of the murder?
- 2 A. Lowell Fletcher.
- 3 Q. Did he have any nicknames?
- 4 A. "Lodi Mack".
- 5 Q. Did you participate in the murder alone or with others?
- 6 A. With others.
- 7 Q. Can you please name for the jury who the others are who
- 8 participated in the murder?
- 9 A. Brian McCleod, Derrick Grant, James Rosemond and Rodney
- 10 Johnson.
- 11 Q. Was there anyone else?
- 12 A. Yeah, there was somebody else but I don't know they name.
- 13 Q. I didn't hear that.
- 14 A. I don't know his name.
- 15 Q. So there was another person but you don't know the guy's
- 16 name?
- 17 A. Yeah.
- 18 Q. In this courtroom today do you see any of the participants
- 19 in the murder?
- 20 A. Yeah.
- 21 Q. Who do you see?
- 22 A. James Rosemond.
- 23 Q. Does Rosemond have any nicknames?
- 24 A. "Jimmy Henchman".
- 25 Q. Any others?

HB9AAROS4

Williams - Direct

1 A. "Jimmy Ace".

2 Q. Can you please point him out and describe what he is
3 wearing and where he is sitting for the jury?

4 A. He's sitting at the second table with a blue sweater on.

5 MR. ENZER: Your Honor, can we please note for the
6 record that Mr. Williams has identified the defendant, James
7 Rosemond.

8 THE COURT: Yes.

9 Q. What was Rosemond's role in the murder?

10 A. The orchestrator.

11 Q. What was Grant's role in the murder?

12 A. The shooter.

13 Q. What was McCleod's role in the murder?

14 A. He lured the guy there.

15 Q. "The guy" is Lowell Fletcher?

16 A. Yeah.

17 Q. And what was your role?

18 A. The driver.

19 Q. With respect to Rodney Johnson and the other guy you
20 mentioned whose name you don't know, were they present for the
21 murder?

22 A. Yeah.

23 Q. Do you know why they were present?

24 A. No.

25 Q. Was a weapon used in the murder?

HB9AAROS4

Williams - Direct

- 1 A. Yes.
- 2 Q. What kind of weapon?
- 3 A. .22 pistol with a silencer.
- 4 Q. Yes or no, do you know who the .22 pistol with the silencer
5 belonged to?
- 6 A. Yes.
- 7 Q. How do you know that?
- 8 A. Cause I know.
- 9 Q. Who did it belong to?
- 10 A. Jimmy.
- 11 Q. Jimmy is Rosemond, the defendant?
- 12 A. Right.
- 13 Q. OK. Since you call him "Jimmy" I'll refer to him as Jimmy
14 also. Do you know who provided Jimmy's gun to the shooter?
- 15 A. I did.
- 16 Q. When you did that, when you provided Jimmy's gun to the
17 shooter, did you do that on your own initiative or were you
18 asked to do that?
- 19 A. I was asked to.
- 20 Q. Who asked you?
- 21 A. Jimmy.
- 22 Q. What, if anything, do you do with the gun after the murder?
- 23 A. I threw it in the East River.
- 24 Q. Did you do that on your own initiative or were you asked to
25 do that?

HB9AAROS4

Williams - Direct

1 A. I was asked to.

2 Q. Who asked you?

3 A. Jimmy.

4 Q. Aside from the murder, did you commit any acts of violence
5 with Jimmy?

6 A. Yes.

7 Q. Generally speaking, what kinds of acts of violence did you
8 commit with Jimmy?

9 A. Shootings.

10 Q. Generally speaking, during what time period were these
11 shootings?

12 A. 2007 to 2009.

13 Q. Generally speaking, against whom did you commit these
14 shootings?

15 A. Members of G-Unit.

16 Q. What is G-Unit?

17 A. A rap label, a record label.

18 Q. What, if anything, was your role in these acts of violence
19 against G-Unit?

20 A. Driver.

21 Q. And what, if anything, was Jimmy's role in these acts of
22 violence against G-Unit?

23 A. Sometimes the shooter and sometimes he just had us go do
24 it.

25 Q. Turning your attention to drugs, you said you were also

HB9AAROS4

Williams - Direct

1 incarcerated because of drug crimes; is that right?

2 A. Yeah.

3 Q. What kind of drug crimes did you commit that caused you to
4 be incarcerated?

5 A. Transporting cocaine, like sending packages.

6 Q. Did you do that alone or as part of an organization with
7 other people?

8 A. As part of an organization.

9 Q. What kind of drugs did your organization sell?

10 A. Cocaine.

11 Q. And from your participation in the drug organization do you
12 know who the head of the organization was?

13 A. Yeah, Jimmy.

14 Q. During what years did you work for the drug organization?

15 A. About 2003 to 2011.

16 Q. And how would you describe your role in the drug
17 organization?

18 A. Just basically doing whatever was needed of me.

19 Q. Before we talk more about Jimmy and crimes that you
20 committed with Jimmy, let's talk a little bit about your
21 background. You testified that you were born in the Bronx; is
22 that right?

23 A. Right.

24 Q. Where did you grow up?

25 A. In Queens.

HB9AAROS4

Williams - Direct

- 1 Q. And where did you go to high school?
- 2 A. Manhattan.
- 3 Q. What school?
- 4 A. Martin Luther King.
- 5 Q. Did you commit any crimes in high school?
- 6 A. No.
- 7 Q. What year did you graduate high school?
- 8 A. 2000.
- 9 Q. Where did you go to college?
- 10 A. Morgan State in Baltimore.
- 11 Q. When did you start there?
- 12 A. 2000, like the fall of 2000.
- 13 Q. What did you study there?
- 14 A. Electrical engineering.
- 15 Q. How long did you go to college there?
- 16 A. For a year.
- 17 Q. When did you leave?
- 18 A. 2001 in June.
- 19 Q. After leaving college where did you go?
- 20 A. Back home to Queens.
- 21 Q. And approximately, when was that?
- 22 A. 2001, June.
- 23 Q. Around that time period, did there come a time when you
- 24 were arrested?
- 25 A. Yeah.

HB9AAROS4

Williams - Direct

- 1 Q. What happened that caused you to be arrested?
- 2 A. Got pulled over with my friends with a gun in the car.
- 3 Q. Where was this?
- 4 A. In Queens.
- 5 Q. What were you and your friends doing?
- 6 A. Leaving a party.
- 7 Q. Was it your car?
- 8 A. No.
- 9 Q. Was it your gun?
- 10 A. No.
- 11 Q. What happened to that case?
- 12 A. It got dismissed.
- 13 Q. When did you first meet James Rosemond, the defendant?
- 14 A. 2001 July.
- 15 Q. And how did you first meet Jimmy?
- 16 A. My father had asked me to give him a call to see if he
- 17 would give me a job.
- 18 Q. Did you do that?
- 19 A. Yeah.
- 20 Q. And did Jimmy hire you?
- 21 A. Yeah.
- 22 Q. When did you begin working for Jimmy?
- 23 A. Around that same time.
- 24 Q. Summer of '01?
- 25 A. Yeah.

HB9AAROS4

Williams - Direct

- 1 Q. For how long did you work for Jimmy?
- 2 A. For ten years.
- 3 Q. Until when, what year?
- 4 A. 2011.
- 5 Q. When you started working for Jimmy in 2001, did Jimmy have
- 6 a company?
- 7 A. Yeah.
- 8 Q. What was the name of the company?
- 9 A. Henchmen Entertainment.
- 10 Q. And what did Jimmy's company do?
- 11 A. It was a record label and a management label.
- 12 Q. Management of what?
- 13 A. Artists, entertainers.
- 14 Q. Did there come a time when the name of the company changed?
- 15 A. Yeah.
- 16 Q. When did it change?
- 17 A. 2003.
- 18 Q. And what did it change to?
- 19 A. Czar Entertainment.
- 20 Q. Did the company's business change or just the name?
- 21 A. Just the name.
- 22 Q. Did Jimmy's company have an office?
- 23 A. Yeah.
- 24 Q. Where was the office?
- 25 A. 25th Street between Sixth and Broadway.

HB9AAROS4

Williams - Direct

- 1 Q. In Manhattan?
- 2 A. 11 west 25 Street.
- 3 Q. Is that in this borough, in Manhattan?
- 4 A. Yeah.
- 5 Q. Was there a particular suite that was assigned to Jimmy's
- 6 company?
- 7 A. 300.
- 8 Q. What floor?
- 9 A. The third floor.
- 10 Q. When you started working for Jimmy's company what, if
- 11 anything, was your job?
- 12 A. Intern, office administration.
- 13 Q. Did there come a time when your job changed?
- 14 A. Yeah.
- 15 Q. When did it change?
- 16 A. About '07.
- 17 Q. And what did it change to?
- 18 A. I became his driver.
- 19 Q. When you say "driver" you mean like a chauffeur?
- 20 A. Yeah.
- 21 Q. During what period did you work as an intern/office
- 22 administrator for Jimmy's company?
- 23 A. 2001 to 2005.
- 24 Q. Directing your attention to March of 2005, did there come a
- 25 time in or about March of 2005 when you were arrested?

HB9AAROS4

Williams - Direct

- 1 A. Yeah.
- 2 Q. Where were you when you were arrested?
- 3 A. Queens.
- 4 Q. And what happened that caused you to be arrested?
- 5 A. I was with my cousins on our way to one of my cousins'
- 6 house, we got pulled over with a gun.
- 7 Q. What were you guys doing?
- 8 A. About to buy some weed.
- 9 Q. Whose gun was it?
- 10 A. Mine.
- 11 Q. After you were arrested were you released on bail?
- 12 A. Yeah.
- 13 Q. Did you have to put up money for the bail?
- 14 A. Yeah.
- 15 Q. Who put up the money?
- 16 A. Jimmy did.
- 17 Q. Do you know how much?
- 18 A. About 1500, I think.
- 19 Q. And did you eventually retain an attorney to represent you
- 20 in that case?
- 21 A. Yeah.
- 22 Q. And did that attorney require a fee, money?
- 23 A. Yeah.
- 24 Q. Who paid it?
- 25 A. Jimmy.

HB9AAROS4

Williams - Direct

- 1 Q. Do you know how much?
- 2 A. No, not exactly.
- 3 Q. What happened to that case?
- 4 A. I pled guilty and I did eight months on Rikers Island.
- 5 Q. When did you begin serving that sentence?
- 6 A. October 2005.
- 7 Q. And how long were you in?
- 8 A. Until June 2006.
- 9 Q. Where did you serve that time?
- 10 A. Riker island.
- 11 Q. When did you get out?
- 12 A. June 2006.
- 13 Q. And following your release did you return to working for
- 14 Jimmy?
- 15 A. Yeah.
- 16 Q. When you returned to working for Jimmy, what was your job
- 17 initially?
- 18 A. Pretty much the same thing, office stuff.
- 19 Q. And you said before you worked, you started work as his
- 20 driver in or about 2007?
- 21 A. Yeah.
- 22 Q. For how long did you work as Jimmy's driver?
- 23 A. Until 2010 or '11.
- 24 Q. So roughly '07 to 2011?
- 25 A. Yeah.

HB9AAROS4

Williams - Direct

1 Q. How old were you when you began working for Jimmy?

2 A. 19.

3 Q. What's the age difference between you and Jimmy?

4 A. I think about 17 years.

5 Q. How would you describe your relationship with Jimmy?

6 A. Friendly.

7 Q. Are you guys close?

8 A. At one point, yeah.

9 Q. Let's talk about the period from 2001 to 2005 when you were
10 an intern during that period. Where did you typically report
11 to work during that period?

12 A. 25 Street between Sixth and Broadway.

13 Q. Remind us, what was the building number?

14 A. 11.

15 MR. ENZER: Could we please publish Government Exhibit
16 600Y.

17 Q. Can you see the entrance to the building where Jimmy's
18 company was in this photo?

19 A. Yeah.

20 Q. Can you describe for the jury where it is in the picture?

21 A. Like where that, on the right side where that red
22 extinguisher thing is.

23 Q. That's the building that says "11", right?

24 A. Right.

25 Q. And during that period what was your job? What did you do?

HB9AAROS4

Williams - Direct

- 1 A. Office administration, like answering phones, buying office
2 supplies, stuff like that.
- 3 Q. Who did you answer to?
- 4 A. Jimmy, pretty much.
- 5 Q. Were you paid?
- 6 A. Yeah.
- 7 Q. How much?
- 8 A. I think about five hundred a week or something like that.
- 9 Q. And during this period, 2001 to 2005, who else, if anyone,
10 worked at Jimmy's company?
- 11 A. Tony Martin, Teddie, Carl, Punch, a few other assistants.
- 12 Q. Rosemond also worked there?
- 13 A. Yeah.
- 14 Q. Now Teddie, do you know Teddie's full name?
- 15 A. Waverly Coleman.
- 16 Q. What did Teddie do?
- 17 A. He kind of ran the office and helped out with the other
18 duties, like management stuff.
- 19 Q. You said Tony Martin, what did he do?
- 20 A. He helped manage the artists.
- 21 Q. Punch, what did Punch do?
- 22 A. He was the office manager.
- 23 Q. You mentioned Carl. Do you know Carl's full name?
- 24 A. Severe.
- 25 Q. What did Carl do?

HB9AAROS4

Williams - Direct

- 1 A. He did like studio management.
- 2 Q. You said Jimmy had assistants?
- 3 A. Yeah.
- 4 Q. Can you name some of them?
- 5 A. Taja, Tasha, Sabrina.
- 6 Q. Can you describe the layout of the company's offices?
- 7 A. It's a reception area, two front offices, two studios and a
- 8 back office.
- 9 Q. And what was Jimmy's role at the company?
- 10 A. CEO.
- 11 Q. Where did Jimmy physically sit in the office?
- 12 A. In the back office.
- 13 Q. Did you observe Jimmy working with any artists?
- 14 A. Yeah.
- 15 Q. Can you name some of the artist you saw him work with?
- 16 A. Game, Sharissa, Gucci Mane, Lucasy, JFK.
- 17 MR. ENZER: Can you we please publish Government
- 18 Exhibit 30.
- 19 Q. Do you recognize this person?
- 20 A. Yeah, that's Game.
- 21 Q. Is that one of the artists you saw Jimmy work with?
- 22 A. Yeah.
- 23 Q. During the period from 2001 to 2005, did you interact with
- 24 Jimmy?
- 25 A. Yeah.

HB9AAROS4

Williams - Direct

1 Q. How often?

2 A. Pretty much everyday.

3 Q. During that same period 2001 to 2005, did you meet anyone
4 relevant to this case at Jimmy's company's office?

5 A. Yeah.

6 Q. Who are some of the relevant people you met?

7 A. Derrick Grant, Brian McCleod, Rodney Johnson, Mohammed
8 Stewart.

9 Q. OK. Those are some. There are possibly others as well; is
10 that right?

11 A. Correct.

12 Q. Start with Grant. I'm going to show you on your screen
13 what's been premarked for identification as Government Exhibit
14 Five.

15 Do you recognize the person shown in that photo?

16 A. Yeah.

17 Q. Who is that?

18 A. That's Grant.

19 MR. ENZER: The government offers Government Exhibit
20 Five.

21 THE COURT: Sorry. Couldn't hear the name.

22 THE WITNESS: Derrick Grant.

23 THE COURT: Derrick Grant.

24 OK. Proceed.

25 MR. ENZER: Make sure you speak loud into the mic,

HB9AAROS4

Williams - Direct

1 please.

2 The government offers Government Exhibit Five.

3 THE COURT: Yes. It's received.

4 (Government's Exhibit Five received in evidence)

5 MR. ENZER: Can we please publish.

6 THE COURT: Yes.

7 (Pause)

8 Q. Now, for the jury can you tell them who is this person?

9 A. Derrick Grant.

10 Q. He have any nicknames?

11 A. "D".

12 Q. Where did you meet him?

13 A. At the office.

14 Q. How often did he come to the office?

15 A. He came a few times.

16 Q. Did Grant have a job at the office?

17 A. No.

18 Q. Did you have a relationship with Grant?

19 A. Yeah.

20 Q. How would you describe your relationship with him?

21 A. Friendly.

22 Q. Did you and him socialize?

23 A. Yeah.

24 Q. Can you describe some of the things you did together to
25 socialize?

HB9AAROS4

Williams - Direct

1 A. Hung out a little bit, played video games, watched movies,
2 stuff like that.

3 Q. Where did you play video games?

4 A. Sometimes at the office.

5 Q. Where did the office -- would you play video games
6 together?

7 A. In the reception area.

8 Q. Do you know if Grant knew Jimmy?

9 A. Yeah.

10 Q. And how do you know that?

11 A. I've seen them interact.

12 Q. How would you describe Grant's relationship with Jimmy?

13 A. Friendly.

14 MR. ENZER: Can we please publish Government Exhibit
15 Nine.

16 Q. Who is this?

17 A. Brian McCleod.

18 Q. Did he have a nickname?

19 A. Slim.

20 Q. When did you meet Slim?

21 A. Early 2000.

22 Q. How did you meet him?

23 A. Up at the office.

24 Q. How often did Slim come to the office?

25 A. From time to time.

HB9AAROS4

Williams - Direct

- 1 Q. Did Slim have a job at the office?
- 2 A. No.
- 3 Q. Did you have a relationship with Slim?
- 4 A. Yeah.
- 5 Q. How would you describe that relationship?
- 6 A. Friendly.
- 7 Q. Do you know if Slim knew Jimmy?
- 8 A. Yeah.
- 9 Q. How do you know that?
- 10 A. I've seen them interact.
- 11 Q. And how would you describe Slim's relationship with Jimmy?
- 12 A. Friendly.
- 13 MR. ENZER: Can we please publish Government Exhibit
- 14 Two.
- 15 (Pause)
- 16 Q. Who is this?
- 17 A. Rodney Johnson.
- 18 Q. Did he have any nicknames?
- 19 A. "Toree".
- 20 Q. Where did you meet Toree?
- 21 A. At the office.
- 22 Q. How often did he come to the office?
- 23 A. From time to time.
- 24 Q. Did Toree have a job at the office?
- 25 A. No.

HB9AAROS4

Williams - Direct

1 Q. Did you have a relationship with Toree?

2 A. Yeah.

3 Q. How would you describe that relationship?

4 A. Friendly. It was cool.

5 Q. Did Toree have a relationship with Jimmy?

6 A. Yeah.

7 Q. How do you know that?

8 A. I seen them interact.

9 Q. How would you describe Toree's relationship with Jimmy?

10 A. Friendly.

11 MR. ENZER: Can we please publish Government Exhibit

12 10.

13 Q. Who is this it?

14 A. Mohammed Stewart.

15 Q. Did he have any nicknames?

16 A. "Tef".

17 Q. Where did you meet Stewart?

18 A. At the office.

19 Q. How often did he come to the office?

20 A. He came a few times.

21 Q. Did Stewart have a job at the office?

22 A. No.

23 Q. Did you have a relationship with Stewart?

24 A. Yeah.

25 Q. How would you describe that relationship?

HB9AAROS4

Williams - Direct

- 1 A. Friendly.
- 2 Q. Do you know if Stewart knew Jimmy?
- 3 A. Yeah, he did.
- 4 Q. How do you know that?
- 5 A. I seen them interact.
- 6 Q. How would you describe Stewart's relationship with Jimmy?
- 7 A. Friendly.
- 8 Q. A few minutes ago you testified that during the period when
9 you were working as an intern/office administrator for Jimmy
10 you served eight months on Rikers Island for a gun case; is
11 that right.
- 12 A. Right.
- 13 Q. And then following your release you returned to working for
14 Jimmy; is that right?
- 15 A. Right.
- 16 Q. Remind us, when did you return working for Jimmy?
- 17 A. About summer 2006.
- 18 Q. And when did your job change from intern to driver?
- 19 A. Around about the end of 2006/2007, somewhere around there.
- 20 Q. For how long did you continue as a driver for Jimmy?
- 21 A. Until 2011.
- 22 Q. As Jimmy's driver what was your job?
- 23 A. To drive him to his meetings, appointment, things like
24 that.
- 25 Q. Did you drive other people for him too?

HB9AAROS4

Williams - Direct

- 1 A. Yeah, sometimes business associates or a family member.
- 2 Q. As Jimmy's driver, what was your typical work schedule?
- 3 A. About ten a.m. to about 7 p.m. Monday through Friday.
- 4 Q. Were you paid for that?
- 5 A. Yeah.
- 6 Q. Who paid you?
- 7 A. Jimmy.
- 8 Q. How much?
- 9 A. About a thousand a week.
- 10 Q. And during the period from late '06, early '07 to 2011, how
- 11 many times would you estimate you drove Rosemond?
- 12 A. A lot.
- 13 Q. Too many times to count?
- 14 A. Yes.
- 15 Q. When you drove Jimmy, was he typically alone or with
- 16 others?
- 17 A. Both.
- 18 Q. Sometimes he was alone. Sometimes he was with others?
- 19 A. Yeah.
- 20 Q. When Jimmy asked you to drive him to locations, how much
- 21 information did he typically share with you about the purpose
- 22 of each trip?
- 23 A. Not much.
- 24 Q. During the period when you worked as Jimmy's driver what,
- 25 if any, cars did Jimmy have?

HB9AAROS4

Williams - Direct

1 A. He had a white Mercedes Benz and he had a silver Lexus and
2 a black Lexus.

3 Q. Let's start with the white Mercedes. What kind of
4 Mercedes?

5 A. S550.

6 Q. During what time period did he have that?

7 A. '06 or '07.

8 Q. The silver Lexus, what kind of Lexus?

9 A. 460.

10 Q. During what time period did he have that car?

11 A. 2007 to 2009.

12 Q. And the black Lexus, what kind of Lexus was that?

13 A. LS600.

14 Q. During what time period did he have the black Lexus?

15 A. 2009 to 2011.

16 Q. Did you ever drive any of those cars?

17 A. Yeah.

18 Q. Which ones?

19 A. All of them.

20 Q. Do you know whether any of those cars had any special
21 features?

22 A. Yeah. The Lexus had a hidden compartment in the seat.

23 Q. Which Lexus?

24 A. Both of them.

25 Q. The silver and the black?

HB9AAROS4

Williams - Direct

1 A. Right.

2 Q. You say a hidden compartment. Let's -- well, for both of
3 them when you say hidden compartment, what do you mean?

4 A. Yeah, a hidden stash, a stash spot.

5 Q. Do you know who installed the hidden compartment or stash
6 spot in each of these Lexuses?

7 A. Yeah.

8 Q. How do you know that?

9 A. I took them to be installed.

10 Q. Who installed the hidden stash spots in these two cars?

11 A. A guy in Jersey named Robbie.

12 Q. Did you bring these cars to Robbie to have the stash box
13 installed on your own initiative or at someone's request?

14 A. At Jimmy's requests.

15 Q. When Rosemond asked you to bring the cars to have the stash
16 compartments installed what, if anything, did he tell you?

17 A. Just to bring them to Robbie.

18 Q. Who paid for the installation?

19 A. Jimmy.

20 Q. How much did it cost to install the stash compartment in
21 each of these cars?

22 A. About two thousand dollars, I think.

23 Q. For each one or total?

24 A. Each.

25 Q. Do you know what Jimmy stored in the stash boxes installed

HB9AAROS4

Williams - Direct

1 in his cars?

2 A. Mostly, money.

3 Q. During the period when you worked as Jimmy's driver do you
4 know where Jimmy lived?

5 A. Yes.

6 Q. Where did he live?

7 A. At first in Manhattan on 63rd Street on the west side, then
8 in Brooklyn downtown.

9 Q. Let's start with the one in Manhattan. You said 63rd and
10 what was the cross or to the intersection?

11 A. West End.

12 Q. During what time period did Jimmy live there?

13 A. Up until about 2009 or '10.

14 Q. And so when did he start living there?

15 A. I'm not sure when he started but from when I met him I
16 think until 2010.

17 Q. OK. Did you ever visit that place?

18 A. Yeah.

19 Q. Go inside?

20 A. Yeah.

21 Q. What kind of establishment was it?

22 A. It's an apartment.

23 Q. What kind of a building was it in?

24 A. An apartment building.

25 Q. You mentioned a spot in Brooklyn?

HB9AAROS4

Williams - Direct

- 1 A. Um-hmm.
- 2 Q. When did Jimmy move there?
- 3 A. About 2010.
- 4 Q. How long did he live there?
- 5 A. Until 2011.
- 6 Q. What kind of establishment was this?
- 7 A. An apartment.
- 8 Q. What kind of building?
- 9 A. Apartment.
- 10 Q. Had you visited that place and gone inside?
- 11 A. Yes.
- 12 Q. During the period when you worked as Jimmy's driver, did
- 13 you have any cars of your own?
- 14 A. Yes.
- 15 Q. What kind of car?
- 16 A. A green Nissan Altima.
- 17 Q. Who bought your green Nissan Altima?
- 18 A. Jimmy.
- 19 Q. When did he buy it?
- 20 A. 2007.
- 21 Q. Did the Nissan Altima have any special features?
- 22 A. Yeah. It had two stash boxes.
- 23 Q. Can you describe those stash boxes?
- 24 A. There was one in the trunk inside of a speaker box and one
- 25 in the front in the front console.

HB9AAROS4

Williams - Direct

- 1 Q. Where the air conditioning is?
- 2 A. Right.
- 3 Q. With respect to the one in the back near the speaker in the
4 trunk, can you access it that if you are inside the car as a
5 passenger?
- 6 A. Yeah.
- 7 Q. How?
- 8 A. Just go pull the backseats down.
- 9 Q. How do the trap compartment, the stash boxes in your car,
10 how do they work?
- 11 A. They were magnetized. You just have to hit a button then
12 it waves the magnet on the steering wheel and it'll open.
- 13 Q. So if you want to open the one in the front, what do you do
14 the button?
- 15 A. You hit the button for the front.
- 16 Q. Then you waived the magnet over the button?
- 17 A. Yes.
- 18 Q. Then where was the button?
- 19 A. Like on the floor on the side, on the driver's side door.
- 20 Q. If you want to open the trap compartment in the trunk how
21 do you do that?
- 22 A. Flip that same button.
- 23 Q. Waive the magnet over the steering wheel?
- 24 A. Correct.
- 25 Q. Where you did you keep the magnet?

HB9AAROS4

Williams - Direct

- 1 A. In the cup holder.
- 2 Q. Yes or no, do you know who installed the stash boxes in the
3 Nissan?
- 4 A. Yeah.
- 5 Q. Who?
- 6 A. Robbie.
- 7 Q. The same guy who installed the stash boxes for Jimmy's car?
- 8 A. Yeah.
- 9 Q. How do you know Robbie did that?
- 10 A. I took it to him.
- 11 Q. Did you have the stash boxes installed in your car on your
12 own initiative?
- 13 A. At Jimmy's request.
- 14 Q. When Rosemond asked you to do that what, if anything, did
15 he tell you? What he did he say?
- 16 A. He just asked me to take the car to Robbie.
- 17 Q. Who paid for that?
- 18 A. Jimmy.
- 19 Q. How much?
- 20 A. About two thousand.
- 21 Q. Did Rosemond explain why he asked you to have the stash
22 boxes installed in your car?
- 23 A. At the time, just wanted some inconspicuous car that the
24 G-Unit guys don't really know about and something we can keep
25 stuff in.

HB9AAROS4

Williams - Direct

- 1 Q. When you say "keep stuff in", what do you mean?
- 2 A. Gun, drugs, whatever.
- 3 Q. Do you know whether Jimmy owned any guns during the period
- 4 when you worked as his driver?
- 5 A. Yeah.
- 6 Q. How do you know that?
- 7 A. I was holding some of them for him.
- 8 Q. How did you come to hold some of these guns for him?
- 9 A. At one time he had asked me to go pick something up from
- 10 his ex-driver and when I went to go pick him up it was the
- 11 guns.
- 12 Q. OK. So what year was this?
- 13 A. About 2007.
- 14 Q. Jimmy said pick something up from his ex-driver?
- 15 A. Yeah.
- 16 Q. Do you know the name of his ex-driver?
- 17 A. Yeah, Mega.
- 18 Q. Where was Mega at the time?
- 19 A. His house I think.
- 20 Q. Did you go there to get something from him?
- 21 A. Yeah.
- 22 Q. How did you get there?
- 23 A. I drove.
- 24 Q. Which cars?
- 25 A. Green Altima.

HB9AAROS4

Williams - Direct

1 Q. Tell us what happened when you arrived to meet with Mega?

2 A. He gave me a backpack. When I took it to my car, I opened
3 the stash box, put the guns in the stash box and then I went
4 home.

5 Q. The guns were in the bag?

6 A. Yeah.

7 Q. What kind of guns were in the bag?

8 A. 22 with the silencer and a couple .45s.

9 Q. After you picked up the guns and put them in a stash boxes
10 in your car, what did you do next?

11 A. I went home.

12 Q. What did you do with those guns?

13 A. I put them up. I kept them in my house.

14 Q. After picking those guns up from Mega what, if anything,
15 did you tell Jimmy?

16 A. I just let him know that I was home and I had picked them
17 up and I was home and he said just hold them for me.

18 Q. Is that discussion in person or how did you communicate
19 that conversation?

20 A. By text.

21 Q. What kind of device?

22 A. A Blackberry.

23 Q. Was there anything special about the Blackberry?

24 A. Yeah.

25 Q. When Jimmy said hold that for me, what did you understand

HB9AAROS4

Williams - Direct

- 1 him to say?
- 2 A. To hold the guns for him.
- 3 Q. Did he say in the text the "hold the guns for me"?
- 4 A. No.
- 5 Q. But you understood him to be saying that?
- 6 A. Right.
- 7 Q. Aside from the guns that you were holding for Jimmy, do you
- 8 know whether Jimmy had access to other guns?
- 9 A. Yeah.
- 10 Q. How do you know that?
- 11 A. I seen it.
- 12 Q. What kind did you see him with?
- 13 A. A machine gun.
- 14 Q. How would you describe that machine gun?
- 15 A. Believe it's Mack 11 or a Mack 15 with the silencer on it.
- 16 Q. Where did you see him with that gun?
- 17 A. In the red Expedition.
- 18 Q. Who owned the red Expedition?
- 19 A. Toree. I mean Derrick English.
- 20 Q. And where was the Mack machine gun with the silencer kept
- 21 in the red Expedition?
- 22 A. It had a stash box under the floor under the backseat.
- 23 Q. Testified earlier that in addition to working for Jimmy as
- 24 a driver you also worked for his drug organization; is that
- 25 right?

HB9AAROS4

Williams - Direct

1 A. Right.

2 Q. During what period did you perform tasks for that drug
3 organization?

4 A. About 2003 till 2011.

5 Q. What kind of drugs did the organization sell?

6 A. Cocaine.

7 Q. Who was the head?

8 A. Jimmy.

9 Q. What was Jimmy's role in the organization?

10 A. Supplier.

11 Q. So, he provided drugs?

12 A. Yeah.

13 Q. And who did he provide it? Not names but kinds of people.

14 A. People who was selling.

15 Q. What, if anything, locations did the drug organization use
16 to store its supplies?

17 MR. TOUGER: Sorry. I missed that question.

18 THE COURT: I couldn't understand you, Mr. Touger.

19 MR. TOUGER: I missed that question could he repeat
20 the question.

21 THE COURT: Could you reread the question back?

22 MR. ENZER: Do you want to just ask --

23 Q. What, if any, locations did the drug organization use to
24 store its supplies?

25 A. Stash houses or dummy offices.

HB9AAROS4

Williams - Direct

- 1 Q. What were some of the stash houses?
- 2 A. Have one on 65th Street in Manhattan. Another one in
3 Harlem on Seventh Avenue and 136, I think it was.
- 4 Q. Did you ever go into those stash houses?
- 5 A. Yes.
- 6 Q. The one on 65th Street, where was it located?
- 7 A. 65th Street between First and York.
- 8 Q. That's in Manhattan?
- 9 A. Yeah.
- 10 Q. What kind of establishment?
- 11 A. It's an apartment building.
- 12 Q. What kind of apartment building was it?
- 13 A. Just a regular walk-up building.
- 14 Q. And the one in Harlem, what kind of establishment?
- 15 A. It's an apartment building.
- 16 Q. Was that a walk-up also?
- 17 A. No.
- 18 Q. It had an elevator?
- 19 A. Yeah.
- 20 Q. What was the location of the stash house in Harlem?
- 21 A. It was on Seventh Avenue, I think 136 and 137.
- 22 Q. Did you Rosemond ever tell you expressly that he was
23 running a drug organization?
- 24 A. No.
- 25 Q. How did you learn that Jimmy was running a drug

HB9AAROS4

Williams - Direct

1 organization?

2 A. Just kind of picking up on things and a couple times I've
3 seen things.

4 Q. Can you give us your examples?

5 A. There was a time Jimmy had gave me a bag to give to Tef and
6 when I gave it to Tef he opened it up to take out what was in
7 it and put in his stash box in his car.

8 Q. Tef, remind us what's his name?

9 A. Mohammed Stewart.

10 Q. OK. Approximately, what year was that the incident you
11 just described?

12 A. Two, I believe it was 2008.

13 Q. Where were you when Jimmy gave you a bag?

14 A. At his mother's apartment on 57 Street in Manhattan.

15 Q. Who was in the apartment with you?

16 A. Me, Jimmy, Khalil. That's pretty much it.

17 Q. What did Jimmy give you in the apartment?

18 A. A backpack.

19 Q. What did he tell you to do?

20 A. Take it down to Tef.

21 Q. Did you do that?

22 A. Yeah.

23 Q. Where was Tef?

24 A. In his car.

25 Q. When you saw Tef, what did you do?

HB9AAROS4

Williams - Direct

- 1 A. Gave him the bag.
- 2 Q. Were you outside the car or --
- 3 A. No. I got in the car.
- 4 Q. What happened when you gave Tef the bag?
- 5 A. He opened it, took out what looked like two bricks of
- 6 cocaine and put it in a stash box.
- 7 Q. What car was Tef in?
- 8 A. In a Ford Explorer.
- 9 Q. What was Tef parked?
- 10 A. Right on the street.
- 11 Q. How far from Jimmy's mother's house?
- 12 A. Maybe like a hundred feet, maybe not even that far.
- 13 Q. OK. So that's one incident. Were there other incidents
- 14 you can recall that told you, all right, Jimmy's running a drug
- 15 organization?
- 16 A. Another time I went to go pick up a package at the stash
- 17 house on 65 Street and Derrick English was there. He wasn't
- 18 finished packing up the box. He still had a bunch of money on
- 19 the floor, so.
- 20 Q. Who asked you to go in the stash spot that day?
- 21 A. Jimmy did.
- 22 Q. What were you supposed to do? Why were you going to the
- 23 stash spot?
- 24 A. To pick up a couple boxes to ship them out.
- 25 Q. When you got there you said, what did you see?

HB9AAROS4

Williams - Direct

- 1 A. Money on the floor, a lot of money.
- 2 Q. Cash?
- 3 A. Yeah.
- 4 Q. How much cash?
- 5 A. I don't know. It looked like a lot though.
- 6 Q. You see anything else?
- 7 A. Like a Food Saver bags, rubber bands, boxes, mustard.
- 8 That's pretty much it.
- 9 Q. Did Derrick English ever finish packing the box?
- 10 A. Yeah. I had left and came back. It was finished.
- 11 Q. What did you do with the box?
- 12 A. I shipped it off.
- 13 Q. Did you supply cocaine to this drug organization?
- 14 A. No.
- 15 Q. Did you sell cocaine for the organization?
- 16 A. No.
- 17 Q. Did you participate in the management of the organization?
- 18 A. No.
- 19 Q. Did Jimmy discuss with you the details of how the
- 20 organization was run?
- 21 A. No.
- 22 Q. What kind of tasks did you perform for the organization?
- 23 A. Whatever was asked of me.
- 24 Q. Can you just us some examples of some things that were
- 25 asked of you?

HB9AAROS4

Williams - Direct

1 A. Like I said, shipping or boxes or sometimes receiving boxes
2 that were shipped and sometimes taking money to buy money
3 orders.

4 Q. OK. Let's walk through some of these and let's talk about
5 shipping boxes. When you were shipping boxes, what was in the
6 boxes?

7 A. Money.

8 Q. What kind of money?

9 A. Cash.

10 Q. Who would ask you to do that?

11 A. Sometimes Jimmy, sometimes Khalil.

12 Q. Where would you get the money to send?

13 A. They would be in the boxes.

14 Q. Where would you pick up the boxes?

15 A. From the stash houses.

16 Q. In New York City?

17 A. Right.

18 Q. Where would you typically send the boxes?

19 A. Mostly to California.

20 Q. You talked with about receiving boxes?

21 A. Right.

22 Q. Can you give us an example of how that worked?

23 A. Sometimes if somebody else could, I would be asked to I
24 guess catch a package that's coming this way. And I would
25 either just get it straight off the truck or it would go to the

HB9AAROS4

Williams - Direct

1 office or something like that? And I would get it from there.

2 Q. What does that mean to "catch a package"?

3 A. Receive it.

4 Q. What was in the packages that you were receiving?

5 A. I'm sure but most of the time drugs.

6 Q. What kind of drugs?

7 A. Cocaine.

8 Q. And you said who were asked to do that. Who would
9 typically ask you to pick up packages that were coming in?

10 A. Jimmy.

11 Q. Now if Jimmy asked you to go to pick up a package of
12 cocaine, how would he phrase that request?

13 A. He would just tell me he needed me to pick up something or
14 he need me to be somewhere to receive something.

15 Q. Would he say, hey, I've got a bunch of cocaine coming in a
16 box. Go get it?

17 A. No.

18 Q. You mentioned money orders. Can you explain, give us an
19 example of how that works, what you were doing with money
20 orders?

21 A. Jimmy would give me some money to go to the post office and
22 buy money orders but I would go to different locations, not
23 just one location, address.

24 Q. What kind of money -- step back. Let's talk about the
25 first time you did that. Tell us about the first time that you

HB9AAROS4

Williams - Direct

1 brought money orders for Jimmy.

2 A. I don't really remember the first time but --

3 Q. Did you Jimmy give you instructions the first time?

4 A. I mean, just not to go to one post office to spread it
5 around, to go to different ones so that I wouldn't have to fill
6 out the tax form.

7 Q. What's the tax form?

8 A. I guess once you go over ten thousand or more you have to
9 fill out a form.

10 Q. And the money you're being given to buy money orders, what
11 kind of money are you given?

12 A. Cash.

13 Q. You are supposed to go buy money orders with them?

14 A. Right.

15 Q. You're saying if you spread the money out across post
16 offices you can avoid going over ten thousand at one particular
17 post office?

18 A. Right.

19 Q. That way you avoid having to fill-out this form for any
20 amount over ten thousand?

21 A. Right.

22 Q. What was the purpose of taking cash and buying money
23 orders?

24 MR. TOUGER: Objection, your Honor.

25 THE COURT: Sustained as to form.

HB9AAROS4

Williams - Direct

1 Q. Did you have an understanding of what kind of money that
2 you were taking to go buy money orders?

3 MR. TOUGER: Objection, your Honor.

4 THE COURT: Sustained as to form.

5 Q. How much money would you typically take in a given week on
6 average in cash to go by money orders?

7 A. In a week probably 20 to 30,000 maybe more or maybe less.

8 Q. Was some portion of that cash money from Jimmy's --

9 MR. TOUGER: Was some portion --

10 THE COURT: I don't know what the question is.
11 Perhaps you do.

12 MR. TOUGER: The question was was some sort of that
13 cash from Jimmy's drug business?

14 THE COURT: Let's go on. Finish the question at
15 least.

16 Q. Was some portion of that cash drug money from Jimmy's
17 business?

18 MR. TOUGER: Objection, your Honor.

19 THE COURT: Overruled. The witness is testifying.

20 MR. ENZER: You can answer.

21 A. Yeah.

22 Q. Apart from your regular salary as Jimmy's driver, were you
23 paid for performing tasks for Jimmy's drug organization?

24 A. No.

25 Q. In addition to Jimmy and yourself, were there other people

HB9AAROS4

Williams - Direct

1 in the drug organization?

2 A. Yeah.

3 Q. Can you name some of those people?

4 A. Winston, Khalil, Toree, Derrick English, Tef.

5 Q. OK. I'm going to show you on your screen what's been
6 premarked for identification as Government Exhibit 1007. Do
7 you recognize the people depicted in this photograph?

8 A. Yes.

9 Q. Who do you see on the right?

10 A. Khalil.

11 Q. Who did you see on the left?

12 A. Teddie.

13 MR. ENZER: The government offers Government Exhibit
14 1007.

15 THE COURT: Who did you see on the left?

16 THE WITNESS: Teddie.

17 THE COURT: I can't hear you.

18 THE WITNESS: Teddie.

19 THE COURT: Thank you. Proceed.

20 MR. ENZER: May we publish?

21 THE COURT: Yes.

22 Q. Now, that the jury can see the photo can you tell them who
23 is on the right in the photo?

24 A. Khalil.

25 Q. Do you know his full name?

HB9AAROS4

Williams - Direct

1 A. Khalil Abdullah.

2 Q. And who is standing next to him?

3 A. Teddie.

4 Q. Teddie's full name?

5 A. Waverly Coleman.

6 Q. What was Khalil's role in the drug organization?

7 A. He had kind of a management role.

8 MR. ENZER: Can we publish Government Exhibit 11.

9 (Pause)

10 Q. Who is that?

11 A. Derrick English.

12 Q. Did he have any nicknames?

13 A. "D".

14 Q. What was his role in Jimmy's drug organization?

15 A. He sold drugs.

16 Q. Did he have any vehicles?

17 A. Yeah.

18 Q. What kind of vehicles?

19 A. He had a red Expedition, black Honda Accord.

20 Q. Let's talk about the red Expedition for a moment. Did you
21 ever drive that car?

22 A. Yeah.

23 Q. Did it have any special features?

24 A. Yeah. It had a hidden compartment under the backseat.

25 MR. ENZER: Let's public Government Exhibit 13.

HB9AAROS4

Williams - Direct

1 Q. Who is that?

2 A. Winston.

3 Q. What was his role in Jimmy's drug organization?

4 A. He sold drugs.

5 MR. ENZER: Let's publish Government Exhibit Two.

6 Q. What was his role in Jimmy's drug organization?

7 A. Sold drugs.

8 MR. ENZER: OK. We can take that down.

9 Q. You also mentioned Tef. What was his role in Jimmy's drug
10 organization?

11 A. He sold drugs.

12 Q. Were there other people who worked for the organization as
13 well?

14 A. Yeah.

15 Q. Have you told the jury about every crime you committed for
16 this drug organization or just answered my questions?

17 A. Just answered your questions.

18 Q. Are you willing to answer additional questions about your
19 activities for the drug organization if the defendant's lawyer
20 or if the judge have any more questions?

21 A. Yes.

22 Q. OK. Let me direct your attention to period from 2007 to
23 2011 when you worked as Jimmy's driver.

24 THE COURT: Sounds like a good place to stop.

25 MR. ENZER: That's fine.

HB9AAROS4

Williams - Direct

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THE COURT: OK. Members of the jury, we'll see you
on --

MR. TOUGER: May we approach before --

THE COURT: Come on up.

(Continued on next page)

HB9AAROS4

Williams - Direct

1 (side bar)

2 MR. TOUGER: I don't want to jinx things, your Honor,
3 but I think we are ahead of schedule so if we could start at
4 ten on Monday because I'm -- I don't want to -- we're a head of
5 the game.

6 THE COURT: What do you think, folks?

7 MR. ENZER: With don't have an objection. I wouldn't
8 say we're a head of judge but that's fine.

9 THE COURT: All right.

10 (Continued on next page)

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HB9AAROS4

Williams - Direct

1 (In Open Court)

2 THE COURT: By overwhelming popular demand, we will
3 start at ten on Monday. Enjoy the weekend.

4 Counsel, remain. I want to talk to you about the
5 schedule.

6 (Jury not present)

7 THE COURT: Be seated, folks.

8 Let's talk about the schedule. How much more on
9 direct with this witness?

10 MR. ENZER: About an hour, 45 more on direct.

11 THE COURT: OK. How much on cross?

12 MR. TOUGER: I know I was wrong about Stewart but I
13 think I was right about Abdullah. I think he will be less than
14 an hour also.

15 THE COURT: OK. Now let's go through the rest of the
16 list.

17 Are you calling detective Eleutice?

18 MR. ENZER: We are going to discuss whether we can get
19 a stipulation to obviate the need to call her but if we can't
20 we'll call her.

21 THE COURT: How long?

22 MR. ENZER: If she is called she, is roughly 30
23 minutes.

24 THE COURT: On cross?

25 MR. TOUGER: Ten.

HB9AAROS4

Williams - Direct

1 THE COURT: McCleod is going to take a lot of time,
2 right?

3 MR. ENZER: Yes. Direct is like five hours.

4 THE COURT: How about cross?

5 MR. TOUGER: I'd say McCleod is the whole day.

6 THE COURT: On cross? Five hours, that gives you a 30
7 minute cross. You're not telling me you're going to do that?

8 MR. TOUGER: No. I would --

9 THE COURT: We've a got five and a half hours.

10 MR. TOUGER: I would say similar to Stewart.

11 THE COURT: So remind me, Stewart was how long?

12 MR. TOUGER: Two hours.

13 THE COURT: On cross?

14 MR. TOUGER: Yes.

15 THE COURT: So Loughran, Mr. Enzer?

16 MR. ENZER: Loughran and Perez are short witnesses,
17 roughly, ten minutes each. We are going to try to get stip
18 for them.

19 THE COURT: How much on cross?

20 MR. TOUGER: Short, two minutes.

21 THE COURT: Nunez?

22 MR. ENZER: Nunez is a 30 minute witness. We are
23 going to try to get a stip for that.

24 THE COURT: How long on cross if he testifies?

25 MR. TOUGER: Ten minutes.

HB9AAROS4

Williams - Direct

1 THE COURT: And Heintz?

2 MR. ENZER: About an hour and a half.

3 THE COURT: Cross?

4 MR. TOUGER: Twenty minutes.

5 THE COURT: So that sort of looks to me like we'll
6 probably finish the testimony next Thursday; is that about
7 right?

8 MR. ENZER: That's what we think.

9 THE COURT: What's the likelihood of a defense case?

10 MR. TOUGER: Nil, your Honor.

11 THE COURT: Nil? OK. Then we have charing
12 conference. Is there going to be controversy over the charge?

13 MR. TOUGER: I doubt it but I have to go what the --

14 THE COURT: Of course. The government's tried this
15 case twice before and you've read those records.

16 MR. TOUGER: Right.

17 THE COURT: I haven't read the thousands of pages.

18 MR. TOUGER: From what I've seen in their prior
19 trials, there shouldn't be any --

20 THE COURT: All right. And what are you thinking
21 about for closings?

22 MR. ENZER: An hour and a half to two hours for the
23 government close.

24 THE COURT: Including rebuttal or not?

25 MR. ENZER: Not including rebuttal.

HB9AAROS4

Williams - Direct

1 THE COURT: Defense?

2 MR. TOUGER: An hour.

3 THE COURT: I'm shocked.

4 Rebuttal?

5 MR. ENZER: 30 minutes.

6 THE COURT: I've heard that before.

7 So we have a full day on closings is what it sounds
8 like. And then we have the charge. At least two hours on the
9 charge.

10 All right. So what it looks like to me is we finish
11 the evidence next Thursday probably. I've told the jury we
12 will not come in on the week of the 20th. I could come in on
13 the 20th itself. If we finish the evidence next week I don't
14 see the point of bringing the jury in on the Monday even though
15 I now can do it on the Monday. But what I'm thinking about in
16 that regard is that we do the motions and the charge conference
17 on the Monday, and then we come back and sum up and finish
18 starting on the 28th. Work for everybody?

19 MR. TOUGER: Perfect, your Honor.

20 MR. ENZER: That's fine, judge.

21 THE COURT: OK.

22 MR. TOUGER: Could the charge conference be at 11?

23 THE COURT: We'll see.

24 MR. TOUGER: Thank you, your Honor.

25 THE COURT: We've got a whole week to think about that

HB9AAROS4

Williams - Direct

1 and maybe I can make the charge shorter.

2 OK. Anything else?

3 MR. ENZER: Nothing from the government.

4 Thank you, your Honor.

5 MR. TOUGER: Finally, your Honor, on Monday if you can
6 have the witness just move a little bit to the right? It's
7 very hard for us to see because of the court reporter and the
8 computer screen next to him.

9 THE COURT: We'll see. This is a problem that has not
10 emerged in a full week of trial till this afternoon.

11 MR. TOUGER: It's because the court reporter wasn't
12 sitting there, your Honor.

13 THE COURT: Well, maybe the court reporter will be
14 kind enough to relocate.

15 MR. TOUGER: That's fine.

16 THE COURT: Maybe if you're very nice to the court
17 reporter she will accommodate you.

18 MR. TOUGER: I think it's because of the agent that's
19 now sitting in the chair.

20 THE COURT: Why don't we see if the personal charm of
21 all the lawyers along with the Court's able staff can solve
22 this problem without my having to solve it.

23 (Adjourned to Monday, November 13, 2017 at ten a.m.)
24
25

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HBDAAROSF-CORRECTED Jury Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 431 (LAK)

5 JAMES J. ROSEMOND,

6 Defendant.

7 -----x

8 New York, New York
9 November 13, 2017
10:00 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14 JOON H. KIM
15 Acting United States Attorney for the
16 Southern District of New York

17 BY: SAMSON ENZER
18 DREW JOHNSON-SKINNER
ELIZABETH HANFT
Assistant United States Attorneys

19 DAVID TOUGER
20 JONATHAN EDELSTEIN
Attorneys for Defendant

21 ALSO PRESENT:

22 NYPD Detective Steven Smith
23 Nicholas Pavlis, Paralegal (USAO)

HBDAAROSF-CORRECTED

Jury Trial

1 (Trial resume; jury not present)

2 THE COURT: Good morning, everybody.

3 We're still missing a whole bunch of jurors. They
4 perhaps think it's still Veterans Day but in any case we have a
5 few odds and ends to deal with.

6 Number one, on the government submitted yesterday a
7 long list of corrections to the November 8 and 9 transcripts.

8 Have you had a chance to go through them, Mr. Touger?

9 MR. TOUGER: Yes, I have, your Honor. They're all
10 fine.

11 THE COURT: They're all fine.

12 All right. Those transcripts all will be corrected as
13 indicated in the government's letter which I'm endorsing and
14 Andy will be happy to get a copy for the reporters.

15 Secondly, we talked about doing the charge conference
16 on the 20th at 11 o'clock. Let's just push it back.

17 MR. JOHNSON-SKINNER: I just want to update the
18 court --

19 THE COURT: Sure.

20 MR. JOHNSON-SKINNER: -- the parties have come to an
21 agreement to stipulate as to the testimony of witnesses number
22 19, 21, 22 and 23 on our list. So that means we only
23 anticipate calling two additional witnesses after the witness
24 that's currently on the stand. Those witnesses that we talked
25 about how the second witness would be about four to five hours

HBDAAROSF-CORRECTED Jury Trial

1 of testimony. The last witness we'd expect to be about two
2 hours of testimony, that's on direct.

3 THE COURT: Let's put names to them. You are going to
4 call McCleod?

5 MR. JOHNSON-SKINNER: Correct. So we have about an
6 hour and a half left with Mr. Williams.

7 THE COURT: Mr. Touger said an hour.

8 MR. TOUGER: That's correct, your Honor.

9 THE COURT: And McCleod the government expects to be
10 about four hours and defense expect to be about how long?

11 MR. TOUGER: Probably about an hour.

12 THE COURT: OK.

13 MR. TOUGER: It's hard to say without knowing
14 exactly --

15 THE COURT: Of course.

16 MR. JOHNSON-SKINNER: Mr. Heintz, our last witness,
17 we expect to be about two hours on direct.

18 THE COURT: The defense?

19 MR. TOUGER: I would say less than a half hour.

20 THE COURT: All right. So let's see how that works
21 out. We're getting a late start today. So we're estimating
22 we're going to finish McCleod tomorrow.

23 MR. JOHNSON-SKINNER: Or possibly early Wednesday
24 depending on the length of the cross.

25 THE COURT: And then you expect to rest on Thursday.

HBDAAROSF-CORRECTED

Jury Trial

1 MR. JOHNSON-SKINNER: We might rest, judge, on
2 Wednesday. Our best estimate was Wednesday morning or
3 afternoon depending on the length of the cross.

4 THE COURT: OK. All right. Let's take a look at the
5 calendar.

6 (Pause)

7 THE COURT: All right. If that's so and it goes along
8 in that fashion we could if we push the charge conference end
9 of Wednesday, beginning of Thursday -- remind me of what you've
10 anticipated for closings.

11 MR. JOHNSON-SKINNER: One and a half to two hours for
12 the government.

13 THE COURT: Including or excluding rebuttal?

14 MR. JOHNSON-SKINNER: Rebuttal is estimated to be 30
15 minutes.

16 THE COURT: Is it within the one to one half --

17 MR. JOHNSON-SKINNER: Not including the additional one
18 half.

19 MR. TOUGER: I'd say about an hour, your Honor, give
20 or take.

21 THE COURT: Now have I already told the jury -- remind
22 me please -- that we're not going to sit next Monday?

23 MR. TOUGER: Yes, your Honor.

24 MR. JOHNSON-SKINNER: I think you did.

25 THE COURT: And we have a juror missing on Tuesday.

HBDAAROSF-CORRECTED

Jury Trial

1 MR. JOHNSON-SKINNER: Correct.

2 THE COURT: Well, what's your pleasure? How do you
3 want to organize the rest of this?

4 MR. TOUGER: I would like to sum and charge the week
5 after Thanksgiving, your Honor. That's what we had scheduled
6 last week and that's how I arranged my work schedule.

7 MR. JOHNSON-SKINNER: We would prefer what the Court
8 suggested which was the charge conference Wednesday afternoon
9 or Thursday morning. We think we could then close on Thursday.
10 Probably the jury could be charged on Thursday. The jury could
11 deliberate on Friday and could have the option of deliberating
12 on Monday if they wanted to.

13 MR. TOUGER: Your Honor, I just do not want to have
14 the jury feel any pressure and plus you already had told the
15 jury they're coming back that week, so they're ready to come
16 back. And I'd plan on summing on that next week.

17 THE COURT: Well, I'm going to leave it open for the
18 moment and see where we get. I sure would hate to have a whole
19 week of downtime if it can be avoided before it goes to the
20 jury. You never know what happens.

21 OK. Now, this will throw a monkey wrench potentially
22 into all the testimonies. Andy found in the jury room after
23 the jury left an envelope addressed to Andy. It's dated on the
24 outside November 7 which is conceivable it contains a note from
25 Juror No., I believe it's 11, but it's a little hard to read,

HBDAAROSF-CORRECTED

Jury Trial

1 that says:

2 I have a pre-natal doctor's appointment on Tuesday
3 November 14. I can come in for the morning session at ten
4 o'clock but I would like to know if I could be excused for the
5 afternoon after we break for lunch on Tuesday.

6 Now Andy has just passed me his own note which says:

7 She says she got the date wrong. It should have been
8 November 9.

9 I see. This is the date on the envelope, not the date
10 of the doctor's appointment.

11 OK. So that rejuggles this because I don't see how I
12 can keep her from the prenatal appointment. I'm just not going
13 to do that. So we're going to get two hours to three hours in
14 tomorrow. Certainly, delighted I made my own medical
15 appointment for dawn so as not to lose any time tomorrow but
16 there it goes. So we've got a couple of hours tomorrow.

17 Now how does that affect the government's expectation
18 as to when you rest? Probably pushes it to Thursday?

19 MR. JOHNSON-SKINNER: Still depends on cross but that
20 sounds like we lose about two and a half hours on Tuesday. So
21 that might mean that we still hope to be able to rest by the
22 end of the day Wednesday but possibly Thursday morning.

23 THE COURT: OK. Well, so we'll hang loose on that.
24 If anybody wants to see the note, it's Court Exhibit E.

25 OK. Do we have anything else that we need to take up

HBCAAROS1

Williams - Direct

1 before we see if we have a full jury? We do have a full jury.

2 MR. JOHNSON-SKINNER: Not for the government.

3 THE COURT: OK. Let's get the witness on the stand
4 and we'll bring in the jury after we get the witness on the
5 stand.

6 (Witness is present)

7 (Jury present)

8 THE COURT: Good morning, everybody.

9 I hope you all had a good weekend. Let the record
10 reflect that the defendant is present.

11 Mr. Williams, you are still under oath.

12 Mr. Enzer, you may continue.

13 JASON WILLIAMS,

14 called as a witness by the Government,

15 and having PREVIOUSLY been duly sworn, testified as
16 follows:

17 CONTINUED DIRECT EXAMINATION

18 BY MR. ENZER:

19 Q. Mr. Williams, direct your attention to the period from 2007
20 to 2011 when you worked for James Rosemond, the defendant, as
21 his driver and also for his drug organization, I want you to
22 focus on that period for a minute. During that period how
23 often did you communicate with Rosemond?

24 A. Everyday.

25 Q. And how would you communicate with him during that period?

HBCAAROS1

Williams - Direct

- 1 A. In person, on phones, text, everyday.
- 2 Q. What kind of phones or texts did you use?
- 3 A. Sometimes regular, sometimes we had like encrypted e-mails.
- 4 Q. What is an encrypted e-mail?
- 5 A. An e-mail that can't be like cracked, I guess.
- 6 Q. Cracked by who?
- 7 A. Law enforcement.
- 8 Q. What kind of device did you use to communicate with the
- 9 defendant via encrypted e-mail?
- 10 A. A Blackberry.
- 11 Q. How did you get an encrypted Blackberry?
- 12 A. I was given one by Jimmy.
- 13 Q. What year was that, roughly?
- 14 A. Around somewhere between 2007 and eight.
- 15 Q. When Rosemond gave you the encrypted Blackberry what, if
- 16 anything, did he tell you?
- 17 A. Just that this is how we would be communicating.
- 18 Q. Were you the only member of Rosemond's drug organization
- 19 with an encrypted Blackberry?
- 20 A. No.
- 21 Q. To your knowledge who else had one?
- 22 A. Khalil, Jimmy, Winston and I think Toree.
- 23 Q. And how did you know those people had an encrypted
- 24 Blackberry?
- 25 A. I spoke to them on it one time or other.

HBCAAROS1

Williams - Direct

1 Q. I'm sorry.

2 A. I spoke to them on it one time or other.

3 Q. Aside from Rosemond's encrypted Blackberry, do you know
4 whether he had any other phone devices?

5 A. Yeah, just regular phone.

6 Q. Cellphone?

7 A. Yeah.

8 Q. One or several?

9 A. Several.

10 Q. How many phones did Rosemond typically have?

11 A. About maybe two, three, about three.

12 Q. Mr. Williams, you testified that you participated with
13 Rosemond in acts of violence against G-Unit; is that right?

14 A. Yes.

15 Q. What is G-Unit?

16 A. A record label.

17 Q. Are there any artists affiliated with G-Unit?

18 A. Yeah.

19 Q. Who?

20 A. 50 Cent, Tony Yayo, Lloyd Banks.

21 MR. ENZER: Could we publish Government Exhibit 20.

22 Q. Do you recognize that person?

23 A. Yes.

24 Q. Who is that?

25 A. 50 Cent.

HBCAAROS1

Williams - Direct

1 Q. Do you know his real name?

2 A. Curtis Jackson.

3 MR. ENZER: Could we publish Government Exhibit 19.

4 Q. Do you know who that is?

5 A. Tony Yayo.

6 Q. Do you know his real name?

7 A. Marvin Bernard.

8 Q. Who managed G-Unit?

9 A. Chris Lighty.

10 Q. Did Lighty have a company?

11 A. Yeah, Violator.

12 MR. ENZER: Publish Government Exhibit 18.

13 Q. Who is that?

14 A. Chris Lighty.

15 MR. ENZER: You can take that down.

16 Q. Did Violator have an office?

17 A. Yeah.

18 Q. Where?

19 A. 25th, same block as us.

20 Q. Aside from the rap artists that you mentioned and Chris
21 Lighty, do you know of anyone else affiliated with G-Unit?

22 A. Yeah, a guy Maserati Fox, Baja and that's about it.

23 Q. Was there anyone else?

24 A. Not that I can think of.

25 Q. How about Lowell Fletcher?

HBCAAROS1

Williams - Direct

- 1 A. Oh, yeah, Lowell Fletcher.
- 2 Q. Did Lowell have a nickname?
- 3 A. Lodi Mack.
- 4 Q. Directing your attention to the period when you worked as a
5 driver for Rosemond, did there come a time when members of
6 G-Unit committed an act of violence against Rosemond or his
7 family?
- 8 A. Yeah.
- 9 Q. Who was the victim of that incident?
- 10 A. His son.
- 11 Q. Whose son?
- 12 A. Jimmy's son.
- 13 Q. Approximately, what point and year did that happen?
- 14 A. March 2007.
- 15 Q. How did you learn about that incident?
- 16 A. I was in the office when it happened.
- 17 Q. Generally speaking, what happened?
- 18 A. He was walking on his way to the office and he got stopped
19 by Yayo and Fletcher and they -- one of them smacked, Fletcher
20 smacked him.
- 21 Q. When you "he" who is "he"?
- 22 A. Jimmy's son.
- 23 Q. Do you know Jimmy's son?
- 24 A. Yeah.
- 25 Q. What's his name?

HBCAAROS1

Williams - Direct

1 A. Jabulani.

2 Q. Aside from Jabulani did Jimmy's son go by any other names?

3 A. James Rosemond, Junior.

4 Q. In March of 2007 how old was Jabulani Rosemond?

5 A. About 14.

6 MR. ENZER: Can we publish Government Exhibit 1008.

7 Q. Who is that?

8 A. That's Jabulani.

9 MR. ENZER: You can take that down.

10 Q. Directing your attention to the day of the slapping
11 incident, where were you when that occurred?

12 A. In the office.

13 Q. Who else was in the office that day?

14 A. Teddie was there, Tef, Jimmy, Spot. That's all I can
15 really remember.

16 MR. ENZER: Could we publish Government Exhibit 10.

17 Q. Who is that?

18 A. Tef.

19 Q. He is one of the people who was there in the office?

20 A. Yeah.

21 MR. ENZER: Could we publish Government Exhibit 31.

22 Q. Who is that?

23 A. Teddie.

24 Q. He was one of the people in the office that day?

25 A. Yeah.

HBCAAROS1

Williams - Direct

1 MR. ENZER: Could we take that down.

2 Q. You mentioned also Jimmy and a guy called "Spot". Who is
3 Spot?

4 A. He's a rapper.

5 Q. So on the day of the slap what, if anything, happened while
6 you were in the office?

7 A. Jabulani had came up afterward and went to the office to
8 tell his father what happened and at some point a little later
9 on they went to go try to see if they could find who --

10 MR. TOUGER: Objection, your Honor.

11 THE COURT: Sustained. Ask it in a way --

12 Jury will disregard the answer.

13 Ask it in a way that will elicit personal knowledge.

14 Q. Where were you sitting in the office when Jabulani arrived?

15 A. In the reception area.

16 Q. When you were sitting in the reception area did there come
17 a point when Jabulani came to the office?

18 A. Yeah.

19 Q. When he came to the office what did Jabulani do?

20 A. They went to the back office to speak to his father.

21 Q. After that happened, what happened next?

22 A. They, Jimmy, Teddie, Tef and them, they went to go see if
23 they could find --

24 MR. TOUGER: Objection.

25 THE COURT: How do you know that?

HBCAAROS1

Williams - Direct

1 THE WITNESS: That's how I remember it.

2 THE COURT: But how do you know it? Did you go with
3 them? Did you see it?

4 THE WITNESS: No, I didn't go with them.

5 THE COURT: Was something said?

6 THE WITNESS: Yeah. I mean they told me what
7 happened.

8 Q. Let me walk through it. Let's walk through what you saw
9 and then I'm gonna ask you what people said. OK?

10 Without talking about who said what, who did you see
11 leave the office after Jabulani spoke with Rosemond?

12 A. Jimmy, Teddie and Tef.

13 Q. OK. They left as a group?

14 A. Yeah.

15 Q. And when they left did you stay in the office?

16 A. Yeah.

17 Q. Now, before that group left Rosemond, Tef and Teddie, did
18 they say anything to you as they were leaving the office?

19 A. I just remember Teddie telling me like what exactly
20 happened.

21 Q. Did Teddie say anything about what he, Rosemond and Tef
22 were going to go do?

23 MR. TOUGER: Objection.

24 THE COURT: I'll take it subject to connection.

25 Q. Did Teddie say anything about what he, Jimmy and Tef were

HBCAAROS1

Williams - Direct

- 1 going to do?
- 2 A. No.
- 3 Q. Did he tell you what had just happened to Jabulani?
- 4 A. Yeah.
- 5 Q. OK. So then they leave, right?
- 6 A. Right.
- 7 Q. After they left did there come a time when you left the
- 8 office?
- 9 A. Yeah, a little later and after that, not too long after
- 10 that.
- 11 Q. What happened when you left the office?
- 12 A. I had seen Tef and he had told me he had cut Mike Lighty on
- 13 the face.
- 14 Q. Why did you leave office at that point? What were you
- 15 doing?
- 16 A. Going to get something to eat I think, something like that.
- 17 Q. And when you left the office to go get something to eat
- 18 where did you see Tef?
- 19 A. Down at his car.
- 20 Q. Was he alone in the car?
- 21 A. No.
- 22 Q. Who was with him?
- 23 A. Teddie and Jimmy.
- 24 Q. What kind of car was it?
- 25 A. Ford Explorer.

HBCAAROS1

Williams - Direct

- 1 Q. And you said at that point you spoke to Tef?
- 2 A. Yeah.
- 3 Q. What did Tef tell you?
- 4 A. That he had sliced one of Chris Lighty's family member's,
5 sliced Lighty on the face.
- 6 Q. Did there come a time when you learned that Lowell Fletcher
7 had been arrested for the assault of Jimmy's son?
- 8 A. Yeah.
- 9 Q. How did you learn that?
- 10 A. It was in the news and stuff like that.
- 11 Q. Did Rosemond ever speak with you about how he felt about
12 the assault of his son?
- 13 A. Yeah, he did.
- 14 Q. Where were you when he spoke to you about it?
- 15 A. I don't really remember.
- 16 Q. What did he say to you?
- 17 A. He said just that -- I don't remember exactly what he said
18 but I know he was like distraught about it.
- 19 Q. You mentioned earlier that Rosemond provided you with a
20 green Nissan Altima and paid to have stash boxes installed in
21 it; is that right?
- 22 A. Yeah.
- 23 Q. Was that before or after his son was slapped?
- 24 A. After.
- 25 Q. How long after?

HBCAAROS1

Williams - Direct

1 A. Not too long. I don't remember exactly.

2 Q. You testified earlier that Rosemond's son was slapped by
3 members of G-Unit in March 2007?

4 A. Right.

5 Q. And you also testified that you and others including
6 Rosemond participated in the murder of Lowell Fletcher in
7 September of 2009; is that right?

8 A. Right.

9 Q. So right now I want to focus on the period between the slap
10 in March 2007 and the murder in September 2009, the period in
11 between them. During that period did you participate in any
12 acts of violence against G-Unit?

13 A. Yes.

14 Q. One or several?

15 A. Several.

16 Q. Can you give us some examples?

17 A. There was a time when we shot up Tony Yayo's mother's
18 house. Another time we attempted to shoot one of their body
19 guards in his car and a couple others.

20 Q. OK. Let's start with the shooting at Tony Yayo's mother's
21 house. Approximately, what year was that?

22 A. 2007.

23 Q. Before or after Rosemond's son was slapped?

24 A. After.

25 Q. Did you participate in that act of violence alone or with

HBCAAROS1

Williams - Direct

1 others?

2 A. No, with Jimmy.

3 Q. When you say Jimmy, you are talking about James Rosemond,
4 the defendant?

5 A. Right.

6 Q. With respect to this act of violence, walk us through what
7 happened.

8 A. We went over there and we kind of sat outside just to make
9 sure the coast was clear pretty much and then he told me to
10 drive by while he shot out the back window, shot at the house.

11 Q. OK. So let's go through that. What time of day was this?

12 A. Nighttime.

13 Q. How did you get to Tony Yayo's mother's house?

14 A. We drove.

15 Q. Who drove?

16 A. I did.

17 Q. Which car? The?

18 A. Expedition, Ford Expedition.

19 Q. Whose car was that again?

20 A. Derrick English.

21 Q. Did that car have any special features?

22 A. Yeah. It had a stash box under the backseat.

23 Q. So you were driving -- what was in the stash box that day?

24 A. A machine gun.

25 Q. Can you show the jury how big that machine gun was with

HBCAAROS1

Williams - Direct

1 your arms?

2 A. Maybe like this big?

3 MR. TOUGER: Your Honor, we can't see.

4 THE COURT: Indicating about 18 inches; everybody
5 agree to that?

6 MR. ENZER: Government agrees.

7 MR. TOUGER: I can't see.

8 THE COURT: Hold your hands up again, please.

9 Everybody agrees it's around 18 to 20 inches?

10 MR. TOUGER: Yes, your Honor.

11 MR. ENZER: Yes, the government agrees to that.

12 Q. Did that machine gun have anything attached to it?

13 A. A silencer.

14 Q. So that figure, the 18-inches, is that with or without the
15 silencer attached?

16 A. With.

17 Q. OK. Whose car was that again?

18 A. Derrick English.

19 Q. So on the night when you and Jimmy did the shooting at Tony
20 Yayo's house you said you were driving, where was Jimmy?

21 A. In the backseat.

22 Q. You said you -- do you remember what borough the house was
23 in?

24 A. Queens.

25 Q. What happened when you arrived in that area?

HBCAAROS1

Williams - Direct

1 A. I don't know. We just sat in the car and pretty much
2 waited till we did what we came there to do.

3 Q. And after waiting what happened?

4 A. I -- he asked me to drive by while he shot at the house
5 from out the back window.

6 Q. How many shots?

7 A. I don't know, a few.

8 Q. How did the gun sound?

9 A. Like a roulette wheel or something.

10 Q. Was it your idea to drive to Tony Yayo's mother's house
11 that day?

12 A. No.

13 Q. Why did you go there?

14 A. Jimmy asked me to.

15 Q. When he asked you what did he say?

16 A. I don't remember exactly but probably just asked me to ride
17 with him over there.

18 Q. Before you drove to Rosemond's -- before you drove Rosemond
19 to Yayo's mother's house, did he tell you, did Rosemond tell
20 you what he planned to do when you arrived?

21 A. I don't remember but more than likely, yeah.

22 Q. Do you know how Rosemond learned the address of Tony Yayo's
23 mother's house in Queens?

24 A. No.

25 Q. After the shooting did Rosemond say anything to you about

HBCAAROS1

Williams - Direct

1 the shooting?

2 A. Not that I remember.

3 THE COURT: Who exactly did the shooting?

4 THE WITNESS: Rosemond.

5 Q. What was Rosemond's mood or demeanor after the shooting?

6 A. Regular.

7 Q. Were you paid for your involvement in that drive-by
8 shooting?

9 A. No.

10 Q. Do you know whether anyone was hit?

11 A. No.

12 Q. Did there come a time when you participated in an act of
13 violence in the Bedford Stuyvesant section of Brooklyn related
14 to Baja?

15 MR. TOUGER: Objection, your Honor.

16 THE COURT: What's the objection?

17 MR. TOUGER: We may we approach?

18 THE COURT: Sure.

19 (Continued on next page)

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HBCAAROS1

Williams - Direct

1 (side bar)

2 MR. TOUGER: If I remember correctly, he testified two
3 minutes ago that he participated in two acts of violence.

4 THE COURT: Sorry?

5 MR. TOUGER: If I remember correctly, he testified
6 that he participated in two acts of violence. One was the Tony
7 Yayo's mother's shooting and two was the body guard. I don't
8 believe this is one of those two.

9 MR. ENZER: He also said that there were others.

10 MR. TOUGER: You shouldn't be able to lead him.

11 THE COURT: Which is the objection, that it's a
12 leading question?

13 MR. TOUGER: Well, the question is that it's leading
14 obviously. He is now putting things into the witness's mind
15 that the witness never even brought up.

16 THE COURT: Rephrased the question.

17 (Continued on next page)

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HBCAAROS1

Williams - Direct

1 (In Open Court)

2 Q. Did there come a time when you participated in an act of
3 violence in the Bedford Stuyvesant section of Brooklyn?

4 MR. TOUGER: Objection, your Honor.

5 THE COURT: Did there come a time when you
6 participated in another act of violence that you haven't told
7 us about yet?

8 THE WITNESS: Yes.

9 Q. Approximately, what year?

10 A. '07.

11 Q. Before or after Rosemond's son was slapped?

12 A. After.

13 Q. Did you do this alone or with somebody else?

14 A. With somebody else.

15 Q. Do you know the name of that person?

16 A. No.

17 Q. How do you know that person?

18 A. Through Tef.

19 Q. Can you describe that person associated with Tef?

20 A. He was tall, brown skin and he had dreads.

21 Q. With respect to this act of violence walk us through what
22 happened.

23 A. We were in Bed-Stuy the guy, Baja, lived over there, so we
24 were looking for him. But when we didn't find him, Tef's
25 friend just ended up shooting at some other random person

HBCAAROS1

Williams - Direct

- 1 outside of his house.
- 2 Q. Was this -- what time of day was this?
- 3 A. Nighttime.
- 4 Q. How did you get there?
- 5 A. We drove.
- 6 Q. Who drove?
- 7 A. I did.
- 8 Q. Which car?
- 9 A. Nissan Altima.
- 10 Q. And who was in the car with you?
- 11 A. I don't know his name.
- 12 Q. Tef's friend?
- 13 A. Right.
- 14 Q. Did there come a point where you arrived in an area in
15 Brooklyn where you thought Baja had a connection?
- 16 A. Yeah.
- 17 Q. And when you got there what happened?
- 18 A. Like I said, we didn't find Baja, so after like a few
19 minutes the guy just got out the car and it was some people
20 standing outside in the street. He shot one of them like in
21 the foot or something like that.
- 22 Q. After he shot somebody random in the foot, what happened
23 after that?
- 24 A. We left.
- 25 Q. Did he get back in the car?

HBCAAROS1

Williams - Direct

1 A. Yeah.

2 Q. When he got in the car did he tell you what happened?

3 A. Yeah.

4 Q. Where was this roughly, what area?

5 A. Bed-Stuy area.

6 THE COURT: Sorry. Just pause a minute, Mr. Enzer.

7 Did you see him shoot anybody?

8 THE WITNESS: No.

9 Q. How do you know he shot?

10 A. He told me he did.

11 Q. Did you hear it?

12 A. No.

13 Q. Why not?

14 A. He had a gun with a silencer on it.

15 Q. So after he gets back in the car and tells you what
16 happened or -- actually, where did this event take place, this
17 shooting?

18 A. In Bed-Stuy area.

19 MR. TOUGER: We have no testimony that there was an
20 actual shooting.

21 MR. ENZER: Yes, we do. He said that the shooter told
22 him.

23 THE COURT: To which there was no objection.

24 MR. TOUGER: Now I'm objecting, your Honor, because
25 you brought out the fact that he didn't see or hear it which

HBCAAROS1

Williams - Direct

1 goes to my cross-examination.

2 THE COURT: Are you going to tie this up to the
3 defendant in some way, Mr. Enzer?

4 MR. ENZER: Yes, your Honor.

5 MR. TOUGER: Your Honor, may we approach the bench?

6 THE COURT: No.

7 Q. Roughly, where did the shooting happen?

8 MR. TOUGER: Objection. He said he didn't see or hear
9 the shooting, so how would he know where it happened?

10 THE COURT: Have a seat, counselor.

11 Q. Let's put it this way. Why don't you describe in detail
12 what happened when you stopped the car and the guy gets out of
13 car with a gun?

14 A. He got out the car. At some point he got back in and he
15 told me that he shot somebody in the foot.

16 Q. So before he gets out of the car --

17 THE COURT: Let's not get out of car yet.

18 Where was the car when you stopped?

19 THE WITNESS: Parked like on down the block.

20 THE COURT: Down the block from what?

21 THE WITNESS: From where I dropped him off at, where
22 he got out the car at.

23 THE COURT: And where did he get out of the car?

24 THE WITNESS: Just in the middle of the street. It
25 was like around --

HBCAAROS1

Williams - Direct

1 THE COURT: Brooklyn, Queens, Manhattan, Cleveland or
2 Los Angeles?

3 THE WITNESS: Bed-Stuy in Brooklyn.

4 THE COURT: OK. Now he gets out of the car. Do you
5 drive off or does he walk away?

6 THE WITNESS: Yeah, he walks away.

7 THE COURT: And there comes a point where he gets back
8 in the car?

9 THE WITNESS: Yeah.

10 THE COURT: How long between when he got out of the
11 car and when he got back in the car?

12 THE WITNESS: Not long, a few minutes.

13 THE COURT: OK. Go ahead.

14 Q. And the spot where you were parked when he gets back in the
15 car, roughly, what streets?

16 A. Somewhere in like the Lexington Avenue, Marcy, somewhere
17 around there.

18 Q. In Brooklyn?

19 A. Yeah.

20 Q. Was it your idea to drive with Tef's friend to Bed-Stuy
21 that day?

22 A. No.

23 Q. Whose idea was it?

24 A. It was Tef's pretty much.

25 MR. TOUGER: Move to strike the whole answer, your

HBCAAROS1

Williams - Direct

1 Honor.

2 MR. ENZER: Judge, there's more testimony.

3 THE COURT: I understand. Let's go on.

4 Q. It was Tef's idea. Did you agree to participate on your
5 own initiative or did somebody ask you?

6 A. Jimmy asked me to.

7 Q. After the incident did you speak with Jimmy about it?

8 A. I really don't remember.

9 Q. Would it have been your practice or habit to?

10 MR. TOUGER: Objection.

11 THE COURT: Overruled.

12 A. More than likely, yeah.

13 Q. Why was that your habit or practice?

14 A. Cause it really didn't have nothing do with do with me, so.

15 Q. Were you paid?

16 A. No.

17 Q. You mentioned earlier that one of the acts of violence you
18 participated in was an attempt to shoot a body guard?

19 THE COURT: Are you done with the --

20 MR. ENZER: Yes, your Honor.

21 THE COURT: I have a question or two about that.

22 When Jimmy asked you to drive on this occasion, did he
23 say anything else about it?

24 THE WITNESS: No. He just asked me to get with Tef
25 and Tef pretty much was telling me that he thought that the

HBCAAROS1

Williams - Direct

1 guy, Baja, lived in that area and we went over there to the
2 area.

3 THE COURT: Who is it who told you something about
4 thinking that Baja lived in that area?

5 THE WITNESS: Tef.

6 THE COURT: Tef told you that?

7 THE WITNESS: Yeah.

8 THE COURT: Was Jimmy present when Tef told you that?

9 THE WITNESS: I don't remember.

10 MR. TOUGER: I renew my motion, your Honor.

11 THE COURT: Members of the jury, I am going to strike
12 the testimony about this incident in Bed-Stuy. Disregard it.

13 MR. ENZER: Your Honor, could we approach at side bar?

14 (Continued on next page)

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HBCAAROS1

Williams - Direct

1 (side bar)

2 THE COURT: What is it?

3 MR. ENZER: Your Honor, Mohammed Stewart testified
4 about this incident. He testified that Rosemond paid Stewart
5 to cause two shootings against Baja, one against Baja and one
6 against Baja's sister. Stewart testified that he used a guy
7 named "Life" to carry out those shootings.

8 THE COURT: This witness doesn't know the name "Life",
9 does he?

10 MR. ENZER: Doesn't know the name but that's who he is
11 describing. The shooter here, he is a Life.

12 THE COURT: What about that Mr. Touger?

13 MR. TOUGER: Your Honor, I don't remember the
14 testimony word-for-word but I think the testimony was he was
15 paid afterwards.

16 THE COURT: Who was paid?

17 MR. TOUGER: Stewart was paid after --

18 THE COURT: By whom?

19 MR. TOUGER: I'm not sure.

20 MR. ENZER: Rosemond.

21 MR. TOUGER: I don't want to quote the testimony.

22 THE COURT: Well, can you put your hands on the
23 transcript?

24 MR. JOHNSON-SKINNER: We can, judge. The testimony
25 from Stewart --

HBCAAROS1

Williams - Direct

1 THE COURT: One person at a time here.

2 MR. ENZER: Stewart testified that there were two
3 incidents he was supposed to carry out. A shooting in Staten
4 Island where Life shot out the door to Baja's house and then he
5 was also supposed to have Life shoot up Baja's sister's house
6 in Brooklyn. Stewart did not know that this shooting actually
7 occurred. He was informed that it didn't and so Jimmy paid,
8 basically, gave a partial payment. He didn't give the full sum
9 he was supposed to pay. I believe --

10 THE COURT: Paid whom?

11 MR. ENZER: Stewart. Rosemond ended up paying Stewart
12 12,000, basically, for both of these incidents. He testified
13 to that. All that's happening here is that Williams is giving
14 testimony corroborating --

15 THE COURT: Look, I'm going to tell the jury that they
16 should hold in abeyance my ruling. I may reconsider it and you
17 can show me the testimony of Stewart that you think connects
18 this.

19 MR. ENZER: Thank you, your Honor.

20 (Continued on next page)

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HBCAAROS1

Williams - Direct

1 (In Open Court)

2 THE COURT: Members of the jury, with respect to this
3 testimony about the alleged incident in Bed-Stuy that I just
4 asked to you disregard and struck, I just want to alert you to
5 the fact that based on what the lawyers have said to me, I may
6 change that ruling later on. It all depends on, my ruling will
7 depend on some testimony that was given early last week and
8 counsel are going to be looking for the transcript and
9 depending on that, I'll either tell you consider this or don't
10 consider this.

11 Let's go on.

12 BY MR. ENZER:

13 Q. Mr. Williams, you were telling us about an incident where
14 you attempted to shoot at a body guard; is that right?

15 A. Right.

16 Q. Approximately, what year did that happen?

17 A. Somewhere around 2000 probably eight.

18 Q. So that's after Rosemond's son was slapped?

19 A. Yeah.

20 Q. Did you participate in that act of violence alone or with
21 others?

22 A. With Tef and Jimmy.

23 Q. With respect to this incident, walk us through what
24 happened.

25 A. We had found out that they were shooting a video, G-Unit

HBCAAROS1

Williams - Direct

1 was shooting a video somewhere in jersey in Bayonne and so we
2 went over there. And when it was over we followed one of the
3 cars leaving there which was the bodyguard. And on the way
4 back to New York and right before the Holland Tunnel we ended
5 up right next to him where Jimmy tried to shoot out the back
6 window but the gun jammed and it didn't go off.

7 Q. OK. What time of day was this?

8 A. It was nighttime.

9 Q. How did you and Rosemond and Tef get out to Bayonne, New
10 Jersey that day?

11 A. We drove in the expedition.

12 Q. That's Derrick English's red expedition?

13 A. Yeah.

14 Q. The same one that you used for the shooting of Tony Yayo's
15 mother's house?

16 A. Yeah.

17 Q. Who drove?

18 A. I did.

19 Q. Where were Tef and Jimmy?

20 A. In the back sheet.

21 Q. When you went to Bayonne, New Jersey, what happened
22 initially?

23 A. Pretty much sat outside and kind of waited.

24 Q. Where were you guys sitting?

25 A. In like a parking lot or something across the street.

HBCAAROS1

Williams - Direct

- 1 Q. Why were you in that parking lot?
- 2 A. We were waiting to see if we could follow one of them
- 3 somewhere.
- 4 Q. Follow one of who?
- 5 A. G-Unit.
- 6 Q. Was the parking lot near the G-Unit video shoot?
- 7 A. Yeah.
- 8 Q. OK. So while you and Jimmy and Tef were waiting in the
- 9 parking lot, did there come a point where you saw a G-Unit
- 10 member or associate that you could follow?
- 11 A. Yeah.
- 12 Q. Who did you see?
- 13 A. One of their bodyguards.
- 14 Q. When you say "one of their" who is "their"?
- 15 A. G-Unit.
- 16 Q. Do you know the name of the guy?
- 17 A. Rich.
- 18 Q. And was he on foot or in a vehicle?
- 19 A. In a Mercedes Benz.
- 20 Q. OK. Did Rich leave?
- 21 A. Yeah.
- 22 Q. Did you and Jimmy and Tef follow?
- 23 A. Yeah.
- 24 Q. Where did you end up?
- 25 A. On like a off ramp or something headed towards the Holland

HBCAAROS1

Williams - Direct

- 1 Tunnel.
- 2 Q. When you got to the off ramp you said Jimmy tried to shoot?
- 3 A. Yeah.
- 4 Q. What weapon did he use?
- 5 A. The same machine gun.
- 6 Q. The machine gun he used to shoot Yayo's mother's house?
- 7 A. Right.
- 8 Q. It's the one with the silencer?
- 9 A. Right.
- 10 Q. What did you hear?
- 11 A. I had heard a sound because after it like it jammed he was
- 12 trying to, I guess fix it and it went off in the car. It shot
- 13 through the floor, sounded like a thud or something.
- 14 Q. When Jimmy tried to shoot where was the car you were
- 15 driving, the red Expedition?
- 16 A. In -- driving.
- 17 Q. On the road?
- 18 A. Yeah.
- 19 Q. Near the Holland Tunnel?
- 20 A. Right.
- 21 Q. Where was the G-Unit bodyguards parked?
- 22 A. Right next to us.
- 23 Q. Could you tell who Jimmy was trying to shoot at?
- 24 A. Yeah.
- 25 Q. Who?

HBCAAROS1

Williams - Direct

- 1 A. Rich.
- 2 Q. After Jimmy shot through the floor what happened?
- 3 A. Nothing. We went back home.
- 4 Q. Was it your idea to drive to Bayonne that day?
- 5 A. No.
- 6 Q. Whose idea was it?
- 7 A. Jimmy.
- 8 Q. When Jimmy asked you to participate in this incident what,
9 if anything, did he say to you?
- 10 A. Just that we're going out to where they were shooting the
11 video at to see what he could find.
- 12 Q. After this incident did you speak with Rosemond about it?
- 13 A. Yeah. We kind of had a laugh about it, I guess, being that
14 the gun didn't work and it went off in the car.
- 15 Q. Were you paid for this incident?
- 16 A. No.
- 17 Q. During the period between when Rosemond's son was slapped
18 and the murder of Lowell Fletcher, did you plan any acts of
19 violence against Chris Lighty?
- 20 A. Yes.
- 21 Q. How many?
- 22 A. One that I could think of.
- 23 Q. And did you plan that incident alone or with others?
- 24 A. With Jimmy and Tef.
- 25 Q. Approximately, what year was that?

HBCAAROS1

Williams - Direct

- 1 A. I want to say like 2008 or nine.
- 2 Q. And in this incident what happened?
- 3 A. Jimmy had somebody I guess set up a meeting with Chris
- 4 Lighty like around the corner from where he was living and once
- 5 he got there we were sitting like in the car on the same block
- 6 and at some point nothing really ended up happening but he was
- 7 supposed to get, I guess, shot at.
- 8 Q. What car were you sitting in?
- 9 A. Jimmy's Lexus.
- 10 Q. Where were you guys sitting?
- 11 A. Across the street from where ever the bar was or whatever,
- 12 like a little down the block.
- 13 Q. How did you know that Lighty was going to go to a bar?
- 14 A. Like I said, Jimmy set up a meeting with him and somebody
- 15 else.
- 16 Q. Who was going to shoot Lighty after he left the bar?
- 17 A. Either Tef or Jimmy.
- 18 Q. Were they waiting in the car with you?
- 19 A. Yeah.
- 20 Q. And did Lighty end up getting shot that day?
- 21 A. No.
- 22 Q. Do you know whether G-Unit had any special vehicles?
- 23 A. Yeah. They had bulletproof trucks.
- 24 Q. How do you know that?
- 25 A. I've seen them.

HBCAAROS1

Williams - Direct

1 Q. How many did they have?

2 MR. TOUGER: Objection, your Honor.

3 THE COURT: Overruled.

4 A. As far as I know, three of them.

5 Q. And who had those three?

6 A. 50 Cent had one. I believe Tony Yayo had one. And there
7 was another one that I think belonged to Baja.

8 Q. Do you know whether Rosemond had anything done to G-Unit's
9 bulletproof cars?

10 A. Yeah. He had them like fire bombed.

11 MR. TOUGER: Objection; personal knowledge.

12 THE COURT: How do you know that?

13 THE WITNESS: From conversations.

14 THE COURT: With whom.

15 THE WITNESS: With Khalil, Jimmy.

16 THE COURT: Overruled.

17 Q. So give us an example of one.

18 A. There was one time where we would, me and Jimmy were
19 driving and we drove pass a body shop where one of the trucks
20 was sitting outside and it was looked like it had been burnt
21 up. He told me that was one of their trucks there. And there
22 was another time where we was kind of laughing about it because
23 50 Cent was coming back from out of town somewhere and he was
24 just saying he could imagine his face when he found out that
25 another one got blown up, another truck.

HBCAAROS1

Williams - Direct

1 Q. OK. Let's walk through both of those incidents. First,
2 you talked about an incident where you saw a burned up armored
3 car by a body shop; is that right?

4 A. Um-hmm.

5 Q. What were you doing when you saw the burned up car?

6 A. Driving.

7 Q. Who were you driving?

8 A. Jimmy.

9 Q. Which car were you in?

10 A. Lexus.

11 Q. Where were you going?

12 A. I don't remember.

13 Q. Where was the body shop where you saw this burned up car?

14 A. Twenty-fifth Street and I think Tenth Avenue.

15 Q. And you said when you saw the burned up car, what did Jimmy
16 say about it?

17 A. He pointed it out like saying, basically, that's one of the
18 G-Unit trucks.

19 Q. And you mentioned another incident where people were
20 describing 50 Cent's face.

21 A. Yeah.

22 Q. Where were you when you heard that conversation?

23 A. In the car.

24 Q. Who was in the car with you?

25 A. Jimmy and Khalil.

HBCAAROS1

Williams - Direct

1 Q. Were you driving?

2 A. Yeah.

3 Q. And while you were driving, what did you hear Khalil and
4 Jimmy say to each other?

5 A. Just I guess the comedy of 50 Cent finding out that another
6 truck of his got burned up.

7 Q. Who said that?

8 A. Jimmy.

9 Q. Was he saying that in response to something like did Khalil
10 say something and then he is responding? How did it go?

11 A. I don't remember that part. I just remember laughing about
12 that.

13 MR. TOUGER: Your Honor, may we approach?

14 THE COURT: About what? Don't answer that question.

15 We'll take a recess now, ladies and gentlemen, 15
16 minutes.

17 (Jury not present)

18 THE COURT: Be seated, everyone.

19 Before we get to whatever is bothering Mr. Touger, I
20 went back with respect to the ruling that's in abeyance and I
21 think the testimony the government is probably referring to
22 starts at page 198 of the transcript.

23 Mr. Touger, after the break I'll hear any response you
24 have to that because on the basis of that subject to what you
25 have to say, I'm going to reverse myself on.

HBCAAROS1

Williams - Direct

1 MR. TOUGER: Your Honor, I would just ask the Court to
2 look at pages 221 to 222 also.

3 THE COURT: I will do that.

4 OK. Now, what's on your mind Mr. Touger.

5 MR. TOUGER: Your Honor, on the first incident that he
6 just spoke about seeing the truck at the body shop --

7 THE COURT: Yes.

8 MR. TOUGER: -- according to the witness the testimony
9 was "that's one of G-Units trucks". There's no statement by
10 Jimmy at that point saying he did anything to that truck or any
11 of that nature.

12 THE COURT: OK.

13 MR. TOUGER: So I would ask that that testimony be
14 struck as irrelevant. The whole incident I'm saying be struck.

15 THE COURT: Government.

16 MR. ENZER: Your Honor, I don't think that other
17 people were burning up G-Unit cars. There is evidence from
18 other witnesses that Rosemond engaged in and orchestrated
19 campaign to blow-up their cars and we'll argue in closing based
20 on Rosemond's statements that's one of G-Unit's cars right
21 there, that is a tacit admission that he is responsible for it.
22 How would he know that this random burned up car on the corner
23 is a G-Unit car unless he had something to do with it?

24 THE COURT: I'm not striking it.

25 OK. Anything else? All right. See you in a few

HBCAAROS1

Williams - Direct

1 minutes.

2 (Recess)

3 THE COURT: OK. With regard to the reserved ruling,
4 Mr. Touger, the portion of the transcript that you invited my
5 attention to at pages 221 and 222 relates to Life shooting at
6 Baja's house. This testimony was about Life shooting at Baja's
7 or being dispatched to shoot at the sister's house. So it
8 seems to me --

9 MR. TOUGER: No, no, your Honor, this is the Bed-Stuy
10 shooting of the bodyguard. It's a totally different shooting.

11 THE COURT: Really? I don't think so.

12 MR. TOUGER: No. Wait. At the end of the 222, your
13 Honor, it says: Second incident I didn't get paid for. If you
14 look at last 222, line three and four.

15 THE COURT: Yeah.

16 MR. TOUGER: That's this incident, your Honor, that he
17 didn't get paid for.

18 THE COURT: First of all, I really have some trouble,
19 not your fault probably my hearing, but I really have trouble
20 making out what you are saying.

21 MR. TOUGER: This is the incident that he didn't get
22 paid for, your Honor, that he is talking about in that
23 testimony.

24 THE COURT: What is?

25 MR. TOUGER: The shooting that he is talking about

HBCAAROS1

Williams - Direct

1 now.

2 THE COURT: Well, he is not even here so he is not
3 talking about anything now.

4 MR. TOUGER: The one that we moved to be stricken,
5 your Honor.

6 THE COURT: Right. What about that?

7 MR. TOUGER: It's the shooting that he didn't get paid
8 for, that Jimmy refused to pay him for. I believe that's what
9 he is saying at page 222, lines two through four.

10 THE COURT: Well, you can argue that to the jury. I
11 mean, I don't think it's remotely clear and even if it were
12 it's inconsistent with the testimony of 198 and the following,
13 so it's a jury question.

14 MR. TOUGER: Your Honor, if Mr. Edelstein can finish
15 the argument?

16 THE COURT: No. The argument is finished.

17 OK. Let's get the jury.

18 MR. TOUGER: Oh, one last thing, your Honor. The
19 witness consistently keeps moving to the right. I can't see
20 now three quarters of face. If we could just move the
21 witness's chair a little to the left?

22 THE COURT: You mean to the right, to his right?

23 MR. TOUGER: Moving towards the wall.

24 THE COURT: Any way he moves it is towards a wall.

25 MR. TOUGER: The outside wall, your Honor.

HBCAAROS1

Williams - Direct

1 THE COURT: Could you move your chair a few inches to
2 the right, please, Mr. Williams.

3 MR. TOUGER: Thank you, your Honor.

4 THE COURT: All right. Let's get the jury.

5 (Continued on next page)

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HBCAAROS1

Williams - Direct

1 (Jury present)

2 THE COURT: The defendant and the jurors are present.

3 Ladies and gentlemen, I've reconsidered that ruling
4 about striking the testimony of the alleged incident in
5 Bed-Stuy. You may consider that testimony along with all the
6 other testimony and, obviously, what you make of it is up to
7 you.

8 Let's go ahead.

9 BY MR. ENZER:

10 Q. Mr. Williams, during the period when you worked Rosemond
11 did Rosemond ever ask you to send money to anyone in jail?

12 A. Yeah.

13 Q. One person or several?

14 A. Several.

15 Q. Who are some of the people that he had you send money to in
16 jail?

17 A. Slim, Winston, Teddie, Toree. That's about all I remember.

18 Q. I'm going to show you a picture just for you Government
19 Exhibit 16 on your screen. Do you recognize that person?

20 A. Yeah.

21 Q. Who is that?

22 A. Black.

23 Q. Do you know Black's government name?

24 A. Jonathan Brown.

25 MR. ENZER: The government offers Government Exhibit

HBCAAROS1

Williams - Direct

1 16.

2 THE COURT: Received.

3 (Government's Exhibit 16 received in evidence)

4 MR. ENZER: Please publish.

5 (Pause)

6 Q. Now that the jury can see the photo, can you tell them who
7 is that?

8 A. Black.

9 Q. Was Black somebody you sent money to in jail?

10 A. Yeah.

11 Q. And who had you send money to Black?

12 A. Jimmy.

13 Q. How did you meet Black?

14 A. Up at the office.

15 Q. Roughly, what year or what period?

16 A. Early 2000s.

17 Q. When did Black go to prison?

18 A. Somewhere around 2003 or two, I think.

19 Q. And did there come a time when he got out?

20 A. Yeah.

21 Q. Roughly, when?

22 A. Two thousand, I think it's 2000.

23 Q. When Rosemond asked you to send money to Black, did he tell
24 you why?

25 A. No.

HBCAAROS1

Williams - Direct

- 1 MR. ENZER: Can we publish Government Exhibit Nine.
- 2 Q. Who is that?
- 3 A. Slim.
- 4 Q. What's Slim's real name?
- 5 A. Brian McCleod.
- 6 Q. When did McCleod go to prison?
- 7 A. About the same time in 2002 or three.
- 8 Q. When did McCleod get out?
- 9 A. About 2009.
- 10 Q. And did Rosemond ever tell you why he had you send money to
- 11 McCleod in jail?
- 12 A. No.
- 13 Q. Yes or no, do you know whether McCleod was in prison with
- 14 anyone associated with G-Unit?
- 15 A. Yeah. He was in there with Lowell Fletcher.
- 16 Q. And how do you know that?
- 17 A. After he came home I found out.
- 18 Q. Who did you find out from?
- 19 A. Jimmy.
- 20 Q. Let's talk about the events leading up to the murder of
- 21 Lowell Fletcher. Directing your attention to 2009, you said
- 22 that in or about 2009 McCleod came home from prison?
- 23 A. Yeah.
- 24 Q. How did you first learn that McCleod was home?
- 25 A. I don't remember how I first learned but you know I seen

HBCAAROS1

Williams - Direct

1 him. I remember seeing him.

2 Q. After McCleod was released from prison in 2009, did you
3 drive Rosemond to any meetings with McCleod?

4 A. Yeah.

5 Q. One or several?

6 A. Probably a couple.

7 Q. I didn't hear you?

8 A. Probably a few.

9 Q. After McCleod was released from prison did you communicate
10 with McCleod?

11 A. Yeah.

12 Q. How?

13 A. In person, through phone.

14 Q. How did you get McCleod's phone number?

15 A. Probably from McCleod.

16 Q. In any of your phone communications with McCleod were there
17 any occasions when you asked McCleod to meet up with Rosemond?

18 A. Yeah.

19 Q. One or several?

20 A. I'm not sure.

21 Q. And when you did that, was it on your own initiative or at
22 someone's request?

23 A. At Jimmy's request.

24 Q. After McCleod was released from prison did you ever give
25 money to McCleod?

HBCAAROS1

Williams - Direct

1 A. Yeah.

2 Q. One time or several times?

3 A. More than once.

4 Q. And when you did that did you do it on your own initiative
5 or at someone's request?

6 A. At Jimmy's request.

7 Q. After McCleod was released from prison, did there come a
8 time when you learned that Lowell Fletcher was going to be
9 released from prison as well?

10 A. Yeah.

11 Q. How did you learn that?

12 A. I'm not really sure. I just, I know that -- like I said, I
13 had found out that Fletcher was locked up with Slim. So at
14 some point there was like Slim -- I know Slim was keeping in
15 contact with him and stuff like that. I don't really remember
16 when I found out he was coming home but.

17 (Continued on next page)

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Hbdnros2

Williams - direct

1 Q. You said Slim was keeping in contact with who?

2 A. Fletcher.

3 Q. Why was Slim keeping in contact with Fletcher?

4 MR. TOUGER: Objection, your Honor.

5 THE COURT: Sustained.

6 Q. Did you have a conversation with Rosemond or McCleod about
7 Fletcher coming home from prison?

8 A. Yes.

9 Q. And during the conversation, what were you told?

10 MR. TOUGER: Which one, your Honor.

11 THE COURT: Sustained.

12 Form.

13 BY MR. ENZER:

14 Q. Did you have a conversation with somebody involved in the
15 plot to murder Lowell Fletcher about when Fletcher was coming
16 home from prison?

17 MR. TOUGER: Objection, your Honor.

18 THE COURT: Sustained as to form.

19 Q. Did there come a time when you went to Queensboro
20 Correctional Facility in Queens?

21 A. Yes.

22 Q. Before going there, did you have a conversation with
23 someone about the fact that Fletcher was coming home from jail,
24 sir?

25 A. Yeah.

Hbdnros2

Williams - direct

1 Q. Do you remember who you had that conversation with?

2 A. Jimmy, Slim.

3 Q. One of the two?

4 A. Yeah.

5 Q. Is it fair to say you are not sure which of the two?

6 A. Yeah.

7 Q. But it was one of the two, is that right?

8 A. Right.

9 Q. Either Jimmy or McCleod?

10 A. Right.

11 Q. Just so we're clear, McCleod and Jimmy are both people who
12 were involved in the plot to murder Lowell Fletcher?

13 MR. TOUGER: Objection.

14 THE COURT: Sustained.

15 MR. TOUGER: Move to strike -- well, there's no
16 answer.

17 BY MR. ENZER:

18 Q. During the conversation with either McCleod or Rosemond
19 about the fact that Fletcher was coming home, what were you
20 told?

21 MR. TOUGER: Objection, your Honor.

22 THE COURT: Members of the jury, I am going to receive
23 the answer to this question not for the truth of whatever he
24 was told, but for the fact that he says it was said to him
25 because it may bear on why he did or what followed, if

Hbdnros2

Williams - direct

1 anything, or what subsequently ensued.

2 Go ahead.

3 BY MR. ENZER:

4 Q. What were you told in the conversation with either McCleod
5 or Rosemond?

6 A. About Queensboro?

7 Q. Correct. What were you told about Fletcher coming home?

8 A. Just that he was at Queensboro, and me and Slim had went
9 over there to see him.

10 Q. Approximately when did you and Slim go over to see him?

11 A. It had to be like I think September, August, 2009.

12 Q. Was it just you and McCleod?

13 A. Yeah.

14 Q. How did you get there?

15 A. We drove.

16 Q. Who drove?

17 A. Me.

18 Q. Which car?

19 A. Altima.

20 Q. When you drove to Queensboro with McCleod, what was the
21 purpose of the trip?

22 A. I am not sure. I didn't go in with him, McCleod I mean.

23 Q. Did you go there on your own initiative, or did someone ask
24 you to go?

25 A. Jimmy asked me.

Hbdnros2

Williams - direct

1 Q. What is Queensboro Correctional?

2 A. It is a jail.

3 Q. Where is it located?

4 A. In Queens.

5 Q. When Rosemond asked you to take McCleod to Queensboro, what
6 did he say?

7 A. He --

8 MR. TOUGER: Your Honor, I missed that question. Can
9 it just be repeated.

10 MR. ENZER: Sure.

11 BY MR. ENZER:

12 Q. When Rosemond asked you to take McCleod to Queensboro, what
13 did Rosemond say?

14 A. Just to ride with Slim over there.

15 Q. And directing your attention to the day when you went
16 there, did you in fact go?

17 A. Yeah.

18 Q. What happened when you got there?

19 A. I had parked like across the street while Slim had went in,
20 and I don't know what happened after that.

21 Q. Did Slim come back?

22 A. Yeah.

23 Q. Did you have any conversation with Slim after he came back?

24 A. I'm sure we did, but I don't remember what.

25 Q. Did you see Fletcher that day?

Hbdnros2

Williams - direct

- 1 A. No.
- 2 Q. Did you bring any weapons to Queensboro with you that day?
- 3 A. No.
- 4 Q. After your trip to Queensboro that day, did you have any
5 conversation with Rosemond about what happened?
- 6 A. More than likely.
- 7 Q. Before the murder, did there come a time when you learned
8 an address where Fletcher lived?
- 9 A. Yeah.
- 10 Q. How did you learn that?
- 11 A. I think Slim got it from him.
- 12 Q. And where was the address? What part of New York City?
- 13 A. In the Bronx.
- 14 Q. Before the murder, did there come a time when you drove to
15 that location?
- 16 A. Yeah.
- 17 Q. Approximately when?
- 18 A. About the same time, 2009.
- 19 Q. Did you go alone or with others?
- 20 A. With Slim.
- 21 Q. Did you go on your own initiative, or did someone ask you
22 to go?
- 23 A. Jimmy asked me to go.
- 24 Q. And when Rosemond asked you, what did he say?
- 25 A. Just to link up with Slim. Me and Slim went over there.

Hbdnros2

Williams - direct

- 1 Q. What happened when you went?
- 2 A. I stayed outside. Slim went inside.
- 3 Q. What car did you take?
- 4 A. Altima.
- 5 Q. Who drove?
- 6 A. Me.
- 7 Q. Before the murder, did there come a time when you went to
- 8 the Bronx again with others involved in the murder?
- 9 A. Yeah.
- 10 Q. How long before the murder was that?
- 11 A. A few days.
- 12 Q. Who did you go with?
- 13 A. Slim and Derrick.
- 14 Q. Derrick who?
- 15 A. Grant.
- 16 Q. What was the purpose of the trip?
- 17 A. To find a spot to lure Fletcher to.
- 18 Q. What was going to happen to Fletcher when he was lured?
- 19 A. He was going to be killed.
- 20 Q. Did you go on this trip to find a spot on your own
- 21 initiative, or were you asked to go?
- 22 A. I was asked to go.
- 23 Q. Who asked you?
- 24 A. Jimmy.
- 25 Q. When he asked you, what did he say?

Hbdnros2

Williams - direct

1 A. That he needed us to find a spot with no cameras, somewhere
2 to lure Fletcher to.

3 Q. Did he explain why it was important that the spot had no
4 cameras?

5 A. No.

6 Q. Did you have an understanding of why it was important that
7 the spot have no cameras?

8 MR. TOUGER: Objection.

9 THE COURT: You are going to have to lay a better
10 foundation than that.

11 BY MR. ENZER:

12 Q. Before this conversation with Jimmy, how many conversations
13 have you had with Jimmy in your life?

14 A. I can't count.

15 Q. Too many to count.

16 Before this conversation with Jimmy, had you discussed
17 criminal matters with Jimmy like drug dealing and other crimes?

18 A. Yeah.

19 Q. When Jimmy spoke to you about criminal matters, like acts
20 of violence against G-Unit or drug dealing that you had
21 participated in with him, how did he typically speak?

22 A. Just, I guess, pretty much leaving what doesn't need to be
23 said unsaid, I guess. Like, you know, sometimes you already
24 have an understanding of things that don't really need to be
25 said.

Hbdnros2

Williams - direct

1 Q. So, for example, when Jimmy would ask you to move a package
2 of cocaine, how would he phrase that request?

3 A. He would just tell me go pick something up.

4 Q. He wouldn't say go pick up some cocaine?

5 A. No.

6 Q. When Jimmy would ask you hold these guns for me, how did he
7 phrase that request?

8 A. Just hold it for me.

9 Q. And by the time when you are going to look for a spot to
10 lure Fletcher to for the murder, you had participated in acts
11 of violence with Jimmy, is that right?

12 A. Yeah.

13 Q. You had driven him to Yayo's mother's house, right?

14 A. Yes.

15 Q. You had participated in other acts of violence with him, is
16 that right?

17 A. Right.

18 Q. You said a few minutes ago that when you went to the spot
19 the purpose of the trip was to find a place to lure Fletcher to
20 so that he could be killed, right?

21 A. Right.

22 Q. So when Jimmy says to you find a spot with no cameras, did
23 you have an understandings of why it was important that the
24 place have no cameras?

25 MR. TOUGER: Is it his understanding he's testifying

Hbdnros2

Williams - direct

1 about or Jimmy's?

2 THE COURT: I can't understand you.

3 MR. TOUGER: Is it his understanding that he's
4 testifying about or Jimmy's.

5 MR. ENZER: His.

6 THE COURT: His.

7 MR. TOUGER: As long as it's his, no.

8 THE COURT: OK.

9 BY MR. ENZER:

10 Q. In your mind, why was it important to find a spot with no
11 cameras?

12 A. Because a violent act was going to occur.

13 Q. Let's talk about the day of your trip to the Bronx to find
14 a spot.

15 What happened that day?

16 A. I had picked up Slim and Derrick, and we pretty much rode
17 around a little bit until we picked that spot on Jerome, and
18 that's what we did.

19 Q. You said you rode around. How did you get around that day?

20 A. In the Altima.

21 Q. That's the green Nissan Altima?

22 A. Yes.

23 Q. Who drove?

24 A. Me.

25 Q. You said you rode around and looked for a spot and found a

Hbdnros2

Williams - direct

1 spot on Jerome?

2 A. Yeah.

3 Q. Jerome and what?

4 A. Mt. Eden.

5 Q. In what borough?

6 A. In the Bronx.

7 MR. ENZER: At this time, with the Court's permission,
8 we would like to set up, publish for the jury Government
9 Exhibit 142G and set up an easel with a blowup of the same
10 exhibit next to the witness.

11 THE COURT: All right.

12 What exhibit is this on the easel?

13 MR. ENZER: 142G.

14 THE COURT: In evidence?

15 MR. ENZER: It is already in evidence.

16 THE COURT: Thank you.

17 BY MR. ENZER:

18 Q. Mr. Williams, looking at the blowup behind you of Exhibit
19 142G, can you see it?

20 A. Yeah.

21 Q. What does this picture show?

22 A. It shows Mt. Eden Avenue, it shows Jerome, it shows
23 Macombs.

24 Q. OK. In your hand is a laser pointer. Can you point out
25 for the jury Jerome Avenue.

Hbdnros2

Williams - direct

1 A. It is right here.

2 Q. Indicating the location where there is a 4 train label with
3 Jerome Avenue.

4 Which way does Jerome run? Can you show the jury?
5 Does it run left to right or up and down?

6 A. Up and down.

7 Q. Can you show the jury Mt. Eden Avenue on this with the
8 laser pointer.

9 MR. ENZER: Indicating Mt. Eden Avenue running left to
10 right at the bottom of the exhibit.

11 Q. Can you see Macombs Avenue on this photo?

12 A. Yeah.

13 Q. Can you show the jury where Macombs is.

14 A. Here.

15 Q. Indicating Macombs Avenue running up and down on the right
16 side of the screen.

17 Can you see Goble Place?

18 A. Yeah. I see the playground.

19 Q. Do you see the street labeled Goble Place right in front of
20 that?

21 A. Yeah.

22 Q. Can you show the jury where that is.

23 MR. ENZER: Indicating Goble Place on the diagram.

24 Q. Did there come a time when you arrived in this area on the
25 day when you were scouting to find a spot for the murder?

Hbdnros2

Williams - direct

1 A. Yeah.

2 Q. Can you show the jury where you came from and where you
3 ended up when you arrived in this area using your laser
4 pointer.

5 A. On this street here.

6 Q. It seems to indicate that you drove up Mt. Eden past Jerome
7 towards Macombs, is that right?

8 A. Right.

9 Q. Did there come a point where you stopped that day?

10 A. Yeah. We parked on Mt. Eden.

11 Q. Can you show the jury roughly where you parked.

12 MR. ENZER: Indicating Mt. Eden between Inwood Avenue
13 and Macombs Avenue on the map.

14 Q. When you parked there, what happened?

15 A. We just picked that as the spot.

16 Q. "We" is you and who else?

17 A. Derrick and Slim.

18 Q. Was there any conversation between you, Derrick, and Slim
19 about this spot, why it was a good spot, any conversation like
20 that?

21 A. Yeah. You know, it was dark. It had not that much
22 traffic, and we didn't see any cameras.

23 Q. Why was it important that it be dark?

24 A. Just less visibility.

25 Q. Was there any discussion or did you give any thought to

Hbdnros2

Williams - direct

1 getaway?

2 A. Yes. It has the train station right there, and it has the
3 highway as well.

4 Q. The train station, which train were you referring to?

5 A. The 4 train.

6 Q. Can you show the jury where that is on the map.

7 MR. ENZER: Indicating the 4 train.

8 Q. Is that an above ground or below ground train?

9 A. Above.

10 Q. In terms of the highway, what highway are you referring to?

11 A. U.S. highway 1.

12 Q. Is that at the bottom of the map?

13 A. Yeah.

14 MR. ENZER: Let's leave up the aerial, but can we
15 publish for the screen 141E.

16 Q. Do you recognize this photo on the screen, Mr. Williams,
17 141E?

18 A. Yeah.

19 Q. What does this show?

20 A. Mt. Eden.

21 Q. Facing which way?

22 A. Facing Jerome.

23 Q. On this photo, is this roughly where you parked?

24 A. Yeah.

25 Q. After picking a spot -- you can take that down -- where did

Hbdnros2

Williams - direct

1 you go?

2 A. We left. We went to go drop them off.

3 Q. Where did you go?

4 A. Home.

5 Q. Did anything happen on your way home?

6 A. Yeah, we had got pulled over. I don't remember why we got
7 pulled over, but I remember Slim had got a ticket for not
8 wearing a seat belt.

9 Q. Do you remember where you got pulled over?

10 A. No.

11 Q. When you say pulled over, you mean by police?

12 A. Yeah.

13 Q. Who got a ticket?

14 A. Slim.

15 Q. After picking a spot for the murder, did you communicate at
16 all with Rosemond?

17 A. Yeah.

18 Q. What did you say?

19 A. Just that we, you know, we all good. We found a spot.

20 Q. How did you tell him that?

21 A. On the encrypted e-mail.

22 Q. What, if anything, did he say in response?

23 A. OK.

24 Q. Let's talk about the day of the murder.

25 Do you know where Rosemond was on the day of the

Hbdnros2

Williams - direct

- 1 murder?
- 2 A. In Miami.
- 3 Q. On the day of the murder, did you return to the area around
4 Mt. Eden Avenue in the Bronx?
- 5 A. Yeah.
- 6 Q. How did you get there?
- 7 A. Drove.
- 8 Q. Which car?
- 9 A. Altima.
- 10 Q. That is your green Nissan Altima?
- 11 A. Uh-huh.
- 12 Q. Did you go alone or with others?
- 13 A. With Derrick and Slim.
- 14 Q. Did you drive to the location in the Bronx on your own
15 initiative, or were you asked to drive there that day?
- 16 A. Yeah. I was asked to.
- 17 Q. Who asked you?
- 18 A. Jimmy.
- 19 Q. When Rosemond asked you, what did he say?
- 20 A. I don't remember exactly. I just -- you know, it was
21 something like, you know, today was basically the day.
- 22 Q. How did he communicate that to you?
- 23 A. Encrypted e-mail.
- 24 Q. Did Rosemond ask you to bring anything?
- 25 A. Yeah, he told me to bring the quiet.

Hbdnros2

Williams - direct

1 Q. What did you understand the quiet to refer to?

2 A. The gun with the silencer.

3 Q. Which gun?

4 A. The .22.

5 Q. Why did you understand the quiet to refer to the .22 with
6 the silencer?

7 A. That's what we called it.

8 Q. At that time were you holding guns for Rosemond?

9 A. Yeah.

10 Q. How many guns were you holding for Rosemond that had a
11 silencer?

12 A. One.

13 Q. Which one?

14 A. The .22.

15 Q. In other words, the .22 with the silencer was the only gun
16 you were holding for him with a silencer?

17 A. Yeah.

18 Q. After Rosemond asked you to go to the Bronx and bring the
19 quiet, what did you do?

20 A. We did that -- went and picked up Derrick, and we drove
21 over there and we met Slim over there. And we waited until
22 McCleod told us that Fletcher was there.

23 Q. Did you bring the quiet with you, the .22 with the
24 silencer?

25 A. Yeah.

Hbdnros2

Williams - direct

1 Q. How did you bring it?

2 A. In the car, in the stash box.

3 Q. Using Government Exhibit 142G, the blowup, can you show us
4 where you went when you arrived on Mt. Eden that day?

5 A. Right here.

6 Q. Indicating a spot on Mt. Eden Avenue between Inwood and
7 Macombs Avenue, is that right?

8 A. Yeah.

9 Q. Did you park?

10 A. Yup.

11 Q. What happened?

12 A. At some point Derrick had got out to get a bag of chips
13 that he could use to keep the gun in. And then when Slim
14 finally told us that Fletcher had arrived, Derrick got out the
15 car to walk towards him while I went around the corner, drove
16 around the corner and waited for him around there.

17 Q. All right. Let's walk through that.

18 So you arrived and you parked, is that right?

19 A. Yeah.

20 Q. You said at some point Derrick went to get a bag of chips?

21 A. Yeah.

22 Q. Where did he go?

23 A. Some store on Jerome.

24 Q. When he went to get the bag of chips, what did you do?

25 A. I stayed in the car.

Hbdnros2

Williams - direct

1 Q. Where you showed us you were parked?

2 A. Right.

3 Q. Did Grant come back?

4 A. Yeah.

5 Q. Did he have a bag of chips?

6 A. Yeah.

7 Q. What happened then?

8 A. McCleod hit us and let us know that Fletcher was there.

9 So I went, drove around the corner on Macombs and
10 waited for Derrick while he walked down towards Jerome towards
11 Fletcher.

12 Q. Now, before Derrick goes towards Fletcher, did you give
13 anything to Derrick?

14 A. Yeah. I gave him the gun.

15 Q. Did you do that before or after Slim said that Fletcher was
16 arriving?

17 A. After.

18 Q. Which way did Derrick go? Using the laser pointer, can you
19 show us?

20 A. This way.

21 Q. So, in other words, he walked from where you were parked
22 towards Jerome?

23 A. Yeah.

24 Q. Which way did Slim go?

25 A. At that point Slim was already out the car. I don't know

Hbdnros2

Williams - direct

1 where he was.

2 Q. Where did you go?

3 A. Around the corner on Macombs.

4 Q. Can you show the jury where you went using the map?

5 A. Right here.

6 Q. So you drove up Mt. Eden and made a right on Macombs?

7 A. Yeah.

8 Q. What did you do there?

9 A. Parked.

10 Q. Before you went and parked there, did you have a
11 discussion, did you tell Derrick or Slim where you would be
12 waiting?

13 A. Yeah. I told Derrick where I would be waiting.

14 Q. While you were waiting in that area what happened?

15 A. Derrick came and got in the car and got in the back seat
16 and gave me the gun. I put it back in the stash box and we
17 drove away. He was telling me that he walked towards Fletcher
18 with his hand in the chips bag like he was eating chips, and he
19 started shooting at him. I guess when Fletcher realized what
20 was going on, he ran away, but he had already hit him at that
21 point.

22 Q. OK. Who was telling you that?

23 A. It was Derrick.

24 Q. And you used like pronouns "he" and "he."

25 Who had his hand in the bag of chips?

Hbdnros2

Williams - direct

1 A. Derrick.

2 Q. Who shot at Fletcher?

3 A. Derrick.

4 Q. Who ran away?

5 A. Fletcher.

6 Q. Who realized he was hit?

7 A. Fletcher.

8 MR. TOUGER: Objection, your Honor.

9 THE COURT: I'm sorry.

10 MR. TOUGER: How does he know what Fletcher realized?

11 MR. ENZER: He's recounting the conversation. He's
12 recounting what Derrick Grant told him.

13 THE COURT: Yes.

14 BY MR. ENZER:

15 Q. Perhaps it was unclear. Why don't you just take us nice
16 and slow through what Grant told you in the car?

17 A. He told me that while he was walking towards Fletcher, he
18 had -- he started shooting at him through the chips bag. And I
19 think before he even shot Fletcher, he seen -- Fletcher seen
20 him with his hand out and kind of figured what was going on and
21 started running, but Derrick had already shot him by then, shot
22 him. He said, He thinks he shot him, he wasn't sure, but the
23 way the guy was running he figured he did hit him.

24 Q. When Derrick says the way the guy was running, the guy is
25 Fletcher?

Hbdnros2

Williams - direct

1 A. Yes.

2 Q. Where did you go with Grant?

3 A. We went to Harlem.

4 Q. Where did you live at that time?

5 A. In Harlem.

6 Q. Roughly what area?

7 A. Lenox, 145th.

8 Q. What happened when you arrived in Harlem?

9 A. We met up with Slim and Toree.

10 Q. "We" is who?

11 A. Me and Derrick.

12 Q. So just so we are clear on who was present, you were
13 present?

14 A. Me, Derrick, Slim, Toree and whoever was in the car with
15 Toree.

16 MR. ENZER: You can take down 142G.

17 Q. How long after the murder was this meeting, this encounter?

18 A. Right after.

19 Q. What happened?

20 A. Toree was just telling us that he saw Fletcher land --
21 laying on the ground on Jerome.

22 Q. Was there anything else discussed?

23 A. No. That's all I can really remember.

24 Q. Did you see Slim talk to Toree at all?

25 A. Yeah. We were standing outside Toree's car. We were all

Hbdnros2

Williams - direct

1 talking.

2 Q. Did you know that Toree was present for the murder before
3 this?

4 A. No.

5 Q. What was your reaction to hearing Toree say he saw Fletcher
6 dead?

7 A. No reaction.

8 MR. TOUGER: Objection, your Honor. Toree never said
9 he saw Fletcher dead.

10 Q. What did Toree say?

11 A. He saw him laying on the ground.

12 Q. What did you take that to mean?

13 THE COURT: Sustained.

14 Q. After learning that Toree, what Toree had said, that
15 Fletcher was laying on the ground, what was your reaction to
16 learning that?

17 A. No reaction.

18 Q. Why not?

19 A. I didn't really think nothing of it.

20 Q. Did anyone express shock that Fletcher was on the ground?

21 A. No.

22 Q. Did anyone express anger that Fletcher was on the ground?

23 A. No.

24 Q. Did there come a point when you learned that Fletcher had
25 died during the attack?

Hbdnros2

Williams - direct

- 1 A. Yeah.
- 2 Q. What was your reaction?
- 3 A. No reaction.
- 4 Q. Why?
- 5 A. I wasn't surprised.
- 6 Q. Why not?
- 7 A. That's what we went there to do.
- 8 Q. Now, after your discussion with Toree in Harlem where you
- 9 learned that Fletcher was on the ground, after that, did you
- 10 communicate with Rosemond?
- 11 A. Yeah, on the encrypted BlackBerry.
- 12 Q. What did you tell him?
- 13 A. I just told him that everything was all right.
- 14 Q. What did you mean by that?
- 15 A. That Derrick shot Fletcher.
- 16 Q. What was Rosemond's reaction?
- 17 A. Just like, OK. We were talking on the e-mail.
- 18 Q. This was encrypted e-mail?
- 19 A. Yeah.
- 20 Q. After that meeting in Harlem, what, if anything, did you
- 21 do?
- 22 A. I drove down to 96th Street and the FDR, and I threw the
- 23 gun in the river.
- 24 Q. Is there an exit to the FDR on 96th?
- 25 A. Yeah.

Hbdnros2

Williams - direct

- 1 Q. Can you describe where you went?
- 2 A. Like right under the overpass.
- 3 Q. You parked?
- 4 A. Yeah.
- 5 Q. What happened after you parked?
- 6 A. I got out and I didn't see nobody there, so I threw the gun
- 7 in the water.
- 8 Q. How about the silencer?
- 9 A. That, too.
- 10 Q. Why did you do that?
- 11 A. To get rid of it.
- 12 Q. Why did you want to get rid of it?
- 13 A. So that it couldn't be found.
- 14 Q. Did you get rid of the gun on your own initiative or were
- 15 you asked to?
- 16 A. I was asked to.
- 17 Q. By who?
- 18 A. Jimmy.
- 19 Q. When did Jimmy make that request?
- 20 A. Like not long after I told him everything was good.
- 21 Q. What did he say when he made that request?
- 22 A. Just make sure you get rid of that.
- 23 Q. And how was that communicated to you?
- 24 A. On the e-mail.
- 25 Q. Did Rosemond ever ask you to get rid of the -- I'm sorry,

Hbdnros2

Williams - direct

1 did Rosemond ever ask you to get rid of the machine gun that he
2 used to shoot Tony Yayo's mother's house in Queens?

3 A. No.

4 Q. Aside from the gun used to murder Fletcher, did Rosemond
5 ever ask you to get rid of any other gun that had been used
6 against G-Unit?

7 A. No.

8 Q. After the murder did there come a time when you spoke with
9 Rosemond in person?

10 A. Yeah.

11 Q. Where?

12 A. When I picked him up from the airport.

13 Q. Why was he coming to the airport? Why was he at the
14 airport?

15 A. He was coming back into town.

16 Q. From where?

17 A. Miami.

18 Q. Which car did you use to pick him up?

19 A. The Lexus.

20 Q. How long after the murder was this?

21 A. I'm not really too sure. A few days or so.

22 Q. Which airport?

23 A. LaGuardia.

24 Q. And that's in Queens?

25 A. Yeah.

Hbdnros2

Williams - direct

- 1 Q. Where did you drive him?
- 2 A. I don't remember where I drove him to.
- 3 Q. During the drive what happened?
- 4 A. I kind of told him what Derrick told me, and that was it.
- 5 He was -- he was like, All right.
- 6 Q. When you say you told Rosemond what Derrick told you, you
- 7 mean what Derrick told you about what?
- 8 A. About shooting Fletcher.
- 9 Q. And you relayed that to Rosemond?
- 10 A. Yeah.
- 11 Q. Did Rosemond express any shock about what he heard about
- 12 Fletcher?
- 13 A. No.
- 14 Q. Did he express any anger about what he heard about
- 15 Fletcher?
- 16 A. No.
- 17 Q. What was his response?
- 18 A. I don't remember the exact response, but he wasn't -- you
- 19 know, just regular.
- 20 Q. By this point, did you believe Fletcher was dead?
- 21 A. Yeah.
- 22 Q. In your mind, at what point did you believe Fletcher was
- 23 dead? When did you realize Fletcher was dead?
- 24 A. I had found out like the next day.
- 25 Q. Were you paid for your involvement in the murder?

Hbdnros2

Williams - direct

- 1 A. Yeah.
- 2 Q. How much?
- 3 A. \$8,000.
- 4 Q. Who paid you?
- 5 A. Jimmy.
- 6 Q. Following the murder, did you drive Rosemond to any
7 meetings with Khalil Abdullah?
- 8 A. Yeah.
- 9 Q. One or several?
- 10 A. Probably several.
- 11 Q. You testified earlier that you and others, including
12 Rosemond, participated in various aspects of the fatal shooting
13 of Fletcher, is that right?
- 14 A. Yeah.
- 15 Q. When you agreed to participate in the attack on Fletcher,
16 did you have an understanding of the goal of the attack?
- 17 A. Yeah.
- 18 Q. What?
- 19 A. Murder.
- 20 Q. During your conversations with Rosemond before the attack,
21 did Rosemond ever say the words "murder" or "kill" in
22 describing what he wanted you and others to do to Fletcher
23 during the attack?
- 24 A. No.
- 25 Q. Why did you believe the goal of the attack was to murder

Hbdnros2

Williams - direct

1 Fletcher?

2 A. Just from the planning of it all pretty much and the
3 silence gun and all that.

4 Q. At any time before the attack on Fletcher, did Rosemond
5 ever say to you make sure Fletcher only gets shot in the leg?

6 A. No.

7 Q. At any time before the attack on Fletcher, did Rosemond
8 ever say to you make sure nobody kills Fletcher?

9 A. No.

10 Q. Following the murder, did there come a time when you and
11 Rosemond met with Mohammed Stewart?

12 A. Yeah.

13 Q. Roughly when? What year?

14 A. 2009.

15 Q. Do you remember where that meeting occurred?

16 A. No.

17 Q. What city?

18 A. New York.

19 Q. What happened during the meeting?

20 A. Stewart had a copy of Fletcher's obituary.

21 Q. What happened?

22 A. He showed it to Jimmy.

23 Q. Did him and Jimmy speak?

24 A. Yeah.

25 Q. Do you remember what they discussed?

Hbdnros2

Williams - direct

1 A. Not really.

2 MR. ENZER: I am going to publish Government Exhibit
3 1110.

4 Q. Do you recognize this document?

5 A. Yeah.

6 Q. What is that?

7 A. That's the obituary.

8 Q. Is that what Stewart had in his hand when he was talking to
9 Rosemond on that occasion?

10 A. Yeah.

11 MR. ENZER: You can take that down.

12 Q. Following the murder of Fletcher, did you participate in
13 any further acts of violence against G-Unit?

14 A. No.

15 Q. To the best of your knowledge, following the murder, did
16 Rosemond participate in any further acts of violence against
17 G-Unit?

18 A. No.

19 Q. Have you told the jury everything that happened as part of
20 your feud between Rosemond and G-Unit or just answered my
21 questions?

22 A. Answered the questions.

23 Q. If the defendant's lawyer or the judge have additional
24 questions about the feud with G-Unit, are you willing to answer
25 any additional questions they have?

Hbdnros2

Williams - direct

1 A. Yeah.

2 Q. Let me direct your attention now to 2010.

3 Did there come a time in 2010 when federal agents with
4 the Drug Enforcement Administration approached you?

5 A. Yeah.

6 Q. Was this before or after the murder?

7 A. After.

8 Q. Where did they approach you?

9 A. At my house.

10 Q. And when the agents approached you, did they ask to speak
11 with you about this case?

12 A. Yeah.

13 Q. Did you speak with them?

14 A. Yeah.

15 Q. During the interview, did you tell the truth?

16 A. No.

17 Q. Why did you lie?

18 A. I had no reason to be truthful with them.

19 Q. At that point had you been arrested for the murder of
20 Lowell Fletcher?

21 A. No.

22 Q. At that point had you been arrested on any federal charges?

23 A. No.

24 Q. Did you tell Rosemond about the interview with the agents?

25 A. Yeah.

Hbdnros2

Williams - direct

- 1 Q. What did you tell him?
- 2 A. That they were showing me pictures and asking me about
3 the -- like money orders and stuff like that.
- 4 Q. What did Rosemond say?
- 5 A. He was just asking me, you know, exactly what happened
6 pretty much.
- 7 Q. Did there come a time when you were arrested on federal
8 charges?
- 9 A. Yeah.
- 10 Q. When?
- 11 A. 2012, February.
- 12 Q. At the time of your arrest, what were the charges against
13 you?
- 14 A. Drug -- possession of -- possession with intent to sell
15 drugs.
- 16 Q. Which prosecutor's office filed the charges?
- 17 A. Brooklyn, Eastern District.
- 18 Q. Eastern District of New York in Brooklyn?
- 19 A. Yeah.
- 20 Q. Were you detained following your arrest?
- 21 A. Yeah.
- 22 Q. Initially where were you detained?
- 23 A. MDC.
- 24 Q. What's the MDC?
- 25 A. Brooklyn -- it's the jail in Brooklyn.

Hbdnros2

Williams - direct

1 Q. Directing your attention to March of 2012, did there come a
2 time in March of 2012 when you participated in a proffer with
3 representatives of the government in the Eastern District of
4 New York?

5 A. Yeah.

6 Q. What is a proffer?

7 A. A meeting with the government.

8 Q. Who attended your proffer?

9 A. My lawyer, the prosecutor at the time, and I think it was
10 an agent, a couple of agents.

11 Q. And you?

12 A. Yeah.

13 Q. How many proffers did you participate in with prosecutors
14 in the Eastern District of New York?

15 A. One.

16 Q. Just the one we are talking about?

17 A. Yeah.

18 Q. During that one proffer, were you asked questions about
19 drug crimes that you had committed?

20 A. Yeah.

21 Q. Did you answer those questions truthfully?

22 A. Yeah.

23 Q. Were you asked questions about the murder of Lowell
24 Fletcher?

25 A. No.